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

FORM 10-K

☒ **Annual report pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934**
For the fiscal year ended December 31, 2009

or

☐ **Transition report pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934**
For the transition period from to

Commission file number: 0-27756

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 No.)**

352 Knotter Drive, Cheshire Connecticut 06410
(Address of Principal Executive Offices) (Zip Code)

203-272-2596
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:	**Common Stock, par value $0.0001**
	Rights to Purchase Junior Participating Cumulative Preferred Stock, par value $0.0001
Name of each exchange on which registered:	**The Nasdaq Stock Market LLC**
Securities registered pursuant to Section 12(g) of the Act:	**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the Common Stock held by non-affiliates of the registrant, based upon the last sale price of the Common Stock reported on The Nasdaq Stock Market LLC on June 30, 2009, was approximately $3,615,450,070.

The number of shares of Common Stock outstanding as of February 16, 2010 was 89,137,398.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement to be used in connection with its Annual Meeting of Stockholders to be held on May 12, 2010, are incorporated by reference into Part III of this report.

PART I

Unless the context requires otherwise, references in this report to "we," "our," "us," "Company" and "Alexion" refer to Alexion Pharmaceuticals, Inc. and its subsidiaries.

Note Regarding Forward-Looking Statements

This annual report on Form 10-K contains forward-looking statements that have been made pursuant to the provisions of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements are based on current expectations, estimates and projections about our industry, management's beliefs and certain assumptions made by our management, and may include, but are not limited to, statements regarding the potential benefits and commercial potential of Soliris® (eculizumab) for its approved indications and any future indications, timing and effect of sales of Soliris in various markets worldwide, level of future Soliris sales and collections, costs, expenses and capital requirements, cash outflows, cash from operations, status of reimbursement, price approval and funding processes in various countries worldwide, progress in developing commercial infrastructure and interest about Soliris in the patient, physician and payor communities, the safety and efficacy of Soliris and our product candidates, estimates of the potential markets and estimated commercialization dates for Soliris around the world, sales and marketing plans, any changes in the current or anticipated market demand or medical need for Soliris, status of our ongoing clinical trials, commencement dates for new clinical trials, clinical trial results, evaluation of our clinical trial results by regulatory agencies in other countries, prospects for regulatory approval in other countries, the need for additional research and testing, the uncertainties involved in the drug development process and manufacturing, our future research and development activities, assessment of competitors and potential competitors, estimates of the capacity of manufacturing and other facilities to support Soliris and our product candidates, the timing for regulatory approval of our manufacturing facility in Rhode Island, potential costs resulting from product liability or other third party claims, the sufficiency of our existing capital resources and projected cash needs, assessment of impact of recent accounting pronouncements, and the effect of shifting currency exchange rates. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," variations of such words and similar expressions are intended to identify such forward-looking statements, although not all forward-looking statements contain these identifying words. These statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict; therefore, actual results may differ materially from those expressed or forecasted in any such forward-looking statements. Such risks and uncertainties include, but are not limited to, those discussed later in this report under the section entitled "Risk Factors." Unless required by law, we undertake no obligation to update publicly any forward-looking statements, whether because of new information, future events or otherwise. However, readers should carefully review the risk factors set forth in other reports or documents we file from time to time with the Securities and Exchange Commission.

Item 1. *BUSINESS.*

Overview

Alexion Pharmaceuticals, Inc. was incorporated in Delaware in 1992. We are a biopharmaceutical company engaged in the discovery, development and commercialization of biologic therapeutic products aimed at treating patients with severe and life-threatening disease states, including hematologic, kidney and neurologic diseases, transplant rejection, cancer and autoimmune disorders. Our marketed product Soliris® (eculizumab) is the first and only therapy approved for the treatment of patients with paroxysmal nocturnal hemoglobinuria, or PNH.

Soliris is designed to inhibit a specific aspect of the complement component of the immune system and thereby treat inflammation associated with chronic hematologic, kidney and neurological disorders, transplant rejection, and autoimmune disorders. Soliris is a humanized monoclonal antibody that generally blocks complement activity for one to two weeks after a single dose at the doses currently prescribed. The initial indication for which we received approval for Soliris is PNH. PNH is a rare, debilitating and life-threatening, acquired genetic deficiency blood disorder defined by the destruction of red blood cells, or hemolysis. The chronic hemolysis in patients with PNH may be associated with life-threatening thromboses, recurrent pain, kidney disease, disabling fatigue, impaired quality of life, severe anemia, pulmonary hypertension, shortness of breath and intermittent episodes of dark-colored urine (hemoglobinuria).

Soliris was granted marketing approval by the U.S. Food and Drug Administration, or FDA, and by the European Commission, or E.C., in 2007 and now has received approval in several other countries worldwide. Additionally, Soliris was granted orphan drug designation for the treatment of PNH in the United States, Europe, Japan and several other territories.

In April 2009 and August 2009, the FDA and E.C., respectively, granted Soliris orphan drug designation for the treatment of patients with atypical Hemolytic Uremic Syndrome, or aHUS, a rare, inherited, and life-threatening complement-inhibitor deficiency disease that often progresses to end-stage kidney disease or failure. Alexion is currently enrolling patients in four clinical studies of Soliris as an investigational treatment for adolescent and adult patients with aHUS.

Recent Developments

In December 2009, our Rhode Island manufacturing facility received regulatory approval from the E.C. for the production of Soliris. In the fourth quarter of 2009, the FDA commenced its inspection of our Rhode Island manufacturing facility and requested additional information regarding our manufacturing processes which we plan to address in 2010.

In January 2010, we amended and restated our existing credit agreement with Bank of America, N.A. to, among other things, increase our revolving credit facility by $25 million. The amended agreement provides for a $50 million revolving credit facility, with up to a $20 million sublimit for letters of credit that can be used for working capital requirements and other general corporate purposes. With the consent of the lenders and the administrative agent and subject to satisfaction of certain conditions, we may increase the facility to $75 million in accordance with its terms.

Products and Development Programs

The human immune system defends the body from attack or invasion by infectious agents or pathogens. This is accomplished through a complex system of proteins and cells, primarily complement proteins, antibodies and white blood cells, each with a specialized function. Under normal circumstances, complement proteins, together with antibodies and white blood cells, act to protect the body by removing:

- harmful micro-organisms;
- cells containing foreign proteins known as antigens; and
- potential disease-causing combinations of antigens and antibodies known as immune complexes.

When activated by stimuli, the immune system triggers a series of enzymatic and biochemical reactions called the complement cascade that results in an inflammatory response. This inflammatory response is one of the immune system's weapons against foreign pathogens or otherwise diseased tissue. However, under certain circumstances, the complement cascade may cause excessive or inappropriate activation, which may result in acute and chronic inflammatory conditions and damage to healthy tissues.

Some of the hematologic, autoimmune, or inflammatory diseases in which the complement cascade is activated include:

- PNH;
- atypical hemolytic uremic syndrome;
- transplantation;
- myasthenia gravis;
- multifocal motor neuropathy;
- asthma;
- autoimmune and other hemolytic anemias;
- cold agglutinin disease;
- membranoproliferative glomerulonephropathy type II (dense deposit disease)
- Guillain-Barré syndrome;
- rheumatoid arthritis;
- age-related macular degeneration;
- antiphospholipid antibody syndrome including the catastrophic form;
- autoimmune kidney disease;
- lupus;
- inflammatory skin and muscle disorders; and
- specific types of multiple sclerosis.

We have focused our product development programs on anti-inflammatory therapeutics for diseases for which we believe current treatments are either non-existent or inadequate. Eculizumab is an antibody known as a C5 complement inhibitor, or a C5 Inhibitor, which is designed to selectively block the production of inflammation-causing proteins of the complement cascade. We believe that selective suppression of this immune response may provide a significant therapeutic advantage relative to existing therapies. In addition to PNH, for which the use of eculizumab has been approved in the United States, Europe and several other territories, we believe that C5 Inhibitors may be useful in the treatment of a variety of other serious diseases and conditions resulting from aberrant complement response.

Our clinical programs, including investigator sponsored clinical programs, are as follows:

Product	Development Area	Indication	Development Stage
Soliris		Paroxysmal Nocturnal Hemoglobinuria (PNH)	Commercial
Soliris	Nephrology	Atypical HUS	Phase II
		MPGN II (Dense Deposit Disease*)	Phase II
	Transplant	Presensitized Renal Transplant*	Phase II
		Presensitized Cardiac Transplant	Preclinical
	Neurology	Myasthenia Gravis	Phase II
		Neuromyelitis Optica*	Phase II
		Multifocal Motor Neuropathy*	Phase II
		Dry Age-Related Macular Degeneration (AMD)*	Phase II
	Hematology	Cold agglutinin disease	Preclinical
		Catastrophic Antiphospholipid Syndrome	Preclinical
Samalizumab	Oncology	Chronic Lymphocytic Leukemia	Phase I/II
		Multiple Myeloma	Phase I/II

* Investigator Initiated Trial

C5 Inhibitors

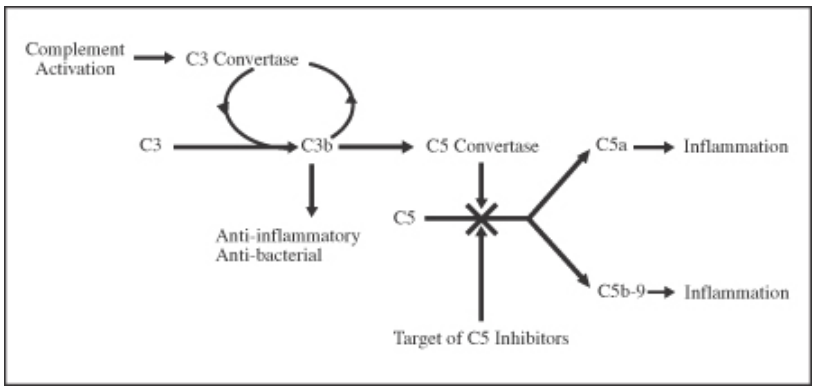
Complement proteins are a series of inactive proteins circulating in the blood. When activated by stimuli, including those associated with both acute and chronic inflammatory disorders, these inactive complement proteins are split by enzymes known as convertases into activated by-products through the complement cascade.

Some of these by-products, notably C3b, are helpful in fighting infections and inhibiting autoimmune disorders. However, the by-products generated by the cleavage of C5, known as C5a and C5b-9, generally cause harmful inflammation if inappropriately or over-activated. The inflammatory by-products of C5 cause:

- lysis, or destruction, of red blood cells that are deficient in complement inhibitors;
- activation of platelets, white blood cells, and blood-vessel lining endothelial cells that are deficient in complement inhibitors;
- activation and destruction of muscle and other tissue cells;
- activation of white blood cells;
- attraction of white blood cells into inflamed tissues;

- production of inflammatory chemicals including tumor necrosis factor-alpha;
- activation of blood-clotting systems;
- activation of blood vessel-lining cells called endothelial cells, allowing leakage of white blood cells into tissue;
- activation of kidney cells; and
- initiation of cell suicide programs in heart cells.

The following diagram illustrates the complement cascade:



Because of the generally beneficial effects of the components of the complement cascade prior to C5 and the potent inflammatory, destructive and disease-promoting effects of the cleavage products of C5, we have identified C5 as an effective anti-inflammatory drug target. Our C5 Inhibitor, eculizumab, specifically and tightly binds to C5 blocking its cleavage into harmful by-products, which inhibits subsequent damage from the downstream inflammatory mediators.

In human studies, eculizumab, which we sell under the name Soliris, had the following effects in patients with PNH:

- reduction of red blood cell destruction (hemolysis);
- reduction in incidence of life-threatening blood clots (thromboses);
- improvement of severe anemia;
- improvement of disabling fatigue and other quality of life outcomes;
- decrease or elimination of blood transfusion requirements;
- reduction of inflammation and blood clotting activation;

- reduction in chronic kidney disease; and
- reduction in incidence of high blood pressure in the lungs (pulmonary hypertension).

In addition, in laboratory and animal models of human disease, we have published results that the administration of eculizumab has demonstrated the following:

- prevention and amelioration of asthmatic attacks;
- enhancement of survival in organ transplantation models;
- prevention of kidney damage and preservation of kidney function in a model of complement inhibitor deficiency;
- prevention of nerve degeneration and improvement in function in myasthenia gravis models;
- prevention of nerve degeneration and improvement in function in multifocal motor neuropathy model;
- reduction of brain damage in cerebral ischemia, or reduced blood flow to brain tissue;
- enhancement of survival in a model of lupus; and
- preservation of kidney function in nephritis, or inflammation of kidney tissue.

Soliris

Soliris is designed to inhibit a specific aspect of the complement component of the immune system and thereby treat inflammation related to chronic hematologic, neurologic and autoimmune disorders and transplant rejection. Soliris is a humanized antibody which, administered at the doses currently prescribed, generally blocks complement activity for one to two weeks after a single dose.

Soliris was granted marketing approval by the U.S. Food and Drug Administration, or FDA, and by the European Commission, or E.C., in 2007 and now has received approval in several other countries worldwide. Additionally, Soliris was granted orphan drug designation for the treatment of PNH in the United States, Europe, Japan and several other territories.

Orphan drug designation generally entitles us to exclusivity for certain periods of time, subject to limited circumstances. However, if a competitive product that is the same as Soliris, as defined under the applicable regulations, is shown to be clinically superior to our product in the treatment of PNH, or if a competitive product is different from Soliris, as defined under the applicable regulations, the orphan drug exclusivity we have obtained may not block the approval of such competitive product.

About Paroxysmal Nocturnal Hemoglobinuria, or PNH

PNH is a rare, debilitating and life-threatening, acquired genetic deficiency blood disorder defined by the destruction of red blood cells. Patients with PNH have an acquired genetic deficiency in certain protective proteins on the surface of their blood cells, allowing their own complement system to attack and destroy these blood cells. Patients with PNH suffer from chronic complement activation of some of their blood cells and hemolysis, or destruction of red blood cells caused by the C5 cleavage product C5b-9. This hemolysis is believed to lead to further clinical complications including thromboses, kidney disease, liver dysfunction, disabling fatigue, impaired quality of life, recurrent pain, shortness of breath, pulmonary hypertension, intermittent

episodes of dark colored urine (hemoglobinuria), and anemia. The red blood cell destruction may be sufficiently large that recurrent blood transfusions are necessary to support normal red blood cell function. The prevalence, or number of affected patients at any one time, has not been definitively determined but has been estimated at approximately 8,000 – 10,000 total patients in North America and Western Europe. Approximately one-half of the patients with PNH die from the disease within 10-15 years of diagnosis. Soliris is the only therapy approved for PNH.

Eculizumab Development Programs

We believe that eculizumab may be useful in treating other complement mediated diseases and conditions. Our ongoing eculizumab development programs include:

Eculizumab Lead Development Area: Nephrology

Lead Program—Atypical Hemolytic Uremic Syndrome (aHUS)

Atypical hemolytic uremic syndrome (aHUS) is a rare life-threatening disease characterized by the triad of microangiopathic hemolytic anemia, low platelet count and acute renal failure. It is a disorder of the regulation of the alternative complement pathway; many patients exhibit genetic mutations in complement inhibitor genes. It is a thrombotic microangiopathy that affects small blood vessels leading to chronic intravascular hemolysis, consumption of platelets, and clots in kidney blood vessels, resulting in renal failure. The prognosis for patients with aHUS is generally poor. Approximately 70% of patients with the most common mutation experience chronic renal insufficiency, chronic dialysis, or death by one year after the first clinical episode. Atypical HUS commonly recurs in patients who undergo renal transplantation. In addition, depending on the mutation, the disease can lead to loss of the transplanted kidney in up to approximately 90% of aHUS patients who undergo kidney transplantation.

Approximately 50% of patients with aHUS have been identified to have genetic mutations in one of the complement control proteins or neutralizing autoantibodies to complement regulatory factors, which can lead to uncontrolled complement activation. Excessive complement activation may contribute to the blood vessel inflammation and clotting by stimulating activation of white blood cells, platelets, and the endothelial lining of blood vessels.

In 2009, the FDA and E.C. granted Soliris orphan drug designation for the treatment of patients with aHUS. We are currently enrolling in our multi-national, multi-center clinical trials evaluating eculizumab for the treatment of both plasma-sensitive and plasma-resistant adolescent and adult patients with aHUS.

Dense Deposit Disease (DDD)

Dense deposit disease, or DDD, also called Type II membrano-proliferative glomerulonephritis, is a rare form of glomerulonephritis, associated with genetic mutations in complement inhibitor genes leading to sustained complement activation and inflammation. Clinically, it is characterized by the onset of severe proteinuria (excess protein in the urine), often accompanied by nephrotic syndrome which is refractory to immunosuppressant therapy. In most cases, the disease evolves into chronic renal failure, requiring dialysis and renal transplantation.

We are aware that independent investigators have commenced a study to evaluate eculizumab in patients with dense deposit disease.

Eculizumab Lead Development Area: Transplant

Lead Program—Acute Humoral Rejection (AHR) in Presensitized Kidney Transplant Patients

Patients undergoing solid organ transplantation may experience severe acute humoral rejection (AHR) in the early post-transplant period. For example, in a patient undergoing a kidney transplant this may be characterized by the acute onset of renal dysfunction and rapid progression to destruction of the transplanted kidney.

AHR results when antibodies in the transplant recipient vigorously attacks the blood vessels of the donor kidney. During severe AHR, these donor specific antibodies bind to the blood vessel lining of the donor organ and initiate activation of the complement cascade, resulting in severe blood vessel inflammation and clotting. Administration of a C5 inhibitor in animal models of AMR inhibits complement activation, tissue damage and transplant rejection.

We are aware that independent investigators are continuing to enroll patients in clinical trials to evaluate eculizumab in presensitized renal transplant patients at elevated risk for AHR.

We are developing protocols to initiate multi-national, multi-site controlled clinical trials of eculizumab in this clinical setting and are further considering expansion of development efforts to include investigation of eculizumab as a treatment for patients undergoing transplantation of other organs.

Other Eculizumab Development Programs:

Myasthenia Gravis (MG)

Myasthenia gravis (MG) is a rare autoimmune syndrome characterized by autoantibodies attacking a specific target in the nerve-muscle junctions leading to failure of neuromuscular transmission. Patients with MG initially experience weakness in their ocular, or eye muscles, and the disease typically progresses to head, spinal, limb and respiratory muscles. Symptoms can include drooping eyelid, blurred vision, slurred speech, difficulty chewing or swallowing, weakness in the arms and legs and difficulty breathing.

In an experimental animal model of MG, administration of a C5 Inhibitor was found to prevent experimentally acquired MG and to inhibit disease progression.

In the third quarter of 2007, we filed an IND with the FDA to initiate clinical development and received authorization from the FDA in July 2008. Patient enrolment is currently ongoing in this Phase II clinical trial in the US, and we are opening sites in Europe as well.

Multifocal Motor Neuropathy (MMN)

Multifocal motor neuropathy, or MMN, is a rare autoimmune disorder in which autoantibodies attack the nerve-muscle junctions. Patients with MMN demonstrate a slow progressive asymmetrical weakness of limbs without sensory loss. Antibodies and complement activation products have been identified at the nerve-muscle junctions in diseases similar to MMN. Complement inhibition has recently been shown to be protective in animal models of MMN.

We are aware that independent investigators are examining the role of eculizumab for the treatment of patients with multifocal motor neuropathy.

Neuromyelitis Optica (NMO)

Neuromyelitis optica (NMO) is a rare autoimmune disease of the central nervous system (CNS) that affects the optic nerves and spinal cord. Individuals with NMO develop optic neuritis, which causes pain in the eye and vision loss, and transverse myelitis, which causes weakness, numbness, and sometimes paralysis of the arms and legs, along with sensory disturbances and loss of bladder and bowel control. In the past, NMO was considered to be a severe variant of multiple sclerosis (MS) because both can cause attacks of optic neuritis and myelitis. The recent discovery of an antibody in the blood of individuals with NMO gives doctors a reliable biomarker to distinguish NMO from MS.

We are aware that independent investigators are examining the role of eculizumab for the treatment of patients with neuromyelitis optica.

Cold Agglutinin Disease (CAD)

Cold Agglutinin Disease (CAD) is a rare autoimmune hemolytic anaemia characterized by activation of the complement cascade and sticking together (agglutination) of red blood cells. Patients may be typically first afflicted after reaching the age of sixty.

As blood is cooled during circulation through the distal parts of the arms and legs, specific antibodies bind to the red blood cells resulting in activation of the complement cascade and sticking together (agglutination) of red blood cells leading to hemolysis. Clinical manifestations of CAD include symptoms of chronic hemolysis such as fatigue, dyspnea, weakness, hemoglobinuria, kidney damage, pallor and jaundice as well as cold-induced circulatory symptoms ranging from mild discomfort to severe pain in affected limbs and tissues. In the most severe cases, complications of progressive hemolysis or anemia, or complications of blood transfusions, may result in death. Current therapies, including cold avoidance, corticosteroids, immunosuppressive drugs, intravenous immunoglobulin G (IgG) and chemotherapy agents are largely ineffective in controlling hemolysis in patients with CAD.

We are considering clinical development of eculizumab for the treatment of patients with cold agglutinin disease.

Age Related Macular Degeneration (Dry Form) (AMD)

Age-related macular degeneration is a chronic eye disease marked by deterioration of tissue in the part of the eye responsible for central vision. The deterioration occurs in the macula, which is in the center of the retina—the layer of tissue on the inside back wall of the eye. Macular degeneration can lead to total blindness, and early in the progression of the disease can worsen a patient’s quality of life by blurring or causing a blind spot in a patient’s central vision. Macular degeneration tends to affect adults age 50 and older. Dry macular degeneration, in which tissue deterioration is not accompanied by bleeding, is the most common form of the disease.

We are aware that an independent investigator is examining eculizumab in patients with the dry form of age-related macular degeneration.

Catastrophic Antiphospholipid Syndrome (CAPS)

Antiphospholipid syndrome, or APS, is an autoimmune condition characterized by blood vessel clotting in the presence of antibodies that target specific proteins (antiphospholipid, or aPL). Catastrophic antiphospholipid

syndrome, or CAPS, is a rare and extreme form of APS characterized by near simultaneous clotting of blood vessels in multiple organs leading to multiorgan failure. Initial mortality in patients experiencing a first episode of CAPS is approximately one-quarter to one-half and treatment with anticoagulants may be ineffective.

In pregnant patients with APS, activated complement proteins are identified in the placenta. In animal models of APS, inhibition of complement rather than anticoagulation is required to block fetal loss. C5 inhibitor treatment in animal models of APS was shown to inhibit blood clotting and tissue damage.

Oncology Program: Samalizumab (Anti-CD200 Antibody)

The FDA authorized our IND to evaluate the activity of samalizumab, an antibody to the immune regulator CD200, in patients with chronic lymphocytic leukemia, or CLL. We continue dosing of CLL patients with samalizumab, which commenced in the second quarter of 2008, and have begun to screen and enroll patients with multiple myeloma as we expand our samalizumab clinical program.

Chronic lymphocytic leukemia (CLL) is a type of cancer of the blood and bone marrow. Chronic lymphocytic leukemia most commonly affects older adults, though it may occur at any age and rarely can affect children.

Multiple myeloma, also known as plasma cell myeloma, is the second-most common cancer of the blood. It is the most common type of plasma cell neoplasm. Multiple myeloma accounts for approximately 1% of all cancers and 2% of all deaths from cancer.

Manufacturing

We currently rely on two facilities, including our own facility in Rhode Island, for commercial quantities of Soliris. We obtain drug product to meet our requirements for clinical studies using both internal and third-party contract manufacturing capabilities. For both clinical and commercial requirements, we have contracted and expect to continue contracting for product finishing, vial filling and packaging through third parties.

In July 2006, we acquired a manufacturing plant in Smithfield, Rhode Island for the future commercial production of Soliris and development and manufacturing of future products. We submitted a supplemental BLA during the third quarter of 2009 for commercial production of eculizumab at this facility. In December 2009, our Rhode Island manufacturing facility received regulatory approval from the E.C. for the production of Soliris. In the fourth quarter of 2009, the FDA commenced its inspection of our Rhode Island manufacturing facility and requested additional information regarding our manufacturing processes which we plan to address in 2010.

We also use our Rhode Island facility for the production and purification of certain of our product candidates for clinical studies.

Our most significant agreement with a third party manufacturer is the large-scale product supply agreement with Lonza Sales AG, or Lonza, dated December 18, 2002, which has been amended from time to time. This agreement, the Lonza Agreement, relates to the manufacture of eculizumab. An amendment to the Lonza Agreement, dated June 8, 2007, provides for additional production and minimum quantity purchase commitments of Soliris of $30 million to $35 million from 2009 through 2013. Such commitments may be cancelled only in limited circumstances. If we terminate the Lonza Agreement without cause, we will be required to pay for

product scheduled for manufacture under our arrangement. Under an existing arrangement with Lonza, we expect to pay Lonza a royalty on sales of Soliris manufactured at our Rhode Island facility.

Sales and Marketing

We have established an organization to support current and future sales of Soliris in the United States, in the major markets in Europe, Latin America and in Japan and the Asia Pacific region. Our sales force is small compared to other drugs with similar gross revenues; however, we believe that a relatively smaller sales force is appropriate to effectively market Soliris due to the limited PNH patient population. If we receive regulatory approval in new territories, we may expand our own commercial organizations in such territories and market and sell Soliris through our own sales force in these territories. However, we will evaluate each jurisdiction on a country-by-country basis, and it is possible that we will promote Soliris in collaboration with marketing partners or rely on relationships with one or more companies with established distribution systems and direct sales forces in certain countries.

Customers

In the United States, our customers are primarily specialty distributors and specialty pharmacies which supply physician office clinics, hospital outpatient clinics, infusion clinics or home health care providers. We also sell Soliris to government agencies. Outside the United States, our customers are primarily hospitals, hospital buying groups, pharmacies, other health care providers and distributors.

During 2009 and 2008, sales to our single largest customer, AmerisourceBergen, accounted for 20% and 21%, respectively, of our Soliris net product sales, and no other customer individually accounted for more than 10% of total net product sales.

Because of the pricing of Soliris, the limited number of patients, the short period from sale of product to patient infusion and the lack of contractual return rights, Soliris customers generally carry limited inventory. We monitor inventory within our distribution channel to determine whether deferral of sales is required. To date, actual refunds and returns have been negligible.

Please also see Management’s Discussion and Analysis – Revenues, and Note 16 of the Consolidated Financial Statements included in this Form 10-K, for financial information about geographic areas.

Patents and Proprietary Rights

Patents and other proprietary rights are important to our business. Our policy is to file patent applications to protect technology, inventions and improvements to our technologies that are considered important to the development of our business. We also rely upon our trade secrets, know-how, and continuing technological innovations, as well as patents that we have licensed or may license from other parties, to develop and maintain our competitive position.

We have filed several U.S. patent applications and international counterparts of certain of these applications. In addition, we have in-licensed several additional U.S. and international patents and patent applications. As of December 31, 2009, we own or in-license over 74 U.S. patents and 35 U.S. patent applications. These patents and patent applications relate to technologies or products in the C5 Inhibitor program, high throughput screening, vectors, cancer, recombinant antibodies, and other technologies. We own or in-license 39 foreign patents and

146 pending foreign patent applications. We owe royalties to a third party and other fees to owners of one or more patents in connection with the manufacture and sale of Soliris for PNH, and we may owe royalties and fees to other third parties with respect to any future commercial manufacture and sale of Soliris and our product candidates.

Our success will depend in part on our ability to obtain and maintain U.S. and international patent protection for our products and development programs, to preserve our trade secrets and proprietary rights, and to operate without infringing on the proprietary rights of third parties or having third parties circumvent our rights. Because of the length of time and expense associated with bringing new products through development and regulatory approval to the marketplace, the health care industry has traditionally placed considerable importance on obtaining patent and trade secret protection for significant new technologies, products and processes. Significant legal issues remain to be resolved as to the extent and scope of patent protection for biotechnology products and processes in the United States and other important markets outside of the United States. Accordingly, there can be no assurance that patent applications owned or licensed by us will issue as patents, or that any issued patents will afford meaningful protection against competitors. Moreover, once issued, patents are subject to challenge through both administrative and judicial proceedings in the United States and in foreign jurisdictions. Such proceedings include interference proceedings before the U.S. Patent and Trademark Office and opposition proceedings before the European Patent Office. Litigation may be required to enforce our intellectual property rights. Any litigation or administrative proceeding may result in a significant commitment of our resources and, depending on outcome, may adversely affect the validity and scope of certain of our patent or other proprietary rights.

We are aware of broad patents owned by others relating to the manufacture, use and sale of recombinant humanized antibodies, recombinant human antibodies, and recombinant human single chain antibodies. Soliris and our product candidates are either genetically engineered antibodies, including recombinant humanized antibodies, recombinant human antibodies, or recombinant human single chain antibodies. We have received notices from the owners of patents claiming that their patents may be infringed by the development, manufacture or sale of Soliris or some of our drug candidates. We are also aware of other patents owned by third parties that might be claimed by such third parties to be infringed by the development and commercialization of Soliris or some of our drug candidates. In respect to some of these patents, we have obtained licenses, or expect to obtain licenses. However, with regard to such other patents, we have determined in our judgment that:

- our products do not infringe the patents;
- the patents are not 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.

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, could materially and adversely affect our ability to commercialize our products, including Soliris.

We record actual and estimated royalties to third parties related to the sale and commercial manufacture of Soliris. These estimates are influenced by our assessment of the likelihood of third parties asserting that their patents are infringed by the manufacture or sale of Soliris and the likely outcome of any such assertion. On a periodic basis and based on specific events such as the outcome of litigation, we may reassess these estimates, resulting in adjustments to cost of sales.

It is our policy to require our employees, consultants and parties to collaborative agreements to execute confidentiality agreements upon the commencement of employment or consulting relationships or collaborations with us. These agreements generally provide that all confidential information developed or made known during the course of the relationship with us is to be kept confidential and not to be disclosed to third parties except in specific circumstances. In the case of employees, the agreements also provide that all inventions resulting from work performed for us, utilizing our property or relating to our business and conceived or completed by the individual during employment shall be our exclusive property to the extent permitted by applicable law.

License Agreements

In March 1996, we entered into a license agreement with the Medical Research Council, or MRC, whereby MRC granted to us worldwide non-exclusive rights to certain patents related to the humanization and production of monoclonal antibodies. We pay MRC royalties on a quarterly basis with respect to sales of Soliris. The royalty is payable until the last to expire of the patents covered by the license agreement, which is expected to be in 2015. MRC may terminate the license if we file for bankruptcy or become insolvent, or if we fail to perform its obligations under the agreement and such failure is not remedied within three months after delivery of notice. Under the agreement, we agreed to (a) make royalty payments with respect to sales of licensed products, (b) promote the sale of Soliris of good marketable quality, and (c) use reasonable endeavors to meet market demand for licensed products.

In December 2008, we entered into a patent license agreement with PDL BioPharma, or PDL, in connection with the resolution of all civil claims previously filed by PDL and all counterclaims previously filed by Alexion. Pursuant to the license agreement, we paid $25 million for a nonexclusive, irrevocable, perpetual worldwide license to some claims of certain PDL patents and a covenant not to sue from PDL for other claims of such PDL patents, in each case for the commercialization of Soliris for all indications.

We are party to other license agreements related to the manufacture and sale of Soliris; however, as with the PDL license agreement, we do not currently pay royalties under such agreements with respect to sales of Soliris. In the future, we expect to pay Lonza a royalty on sales of Soliris manufactured at our Rhode Island manufacturing facility.

Government Regulation

The preclinical studies and clinical testing, manufacture, labeling, storage, record keeping, advertising, promotion, export, and marketing, among other things, of our products and product candidates, including Soliris, are subject to extensive regulation by governmental authorities in the U.S. and other countries. In the U.S., pharmaceutical products are regulated by the FDA under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act. Soliris is regulated by the FDA as a biologic. Biologics require the submission of a Biologics License Application, or BLA, and approval by FDA prior to being marketed in the United States. Manufacturers of biologics may also be subject to state regulation. Failure to comply with FDA requirements, both before and after product approval, may subject us and/or our partners, contract manufacturers, and suppliers to administrative or judicial sanctions, including FDA refusal to approve applications, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, fines and/or criminal prosecution.

The steps required before a biologic may be approved for marketing in the U.S. generally include:

(1) preclinical laboratory tests and animal tests;

(2) submission to the FDA of an Investigational New Drug Application for human clinical testing, which must become effective before human clinical trials may commence;

(3) adequate and well-controlled human clinical trials to establish the safety and efficacy of the product;

(4) submission to the FDA of a BLA;

(5) FDA pre-approval inspection of product manufacturers; and

(6) FDA review and approval of BLA.

Preclinical studies include laboratory evaluation, as well as animal studies to assess the potential safety and efficacy of the product candidate. Preclinical safety tests must be conducted in compliance with FDA regulations regarding good laboratory practices. The results of the preclinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an Investigational New Drug Application, or IND, which must become effective before human clinical trials may be commenced. The IND will automatically become effective 30 days after receipt by the FDA, unless the FDA before that time raises concerns about the drug candidate or the conduct of the trials as outlined in the IND. The IND sponsor and the FDA must resolve any outstanding concerns before clinical trials can proceed. We cannot assure you that submission of an IND will result in FDA authorization to commence clinical trials or that once commenced, other concerns will not arise.

Clinical trials involve the administration of the investigational product to healthy volunteers or to patients, under the supervision of qualified principal investigators. Each clinical study at each clinical site must be reviewed and approved by an independent institutional review board, prior to the recruitment of subjects.

Clinical trials are typically conducted in three sequential phases, but the phases may overlap and different trials may be initiated with the same drug candidate within the same phase of development in similar or differing patient populations. Phase I studies may be conducted in a limited number of patients, but are usually conducted in healthy volunteer subjects. The drug is usually tested for safety and, as appropriate, for absorption, metabolism, distribution, excretion, pharmaco-dynamics and pharmaco-kinetics.

Phase II usually involves studies in a larger, but still limited patient population to evaluate preliminarily the efficacy of the drug candidate for specific, targeted indications; to determine dosage tolerance and optimal dosage; and to identify possible short-term adverse effects and safety risks.

Phase III trials are undertaken to further evaluate clinical efficacy of a specific endpoint and to test further for safety within an expanded patient population at geographically dispersed clinical study sites. Phase I, Phase II or Phase III testing might not be completed successfully within any specific time period, if at all, with respect to any of our product candidates. Results from one trial are not necessarily predictive of results from later trials. Furthermore, the FDA may suspend clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

The results of the preclinical studies and clinical trials, together with other detailed information, including information on the manufacture and composition of the product, are submitted to the FDA as part of a BLA requesting approval to market the product candidate. Under the Prescription Drug User Fee Act, as amended, the

fees payable to the FDA for reviewing a BLA, as well as annual fees for commercial manufacturing establishments and for approved products, can be substantial. The BLA review fee alone can exceed $500,000, subject to certain limited deferrals, waivers and reductions that may be available. Each BLA submitted to the FDA for approval is typically reviewed for administrative completeness and reviewability within 45 to 60 days following submission of the application. If found complete, the FDA will "file" the BLA, thus triggering a full review of the application. The FDA may refuse to file any BLA that it deems incomplete or not properly reviewable. The FDA's established goals for the review of a BLA is six months for Priority applications and 10 months for Standard applications, whereupon a review decision is to be made. The FDA, however, may not approve a drug within these established goals and its review goals are subject to change from time to time. Further, the outcome of the review, even if generally favorable, may not be an actual approval but an "action letter" that describes additional work that must be done before the application can be approved. Before approving a BLA, the FDA may inspect the facilities at which the product is manufactured and will not approve the product unless current Good Manufacturing Practices, or cGMP, compliance is satisfactory. The FDA may deny approval of a BLA if applicable statutory or regulatory criteria are not satisfied, or may require additional testing or information, which can delay the approval process. FDA approval of any application may include many delays or never be granted. If a product is approved, the approval will impose limitations on the indicated uses for which the product may be marketed, may require that warning statements be included in the product labeling, and may require that additional studies be conducted following approval as a condition of the approval, may impose restrictions and conditions on product distribution, prescribing or dispensing in the form of a risk management plan, or otherwise limit the scope of any approval. To market a product for other indicated uses, or to make certain manufacturing or other changes requires FDA review and approval of a BLA Supplement or new BLA. Further post-marketing testing and surveillance to monitor the safety or efficacy of a product is required. Also, product approvals may be withdrawn if compliance with regulatory standards is not maintained or if safety or manufacturing problems occur following initial marketing. In addition new government requirements may be established that could delay or prevent regulatory approval of our product candidates under development.

The U.S. Congress and regulatory authorities, including the FDA, are considering whether an abbreviated approval process for so-called generic or "follow-on" biological products should be adopted. An abbreviated approval process is currently available under the Federal Food, Drug and Cosmetic Act for generic versions of conventional chemical drug compounds, sometimes referred to as small molecule compounds, but not for biological products approved under the Public Health Service Act through a BLA. Currently, an applicant for a generic version of a small molecule compound only has to reference in its application an approved product for which full clinical data demonstrating safety and effectiveness exist for the approved conditions of use; demonstrate that its product has the same active ingredients, dosage form, strength, route of administration and conditions of use and is absorbed in the body at the same rate and to the same extent as the referenced approved drug; include certifications to non-infringement of valid patents listed with the FDA for the referenced approved drug; and await the expiration of any non-patent exclusivity. Various proposals have been made to establish an abbreviated approval process to permit approval of generic or follow-on versions of biological products. It is unclear as to when, or if, any such proposals may be adopted but any such abbreviated approval process could have a material impact on our business as follow-on products may be significantly less costly to bring to market and may be priced significantly lower than our products.

Both before and after the FDA approves a product, the manufacturer and the holder or holders of the BLA for the product are subject to comprehensive regulatory oversight. For example, quality control and manufacturing procedures must conform, on an ongoing basis, to cGMP requirements, and the FDA periodically inspects manufacturing facilities to assess compliance with cGMP. Accordingly, manufacturers must continue to spend time, money and effort to maintain cGMP compliance.

Orphan Drug Designation

Soliris has received orphan drug designation from the FDA for the treatment of PNH and aHUS. Under the Orphan Drug Act, the FDA may grant orphan drug designation to drugs intended to treat a "rare disease or condition," which generally is a disease or condition that affects fewer than 200,000 individuals in the United States. Orphan drug designation must be requested before submitting a BLA. After the FDA grants orphan drug designation, the generic identity of the therapeutic agent and its potential orphan use are publicly disclosed by the FDA. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory 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 an orphan exclusivity period, in which the FDA may not approve any other applications to market the same drug for the same indication for seven years, except in limited circumstances.

Soliris has also received orphan drug designation for the treatment of PNH in several other territories, including Europe, Australia and South Korea, which provides certain regulatory and filing fee advantages, including market exclusivity, except in limited circumstances, for several years after approval. In 2009, the FDA and E.C. also granted Soliris orphan drug designation for the treatment of patients with aHUS.

Foreign Regulation

In addition to regulations in the United States, we are subject to a variety of foreign regulatory requirements governing human clinical trials and marketing approval for drugs. The foreign regulatory approval process includes all of the risks associated with FDA approval set forth above, as well as additional country-specific regulations. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

For example, under European Union regulatory systems, we may submit marketing authorizations either under a centralized or decentralized procedure. The centralized procedure provides for the grant of a single marketing authorization that is valid for all European Union member states. The decentralized procedure provides for mutual recognition of national approval decisions, and the holder of a national marketing authorization may submit an application to the remaining member states. We submitted our Marketing Authorization Application for Soliris for the treatment of PNH to the European Medicines Agency, or EMEA, using the centralized procedure.

Reimbursement

Sales of pharmaceutical products depend in significant part on the coverage and reimbursement policies of government programs, including Medicare and Medicaid in the United States, and other third party payors. These health insurance programs may restrict coverage of some products by using payor formularies under which only selected drugs are covered, variable co-payments that make drugs that are not preferred by the payor more expensive for patients, and by using utilization management controls, such as requirements for prior authorization or prior failure on another type of treatment. Payors may especially impose these obstacles to coverage for higher priced drugs, and consequently Soliris may be subject to payor-driven restrictions.

In furtherance of our efforts to facilitate access to Soliris, we have created the Soliris OneSource™ Treatment Support Program in the United States, a treatment support service for patients with PNH and their healthcare providers. Alexion case managers provide education about PNH and Soliris and help facilitate solutions for reimbursement, coverage and access.

In addition, in some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, the European Union provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices and/or reimbursement of medicinal products for human use. A member state may approve a specific price or level of reimbursement for the medicinal product, or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. Following E.C. approval of Soliris for patients with PNH in June 2007, we engaged with appropriate authorities on the operational, reimbursement, price approval and funding processes that are separately required in each country and have initiated commercialization in those countries where this process is completed.

Competition

There are currently no approved drugs other than Soliris for the treatment of PNH. However, many companies, including major pharmaceutical and chemical companies as well as specialized biotechnology companies, are engaged in activities similar to our activities. Universities, governmental agencies and other public and private research organizations also conduct research and may market commercial products on their own or through joint ventures. Many of these entities may have:

- substantially greater financial and other resources;
- larger research and development staffs;
- lower labor costs; and/or
- more extensive marketing and manufacturing organizations.

Many of these companies and organizations have significant experience in preclinical testing, human clinical trials, product manufacturing, marketing, sales and distribution and other regulatory approval and commercial procedures. They may also have a greater number of significant patents and greater legal resources to seek remedies for cases of alleged infringement of their patents by us to block, delay or compromise our own drug development process.

We compete with large pharmaceutical companies that produce and market synthetic compounds and with specialized biotechnology firms in the U.S., Europe and elsewhere, as well as a growing number of large pharmaceutical companies that are applying biotechnology to their operations. A number of biotechnology and pharmaceutical companies are developing new products for the treatment of the same diseases being targeted by us; in some instances, these products have already entered clinical trials or are already being marketed. Other companies are engaged in research and development based on complement proteins.

Several companies have either publicly announced their intentions to develop drugs which target the inflammatory effects of complement in the immune system or have had programs to develop complement inhibitor therapies. We believe that our potential C5 Inhibitors differ substantially from those of our potential competitors due to our compounds' demonstrated ability to specifically intervene in the complement cascade, for

potentially prolonged periods of time. We believe this action to be the optimal point so that the disease-causing actions of complement proteins are inhibited, while the normal disease-preventing functions of complement proteins and other aspects of immune function remain intact.

Employees

As of December 31, 2009, we had 673 full-time, world-wide employees, of which 315 were engaged in research, product development, manufacturing, and clinical development, 234 in sales and marketing, and 124 in administration, business development and finance. Our U.S. employees are not represented by any collective bargaining unit, and we regard the relationships with all our employees as satisfactory.

Available Information

Our internet website address is http://www.alexionpharma.com. Through our website, we make available, free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, any amendments to those reports, proxy and registration statements, and all of our insider Section 16 reports, as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. These SEC reports can be accessed through the “Investors” section of our website. The information found on our website is not part of this or any other report we file with, or furnish to, the SEC. Paper copies of our SEC reports are available free of charge upon request in writing to Investor Relations, Alexion Pharmaceuticals, Inc., 352 Knotter Drive, Cheshire, CT 06410.

Item 1A. ***RISK FACTORS.***

You should carefully consider the following risk factors before you decide to invest in our Company and our business because these risk factors may have a significant impact on our business, operating results, financial condition, and cash flows. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the following risks actually occurs, our business, financial condition and results of operations could be materially and adversely affected.

Risks Related to Our Lead Product Soliris

We depend heavily on the success of our lead product, Soliris, which was approved in the United States and in Europe in 2007 for the treatment of PNH. If we are unable to increase sales of Soliris in the United States and Europe and commercialize Soliris in additional countries, or if we are significantly delayed or limited in doing so, our business may be materially harmed.

Our ability to generate revenues will depend on commercial success of Soliris in the United States, Europe and throughout the rest of the world and whether physicians, patients and healthcare payors view Soliris as therapeutically effective and safe relative to cost. Since we launched Soliris in the United States in April 2007, almost all of our revenue has been attributed to sales of Soliris, and we expect that Soliris product sales will continue to contribute to a significant percentage or almost all of our total revenue over the next several years.

The commercial success of Soliris and our ability to generate and increase revenues will depend on several factors, including the following:

- the number of patients with PNH who are diagnosed with the disease and identified to us;
- the number of patients with PNH that may be treated with Soliris;
- successful continuation of commercial sales in the United States and in European countries where we are already selling Soliris, and successful launch in countries where we have not yet obtained marketing approval or commenced sales;
- ability to obtain and maintain sufficient coverage or reimbursement by third-party payors;
- acceptance of Soliris in the medical community;
- receipt and maintenance of marketing approvals from the United States and foreign regulatory authorities; and
- establishment and maintenance of commercial manufacturing capabilities ourselves or through third-party manufacturers.

We dedicate significant resources to the worldwide expansion of the commercialization of Soliris for the treatment of PNH. In the European Union, we have established sales and marketing capabilities in several countries, and we continue discussions with appropriate authorities in other countries so that we may, upon conclusion of such discussions, commence commercial sales in those countries. We have submitted applications for marketing authorization in additional territories, including Japan, and received approval in Canada and Australia in 2009 and South Korea and Switzerland in 2010. We cannot guarantee that our pending marketing

applications, or any marketing applications that we file in the future, will be approved in all countries where we seek authorization to sell Soliris, or that we will be able to obtain reimbursement for Soliris or that other discussions and processes will be concluded successfully or on a timely basis and, as a result, sales in certain countries may be delayed or never occur, or may be subsequently reduced. If we are not successful in increasing sales of Soliris in the United States and Europe and commercializing in the rest of the world, or are significantly delayed or limited in doing so, we may experience a surplus inventory, our business may be materially harmed and we may need to significantly curtail operations.

Because the target patient population of Soliris for the treatment of PNH is small and has not been definitively determined, we must be able to successfully identify PNH patients and achieve a significant market share in order to achieve or maintain profitability.

The prevalence of PNH patients has not been definitively determined but can be estimated at approximately 8,000—10,000 total patients in North America and Western Europe. There can be no guarantee that any of our programs will be effective at identifying PNH patients and the number of PNH patients in the United States and Europe may turn out to be lower than expected or may not be otherwise amenable to treatment with Soliris, all of which would adversely affect our results of operations and our business.

If we are unable to obtain and maintain reimbursement for Soliris from government health administration authorities, private health insurers and other organizations, Soliris may be too costly for regular use and our ability to generate revenues would be harmed.

We may not be able to sell Soliris on a profitable basis or our profitability may be reduced if we are required to sell our product at lower than anticipated prices or reimbursement is unavailable or limited in scope or amount. Soliris is significantly more expensive than traditional drug treatments and almost all patients require some form of third party coverage to afford its cost. Our future revenues and profitability will be adversely affected if we cannot depend on governmental, private third-party payors and other third-party payors, such as Medicare and Medicaid in the United States or country specific governmental organizations, to defray the cost of Soliris to the patient. If these entities refuse to provide coverage and reimbursement with respect to Soliris or determine to provide a lower level of coverage and reimbursement than anticipated, Soliris may be too costly for general use, and physicians may not prescribe it.

In certain foreign countries, pricing, coverage and level of reimbursement of prescription drugs are subject to governmental control and we may be unable to negotiate coverage, pricing, and reimbursement on terms that are favorable to us, or such coverage, pricing, and reimbursement may differ in separate regions in the same country. In some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country, and we cannot guarantee that we will have the capabilities or resources to successfully conclude the necessary processes and commercialize Soliris in every or even most countries in which we seek to sell Soliris. Reimbursement sources are different in each country and in each country may include a combination of distinct potential payors, including private insurance and governmental payors. For example, countries in the European Union may restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may from time to time approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. Our results of operations may suffer if we are unable to successfully and timely conclude reimbursement, price approval or funding processes and begin to market Soliris in foreign countries or if coverage and reimbursement for Soliris in foreign countries is limited. If we discover we

are not able to obtain coverage, pricing or reimbursement on terms acceptable to us or at all, or if such terms should change, in any foreign countries, we may not be able to or we may determine not to sell Soliris in such countries and our plans for geographic expansion of sales and our business may be adversely affected as a result.

Many third-party payors cover only selected drugs, making drugs that are not preferred by such payor more expensive for patients, and require prior authorization or failure on another type of treatment before covering a particular drug. Third-party payors may be especially likely to impose these obstacles to coverage for higher-priced drugs such as Soliris.

In addition to potential restrictions on coverage, the amount of reimbursement for Soliris may also reduce our profitability and worsen our financial condition. In the United States, European countries, and elsewhere, there have been, and we expect there will continue to be, actions and proposals to control and reduce healthcare costs. Government and other third-party payors are challenging the prices charged for healthcare products and increasingly limiting and attempting to limit both coverage and level of reimbursement for prescription drugs. A significant reduction in the amount of reimbursement for Soliris in one or more countries may have a material adverse effect on our business. See additional discussion below under the headings “Healthcare reform measures could adversely affect our business” and “The current credit and financial market conditions may aggravate certain risks affecting our business.”

Even where patients have access to insurance, their insurance co-payment amounts or annual or lifetime caps on reimbursements may represent a barrier to obtaining or continuing Soliris. In the United States, Alexion has financially supported non-profit organizations, such as the PNH Fund of the National Organization for Rare Disorders, or NORD, which assist patients in accessing treatment for PNH, including Soliris. Such organizations assist patients whose insurance coverage leaves them with prohibitive co-payment amounts or other expensive financial obligations. NORD’s, and other similar organizations’, ability to provide assistance to PNH patients is dependent on funding from external sources, and we cannot guarantee that such funding will be provided at adequate levels, if at all. We have also provided Soliris without charge to patients who have no insurance coverage for drugs for related charitable purposes. We are not able to predict the financial impact of the support we may provide for these and other charitable purposes; however, substantial support could have a material adverse effect on our profitability in the future.

We may not be able to gain or maintain market acceptance among the medical community or patients which would prevent us from achieving or maintaining profitability in the future.

We cannot be certain that Soliris will gain or maintain market acceptance in a particular country among physicians, patients, healthcare payors, and others. Although we have received regulatory approval for Soliris in certain territories, including the United States and Europe, such approvals do not guarantee future revenue. We cannot predict whether physicians, other healthcare providers, government agencies or private insurers will determine that Soliris is safe and therapeutically effective relative to its cost. Medical doctors’ willingness to prescribe, and patients’ willingness to accept, Soliris depends on many factors, including prevalence and severity of adverse side effects in both clinical trials and commercial use, effectiveness of our marketing strategy and the pricing of Soliris, publicity concerning Soliris, our other product candidates or competing products, our ability to obtain and maintain third-party coverage or reimbursement, and availability of alternative treatments, including bone marrow transplants. If Soliris fails to achieve or maintain market acceptance among the medical community or patients in a particular country, we may not be able to market and sell it successfully in such country, which would limit our ability to generate revenue and could harm our overall business.

If we or our contract manufacturers fail to comply with continuing United States and foreign regulations, we could lose our approvals to market Soliris or our manufacturers could lose their approvals to manufacture Soliris, and our business would be seriously harmed.

We cannot guarantee that we will be able to maintain our regulatory approvals for Soliris. If we do not maintain our regulatory approvals for Soliris, the value of our company and our results of operations will be materially harmed. We and our future partners, contract manufacturers and suppliers are subject to rigorous and extensive regulation by the Food and Drug Administration, or FDA, other federal and state agencies, and governmental authorities in other territories. These regulations continue to apply after product approval, and cover, among other things, testing, manufacturing, quality control, labeling, advertising, promotion, risk mitigation, adverse event reporting requirements, and export of biologics. As a condition of approval for marketing Soliris, governmental authorities may require us to conduct additional studies. For example, in connection with the approval of Soliris in the United States, we agreed to establish a PNH Registry, monitor immunogenicity, monitor compliance with vaccination requirements, and determine the effects of anticoagulant withdrawal among PNH patients receiving eculizumab. The FDA can propose to withdraw approval if it determines that such studies are inadequate or if new clinical data or information shows that a product is not safe for use in an approved indication. We are required to report any serious and unexpected adverse experiences and certain quality problems with Soliris to the FDA, the European Medicines Evaluation Agency, or EMEA, and certain other health agencies. We, the FDA, the EMEA or another health agency may have to notify healthcare providers of any such developments. The discovery of any previously unknown problems with Soliris, a manufacturer or a facility may result in restrictions on Soliris, a manufacturer or a facility, including withdrawal of Soliris from the market. Certain changes to an approved product, including the way it is manufactured or promoted, often require prior regulatory approval before the product as modified may be marketed. Our manufacturing and other facilities and those of any third parties manufacturing Soliris will be subject to inspection prior to grant of marketing approval and subject to continued review and periodic inspections by the regulatory authorities. In December 2009, the E.C. approved the use of our Rhode Island manufacturing facility for the production of Soliris, and we are authorized to sell product that is manufactured in our facility in the European Union and certain other territories. The FDA commenced its inspections during 2009; however we will not be capable of manufacturing Soliris for commercial sale in the United States on our own until such time as we have received the required FDA approval for our facility in Rhode Island, if ever. Any third party we would use to manufacture Soliris for sale must also be licensed by applicable regulatory authorities.

Failure to comply with the laws, including statutes and regulations, administered by the FDA, the EMEA or other agencies could result in:

- administrative and judicial sanctions, including, warning letters;
- fines and other civil penalties;
- withdrawal of a previously granted approval for Soliris;
- interruption of production;
- operating restrictions;
- delays in approving or refusal to approve Soliris or a facility that manufactures Soliris;
- product recall or seizure;
- injunctions; and
- criminal prosecution.

If the use of Soliris harms people, or is perceived to harm patients even when such harm is unrelated to Soliris, our regulatory approvals could be revoked or otherwise negatively impacted and 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 Soliris could (1) lessen the frequency with which physicians decide to prescribe Soliris, (2) encourage physicians to stop prescribing Soliris to their patients who previously had been prescribed Soliris, (3) cause serious adverse events and give rise to product liability claims against us, and (4) result in our need to withdraw or recall Soliris from the marketplace. Some of these risks are unknown at this time.

We have tested Soliris in only a small number of patients. As more patients begin to use Soliris, new risks and side effects may be discovered, the rate of known risks or side effects may increase, and risks previously viewed as less significant could be determined to be significant. Previously unknown risks and adverse effects of Soliris may also be discovered in connection with unapproved, or off-label, uses of Soliris. We do not promote, or in any way support or encourage the promotion of Soliris for off-label uses in violation of applicable law, but physicians are permitted to use products for off-label purposes and we are aware of such off-label uses of Soliris. In addition, we are studying and expect to continue to study Soliris in diseases other than PNH in controlled clinical settings, and expect independent investigators to do so as well. In the event of any new risks or adverse effects discovered as new patients are treated for PNH and as Soliris is studied in or used by patients for off-label indications, regulatory authorities may delay or revoke their approvals, we may be required to conduct additional clinical trials, make changes in labeling of Soliris, reformulate Soliris or make changes and obtain new approvals for our and our suppliers' manufacturing facilities. We may also experience a significant drop in the potential sales of Soliris, experience harm to our reputation and the reputation of Soliris in the marketplace or become subject to lawsuits, including class actions. Any of these results could decrease or prevent any sales of Soliris or substantially increase the costs and expenses of commercializing and marketing Soliris.

We may be sued by people who use Soliris, whether as a prescribed therapy, during a clinical trial, during an investigator initiated study, or otherwise. Many patients who use Soliris are already very ill. Any informed consents or waivers obtained from people who enroll in our trials or use Soliris may not protect us from liability or litigation. Our product liability insurance may not cover all potential types of liabilities or may not cover certain liabilities completely. Moreover, we may not be able to maintain our insurance on acceptable terms. In addition, negative publicity relating to the use of Soliris or a product candidate, or to a product liability claim, may make it more difficult, or impossible, for us to market and sell Soliris. 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.

Patients who use Soliris already often have severe and advanced stages of disease and known as well as unknown significant pre-existing and potentially life-threatening health risks, including for example bone marrow failure. During the course of treatment, patients may suffer adverse events, including death, for reasons that may or may not be related to Soliris. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients, delay, negatively impact or end our opportunity to receive or maintain regulatory approval to market Soliris, or require us to suspend or abandon our commercialization efforts. Even in a circumstance in which we do not believe that an adverse event is related to Soliris, the investigation into the circumstance may be time consuming or may be inconclusive. These investigations may interrupt our sales efforts, delay our regulatory approval process in other countries, or impact and limit the type of regulatory approvals Soliris receives or maintains.

Some patients treated with Soliris for PNH or other diseases, including patients who have participated in our clinical trials, have died or suffered potentially life-threatening diseases either during or after ending their Soliris treatments. In particular, use of C5 Inhibitors, such as Soliris, is associated with an increased risk for certain types of infection, including Neisseria bacteria. Serious cases of Neisseria infection can result in severe illness, including but not limited to brain damage, loss of limbs or parts of limbs, kidney failure, or death. PNH patients in our TRIUMPH and SHEPHERD trials all received vaccination against Neisseria bacteria prior to first administration of Soliris and all patients who are prescribed Soliris are required by prescribing guidelines to be vaccinated prior to receiving their first dose; however, vaccination does not eliminate all risk of becoming infected with Neisseria bacteria. Some patients treated with Soliris, who had been vaccinated, including patients who have participated in our trials of Soliris for the treatment of PNH and other diseases, have become infected with Neisseria bacteria, including patients who have suffered serious illness or death. Each such incident is required to be reported to appropriate regulatory agencies in accordance with relevant regulations.

We are also aware of a potential risk for PNH patients who delay a dose of Soliris or discontinue their treatment of Soliris. Treatment with Soliris blocks complement and allows complement-sensitive PNH red blood cells to increase in number. If treatment with Soliris is thereafter delayed or discontinued, a greater number of red blood cells therefore would become susceptible to destruction when the patient's complement system is no longer blocked. The rapid destruction of a larger number of a patient's red blood cells may lead to numerous complications, including death. Several PNH patients in our studies of Soliris have received delayed doses or discontinued their treatment. In none of those circumstances were significant complications shown to be due to rapid destruction of a larger number of PNH red blood cells; however, we have not studied the delay or termination of treatment in enough patients to determine that such complications in the future are unlikely to occur. Additionally, such delays or discontinuations may be associated with significant complications without evidence of such rapid cell destruction. Clinical evaluations of outcomes in the post-marketing setting are required to be reported to appropriate regulatory agencies in accordance with relevant regulations. Determination of significant complications associated with the delay or discontinuation of Soliris could have a material adverse effect on our ability to sell Soliris for PNH.

Although we obtained regulatory approval of Soliris for PNH in the United States, Europe and other territories, we cannot guarantee that we will obtain regulatory approval for Soliris in each territory where we seek approval.

Governments in countries outside the United States and Europe regulate the distribution of drugs in such countries and the facilities where such drugs are manufactured, and obtaining their approvals can be lengthy, expensive and highly uncertain. The approval process varies from country to country, and the requirements governing the conduct of clinical trials, product manufacturing, product licensing, pricing and reimbursement vary greatly from country to country. In certain jurisdictions, we are required to finalize operational, reimbursement, price approval and funding processes prior to marketing our products, even in countries where marketing approval has been obtained. Soliris became commercially available in certain countries in Europe in the fourth quarter of 2007. We received regulatory approval for Soliris for treatment of patients with PNH in Canada and Australia in 2009 and in South Korea and Switzerland in 2010. We may not receive regulatory approval for Soliris in any other territories for at least the next several years, if ever.

Regulatory agencies may require additional information or data with respect to our submissions for Soliris for PNH. We may have to conduct additional lengthy clinical testing and other costly and time-consuming procedures to satisfy foreign regulatory agencies. Even with approval of Soliris in certain countries, the regulatory agencies in other countries may not agree with our interpretations of our clinical trial data for Soliris

and may decide that our results are not adequate to support approval for marketing of Soliris. In those circumstances, we would not be able to obtain regulatory approval in such country on a timely basis, if ever. Even if approval is granted in such country, the approval may require limitations on the indicated uses for which the drug may be marketed. The foreign regulatory approval process includes all of the risks associated with FDA approval as well as country-specific regulations. We must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. For example, we were required to conduct clinical studies with Soliris in patients with PNH in Japan; however, there is no assurance that the Japanese regulatory agency will find these studies sufficient for registration of Soliris in Japan.

Commercial quantities of Soliris can only be manufactured at two facilities, including our own facility in Rhode Island, and we are currently entirely dependent on a single third party to manufacture commercial quantities of Soliris for sale in the United States. Our commercialization of Soliris may be stopped, delayed or made less profitable if we or any other supply vendor fails to provide sufficient quantities of Soliris.

Until December 2009, only Lonza Sales AG, or Lonza, was capable of manufacturing commercial quantities of Soliris. In December 2009, the E.C. approved the use of our Rhode Island manufacturing facility for the production of Soliris and we are authorized to sell product that is manufactured in our facility in the European Union and certain other territories. However, we will not be capable of manufacturing Soliris for commercial sale in the United States on our own until such time as we have received the required FDA approval for our manufacturing facility in Rhode Island, if ever. Therefore, we will continue to depend entirely on one company, Lonza, to manufacture Soliris for commercial sale in the United States until that time.

The manufacture of Soliris is difficult. Manufacture of a biologic requires a multi-step controlled process and even minor problems or deviations could result in defects or failures. We cannot be certain that we or Lonza will be able to perform uninterrupted supply chain services. The failure to manufacture appropriate supplies of Soliris, on a timely basis, or at all, may prevent or interrupt the commercialization of Soliris. If we or Lonza were unable to manufacture Soliris for any period, or if we do not obtain approval of our facility by the FDA, we may incur substantial loss of sales. If we are forced to find an alternative supplier for Soliris, in addition to loss of sales, we may also incur significant costs in establishing a new arrangement.

We also depend on a few outside vendors for other services with respect to our clinical and commercial requirements, including product finishing, packaging, vialing and labeling. We do not have control over any third-party manufacturer's, vialer's or other third party provider's compliance with the rules and regulations of the FDA, EMEA or any other applicable regulations or standards. Any difficulties or delays in our third party manufacturing and supply of Soliris and other product candidates, or any failure of our third party providers to maintain compliance with the applicable regulations and standards could increase our costs, constrain our ability to satisfy demand for Soliris from customers, cause us to lose revenue, make us postpone or cancel clinical trials, or cause our products to be recalled or withdrawn.

We are dependent upon a small number of customers for a significant portion of our revenue, and the loss of, or significant reduction or cancellation in sales to, any one of these customers could adversely affect our operations and financial condition.

In the United States, we sell Soliris to specialty pharmacies and specialty distributors who in turn sell to patient health-care providers. We do not promote Soliris to these distributors, and they do not set or determine

demand for Soliris. For the year ended December 31, 2009, our single largest customer, AmerisourceBergen, accounted for 20% of our Soliris net product sales, and our three largest customers accounted for approximately 35% of our net product sales. As of December 31, 2009, our single largest customer, AmerisourceBergen, accounted for 20% of the accounts receivable balance. We expect such customer concentration to continue for the foreseeable future. Our ability to successfully commercialize Soliris will depend, in part, on the extent to which we are able to provide adequate distribution of Soliris to patients. Although a number of specialty distributors and specialty pharmacies, which supply physician office clinics, hospital outpatient clinics, infusion clinics, home health care providers, and governmental organizations, distribute Soliris, they generally carry a very limited inventory and may be reluctant to distribute Soliris in the future if demand for the product does not increase. Further, it is possible that our distributors could decide to change their policies or fees, or both, at some time in the future. This could result in their refusal to distribute smaller volume products such as Soliris, or cause higher product distribution costs, lower margins or the need to find alternative methods of distributing our product. Although we believe we can find alternative distributors on a relatively short notice, our revenue during that period of time may suffer and we may incur additional costs to replace a distributor. The loss of any large customer, a significant reduction in sales we make to them, any cancellation of orders they have made with us or any failure to pay for the products we have shipped to them could materially and adversely affect our results of operations and financial condition.

If we are unable to establish and maintain effective sales, marketing and distribution capabilities, or to enter into agreements with third parties to do so, we will be unable to successfully commercialize Soliris.

We are marketing and selling Soliris ourselves in the United States, Europe and several other territories, but have only limited experience thus far with marketing, sales or distribution of drug products. We have established commercial capabilities in the United States and in Europe. If we are unable to establish and/or expand the capabilities to sell, market and distribute Soliris, either through our own capabilities or by entering into agreements with others, or to maintain such capabilities in countries where we have already commenced commercial sales, we will not be able to successfully sell Soliris. In that event, we will not be able to generate significant revenues. We cannot guarantee that we will be able to establish and maintain our own capabilities or enter into and maintain any marketing or distribution agreements with third-party providers on acceptable terms, if at all. Even if we hire the qualified sales and marketing personnel we need in the United States and in Europe to support our objectives, or enter into marketing and distribution agreements with third parties on acceptable terms, we may not do so in an efficient manner or on a timely basis. We may not be able to correctly judge the size and experience of the sales and marketing force and the scale of distribution capabilities necessary to successfully market and sell Soliris. Establishing and maintaining sales, marketing and distribution capabilities are expensive and time-consuming. Our expenses associated with building up and maintaining the sales force and distribution capabilities around the world may be disproportional compared to the revenues we may be able to generate on sales of Soliris. We cannot guarantee that we will be successful in commercializing Soliris.

If we market Soliris in a manner that violates health care fraud and abuse laws, we may be subject to civil or criminal penalties.

In addition to FDA and related regulatory requirements, we are subject to health care “fraud and abuse” laws, such as the federal False Claims Act, the anti-kickback provisions of the federal Social Security Act, and other state and federal laws and regulations. Federal and state anti-kickback laws prohibit, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service

reimbursable under Medicare, Medicaid, or other federally or state financed health care programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, patients, purchasers and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing, or recommending may be subject to scrutiny if they do not qualify for an exemption or safe harbor.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Pharmaceutical companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities, such as allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product; reporting to pricing services inflated average wholesale prices that were then used by federal programs to set reimbursement rates; engaging in promotion for uses that the FDA has not approved, or "off-label" uses, that caused claims to be submitted to Medicaid for non-covered off-label uses; and submitting inflated best price information to the Medicaid Rebate Program.

Although physicians are permitted to, based on their medical judgment, prescribe products for indications other than those cleared or approved by the FDA, manufacturers are prohibited from promoting their products for such off-label uses. We market Soliris for PNH and provide promotional materials and training programs to physicians regarding the use of Soliris for PNH. Although we believe our marketing materials and training programs for physicians do not constitute off-label promotion of Soliris, the FDA may disagree. If the FDA determines that our promotional materials, training or other activities constitute off-label promotion of Soliris, it could request that we modify our training or promotional materials or other activities or subject us to regulatory enforcement actions, including the issuance of a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they believe that the alleged improper promotion led to the submission and payment of claims for an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Even if it is later determined we are not in violation of these laws, we may be faced with negative publicity, incur significant expenses defending our position and have to divert significant management resources from other matters.

The majority of states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a manufacturer's products from reimbursement under government programs, criminal fines, and imprisonment. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which would also harm our financial condition. Because of the breadth of these laws and the narrowness of the safe harbors and because government scrutiny in this area is high, it is possible that some of our business activities could come under that scrutiny.

In recent years, several states and localities, including California, the District of Columbia, Maine, Minnesota, Nevada, New Mexico, Vermont, and West Virginia, have enacted legislation requiring pharmaceutical companies to establish marketing compliance programs, file periodic reports with the state or make periodic public disclosures on sales, marketing, pricing, clinical trials, and other activities. Similar legislation is being considered in other states. Many of these requirements are new and uncertain, and the

penalties for failure to comply with these requirements are unclear. Nonetheless, if we are found not to be in full compliance with these laws, we could face enforcement action and fines and other penalties, and could receive adverse publicity.

Risks Related to Development, Clinical Testing and Regulatory Approval of Our Product Candidates, Including Eculizumab for Indications Other than PNH

None of our product candidates except for Soliris has received regulatory approvals. Soliris has not been approved for any indication other than for the treatment of patients with PNH. If we are unable to obtain regulatory approvals to market one or more of our product candidates, including Soliris for other indications, our business may be adversely affected.

All of our product candidates except Soliris are in early stages of development, and we do not expect our other product candidates to be commercially available for several years, if at all. Similarly, Soliris has not been approved for any indication other than for the treatment of patients with PNH, and we do not expect approval for use of Soliris in other indications for several years, if at all. Our product candidates are subject to strict regulation by regulatory authorities in the United States and in other countries. We cannot market any product candidate until we have completed all necessary preclinical studies and clinical trials and have obtained the necessary regulatory approvals. We do not know whether regulatory agencies will grant approval for any of our product candidates. Even if we complete preclinical studies and clinical trials successfully, we may not be able to obtain regulatory approvals or we may not receive approvals to make claims about our products that we believe to be necessary to effectively market our products. Data obtained from preclinical studies and clinical trials are subject to varying interpretations that could delay, limit or prevent regulatory approval, and failure to comply with regulatory requirements or inadequate manufacturing processes are examples of other problems that could prevent approval. In addition, we may encounter delays or rejections due to additional government regulation from future legislation, administrative action or changes in the FDA policy. Even if the FDA approves a product, the approval will be limited to those indications covered in the approval.

Outside the United States, our ability to market any of our potential products is dependent upon receiving marketing approvals from the appropriate regulatory authorities. These foreign regulatory approval processes include all of the risks associated with the FDA approval process described above. If we are unable to receive regulatory approvals, we will be unable to commercialize our product candidates, and our business may be adversely affected.

Completion of preclinical studies or clinical trials does not guarantee advancement to the next phase of development.

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

likelihood of timely development of and regulatory approval to market the product candidate, and may decrease the chances for successfully achieving the primary endpoint in scientifically similar indications.

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. In addition, 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. We may decide to abandon development of a product candidate at any time, or we may have to spend considerable resources repeating clinical trials or conducting additional trials, either of which would increase costs and delay any revenue from those product candidates, if any.

Additional factors that can cause delay, impairment or termination of our clinical trials or our product development efforts include:

- slow patient enrollment, including for example due to the rarity of the disease being studied;
- long treatment time required to demonstrate effectiveness;
- lack of sufficient supplies of the product candidate;
- disruption of operations at the clinical trial sites;
- adverse medical events or side effects in treated patients;
- the failure of patients taking the placebo to continue to participate in our clinical trials;
- insufficient clinical trial data to support effectiveness of the product candidates;
- lack of effectiveness or safety of the product candidate being tested;
- lack of sufficient funds;
- inability to manufacture sufficient quantities of the product candidate for development or commercialization activities in a timely and cost-efficient manner; or
- failure to obtain the necessary regulatory approvals for the product candidate or the approvals for the facilities in which such product candidate is manufactured.

The regulatory approval process is costly and lengthy and we may not be able to successfully obtain all required regulatory approvals.

The preclinical development, clinical trials, manufacturing, marketing and labeling of pharmaceuticals are all subject to extensive regulation by numerous governmental authorities and agencies in the United States and other countries. We must obtain regulatory approval for each of our product candidates before marketing or selling any of them. It is not possible to predict how long the approval processes of the FDA or any other applicable federal or foreign regulatory authority or agency for any of our product candidates will take or whether any such approvals ultimately will be granted. The FDA and foreign regulatory agencies have substantial discretion in the drug approval process, and positive results in preclinical testing or early phases of clinical studies offer no assurance of success in later phases of the approval process. The approval process varies from country to country and the requirements governing the conduct of clinical trials, product manufacturing,

product licensing, pricing and reimbursement vary greatly from country to country. Generally, preclinical and clinical testing of product candidates can take many years and require the expenditure of substantial resources, and the data obtained from these tests and trials can be susceptible to varying interpretations that could delay, limit or prevent regulatory approval. If we encounter significant delays in the regulatory process that result in excessive costs, this may prevent us from continuing to develop our product candidates. Any delay in obtaining, or failure to obtain, approvals could adversely affect the marketing of our products and our ability to generate product revenue. The risks associated with the approval process include:

- failure of our product candidates to meet a regulatory agency's requirements for safety, efficacy and quality;
- limitation on the indicated uses for which a product may be marketed;
- unforeseen safety issues or side effects; and
- governmental or regulatory delays and changes in regulatory requirements and guidelines.

Even if our drug candidates obtain regulatory approval, they may not gain market acceptance among physicians, patients and health care payors.

Physicians may elect not to recommend our drugs even if they receive marketing approval for a variety of reasons, including the timing of the market introduction of competitive drugs; lower demonstrated clinical safety and efficacy compared to other drugs; lack of cost-effectiveness; lack of availability of reimbursement from third-party payors; convenience and ease of administration; prevalence and severity of adverse side effects; other potential advantages of alternative treatment methods; and ineffective marketing and distribution support. Sales of pharmaceutical products depend in significant part on the coverage and reimbursement policies of government programs, including Medicare and Medicaid in the United States and programs in other countries, and other third-party payors. These health insurance programs may restrict coverage of some products by using payor formularies under which only selected drugs are covered, variable co-payments that make drugs that are not preferred by the payor more expensive for patients, and by using utilization management controls, such as requirements for prior authorization or failure on another type of treatment. Payors may especially impose these obstacles to coverage for higher-priced drugs, and consequently our drug candidates may be subject to payor-driven restrictions. In addition, in some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, countries in the European Union may restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices and/or reimbursement of medicinal products for human use. A member state may approve a specific price or level of reimbursement for the medicinal product, or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. The reimbursement or budget identified by a government or non-government payor for Soliris in an indication other than PNH, if obtained, may be adversely affected by the reimbursement or budget for Soliris in PNH and/or adversely affect the reimbursement or budget for Soliris in PNH by that payor.

Inability to contract with third-party manufacturers and other third parties on commercially reasonable terms, or failure or delay by us our third-party manufacturers or other third party providers to provide services with respect to our drug products in the volumes and quality required, would have a material adverse effect on our business.

Clinical quantities of eculizumab are manufactured by us in our Rhode Island facility and by Lonza. Clinical quantities of samalizumab are manufactured solely by us in Rhode Island. Manufacture of our drug products is

highly technical, and only a small number of companies have the ability and capacity to manufacture our drug products for our development and commercialization needs. Due to the highly technical requirements of manufacturing our drug products, we and our third-party collaborators may be unable to manufacture our drug products despite our and their efforts. In addition, we cannot be certain that any third party will be able or willing to honor the terms of its agreement, including any obligations to manufacture the drug products in accordance with regulatory requirements and to our quality specifications and volume requirements.

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 highly regulated by the FDA and other domestic and foreign authorities. Regulatory authorities must approve the facilities in which our products are manufactured prior to granting marketing approval for any product candidate. Manufacturing facilities are also subject to ongoing inspections, and minor changes in manufacturing processes may require additional regulatory approvals. We cannot assure you that we or our third-party collaborators will successfully comply with all requirements and regulations, which failure could have a material adverse effect on our business.

We currently have limited experience in manufacturing drug products in volumes that would be necessary to support commercial sales, and we can provide no assurance that we will be able to do so successfully. We acquired a commercial-scale manufacturing plant in Smithfield, Rhode Island in July 2006. In December 2009, the E.C. approved the use of our facility for the production of Soliris, and we are authorized to sell Soliris manufactured in our facility in the European Union and certain other territories. However, the plant is not currently approved by the FDA or other regulatory agencies to manufacture Soliris and we will not be capable of manufacturing Soliris for commercial sale in the United States on our own until such time as we have received FDA approval of our manufacturing facility, if ever. Until December 2009, we have depended on a single third party for commercial supply of Soliris, and until our facility is approved by the FDA, we are still entirely dependent on this third party for commercial quantities of Soliris for sale in the United States. We have limited experience in developing commercial-scale manufacturing. We can provide no assurance that we will be able to manufacture our drug products at our Smithfield, Rhode Island plant under conditions required by the FDA or foreign regulatory agencies on a timely basis, if at all. Our plant in Smithfield, Rhode Island is subject to approval by other national and regional regulatory agencies before we can begin sales of Soliris or other drug products manufactured in this facility in such country or region, and we will continue to be subject to ongoing regulatory inspections thereafter.

We, and our outside manufacturers, may experience higher manufacturing failure rates than in the past, if and when, we attempt to substantially increase production volume. 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 may need to find other alternatives, which is likely to be expensive and time consuming, and also may result in reduced revenue during this period. Even if we are able to find alternatives they may ultimately be insufficient for our needs. As a result, our ability to conduct testing and drug trials and our plans for commercialization could be materially adversely affected. Submission of products and new development programs for regulatory approval, as well as our plans for commercialization, would be delayed or suspended. Our competitive position and our prospects for achieving or maintaining profitability could be materially and adversely affected.

Due to the nature of the current market for third-party commercial manufacturing, many arrangements require substantial penalty payments by the customer for failure to use the manufacturing capacity for which it contracted. Penalty payments under these agreements typically decrease over the life of the agreement, and may be substantial initially and de minimis or non-existent in the final period. The payment of a substantial penalty could harm our financial condition.

Risks Related to Intellectual Property

If we cannot protect the confidentiality and proprietary nature of our trade secrets, and other intellectual property, 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, we may 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 or the right to practice patents through ownership or license. Soliris and our drug candidates 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/or obtain a license to continue the manufacture, sale or development of our drugs. If we cannot obtain a license, we may be prevented from the manufacture, sale or development of our drugs, including Soliris, which would adversely affect our business.

Parts of our technology, techniques and proprietary compounds and potential drug candidates, including those which are or may be in-licensed, may be found to infringe patents owned by or granted to others. We previously reported that three civil actions were filed against us relating to the commercialization of Soliris and the intellectual property rights of third parties. Each of these cases was resolved in 2008, however, additional third parties may claim that the manufacture, use or sale of Soliris or other drugs under development infringes patents owned or granted to such third parties. We are aware of broad patents owned by others relating to the manufacture, use and sale of recombinant humanized antibodies, recombinant human antibodies, and recombinant human single chain antibodies. Soliris and many of our product candidates are either genetically engineered antibodies, including recombinant humanized antibodies, recombinant human antibodies, or recombinant human single chain antibodies. In addition to the actions described above, we have received notices from the owners of some of these patents claiming that their patents may be infringed by the development, manufacture or sale of Soliris or some of our drug candidates. We are also aware of other patents owned by third parties that might be claimed by such third parties to be infringed by the development and commercialization of Soliris and some of our drug candidates. In respect to some of these patents, we have obtained licenses, or expect to obtain licenses. However, with regard to such other patents, we have determined in our judgment that:

- Soliris and our product candidates do not infringe the patents;
- the patents are not 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 holder of these patents or other patents covering similar technology 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 we cannot successfully defend against any future actions or conflicts, if they arise, we

may incur substantial legal costs and may be liable for damages, be required to obtain costly licenses or need to stop manufacturing, using or selling Soliris, which would adversely affect our business. 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, could have a material adverse effect on our business.

There can be no assurance that we would prevail in a patent infringement action; that we would 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 Soliris or our product candidates could have a material adverse effect on our business and prospects.

Risks Related to Our Operations

We have had a history of losses and cannot guarantee that we will achieve our financial goals, including our ability to maintain profitability on a quarterly or annual basis in the future.

Until the quarter ended June 30, 2008, we had never been profitable since we started our company in January 1992. We have maintained profitability on a quarterly basis since the quarter ended June 30, 2008 and on an annual basis for the years ended December 31, 2009 and 2008. We believe that we formulate our annual operating budgets with reasonable assumptions and targets, however we cannot guarantee that we will be able to generate sufficient revenues or control expenses to achieve our financial goals, including continued profitability. Even if we do achieve profitability in any subsequent quarters, we may not be able to sustain or increase profitability on a quarterly or annual basis. You should not consider our revenue growth in recent periods as indicative of our future performance. Our revenue in future periods could decline. We may make errors in predicting and reacting to relevant business trends or our business may be subject to factors beyond our control, which could harm our operations. Since we began our business, we have focused on research and development of product candidates. We launched Soliris for sale in the United States during April 2007 and began commercial sales in Europe during the fourth quarter of 2007. We cannot guarantee that we will be successful in marketing and selling Soliris in countries or regions where we have obtained marketing approval, including the United States and Europe, on a continued basis, and we do not know when we will have Soliris available for sale in territories where we have applied or will apply for marketing approval, if ever. All of our other product candidates are still in the early stages of research and development. We will have substantial expenses as we continue our research and development efforts, continue to conduct clinical trials, and continue to develop manufacturing, sales, marketing and distribution capabilities in the United States and abroad. The achievement of our financial goals, including the extent of our future profitability, depends on many factors, including our ability to successfully market Soliris in the United States, Europe and other territories, on receiving regulatory, pricing, coverage, and reimbursement approvals of Soliris in additional countries and regions, our ability to successfully market Soliris in additional countries and regions, and our ability to successfully manufacture and commercialize our drug candidates.

If our competitors get to the marketplace before we do, or with better or cheaper drugs, Soliris and our product candidates may not be profitable to continue to pursue.

Both the FDA and the E.C. granted orphan drug designation for Soliris in the treatment of PNH, which entitles us to exclusivity for a total of seven years in the United States and for ten years in Europe. However, if a competitive product that is the same as Soliris, as defined under the applicable regulations, is shown to be

clinically superior to Soliris in the treatment of PNH, or if a competitive product is different from Soliris, as defined under the applicable regulations, the orphan drug exclusivity we have obtained may not block the approval of such competitive product. Several biotechnology and pharmaceutical companies throughout the world have programs to develop complement inhibitor therapies or have publicly announced their intentions to develop drugs which target the inflammatory effects of complement in the immune system. Other companies have publicly announced intentions to develop therapeutic human antibodies from libraries of human antibody genes or therapeutic human antibodies from mice that have been bred to include some human antibody genes. A number of biotechnology and pharmaceutical companies are developing new products for the treatment of the same diseases being targeted by us. These and other companies, many of which have significantly greater resources than us, may develop, manufacture, and market better or cheaper drugs than Soliris or our product candidates. They may establish themselves in the marketplace before Alexion for Soliris for other indications or for any of our other product candidates. Other pharmaceutical companies also compete with us to attract academic research institutions as drug development partners, including for licensing these institutions' proprietary technology. If our competitors successfully enter into such arrangements with academic institutions, we will be precluded from pursuing those unique opportunities and may not be able to find equivalent opportunities elsewhere.

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

We believe that revenues and collections from sales of Soliris along with our existing cash and cash equivalents will provide sufficient capital to fund our operations and product development for at least twelve months. We may need to raise additional capital before or after that time to complete or continue the development or commercialization of our products and product candidates. We are currently selling or preparing for the commercialization of Soliris in the United States, Europe and several other territories, evaluating and preparing regulatory submissions for Soliris in several countries, and conducting, preparing or evaluating several clinical trials. Funding needs may shift between projects and potentially accelerate and increase as we continue launch and commercialization activities throughout the world and as we initiate or continue clinical trials for our product candidates.

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 cost necessary to sell, market and distribute Soliris;
- the rate of new patient sales and drug utilization by treated patients;
- the time and cost necessary to obtain and maintain regulatory approvals for Soliris and for eculizumab for other indications in multiple countries;
- the ability to obtain and maintain reimbursement approvals and funding for Soliris and the time necessary to obtain such approvals and funding;
- the time and cost necessary to develop sales, marketing and distribution capabilities outside the United States;
- the time and cost necessary to purchase or to further develop manufacturing processes, arrange for contract manufacturing or build manufacturing facilities and obtain and maintain the necessary regulatory approvals for those facilities;

- changes in applicable governmental regulatory policies or requests by regulatory agencies for additional information or data;
- the progress, timing and scope of our research and development programs;
- the progress, timing and scope of our preclinical studies and clinical trials; and
- any new collaborative, licensing or other commercial relationships that we may establish.

We may not receive funding when we need it or funding may only be available on unfavorable terms. Financial markets in the U.S., Europe and the rest of the world have been experiencing significant volatility in security prices, substantially diminished liquidity and credit availability, rating downgrades of certain investments and declining valuations of others. There can be no assurance that we will be able to access credit or equity markets in order to finance our operations in the United States or Europe, grow our operations in any territory, or expand development programs for our product candidates, or that there will not be a further deterioration in financial markets and confidence in economies. 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 operations. We might have to license our technology to others or relinquish commercialization rights. This could result in sharing revenues that we might otherwise retain for ourselves. Any of these actions would harm our business.

If we fail to recruit and retain personnel, we may not be able to implement our business strategy.

We are highly dependent upon the efforts of our senior management and scientific personnel, particularly Dr. Leonard Bell, M.D., our Chief Executive Officer and a member of our Board of Directors, and Stephen P. Squinto, Ph.D., our Executive Vice President and Head of Research and Development. There is intense competition in the biopharmaceutical industry for qualified scientific and technical personnel. Since our business is science-oriented and specialized, we need to continue to attract and retain such people. We may not be able to continue to attract and retain the qualified personnel necessary for developing our business. We have employment agreements with Dr. Bell and Dr. Squinto. None of our key personnel is nearing retirement age or to our knowledge, planning to retire. To our knowledge, there is no tension between any of our key personnel and the Board of Directors. If we are unable to retain and recruit highly qualified personnel, our ability to execute our business plan will be materially and adversely affected.

In particular, we highly value the services of Dr. Bell, our Chief Executive Officer. The loss of his services could materially and adversely affect our ability to achieve our objectives.

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.

We may expand our business through acquisitions or in-licensing opportunities that could disrupt our business and harm our financial condition.

Our business strategy includes expanding our products and capabilities, and we may seek acquisitions or in-licensing of business or products to do so. Acquisitions of new businesses or products and in-licensing of new products 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 compete with pharmaceutical companies that have significantly greater resources than us for many of the same acquisition and in-licensing opportunities. Such pharmaceutical companies that are less leveraged and have better access to capital resources may preclude us from completing any acquisition or in-licensing. Even if we are able to complete an acquisition or in-licensing, we cannot assure you that any acquisition or in-licensing of new products 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 or an acquired or in-licensed product. In addition, our future success would depend in part on our ability to manage the rapid growth associated with any such acquisitions or in-licensing. 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. We may not be able to acquire the rights to additional product candidates and approved products on terms that we find acceptable, or at all. Furthermore, the development or expansion of our business, any acquired business or any acquired or in-licensed products may require a substantial capital investment by us. We may not have these 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 capital stock, which could dilute current stockholders' ownership interest in our company, or securities convertible into our capital stock, which could dilute current stockholders' ownership interest in our company upon conversion.

Our ability to use net operating loss carry forwards to reduce future tax payments may be limited if there is a change in ownership of Alexion, or if taxable income does not reach sufficient levels.

As of December 31, 2009, we have approximately $665.7 million of U.S. Federal net operating loss carryforwards, or NOL's, available to reduce taxable income in future years. A portion of these NOL's are currently subject to an annual limitation under section 382 of the Internal Revenue Code of 1986, as amended. We believe it is more likely than not that we will use the net operating losses. However, the ability to use net operating loss carryforwards will be dependent on our ability to generate taxable income. The net operating loss carryforwards may expire before we generate sufficient taxable income. NOL's totaling $3.8 million expired in the year ended December 31, 2007. No NOL's expired during the years ended December 31, 2009 and 2008.

Our ability to utilize the NOL's may be further limited if we undergo an ownership change, as defined in section 382. This ownership change could be triggered by substantial changes in the ownership of our outstanding stock, which are generally outside of our control. An ownership change would exist if the stockholders, or group of stockholders, who own or have owned, directly or indirectly, 5% or more of the value of our stock, or are otherwise treated as 5% stockholders under section 382 and the regulations promulgated there under, increase their aggregate percentage ownership of our stock by more than 50 percentage points over the lowest percentage of our stock owned by these stockholders at any time during the testing period, which is generally the three-year period preceding the potential ownership change. In the event of an ownership change, section 382 imposes an annual limitation on the amount of post-ownership change taxable income a corporation may offset with pre-ownership change NOL's. The limitation imposed by section 382 for any post-change year would be determined by multiplying the value of our stock immediately before the ownership change (subject to certain adjustments) by the applicable long-term tax-exempt rate. Any unused annual limitation may be carried over to later years, and the limitation may under certain circumstances be increased by built-in gains which may be present with respect to assets held by us at the time of the ownership change that are recognized in the five-year period after the ownership change. Our use of NOL's arising after the date of an ownership change would not be affected.

We may have exposure to additional tax liabilities which could have a material impact on our results of operations and financial position.

As a company with international operations, we are subject to income taxes, as well as non-income based taxes, in both the United States and various foreign jurisdictions. Significant judgment is required in determining our worldwide tax liabilities. Although we believe our estimates are reasonable, the ultimate outcome with respect to the taxes we owe may differ from the amounts recorded in our financial statements. If the Internal Revenue Service, or other taxing authority, disagrees with the positions taken by our company, we could have additional tax liability, and this could have a material impact on our results of operations and financial position. In addition, the United States government and other governments are considering and may adopt tax reform measures that significantly increase our worldwide tax liabilities and materially harm our business, financial condition and results of operations.

Our international sales and operations are subject to the economic, political, legal and business conditions in the countries in which we do business, and our failure to operate successfully or adapt to changes in these conditions could cause our international sales and operations to be limited or disrupted.

Over the past few years, we have significantly expanded our international operations and expect to continue to do so in the future. Our operations in foreign countries subject us to the following additional risks:

- fluctuations in currency exchange rates;
- economic problems or political instability that disrupts foreign healthcare payment systems;
- difficulties or inability to obtain financing in international markets;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- difficulties enforcing contractual and intellectual property rights;
- changes in laws, regulations or enforcement practices with respect to our business, including without limitation laws relating to reimbursement, competition, pricing and sales and marketing of our products;

- trade restrictions and restrictions on direct investments by foreign entities;
- compliance with tax, employment and labor laws;
- costs and difficulties in staffing, managing and monitoring international operations; and
- longer payment cycles.

Our business and marketing methods are also subject to regulation by the governments of the countries in which we operate. The United States Foreign Corrupt Practices Act, or FCPA, and similar anti-bribery laws in other countries prohibit companies and their representatives from offering, promising, authorizing or making payments to foreign officials for the purpose of obtaining or retaining business. We have policies and procedures designed to help ensure that we and our representatives, including our employees, comply with such laws, however we cannot guarantee that these policies and procedures will protect us against liability under the FCPA or other anti-bribery laws for actions taken by our representatives. Failure to comply with the laws and regulations of the countries in which we operate could materially harm our business.

We conduct a substantial portion of our business in currencies other than the U.S. dollar, primarily the Euro, Japanese Yen, Swiss Franc and British Pound. While we attempt to hedge certain currency risks, currency fluctuations between the U.S. dollar and the currencies in which we do business have caused foreign currency transaction gains and losses in the past and will likely do so in the future. Likewise, past currency fluctuations have at times resulted in foreign currency transaction gains, and there can be no assurance that these gains can be reproduced.

The credit and financial market conditions may aggravate certain risks affecting our business.

Sales of Soliris are dependent, in large part, on reimbursement from government health administration organizations and private and governmental third-party payors, and also co-payments from individual patients in certain situations. As a result of the current credit and financial market conditions, and the overall financial climate, these governmental organizations and payors, and/or individuals, may reduce or delay initiation of treatment, may be unable to satisfy their reimbursement obligations, may delay payment or may seek to reduce reimbursement for Soliris in the future, which could have a material adverse effect on our business and results of operations. Payment defaults by a government payor could require us to expense previously recorded revenue as uncollectable, and might cause us to end or restrict sales to patients in that country. Further, the risk of payment default by a government payor could require us to revise our revenue recognition policies in regard to that payor, causing revenue to be recorded only on a cash basis, and we may be required to end or restrict sales to patients in that country.

Additionally, we rely upon third-parties for certain parts of our business, including Lonza, licensees, wholesale distributors of Soliris, contract clinical trial providers, contract manufacturers and other third-party suppliers and financial institutions. Because of the recent volatility in the financial markets, there may be a disruption or delay in the performance or satisfaction of commitments to us by these third parties which could have a material adverse effect on our business and results of operations.

Healthcare reform measures could adversely affect our business.

The United States government and governments in foreign countries have shown significant interest in pursuing healthcare reform in order to reduce costs of healthcare. Any government-adopted reform measures

could adversely impact the pricing of Soliris or the amount of reimbursement available for Soliris from governmental agencies or other third-party payors. The pricing and reimbursement environment for Soliris may become more challenging due to, among other reasons, policies of the administration or new healthcare legislation passed by Congress, or other changes in policy in the United States or in foreign countries. While we cannot predict what, if any, legislative or regulatory proposals will be adopted, the announcement or adoption of such proposals could delay or prevent our entry into new markets, affect our reimbursement or sales in the markets where we are already selling Soliris and materially harm our business, financial condition and results of operations.

Risks Related to Our Common Stock

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 common 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, changes in our prospects, particularly with respect to sales of Soliris, and market conditions for biopharmaceutical 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 biopharmaceutical 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, sales of Soliris, the announcement of the results of our clinical trials or product development and the results of our efforts to obtain regulatory approval for our products. In particular, between January 1, 2008 and December 31, 2009, the closing sales price of our common stock fluctuated from a low of $25.49 per share to a high of $48.82 per share, as reported after giving effect to the forward two-for-one stock split effected on August 22, 2008. While we cannot predict our future performance, if our stock price continues to fluctuate in a wide range, an investment in our common stock may result in considerable uncertainty for an investor.

Anti-takeover provisions of Delaware law, provisions in our charter and bylaws and our stockholders' rights plan, or poison pill, could make a third-party acquisition of us difficult and may frustrate any attempt to remove or replace our current management.

Because we are a Delaware corporation, the anti-takeover provisions of Delaware law could make it more difficult for a third party to acquire control of us, even if the change in control would be beneficial to stockholders. We are subject to the provisions of Section 203 of the Delaware General Laws, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

Our corporate charter and by-law provisions and stockholder rights plan may discourage certain types of transactions involving an actual or potential change of control that might be beneficial to Alexion or its stockholders. Our bylaws provide that special meetings of our stockholders may be called only by the Chairman of the Board, the President, the Secretary, or a majority of the Board of Directors, or upon the written request of stockholders who together own of record 50% of the outstanding stock of all classes entitled to vote at such

meeting. Our bylaws also specify that the authorized number of directors may be changed only by resolution of the board of directors. Our certificate does not include a provision for cumulative voting for directors, which may have enabled a minority stockholder holding a sufficient percentage of a class of shares to elect one or more directors. Under our certificate of incorporation, our board of directors has the authority, without further action by stockholders, to designate up to 5,000,000 shares of preferred stock in one or more series. The rights of the holders of common stock will be subject to, and may be adversely affected by, the rights of the holders of any class or series of preferred stock that may be issued in the future.

Pursuant to our stockholder rights plan, each share of common stock has an associated preferred stock purchase right. The rights will not trade separately from the common stock until, and are exercisable only upon, the acquisition or the potential acquisition through tender offer by a person or group of 20% or more of the outstanding common stock. The rights are designed to make it more likely that all of our stockholders receive fair and equal treatment in the event of any proposed takeover of us and to guard against the use of partial tender offers or other coercive tactics to gain control of us. These provisions could delay or discourage transactions involving an actual or potential change in control of us or our management, including transactions in which stockholders might otherwise receive a premium for their shares over then current prices. These provisions could also limit the ability of stockholders to remove current management or approve transactions that stockholders may deem to be in their best interests and could adversely affect the price of our common stock.

Item 1B. ***UNRESOLVED STAFF COMMENTS.***

None.

Item 2. ***PROPERTIES.***

We conduct our operations at owned and leased facilities described below.

Location	Operations Conducted	Approximate Square Feet	Lease Expiration Date
Cheshire, Connecticut	Executive, sales and research offices	141,454	2017
Smithfield, Rhode Island	Commercial and research manufacturing	56,500	N/A
Lausanne, Switzerland	Regional executive and sales office	5,249	2013

We believe that our administrative office space is adequate to meet our needs for the foreseeable future. We also believe that our research and development facilities and our manufacturing facility, together with third party manufacturing facilities, will be adequate for our on-going activities. In addition to the locations above, we also lease offices in certain countries to facilitate our operations as a global organization.

Item 3. ***LEGAL PROCEEDINGS.***

None

Item 4. ***SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.***

There were no matters submitted to a vote of security holders during the fourth quarter of 2009.

EXECUTIVE OFFICERS OF THE COMPANY

The executive officers of the Company and their respective ages and positions as of February 16, 2010 are as follows:

Name	Age	Position with Alexion
Leonard Bell, M.D.	51	Chief Executive Officer, Secretary, Treasurer, Director
Stephen P. Squinto, Ph.D.	53	Executive Vice President and Head of Research and Development
Patrice Coissac	61	Senior Vice President, and President of Alexion International, Sàrl
Thomas I.H. Dubin, J.D.	47	Senior Vice President and Chief Legal Officer
David L. Hallal	43	Senior Vice President, Commercial Operations, Americas
Vikas Sinha, M.B.A., C.A., C.P.A.	46	Senior Vice President and Chief Financial Officer

Leonard Bell, M.D. is the principal founder of Alexion, and has been a director of Alexion since February 1992 and the Company's President and Chief Executive Officer, Secretary and Treasurer from January 1992, and Chief Executive Officer, Secretary and Treasurer since April 2002. From 1991 to 1992, Dr. Bell was an Assistant Professor of Medicine and Pathology and co-Director of the program in Vascular Biology at the Yale University School of Medicine. From 1990 to 1992, Dr. Bell was an attending physician at the Yale-New Haven Hospital and an Assistant Professor in the Department of Internal Medicine at the Yale University School of Medicine. Dr. Bell was a recipient of the Physician Scientist Award from the National Institutes of Health and Grant-in-Aid from the American Heart Association as well as various honors and awards from academic and professional organizations. His work has resulted in more than 20 scientific publications and 9 patent applications. Dr. Bell was also a director of The Medicines Company from May 2000 until April 2005. Dr. Bell received his A.B. from Brown University and M.D. from Yale University School of Medicine. Dr. Bell is currently an Adjunct Assistant Professor of Medicine and Pathology at the Yale University School of Medicine.

Stephen P. Squinto, Ph.D. is a founder of Alexion and has been Executive Vice President and Head of Research and Development since June 2007. He held the position of Executive Vice President and Head of Research between August 2000 and June 2007. He also held the positions of Senior Vice President and Chief Technical Officer from March 1998 to July 2000, Vice President of Research, Molecular Sciences, from August 1994 to March 1998, Senior Director of Molecular Sciences from July 1993 to July 1994, and Director of Molecular Development from 1992 to July 1993. From 1989 to 1992, Dr. Squinto held various positions at Regeneron Pharmaceuticals, Inc. most recently serving as Senior Scientist and Assistant Head of the Discovery Group. From 1986 to 1989, Dr. Squinto was an Assistant Professor of Biochemistry and Molecular Biology at Louisiana State University Medical Center and an Adjunct Professor of Neuroscience at the Tulane University Medical School. Dr. Squinto's work has led to over 70 scientific papers in the fields of gene regulation, growth factor biology and gene transfer. Dr. Squinto's work is primarily in the fields of molecular and cellular biology. Dr. Squinto served as a Director of the Biotechnology Research and Development Corporation, a biotechnology consortium, from 1997 to 2003. Dr. Squinto received his B.A. in Chemistry and Ph.D. in Biochemistry and Biophysics from Loyola University of Chicago.

Patrice Coissac has been Senior Vice President, and President of Alexion International Sàrl since April 2009. He was Senior Vice President, and President of Alexion Europe SAS from November 2005 to March 2009. In 2004-2005, he founded and ran his own consulting firm to serve biopharmaceutical companies in their

strategic development. From 1999 to mid 2003, prior to the Pfizer acquisition, Mr. Coissac served as President of Pharmacia SAS France and was responsible for the integration of Monsanto (Searle) with Pharmacia & Upjohn in France. Before 1999 Mr. Coissac held a number of managerial positions at leading pharmaceutical companies including Head of Operations for Novartis Belgium and President of Boehringer Mannheim Therapeutics France. In 1994 Mr. Coissac also served as Marketing Senior Vice President for global pharmaceutical operations at Corange International. Previously at Sandoz Pharmaceuticals, he held various global marketing positions in several countries including Japan where he was posted during several years, Switzerland at Sandoz World Headquarters and France at the beginning of his career.

Thomas I.H. Dubin, J.D. has been Senior Vice President and Chief Legal Officer since January 2010. He was Senior Vice President and General Counsel from August 2005 to December 2009. He was Vice President and General Counsel from January 2001 to July 2005. From February 1999 to September 2000 he served as Vice President, General Counsel and Secretary for ChiRex Inc., a NASDAQ-traded international corporation providing advanced process development services and specialty manufacturing to the pharmaceutical industry, which in September 2000 was acquired by and merged into Rhodia. From 1992 to 1999, Mr. Dubin held various positions with Warner-Lambert Company, including Assistant General Counsel, Pharmaceuticals. Prior to his tenure with Warner-Lambert, Mr. Dubin was a corporate attorney for five years with Cravath, Swaine & Moore in New York. Mr. Dubin received his J.D. from New York University and his B.A., cum laude, from Amherst College.

David L. Hallal has been Senior Vice President, Commercial Operations, Americas since November 2008. He was Senior Vice President, US Commercial Operations from November 2007 until November 2008. Prior to that, Mr. Hallal was Vice President, US Commercial Operations from June 2006 until November 2007. Mr. Hallal is responsible for all Commercial Functions in the U.S., Canada, and Latin America, including marketing, sales, reimbursement and product access. Mr. Hallal is also responsible for Alexion's Global Marketing Team. Prior to Alexion, from April 2004 to June 2006, Mr. Hallal was Vice President of Sales at OSI Eyetech where he led the U.S. launch of the first-in-class anti-VEGF therapy, Macugen for age-related macular degeneration. From August 2002 to February 2004, Mr. Hallal was Senior Director of Sales for Biogen Idec's Immunology Sales Team, where he built a sales organization dedicated to the launch of the first-in-class biologic Amevive for psoriasis. For more than ten years starting in 1992, Mr. Hallal held various leadership positions at Amgen, focusing on Epogen®, Neupogen®, Neulasta® and Aranesp® in the hematology and oncology marketplace. More specifically from April 1999 to August 2002, he served as the Southeast Oncology Sales Director and Oncology Health Systems Sales Director. From 1998 to 1999, Mr. Hallal served as Amgen's Director of Oncology National Accounts. From 1992 to 1998, Mr. Hallal served in roles of escalating responsibility for the promotion of Epogen and Neupogen, including National Account Manager where he was responsible for working with national managed care organizations in the U.S. He holds a B.A. from the University of New Hampshire.

Vikas Sinha, M.B.A., C.A, CPA. joined Alexion as Senior Vice President and Chief Financial Officer in September 2005. From June 1994 to August 2005, Mr. Sinha held various positions with Bayer AG in the United States, Japan, Germany, and Canada, most recently serving since February 2001 as Vice President and Chief Financial Officer of Bayer Pharmaceuticals Corporation, USA. Mr. Sinha has been responsible for financial and business risk management, strategic planning, contracting, customer services, information systems, and supply chain and site administration in North America. Mr. Sinha was also a member of the Pharmaceutical Management Committee for North America. Prior to his appointment in the United States, Mr. Sinha was Vice President and Chief Financial Officer of Bayer Yakuhin Ltd., in Japan and Manager, Mergers and Acquisitions with Bayer AG in Germany. He began his career at Bayer in Toronto as part of an executive development

program in the healthcare division. Prior to Bayer, Mr. Sinha held several positions of increasing responsibilities with ANZ Bank and Citibank in South Asia. Mr. Sinha holds a Masters of Business Administration from the Asian Institute of Management which included an exchange program with the University of Western Ontario (Richard Ivey School of Business). He is also a qualified Chartered Accountant from the Institute of Chartered Accountants of India and a CPA from USA.

PART II

Item 5. ***MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.***

Our common stock is quoted on The Nasdaq Stock Market, LLC under the symbol "ALXN." The following table sets forth the range of high and low sales prices for our common stock on The Nasdaq Stock Market, LLC for the periods indicated since January 1, 2008.

Fiscal 2008	High	Low
First Quarter		
(January 1, 2008 to March 31, 2008)	$38.56	$25.49
Second Quarter		
(April 1, 2008 to June 30, 2008)	$36.46	$30.51
Third Quarter		
(July 1, 2008 to September 30, 2008)	$47.51	$36.66
Fourth Quarter		
(October 1, 2008 to December 31, 2008)	$42.04	$31.00
Fiscal 2009		
First Quarter		
(January 1, 2009 to March 31, 2009)	$40.17	$31.65
Second Quarter		
(April 1, 2009 to June 30, 2009)	$41.11	$32.59
Third Quarter		
(July 1, 2009 to September 30, 2009)	$46.67	$36.87
Fourth Quarter		
(October 1, 2009 to December 31, 2009)	$48.82	$43.11

As of February 16, 2010, we had 449 stockholders of record of our common stock and an estimated 51,251 beneficial owners. The closing sale price of our common stock on February 16, 2010 was $47.92 per share.

DIVIDEND POLICY

We have never paid cash dividends. We do not expect to declare or pay any cash dividends on our common stock in the near future. We intend to retain all earnings, if any, to invest in our operations. The payment of future dividends is within the discretion of our board of directors and will depend upon our future earnings, if any, our capital requirements, financial condition and other relevant factors.

EQUITY COMPENSATION PLAN INFORMATION (shares in thousands)

Plan Category	Number of shares of common stock to be issued upon exercise of outstanding options (2)	Weighted-average exercise price of outstanding options	Weighted-average term to expiration of options outstanding	Number of shares of common stock remaining available for future issuance under equity compensation plans
Equity compensation plans approved by stockholders (1)	6,476	24.78	6.77	4,439
Equity compensation plans not approved by stockholders	—	—	—	—

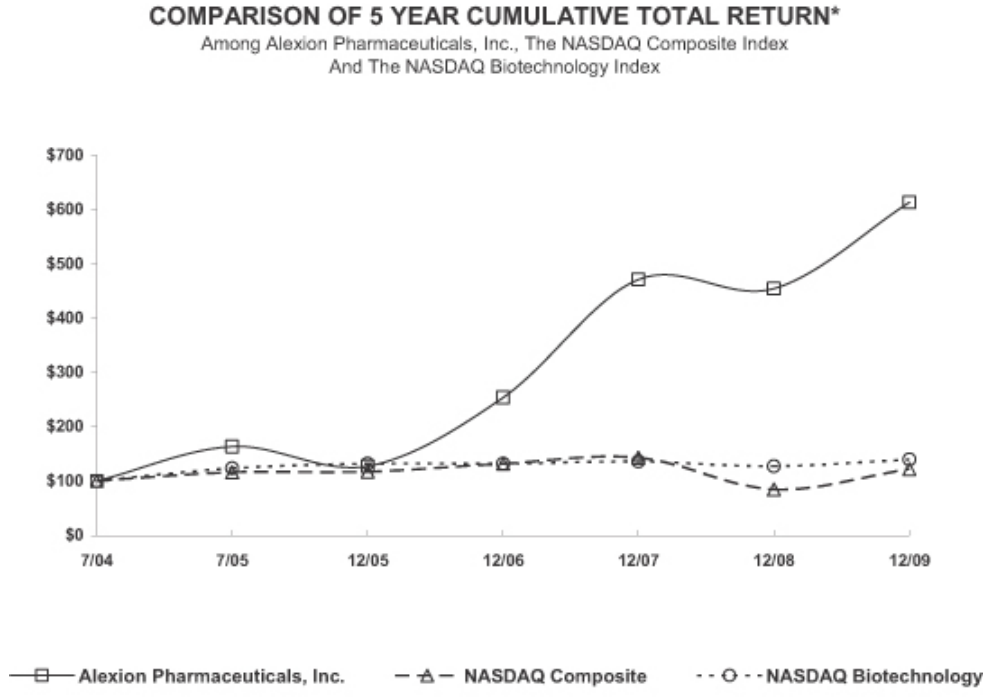
(1) Reflects number of shares of common stock to be issued upon exercise of outstanding options under all our equity compensation plans, including our 2004 Incentive Plan. No shares of common stock are available for future issuance under any of our equity compensation plans, except the 2004 Incentive Plan.

(2) Does not include 944 restricted shares outstanding that were issued under the 2004 Incentive Plan.

The outstanding options and restricted shares are not transferable for consideration and do not have dividend equivalent rights attached.

THE COMPANY'S STOCK PERFORMANCE

The following graph compares cumulative total return of the Company's Common Stock with the cumulative total return of (i) the NASDAQ Stock Market-United States, and (ii) the NASDAQ Biotechnology Index. The graph assumes (a) $100 was invested on July 31, 2003 in each of the Company's Common Stock, the stocks comprising the NASDAQ Stock Market-United States and the stocks comprising the NASDAQ Biotechnology Index, and (b) the reinvestment of dividends. The comparisons shown in the graph are based on historical data and the stock price performance shown in the graph is not necessarily indicative of, or intended to forecast, future performance of our stock.



CUMULATIVE TOTAL RETURN

	7/04	7/05	12/05	12/06	12/07	12/08	12/09
Alexion Pharmaceuticals, Inc.	100.00	163.57	127.20	253.71	471.29	454.65	613.32
NASDAQ Composite	100.00	116.09	117.27	131.94	143.17	84.61	122.22
NASDAQ Biotechnology	100.00	123.52	132.12	131.93	136.42	127.47	140.04

Item 6. ***SELECTED CONDENSED CONSOLIDATED FINANCIAL DATA.***

The following selected financial data is derived from, and should be read in conjunction with, the financial statements, including the notes thereto, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this Form 10-K.

(amounts in thousands, except per share amounts)

Consolidated Condensed Statement of Operations:

	Year Ended December 31,				Five Month Period Ended December 31,	Year Ended July 31,
	2009	2008	2007	2006	2005	2005
Revenues:						
Net product sales	$ 386,800	$ 259,004	$ 66,381	$ —	$ —	$ —
Contract research revenue	—	95	5,660	1,558	664	1,064
Total revenues	386,800	259,099	72,041	1,558	664	1,064
Cost of sales	45,059	28,366	6,696	—	—	—
Operating expenses:						
Research and development	81,915	62,581	68,961	83,225	48,238	91,388
Selling, general and administrative	172,767	133,543	96,142	55,418	12,763	18,951
Total operating expenses	254,682	196,124	165,103	138,643	61,001	110,339
Operating income (loss)	87,059	34,609	(99,758)	(137,085)	(60,337)	(109,275)
Other income (expense)	(3,745)	121	6,723	5,198	1,931	(240)
Income (loss) before income taxes	83,314	34,730	(93,035)	(131,887)	(58,406)	(109,515)
Income tax provision (benefit)	(211,852)	1,581	(745)	(373)	(450)	(765)
Net income (loss)	$ 295,166	$ 33,149	$ (92,290)	$ (131,514)	$ (57,956)	$ (108,750)
Earnings (loss) per common share						
Basic	$ 3.46	$ 0.43	$ (1.27)	$ (2.07)	$ (0.95)	$ (1.95)
Diluted	$ 3.26	$ 0.39	$ (1.27)	$ (2.07)	$ (0.95)	$ (1.95)
Shares used in computing earnings (loss) per common share						
Basic	85,326	77,680	72,622	63,402	61,046	55,704
Diluted	90,582	89,967	72,622	63,402	61,046	55,704

Consolidated Condensed Balance Sheet Data:

	As of December 31,					As of July 31,
	2009	2008	2007	2006	2005	2005
Cash, cash equivalents and marketable securities	$ 176,220	$ 139,711	$ 106,712	$ 250,148	$ 212,456	$ 195,404
Trade accounts receivable	113,731	74,476	46,278	—	—	—
Inventories	40,885	49,821	32,907	2,314	—	—
Total current assets	373,456	277,101	205,354	236,776	217,551	201,162
Property, plant and equipment	164,691	139,885	104,280	39,135	—	—
Total assets	786,401	477,551	334,357	333,537	262,711	248,122
Notes payable	—	27,500	—	—	—	—
Mortgage loan	—	44,000	44,000	26,000	—	—
Convertible notes	9,918	97,222	150,000	150,000	150,000	150,000
Total stockholders’ equity	688,356	247,001	101,556	124,677	81,890	67,671

Item 7. ***MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.*** *(amounts in thousands, except per share data)*

In addition to historical information, this report contains forward-looking statements that involve risks and uncertainties, which may cause our actual results to differ materially from plans and results discussed in forward-looking statements. We encourage you to review the risks and uncertainties, discussed in the section entitled item 1A "Risk Factors", and the "Note Regarding Forward-Looking Statements", included at the beginning of this Form 10-K. The risks and uncertainties can cause actual results to differ significantly from those forecasted in forward-looking statements or implied in historical results and trends.

The following discussion should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Form 10-K.

Overview

We are a biopharmaceutical company engaged in the discovery, development and commercialization of biologic therapeutic products aimed at treating patients with severe and life-threatening disease states, including hematologic, kidney and neurologic diseases, transplant rejection, cancer and autoimmune disorders. Our marketed product Soliris® (eculizumab) is the first and only therapy approved for the treatment of patients with paroxysmal nocturnal hemoglobinuria, or PNH.

Soliris is designed to inhibit a specific aspect of the complement component of the immune system and thereby treat inflammation associated with chronic hematologic, kidney and neurological disorders, transplant rejection, and autoimmune disorders. Soliris is a humanized monoclonal antibody that generally blocks complement activity for one to two weeks after a single dose at the doses currently prescribed. The initial indication for which we received approval for Soliris is PNH. PNH is a rare, debilitating and life-threatening, acquired genetic deficiency blood disorder defined by the destruction of red blood cells, or hemolysis. The chronic hemolysis in patients with PNH may be associated with life-threatening thromboses, recurrent pain, kidney disease, disabling fatigue, impaired quality of life, severe anemia, pulmonary hypertension, shortness of breath and intermittent episodes of dark-colored urine (hemoglobinuria).

Soliris was granted marketing approval by the U.S. Food and Drug Administration, or FDA, and by the European Commission, or E.C., in 2007 and now has received approval in several other countries throughout the world. Additionally, Soliris was granted orphan drug designation for the treatment of PNH in the United States, Europe, Japan and several other territories.

In 2009, the FDA and E.C. granted Soliris orphan drug designation for the treatment of patients with atypical Hemolytic Uremic Syndrome, or aHUS, a rare, inherited, and life-threatening complement-inhibitor deficiency disease that often progresses to end-stage kidney disease or failure. Alexion is currently enrolling patients in four clinical studies of Soliris as an investigational treatment for adolescent and adult patients with aHUS.

Critical Accounting Policies and the Use of Estimates

The significant accounting policies and basis of preparation of our consolidated financial statements are described in Note 1, "Business Overview and Summary of Significant Accounting Policies". Under accounting

principles generally accepted in the United States, we are required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and disclosure of contingent assets and liabilities in our financial statements. Actual results could differ from those estimates.

We believe the judgments, estimates and assumptions associated with the following critical accounting policies have the greatest potential impact on our consolidated financial statements:

- Revenue recognition
- Royalties
- Inventories
- Research and development expenses
- Stock-based compensation
- Income taxes

Revenue Recognition

Net Product Sales

Our principal source of revenue is product sales. We have applied the following principles in recognizing revenue:

To date, our product sales have consisted solely of Soliris. We recognize revenue from product sales when persuasive evidence of an arrangement exists, risk of loss has passed to the customer, the price is fixed or determinable, collection from the customer is reasonably assured and we have no further performance obligations. Amounts collected from customers and remitted to governmental authorities, which are primarily comprised of value-added taxes (VAT) in foreign jurisdictions, are presented on a net basis in the Company's statements of operations, and do not impact net product sales.

In the United States, our customers are primarily specialty distributors and specialty pharmacies who supply physician office clinics, hospital outpatient clinics, infusion clinics or home health care providers. In some cases, we also sell Soliris to government agencies. Outside the United States, our customers are primarily hospitals, hospital buying groups, pharmacies, other health care providers and distributors.

In addition to sales where Soliris is commercially available, we have also recorded revenue on sales for individual patients through named-patient programs outside the United States. The relevant authorities or institutions in those countries have agreed to reimburse for product sold on a named-patient basis where Soliris has not received final approval for commercial sales.

Because of the pricing of Soliris, the limited number of patients, the short period from sale of product to patient infusion and the lack of contractual return rights, Soliris customers generally carry limited inventory. We monitor inventory within our distribution channel to determine whether deferral of sales is required. To date, actual refunds and returns have been negligible.

We record estimated rebates payable under governmental programs, including Medicaid and programs in Europe, as a reduction of revenue at the time product sales are recorded. Our calculations related to these rebate accruals require estimates, including estimates of customer mix, to determine which sales will be subject to

rebates and the amount of such rebates. We update our estimates and assumptions each period and record any necessary adjustments. Generally, the length of time between product sale and the processing and reporting of the rebates is three to six months. Upon review of historical rebate payments compared to our accruals, we revise our estimates of rebates payable, which may have an impact on revenue in the period in which the adjustment is made.

We have provided balances and activity in the rebates payable account for the years ended December 31, 2009, 2008 and 2007 as follows:

	Rebates Payable
Balance at December 31, 2006	**$ —**
Current provisions relating to sales in current year	(1,024)
Payments/credits relating to sales in current year	18
Balance at December 31, 2007	**$(1,006)**
Current provisions relating to sales in current year	(3,723)
Payments/credits relating to sales in current year	1,189
Payments/credits relating to sales in prior years	193
Balance at December 31, 2008	**$(3,347)**
Current provisions relating to sales in current year	(6,024)
Payments/credits relating to sales in current year	2,165
Payments/credits relating to sales in prior years	3,138
Balance at December 31, 2009	**$(4,068)**

We record distribution and other fees paid to our customers as a reduction of revenue. These costs are typically known at the time of sale, resulting in minimal adjustments subsequent to the period of sale.

Royalties

Our cost of sales includes royalties to third parties related to the sale and commercial manufacture of Soliris. We estimate our royalty obligations based on existing contractual obligations and our assessment of estimated royalties owed to other third parties. These estimates may be influenced by the outcome of future litigation or other claims, if any, the results of which are uncertain. On a periodic basis and based on specific events such as the outcome of litigation or settlement of claims, we may reassess these estimates, resulting in adjustments to cost of sales.

Inventories

Inventories are stated at the lower of cost or estimated realizable value. We determine the cost of inventory using the average cost method.

For products that are in initial clinical development, we capitalize inventory costs prior to regulatory approval, but subsequent to the filing of the Biologics License Application, or BLA, when we determine that the inventory has probable future economic benefit. Inventory is not capitalized prior to completion of a Phase III

clinical trial. We also capitalize the cost of inventory manufactured at our manufacturing plant in property, plant and equipment prior to approval of the facility by regulatory authorities.

We analyze our inventory levels to identify inventory that may expire prior to sale, inventory that has a cost basis in excess of its estimated realizable value, or inventory in excess of expected sales requirements. Although the manufacturing of our product is subject to strict quality control, certain batches or units of product may, after a period of time, no longer meet quality specifications or may expire, at which point we would adjust our inventory values. Soliris currently has a maximum estimated life of 48 months and, based on our sales forecasts, we expect to realize the carrying value of the Soliris inventory.

The determination of whether or not inventory costs will be realizable requires estimates by our management. A critical input in this determination is future expected inventory requirements based on internal sales forecasts. We then compare these requirements to the expiry dates of inventory on hand. To the extent that inventory is expected to expire prior to being sold, we will write down the value of inventory. If actual results differ from those estimates, additional inventory write-offs may be required.

In the future, reduced demand, quality issues or excess supply beyond those anticipated by management may result in an adjustment to inventory levels, which would be recorded as an increase to cost of sales.

Research and Development Expenses

We accrue costs for clinical trial activities based upon estimates of the services received and related expenses incurred that have yet to be invoiced by the contract research organizations (CRO's), clinical study sites, laboratories, consultants, or other clinical trial vendors that perform the activities. Related contracts vary significantly in length, and may be for a fixed amount, a variable amount based on actual costs incurred, capped at a certain limit, or for a combination of these elements. Activity levels are monitored through close communication with the CRO's and other clinical trial vendors, including detailed invoice and task completion review, analysis of expenses against budgeted amounts, analysis of work performed against approved contract budgets and payment schedules, and recognition of any changes in scope of the services to be performed. Certain CRO and significant clinical trial vendors provide an estimate of costs incurred but not invoiced at the end of each quarter for each individual trial. The estimates are reviewed and discussed with the CRO or vendor as necessary, and are included in research and development expenses for the related period. For clinical study sites, which are paid periodically on a per-subject basis to the institutions performing the clinical study, we accrue an estimated amount based on subject screening and enrollment in each quarter. The estimates may differ from the actual amount subsequently invoiced, which may result in adjustment to research and development expense several months after the related services were performed.

Stock-Based Compensation

We have one stock-based compensation plan known as the 2004 Incentive Plan. Under this plan, restricted stock, restricted stock units, stock options and other stock-related awards may be granted to our directors, officers, employees and consultants or advisors of the Company or any subsidiary.

Our estimates of employee stock option values rely on estimates of factors we input into the Black-Scholes model. The key factors involve an estimate of future uncertain events. Significant assumptions include the use of historical volatility to determine the expected stock price volatility. We also estimate expected term until

exercise, forfeiture or cancellation, as well as the reduction in the expense from expected forfeitures. We currently use historical exercise and cancellation patterns as our best estimate of future estimated life. Actual volatility and lives of options may be significantly different from our estimates. If factors change and we employ different assumptions, the compensation expense that we record in future periods may differ significantly from our prior recorded amounts.

Income Taxes

We utilize the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement carrying amounts and tax basis of assets and liabilities using enacted tax rates in effect for years in which the temporary differences are expected to reverse. We provide a valuation allowance when it is more likely than not that deferred tax assets will not be realized.

We follow the authoritative guidance regarding accounting for uncertainty in income taxes, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. These unrecognized tax benefits relate primarily to issues common among multinational corporations in our industry. We apply a variety of methodologies in making these estimates which include studies performed by independent economists, advice from industry and subject experts, evaluation of public actions taken by the Internal Revenue Service and other taxing authorities, as well as our own industry experience. We provide estimates for unrecognized tax benefits which may be subject to material adjustments until matters are resolved with taxing authorities or statutes expire. If our estimates are not representative of actual outcomes, our results of operations could be materially impacted.

In the fourth quarter of 2009, we reversed the valuation allowance recorded against a significant portion of our deferred tax assets in the United States, resulting in a tax benefit of $215,516. The decision to reverse the valuation allowance was made after management determined that it was more likely than not that these deferred tax assets would be realized. We made the determination after evaluation of our levels of recent profitability, as well as forecasts of future taxable income which impact utilization of tax attributes, primarily net operating losses and research income tax credits.

We continue to maintain a valuation allowance against certain other deferred tax assets where realizability is not certain. We periodically evaluate the likelihood of the realization of deferred tax assets and reduce the carrying amount of these deferred tax assets by a valuation allowance to the extent we believe a portion will not be realized. We consider many factors when assessing the likelihood of future realization of deferred tax assets, including our recent cumulative earnings experience by taxing jurisdiction, expectations of future taxable income, carryforward periods available to us for tax reporting purposes, various income tax strategies and other relevant factors. Significant judgment is required in making this assessment and, to the extent future expectations change we would have to assess the recoverability of our deferred tax assets at that time. If we determine that the deferred tax assets are not realizable in a future period, we would record material changes to income tax expense in that period.

Results of Operations

The following table sets forth consolidated statements of operations data for the periods indicated. This information has been derived from the consolidated financial statements included elsewhere in this Form 10-K.

	Year Ended December 31,		
	2009	2008	2007
Revenues:			
Net product sales	$ 386,800	$259,004	$ 66,381
Contract research revenue	—	95	5,660
Total revenues	386,800	259,099	72,041
Cost of sales	45,059	28,366	6,696
Research and development expenses	81,915	62,581	68,961
Selling, general and administrative expenses	172,767	133,543	96,142
Total operating expenses	254,682	196,124	165,103
Operating income (loss)	87,059	34,609	(99,758)
Other income (expense)	(3,745)	121	6,723
Income (loss) before income taxes	83,314	34,730	(93,035)
Income tax provision (benefit)	(211,852)	1,581	(745)
Net income (loss)	$ 295,166	$ 33,149	$ (92,290)
Earnings (loss) per common share:			
Basic	$ 3.46	$ 0.43	$ (1.27)
Diluted	$ 3.26	$ 0.39	$ (1.27)

Comparison of the Year Ended December 31, 2009 to the Year Ended December 31, 2008

Revenues

During the year ended December 31, 2009, we recorded sales of Soliris in the United States of $159,829 and outside the United States of $226,971. We recorded a gain of $3,363 related to our foreign currency cash flow hedging program, included in revenue from outside the United States. During the year ended December 31, 2008, we recorded sales of Soliris in the United States of $113,204 and outside the United States of $145,800. We recorded a gain of $4,141 related to our foreign currency cash flow hedging program, included in revenue from outside the United States.

The increases in revenue for fiscal year 2009 versus 2008 were due to an increased number of patients treated with Soliris in the United States and outside the United States.

As additional physicians request Soliris and as governmental reimbursement for Soliris is provided for in more territories, we expect that the number of patients receiving Soliris treatment will increase, resulting in an increase in product sales in existing countries. We also expect product sales in the rest of the world to increase as we progress with appropriate authorities on the regulatory, price approval and reimbursement process in additional territories.

We recorded no contract research revenues in the year ended December 31, 2009 and $95 for the year ended December 31, 2008.

Cost of Sales

Cost of sales was $45,059 and $28,366, or 12% and 11% of product revenue, for the years ended December 31, 2009 and 2008, respectively. Cost of sales includes manufacturing costs as well as actual and estimated royalty expenses associated with sales of Soliris.

On a periodic basis and based on events such as the outcome of litigation, we may reassess the estimates of royalties owed to certain third parties. Changes in these estimates could have a material impact on our cost of sales in future periods.

Research and Development Expenses

Our research and development expense includes personnel, facility and external costs associated with the research and development of our product candidates, as well as product development costs.

We group our research and development expenses into two major categories: external direct expenses and all other R&D expenses.

External direct expenses are comprised of costs paid to outside parties for clinical development, product development and discovery research. Clinical development costs are comprised of costs to conduct and manage clinical trials related to eculizumab and other product candidates. Product development costs are those incurred in performing duties related to pre- and post-approval manufacturing development and regulatory functions. Discovery research costs are incurred in conducting laboratory studies and performing preclinical research for

other uses of eculizumab and other product candidates. Clinical development costs have been accumulated and allocated to each of our programs, while product development and discovery research costs have not been allocated.

All other R&D expenses consist of costs to compensate personnel, to maintain our facility, equipment and overhead and similar costs of our research and development efforts. These costs relate to efforts on our clinical and preclinical products as well as our discovery research efforts. These costs have not been allocated directly to each program.

The following table provides information regarding research and development expenses:

	Year Ended December 31, 2009	Year Ended December 31, 2008	$ Variance	% Variance
Clinical development	$ 20,858	$ 17,889	$ 2,969	17%
Product development	10,630	8,258	2,372	29%
Discovery research	1,776	1,201	575	48%
Total external direct expenses	**33,264**	**27,348**	**5,916**	**22%**
Labor expenses	39,899	27,555	12,344	45%
Operating and occupancy	4,935	4,192	743	18%
Depreciation and amortization	3,817	3,486	331	9%
Total other R&D expenses	**48,651**	**35,233**	**13,418**	**38%**
Research and development expense	**$ 81,915**	**$ 62,581**	**$19,334**	**31%**

The following table summarizes external direct expenses related to our clinical development programs. Please refer to Item 1, Business, for a description of each of these programs:

	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007	Accumulated Expenditures since January 1, 2006
External direct expenses				
Soliris: PNH program	$ 7,850	$ 14,112	$ 14,741	$ 53,604
Soliris: non-PNH programs	8,938	1,657	679	11,274
Samalizumab	1,222	699	—	1,921
Pexelizumab	—	—	1,847	13,713
Unallocated	2,848	1,421	2,667	10,431
	$ 20,858	**$ 17,889**	**$ 19,934**	**$ 90,943**

Prior to January 1, 2006, we spent approximately $475,838 on all research & development programs. Substantially all of our research and development expenses prior to the year ended December 31, 2006 were related to two products, eculizumab and pexelizumab. We obtained approval for eculizumab for the treatment of PNH in 2007 in the United States and European Union, and we made the decision to cease development of pexelizumab in 2006. Expenses for the pexelizumab program recorded in 2007 related to the termination of the program.

The successful development of our drug candidates is uncertain and subject to a number of risks. We cannot guarantee that results of clinical trials will be favorable or sufficient to support regulatory approvals for our other programs. We could decide to abandon development or be required to spend considerable resources not otherwise contemplated. For additional discussion regarding the risks and uncertainties regarding our development programs, please refer to the Risk Factors in this Form 10-K.

During the year ended December 31, 2009, we incurred research and development expenses of $81,915, an increase of $19,334, or 31% versus the $62,581 incurred during the year ended December 31, 2008. The increase was primarily due to the following:

- Increase of $12,344 in research and development payroll and benefit expense related primarily to global expansion of staff supporting our expanding number of clinical programs and manufacturing and product development activities at our production facility in Smithfield RI.
- Increase of $2,969 external clinical development expenses related primarily to an expansion of studies of eculizumab for non-PNH indications, as well as growth of our samalizumab program, offset by decreases in spending on the PNH program (see table above).
- Increase of $2,372 in external product development expenses related primarily to increases in manufacturing development activities at our production facility in Smithfield RI.

We expect our research and development expenses to increase, at a lower rate than our revenue, in 2010 due to clinical development and manufacturing costs related to our expanding eculizumab and samalizumab development programs. For additional information on these programs, please refer to “Product and Development Programs” in Item I of this Form 10-K.

Selling, General and Administrative Expenses

Our selling, general and administrative expense includes commercial and administrative personnel, corporate facility and external costs required to support the marketing and sales of our commercialized products. These selling, general and administrative costs include: corporate facility operating expenses and depreciation; marketing and sales operations in support of Soliris; human resources; finance, legal, information technology and support personnel expenses; and other corporate costs such as telecommunications, insurance, audit and legal expenses.

During the year ended December 31, 2009, we incurred selling, general and administrative expenses of $172,767, an increase of $39,224, or 29%, versus the $133,543 incurred during the year ended December 31, 2008. The increase was primarily due to the following:

- During the year ended December 31, 2009, salaries, benefits and other labor expenses increased to $88,622, an increase of $21,766, or 33%, versus $66,856 incurred during the year ended December 31, 2008. The increase was a result of increased headcount related to commercial development activities, including increases in payroll and benefits costs of $15,108 related to our global commercial operations teams. Other increases related to payroll and benefits within our executive, finance, information technology, human resources and legal groups to support our growth as a commercial entity.
- Increase in external selling, general and administrative expenses of $17,458 was due primarily to increases in marketing and consulting services of $5,693, travel costs of $3,006, occupancy and

depreciation expenses of $4,901 relating to new and expanded office space in Europe, Japan, Canada, Australia and Latin America and $1,348 in telecommunications and information technology expenses.

We expect our selling, general and administrative expenses to increase, at a lower rate than our revenue, in 2010, reflecting our growth as a commercial organization throughout the world.

Other Income (Expense)

During the year ended December 31, 2009, we recognized $530 of foreign currency loss, an increase of $248, versus a loss of $282 incurred during the year ended December 31, 2008. The increase was primarily a result of the fluctuation in exchange rates on the portion of our monetary assets and liabilities that were not fully hedged as part of our hedging programs.

During the year ended December 31, 2009, investment income decreased $2,024, or 72% to $786 due primarily to reduced interest rates earned in money market funds.

During the year ended December 31, 2009, interest expense decreased $1,801, or 75%, to $606 due primarily to lower principal balance of our convertible notes as a result of the note conversion in October 2008 and exchange in April and May 2009.

During the year ended December 31, 2009, interest expense decreased $1,801, or 75%, to $606 due primarily to lower principal balance of our convertible notes as a result of the note conversion in October 2008 and exchange in April and May 2009.

Income Taxes

During the year ended December 31, 2009, we recorded an income tax benefit of $211,852, compared to a provision of $1,581 for the year ended December 31, 2008. The tax benefit reported in 2009 includes a benefit of $215,516 attributable to the release of valuation allowances against US deferred tax assets, offset principally by income tax provisions for profitable foreign subsidiaries. The valuation allowance was reversed after management determined that a significant portion of the deferred tax assets relating to the United States would be realized. We made the determination after evaluation of our levels of recent profitability, as well as forecasts of future taxable income which impact utilization of tax attributes, primarily net operating losses and research income tax credits. The income tax provision for 2008 is principally attributable to entities in certain foreign jurisdictions who achieved profitability during the year, offset by the reversal of valuation allowances in those foreign jurisdictions and the exchange of Federal research credits for cash.

Due to reversal of the valuation allowance during the year ended December 31, 2009, we will record income taxes at an effective tax rate, starting in 2010, which is significantly higher than historical tax rates. The Company was granted an incentive tax holiday in the Canton of Vaud in Switzerland effective January 1, 2010, with a final expiration date in 2019. The tax holiday will exempt the Company from most local corporate income taxes in Switzerland through the end of 2014 and is expected to be renewed for an additional 5 years.

Comparison of the Year Ended December 31, 2008 to the Year Ended December 31, 2007

Revenues

During the year ended December 31, 2008, we recorded sales of Soliris related to commercial sales in the United States of $113,204 and commercial and named-patient sales outside the United States of $145,800. We recorded a gain of $4,141 related to our foreign currency cash flow hedging program, included in revenue from outside the United States. During the year ended December 31, 2007, we recorded sales of Soliris related to commercial sales in the United States of $46,196 and commercial and named-patient sales in the European Union of $20,185. The increases in revenue for fiscal year 2008 versus 2007 were due to an increased number of patients treated with Soliris as a result of our product launch in the United States and in various countries in Europe.

We recorded contract research revenues of $95 and $5,660 for the years ended December 31, 2008 and 2007, respectively. Of the $5,660 in contract research revenues recorded in 2007, $5,343 relates to the termination of our collaborative agreement with Proctor & Gamble, effective March 30, 2007.

Cost of Sales

Cost of sales was $28,366 and $6,696 for the years ended December 31, 2008 and 2007, respectively. Cost of sales includes actual and estimated royalty expenses associated with sales of Soliris, as well as other manufacturing costs. Changes in the estimates of royalties owed to certain third parties could have a material impact on our cost of sales in future periods.

Product sold during the year ended December 31, 2007 included inventory that was previously expensed prior to submission of our BLA and therefore is not included in the cost of sales during this period. During the fourth quarter of 2007, we exhausted the supply of previously expensed inventory. Beginning in 2008, our cost of sales reflected the full manufacturing cost of the inventory.

In the fourth quarter of 2008, we entered into a patent license agreement and settlement agreement with PDL BioPharma in which we were obligated to pay a total of $25,000 for a fully paid, perpetual license. As a result of the settlement and evaluation of other potential royalties, we recorded a reduction in cost of goods sold of approximately $1,800 related to an adjustment of estimated accrued royalties for sales of Soliris prior to the fourth quarter.

Research and Development Expenses

The following table provides information regarding research and development expenses:

	Year Ended December 31, 2008	Year Ended December 31, 2007	$ Variance	% Variance
Clinical development	$ 17,889	$ 19,934	$(2,045)	-10%
Product development	8,258	8,651	(393)	-5%
Discovery research	1,201	2,801	(1,600)	-57%
Total external direct expenses	**27,348**	**31,386**	**(4,038)**	**-13%**
Payroll and benefits	27,555	30,287	(2,732)	-9%
Operating and occupancy	4,192	4,615	(423)	-9%
Depreciation and amortization	3,486	2,673	813	30%
Total other R&D expenses	**35,233**	**37,575**	**(2,342)**	**-6%**
Research and development expense	**$ 62,581**	**$ 68,961**	**$(6,380)**	**-9%**

The following table summarizes external direct expenses related to our clinical development programs. Please refer to Item 1, Business, for a description of each of these programs:

	Year Ended December 31, 2008	Year Ended December 31, 2007
External direct expenses		
Soliris: PNH program	$ 14,112	$ 14,741
Soliris: non-PNH programs	1,657	679
Samalizumab	699	—
Pexelizumab	—	1,847
Unallocated	1,421	2,667
	$ 17,889	**$ 19,934**

During the year ended December 31, 2008, we incurred research and development expenses of $62,581, a decrease of $6,380, or 9.3% versus the $68,961 incurred during the year ended December 31, 2007. The decrease was primarily due to the following:

- Decrease of $2,732 in research and development payroll and benefit expense related primarily to a reduction in stock-based compensation due to employee forfeitures and additional capitalization to inventory and property, plant and equipment.
- Decrease of $2,045 external clinical development expenses related primarily to termination of our pexelizumab program in 2007 and decreases in spending for Soliris for PNH. These are offset by the expansion of studies of eculizumab for non-PNH indications, as well as growth of our samalizumab program (see table above).
- Decrease of $1,600 in discovery research was primarily due to a reduction in external research and consulting fees.

- Increase of $813 in depreciation and amortization related primarily to the amortization of costs associated with our new pilot plant located at our manufacturing facility in Smithfield, RI, which was placed in service in the fourth quarter 2007.

Selling, General and Administrative Expenses

During the year ended December 31, 2008, we incurred selling, general and administrative expenses of $133,543, an increase of $37,401 or 38.9% versus the $96,142 incurred during the year ended December 31, 2007. The increase was primarily due to the following:

- During the year ended December 31, 2008, salaries, benefits and other labor expenses increased to $66,856, an increase of $17,335, or 35%, versus $49,521 incurred during the year ended December 31, 2007. The increase was a result of increased headcount related to commercial development activities, including increases in payroll and benefits costs of $17,211 related to our global commercial operations teams. Other increases related to payroll and benefits within our executive, finance, information technology, human resources and legal groups to support our growth as a commercial entity.
- Increase in non-labor commercial operations of $14,746 for the year ended December 31, 2008 was primarily due to the expansion of our foreign operations, which we expanded significantly in the latter half of 2007.
- Increase in non-labor general and administration of $5,977 primarily related to increases in legal costs associated with ongoing litigation and increases in infrastructure costs to support our growth as a commercial entity.
- Decrease in non-labor information technology of $1,293 primarily related to the costs associated with the build out of our European operations in 2007.

Other Income (Expense)

During the year ended December 31, 2008, we recognized $282 of foreign currency loss, versus a gain of $1,132 incurred during the year ended December 31, 2007. The decreased impact of foreign currency fluctuations was due to our hedging programs implemented in 2008.

During the year ended December 31, 2008, investment income decreased $5,270, or 65.2% to $2,810 due primarily to reduced interest rates earned in money market funds.

During the year ended December 31, 2008, interest expense of $2,407 was consistent with the amounts recognized during the year ended December 31, 2007.

Income Taxes

During the year ended December 31, 2008, we recorded an income tax provision of $1,581, compared to an income tax benefit of $745 for the year ended December 31, 2007. The tax expense during 2008 is principally attributable to entities in certain foreign jurisdictions who achieved profitability during the year, offset by the reversal of valuation allowances in these foreign jurisdictions and the exchange of federal research tax credits for cash. The income tax benefit for 2007 is attributable to the exchange of state research tax credits for cash.

Liquidity and Capital Resources ***(amounts in thousands, except per share data)***

As of December 31, 2009, our consolidated cash, cash equivalents, and marketable securities totaled $176,220. The $38,208 increase from December 31, 2008 is largely attributable to the significantly increased sales and the resulting collection of accounts receivable and proceeds from employee option exercises, offset by payments against our mortgage loan of $44,000, payments related to the PDL settlement of $25,000 and OMRF patent purchase agreement of $2,500 and capital expenditures associated with validation and regulatory approval of our Smithfield, Rhode Island facility. Until required for use in the business, we invest our cash reserves in money market funds and high quality commercial, corporate and U.S. Government notes in accordance with our investment policy.

Financial instruments that potentially expose the Company to concentrations of credit risk are limited to cash equivalents, corporate bonds, accounts receivable and our foreign exchange derivative contracts. At December 31, 2009, one individual customer accounted for 20% of the accounts receivable balance.

At December 31, 2009, we have foreign currency forward contracts with notional amounts totaling $284,895. These outstanding foreign currency forward contracts had a net fair value of $2,528, of which an unrealized gain of $5,209 is included in other current assets, $2,061 is included in other assets and an unrealized loss of $4,742 is included in other current liabilities. The counterparty to these forward contracts is a large multinational commercial bank, and we believe the risk of nonperformance is not material. However, we can not be assured that the financial institution will not be further impacted by the negative economic environment.

In January 2010, we amended and restated our existing credit agreement with Bank of America, N.A. to, among other things, increase our revolving credit facility by $25,000. The amended agreement provides for a $50,000 revolving credit facility, with up to a $20,000 sublimit for letters of credit that can be used for working capital requirements and other general corporate purposes. With the consent of the lenders and the administrative agent and subject to satisfaction of certain conditions, we may increase the facility to $75,000 in accordance with its terms.

At December 31, 2009, our working capital was $288,194, compared to $192,683 at December 31, 2008. At December 31, 2009, our current ratio was 4.38, compared to 3.28 at December 31, 2008. The increase in current ratio relates primarily to increases in our accounts receivable and cash and cash equivalents as well as reductions in amounts payable to PDL and OMRF.

We anticipate that cash generated from operations and our existing available cash should provide us adequate resources to fund our operating expenses and capital requirements as currently planned for at least the next twelve months.

Cash Flows from Operating Activities

Net cash provided by operating activities was $113,841 for the year ended December 31, 2009 versus $53,199 provided by operating activities for the year ended December 31, 2008. The change is primarily due to the increase in pre-tax income achieved in 2009 versus the same period in 2008. The components of cash provided by operating activities, as reported in our Statement of Cash Flows, for the period ended December 31, 2009 are as follows:

- Our reported net income, adjusted for non-cash items, including depreciation and amortization, non-cash debt exchange expense, unrealized currency gain, unrealized hedge gains, deferred taxes and stock compensation, was $128,080 for the year ended December 31, 2009 versus $64,959 for the year ended December 31, 2008.

- Net cash outflow due to changes in operating assets and liabilities of $14,239, primarily relates to increases in accounts receivable of $36,440, offset by an increase in accounts payable and accrued expenses of $14,131 and a decrease in inventory of $14,596.

In 2010, we expect changes in cash from operations to be highly dependent on sales levels, and the related cash collections, from Soliris.

Cash Flows from Investing Activities

Net cash used in investing activities was $81,423 for the year ended December 31, 2009 versus $38,650 used in investing activities for the year ended December 31, 2008. For the year ended December 31, 2009, the net cash used for investing activities consisted of the following:

- Additions to property, plant and equipment of $35,275, of which $20,900 was attributable to expenditures related to our Rhode Island manufacturing facility, with the remaining attributable to spending on information technology and facility capital costs.
- Final payments of $25,000 and $2,500 related to a settlement agreement with PDL Biopharma and purchase of patents from Oklahoma Medical research Foundation, or OMRF, respectively.

In July 2006, we acquired a manufacturing plant in Smithfield, Rhode Island for the future commercial production of Soliris and development and manufacturing of future products. Since this date, we have incurred costs related to the construction of the plant to support full-scale commercial manufacturing. We have also capitalized costs related to validation activities, including engineering runs and inventory production necessary to obtain approval of the facility from government regulators for the production of a commercially approved drug. In December 2009, we received final regulatory approval for production of commercial quantities of eculizumab by the E.C. Accordingly, our plant is substantially complete and ready for its intended use, and therefore we placed the plant into service. In the fourth quarter of 2009, the FDA commenced its inspection of our Rhode Island manufacturing facility and requested additional information regarding our manufacturing processes which we expect to address in 2010.

Through December 31, 2009, we have capitalized $143,822 related to the facility, which includes all costs associated with construction, renovation and upgrades, engineering runs, pre-approval inventory production and capitalized interest.

Cash Flows from Financing Activities

Net cash (used in) provided by financing activities was $(14,270) and $28,308 for the years ended December 31, 2009 and 2008, respectively. This amount related to proceeds from the issuance of common stock related to the exercise of stock options of $30,733 and $28,893, respectively. For the year ended December 31, 2009, this amount was offset by the $44,000 prepayment in full of our mortgage loan.

Contractual Obligations

We have contractual obligations related to our third party manufacturer, certain other third parties described below, for open letters of credit totaling $5,263 and for our $9,918 1.375% Convertible Senior Notes due February 2012.

The following table summarizes our contractual obligations at December 31, 2009 and the effect such obligations and commercial commitments are expected to have on our liquidity and cash flow in future fiscal years. These do not include milestones and assume non-termination of agreements. These obligations, commitments and supporting arrangements represent payments based on current operating forecasts, which are subject to change:

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Contractual obligations:					
Convertible notes payable	$ 9,918	$ —	$ 9,918	$ —	$ —
Interest expense	340	136	204	—	—
Capital and operating leases	39,331	8,943	15,272	9,310	5,806
Total contractual obligations	$49,589	$ 9,079	$25,394	$9,310	$ 5,806
Commercial commitments:					
Clinical and manufacturing development	$35,175	$11,250	$15,725	$8,200	$ —
Licenses	1,840	365	740	735	—
Total commercial commitments	$37,015	$11,615	$16,465	$8,935	$ —

The contractual obligations table above does not include contingent royalties and other contingent contractual payments we may owe to third parties in the future because such payments are contingent on future sales of our products and the existence and scope of third party intellectual property rights and other factors described under the “Risk Factors”. The table above also does not include a liability for unrecognized tax benefits related to various federal, state and foreign income tax matters of $7,305 at December 31, 2009. The timing of the settlement of these amounts was not reasonably estimable at December 31, 2009. We do not expect payment of amounts related to the unrecognized tax benefits within the next twelve months.

Convertible Notes

We have outstanding $9,918 principal amount of 1.375% Convertible Senior Notes due February 1, 2012, or the 1.375% Notes. We pay interest on these notes on a semi-annual basis on February 1 and August 1 of each year. However, no principal payments are due until February 2012, except under certain circumstances such as liquidation, merger or business combination. The convertible notes payable do not contain covenants related to our financial performance.

In October 2008, certain holders of the 1.375% Notes exercised conversion rights with respect to an aggregate principal amount of $52,778 of the 1.375% Notes resulting in the issuance of 3,356 shares of common stock. The shares were issued in November 2008. In April and May 2009, we issued an aggregate of 5,644 shares of our common stock in exchange for $87,304 principal amount of our 1.375% Convertible Senior Notes due 2012 owned by certain note holders.

The 1.375% Notes are convertible into our common stock at an initial conversion rate of 63.5828 shares of common stock (equivalent to a conversion price of approximately $15.73 per share) per $1 principal amount of the 1.375% Notes, subject to adjustment, at any time prior to the close of business on the final maturity date of the notes. We do not have the right to redeem any of the 1.375% Notes prior to maturity. The conversion rate and conversion price have been adjusted for the stock split effected on August 22, 2008.

As of December 31, 2009, the market value of our $9,918 principal amount of 1.375% Notes, based on quoted market prices, was estimated at $30,732 versus $211,106 at December 31, 2008. The decrease of $180,374 from December 31, 2008 is largely attributable to the issuance of 5,644 shares of our common stock in exchange for $87,304 principal amount of the Notes in the second quarter of 2009.

Mortgage Loan

We had a mortgage loan of $44,000 to finance the purchase and construction of our manufacturing facility in Smithfield, Rhode Island. In June 2009, we amended the mortgage loan agreement to permit the prepayment of the loan without penalty. We prepaid a portion of the mortgage loan each month beginning in July 2009 and made a final payment of the remaining principal balance in October 2009.

Revolving Credit Facility

In February 2008, we entered into a Credit Agreement with a financial institution to provide for an available $25,000 revolving credit facility that could be used for working capital requirements and other general corporate purposes. The loan was collateralized by substantially all of Alexion Pharmaceuticals, Inc.'s assets, including the pledge of the equity interests of certain direct subsidiaries, but excluding intellectual property, assets of foreign subsidiaries and assets related to our manufacturing facility in Smithfield, Rhode Island. The borrowing base was limited to the lesser of $25,000 or 80% of eligible domestic receivables. At December 31, 2009, we had no outstanding balance under the revolving credit facility and were in compliance with all financial debt covenants.

In January 2010, we amended and restated the credit agreement, the Amended Credit Agreement, to, among other things, increase the revolving credit facility by $25,000. The Amended Credit Agreement provides for a $50,000 facility, with up to a $20,000 sublimit for letters of credit that can be used for working capital requirements and other general corporate purposes. With the consent of the lenders and the administrative agent and subject to satisfaction of certain conditions, we may increase the facility to $75,000 in accordance with the Amended Credit Agreement. The loan is secured by substantially all of Alexion Pharmaceuticals, Inc.'s assets, including the pledge of the equity interests of certain direct subsidiaries and the real estate owned by Alexion Manufacturing LLC, its wholly owned subsidiary, but excluding intellectual property and assets of foreign subsidiaries. We have not borrowed under the Amended Credit Agreement but may borrow under the agreement from time to time based on its needs.

We may elect that the loans under the agreement bear interest at a rate per annum equal to (i) LIBOR plus 2.50% to 3.00% depending on the ratio of our cash to liabilities (as calculated in accordance with the agreement), or (ii) a Base Rate equal to the higher of the (A) Prime Rate then in effect, (B) Federal Funds Rate then in effect plus 0.50%, and (C) Eurodollar Rate then in effect plus 1%, plus 0.50% to 1.00% depending on the ratio of our cash to liabilities (as calculated in accordance with the agreement). We may prepay the loans, in whole or in part, in minimum amounts without premium or penalty, other than customary breakage costs with respect to LIBOR borrowings. Interest is payable quarterly for Base Rate loans and, in the case of LIBOR-based loans, at the end of the applicable interest period, with the principal due on January 22, 2013, the maturity date. We may borrow, repay and reborrow under the facility until January 22, 2013.

The Amended Credit Agreement requires us to comply with certain financial covenants on a quarterly basis. Further, the agreement includes negative covenants, subject to exceptions, restricting or limiting our ability and the ability of our subsidiaries to, among other things, incur additional indebtedness, grant liens, engage in certain

investment, acquisition and disposition transactions, and enter into transactions with affiliates. The agreement also contains customary representations and warranties, affirmative covenants and events of default, including payment defaults, breach of representations and warranties, covenant defaults and cross defaults. If an event of default occurs, the interest rate would increase and the administrative agent would be entitled to take various actions, including the acceleration of amounts due under the loan.

Capital Leases

We currently lease office equipment under capital lease agreements expiring in 2013. The assets and liabilities under capital lease agreements are recorded at the lower of the present value of the minimum lease payments or the fair value of the asset. The assets are amortized over the lower of their related lease terms or their estimated useful lives. The average interest rates on the above capital leases is 3.76% and is imputed based on the lower of our incremental borrowing rate at the inception of each lease.

Operating Leases

Our operating leases are principally for facilities and equipment. We currently lease 141,454 square feet of space at our headquarters and research and development facility in Cheshire, Connecticut and approximately 5,249 square feet of space at our regional executive and sales offices in Lausanne, Switzerland. Additionally, we lease research space in San Diego, California. In connection with the closure of Alexion Antibody Technologies in 2006, we accrued the fair value of future payments under the lease (see Note 7 of the Consolidated Financial Statements included in this Form 10-K). In September 2007, we entered into a sub-lease for the AAT facility, which provides for sub-lease payments to us through the term of the lease, or 2012.

We believe that our administrative office space is adequate to meet our needs for the foreseeable future. We also believe that our research and development facilities and our manufacturing facility, together with third party manufacturing facilities, will be adequate for our on-going activities. In addition to the locations above, we also lease offices in certain countries to facilitate our operations as a global organization.

Commercial Commitments

Our commercial commitments consist of research and development, license, operational, clinical development, and manufacturing cost commitments, along with anticipated supporting arrangements, subject to certain limitations and cancellation clauses. The timing and level of our commercial scale manufacturing costs, which may or may not be realized, are contingent upon the progress of our clinical development programs and our commercialization plans. Our commercial commitments are represented principally by our supply agreement with Lonza Sales AG.

Lonza Agreement

We have a supply agreement with Lonza Sales AG relating to the manufacture of Soliris, which requires payments to Lonza at the inception of the contract and as product is manufactured. On an ongoing basis, we evaluate our plans for future levels of production by Lonza, which depends upon our commercial requirements, the progress of our clinical development programs and the production levels of our Smithfield, Rhode Island manufacturing facility.

We have agreed to purchase certain minimum quantities of product from Lonza under our existing arrangements. If we terminate the Lonza Agreement without cause, we will be required to pay for batches of product scheduled for manufacture under our arrangement.

Additional Commercial Commitments

Additional payments related to our commercial commitments, such as licenses, aggregating to approximately $1,350, would be required if we elect to continue development under our current preclinical development programs and if specified development milestones are reached (including achievement of commercialization). These amounts are not included in the above table.

Income Taxes

At December 31, 2009, we have pre-tax federal and state net operating loss carryforwards of $665,740, and $117,778, respectively. These NOL's expire between 2010 and 2028. We also have federal and state income tax credit carryforwards of approximately $34,208 and $7,689, respectively. These income tax credits expire between 2010 and 2029. Due to the amount of our NOL's and credit carryforwards, we do not anticipate paying substantial U.S. federal income taxes in the foreseeable future. We do expect to pay cash taxes in various U.S. states and in foreign jurisdictions where we have operations and have utilized all of our net operating losses. We were again subject to the alternative minimum tax during 2009 and expect that we will continue to be subject to cash payments for the alternative minimum tax in the near term. The payment of an alternative minimum tax amount generates a credit that may be carried forward indefinitely and used to offset our regular income tax liability.

The Tax Reform Act of 1986 contains certain provisions that can limit a taxpayer's ability to utilize net operating loss and tax credit carryforwards in any given year resulting from cumulative changes in ownership interests in excess of 50 percent over a three-year period. We have determined that these limiting provisions were triggered during a prior year. However, we believe that such limitation is not expected to result in the expiration or loss of any of our federal NOL's.

Item 7A. ***QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.***
(amounts in thousands, except per share data)

Interest Rate Risk

As of December 31, 2009, we held all of our cash and cash equivalents in bank accounts and money market funds, which are not subject to significant interest rate risk.

At December 31, 2009, we held $18,916 in marketable securities with maturity dates of less than one year. These financial instruments are subject to interest rate risk and will decline in value if interest rates increase. However, we expect to hold time-based investments, such as corporate bonds, through maturity. We estimate that a change of 100 basis points in interest rates would result in an increase or decrease of approximately $19 in the fair value of our cash and investments, which had a weighted average duration of approximately 6.2 months at December 31, 2009.

Our outstanding long-term liabilities as of December 31, 2009 included our $9,918, 1.375% Convertible Senior Notes due February 1, 2012. As the notes bear interest at a fixed rate, our results of operations would not be impacted by interest rate changes.

During the first quarter of 2008, we entered into a revolving credit facility with a financial institution to borrow up to $25,000. In January 2010, we amended and restated the credit agreement, the Amended Credit Agreement, to, among other things, increase the revolving credit facility to $50,000. We may elect that the loans under the agreement bear interest at a rate per annum equal to (i) LIBOR plus 2.50% to 3.00% depending on the ratio of our cash to liabilities (as calculated in accordance with the agreement), or (ii) a Base Rate equal to the higher of the (A) Prime Rate then in effect, (B) Federal Funds Rate then in effect plus 0.50%, and (C) Eurodollar Rate then in effect plus 1%, plus 0.50% to 1.00% depending on the ratio of our cash to liabilities (as calculated in accordance with the agreement). We do not expect changes in interest rates related to our revolving credit facility to have a material effect on our financial statements.

Foreign Exchange Market Risk

As a result of our foreign operations, we face exposure to movements in foreign currency exchange rates, primarily the Euro, Japanese Yen, Swiss Franc and British Pound. The current exposures arise primarily from cash, accounts receivable, intercompany receivables and payables, and product sales denominated in foreign currencies. Both positive and negative impacts to our international product sales from movements in foreign currency exchange rates are partially mitigated by the natural, opposite impact that foreign currency exchange rates have on our international operating expenses.

We currently have a derivative program in place to achieve two goals: 1) limit the foreign currency exposure of our monetary assets and liabilities on our balance sheet and 2) hedge a portion of our forecasted product sales, using contracts with duration of up to 24 months, to mitigate fluctuations in foreign exchange rates. Both programs utilize forward foreign exchange contracts intended to reduce, not eliminate, the impact of fluctuations in foreign currency rates.

As of December 31, 2009, we held foreign currency forward contracts with notional amounts totaling $284,895. As of December 31, 2009, our outstanding foreign currency forward contracts had a net fair value of $2,528.

We do not use derivative financial instruments for speculative trading purposes. The counterparty to these forward contracts is a multinational commercial bank. We believe the risk of counterparty nonperformance is not material.

Since our foreign currency hedges are designed to offset gains and losses on our monetary assets and liabilities, we do not expect that a hypothetical 10% adverse change fluctuation in exchange rates would result in a material change in the fair value of our foreign currency sensitive assets, which include our monetary assets and liabilities and our forward contracts. The analysis above does not consider the impact that hypothetical changes in foreign currency exchange rates would have on future transactions such as anticipated sales.

Item 8. ***FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.***

The consolidated financial statements and supplementary data of the Company required in this item are set forth beginning on page F-1.

Item 9. ***CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.***

None.

Item 9A. ***CONTROLS AND PROCEDURES.***

Disclosure Controls and Procedures.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act,) as of December 31, 2009. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2009, our disclosure controls and procedures were effective to provide reasonable assurance that information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure, and ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms.

Management's Report on Internal Control over Financial Reporting.

Management of Alexion Pharmaceuticals, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management utilized the criteria set forth in "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO, to conduct an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2009. Based on the assessment, management has concluded that, as of December 31, 2009, our internal control over financial reporting is effective.

The effectiveness of our internal control over financial reporting as of December 31, 2009 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report, which is included herein.

Changes in Internal Control over Financial Reporting.

There has been no change in our internal control over financial reporting that occurred during the quarter ended December 31, 2009 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9A(T). ***CONTROLS AND PROCEDURES.***

Not applicable

Item 9B. ***OTHER INFORMATION.***

None.

PART III

Item 10. *DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.*

The information required by this item with respect to our executive officers is provided under the caption entitled "Executive Officers of the Company" in Part I of this Annual Report on Form 10-K and is incorporated by reference herein. The information required by this item with respect to our directors and our audit committee and audit committee financial expert will be set forth in our definitive Proxy Statement under the captions "General Information About the Board of Directors" and "Election of Directors", to be filed within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and is incorporated herein by reference to our Proxy Statement.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

The information concerning our directors regarding compliance with Section 16(a) of the Securities Exchange Act of 1934 required by this Item will be set forth in our definitive Proxy Statement under the caption "Section 16(a) Beneficial Ownership Reporting Compliance", to be filed within 120 days after the end of the fiscal year covered by this annual report on Form 10-K, and is incorporated herein by reference to our Proxy Statement.

CODE OF ETHICS

We have adopted the Alexion Pharmaceuticals, Inc. Code of Conduct, or code of ethics, that applies to directors, officers and employees of Alexion and its subsidiaries and complies with the requirements of Item 406 of Regulation S-K and the listing standards of the Nasdaq Global Market. Our code of ethics is located on our website (http://ir.alexionpharm.com/governance.cfm). We amended the code of ethics in September 2009 and any future amendments or waivers to our code of ethics will be promptly disclosed on our website and as required by applicable laws, rules and regulations of the Securities and Exchange Commission and Nasdaq.

Item 11. *EXECUTIVE COMPENSATION.*

The information required by this Item will be set forth in our definitive Proxy Statement, to be filed within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and is incorporated herein by reference to our Proxy Statement.

Item 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.*

The information required by this Item will be set forth in our definitive Proxy Statement, to be filed within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and is incorporated herein by reference to our Proxy Statement.

Item 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.*

The information required by this Item will be set forth in our definitive Proxy Statement, to be filed within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and is incorporated herein by reference to our Proxy Statement.

PART IV

Item 14. ***PRINCIPAL ACCOUNTING FEES AND SERVICES.***

The information required by this Item will be set forth in our definitive Proxy Statement under the caption “Independent Registered Public Accounting Firm”, to be filed within 120 days after the end of the year ended December 31, 2009 covered by this Annual Report on Form 10-K, and is incorporated herein by reference to our Proxy Statement.

Item 15. ***EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.***

(1) Financial Statements

The financial statements required by this item are submitted in a separate section beginning on page F-1 of this report.

(**2) Financial Statement Schedules**

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the financial statements or notes thereto beginning on page F-1 of this report.

(3) Exhibits:

3.1	Certificate of Incorporation, as amended. (1)
3.2	Bylaws,as amended. (2)
4.1	SpecimenCommon Stock Certificate. (3)
4.2	Rights Agreement between the Company and Continental Stock Transfer & Trust Company, Rights Agent, dated as of February 14, 1997. (4)
4.3	Amendment No. 1 to Rights Agreement, dated as of September 18, 2000, between the Company and Continental Stock Transfer and Trust Company. (5)
4.4	Amendment No. 2 to Rights Agreement, dated as of December 12, 2001, between the Company and Continental Stock Transfer and Trust Company, which includes as Exhibit B the form of Right Certificate. (6)
4.5	Amendment No. 3 to Rights Agreement, dated as of November 16, 2004, between the Company and Continental Stock Transfer and Trust Company. (7)
4.6	Amendment No. 4 to Rights Agreement, dated February 23, 2007, between the Company and Continental Stock Transfer and Trust Company. (8)
4.7	Indenture, dated January 25, 2005, between the Company and U.S. Bank National Association relating to Alexion Pharmaceuticals, Inc.’s 1.375% Convertible Senior Notes due 2012. (9)
4.8	Registration Rights Agreement, dated January 25, 2005, between the Company, Morgan Stanley & Co. Incorporated, Bear, Stearns & Co. Inc., SG Cowen & Co., LLC and J.P. Morgan Securities Inc. (9)
10.1	Employment Agreement, dated as of February 14, 2006, between the Company and Dr. Leonard Bell. (10)

10.2	Amendment No. 1 to the Employment Agreement, dated as of December 23, 2009, between the Company and Dr. Leonard Bell.
10.3	Employment Agreement, dated as of February 14, 2006, between the Company and Dr. Stephen P. Squinto. (10)
10.4	Amendment No. 1 to the Employment Agreement, dated as of December 23, 2009, between the Company and Dr. Stephen P. Squinto.
10.5	Employment Agreement, dated as of February 14, 2006, between the Company and Vikas Sinha. (10)
10.6	Amendment No. 1 to the Employment Agreement, dated as of December 23, 2009, between the Company and Vikas Sinha.
10.7	Employment Agreement, dated November 7, 2005, between the Company and Patrice Coissac. (11)
10.8	Amendment to Employment Agreement, dated July 25, 2007, between the Company and Patrice Coissac. (12)
10.9	Amendment to Employment Agreement, dated January 14, 2008, between the Company and Patrice Coissac. (12)
10.10	Severance Letter Agreement, dated as of November 7, 2005, by and between Alexion Europe SAS and Patrice Coissac. (11)
10.11	Form of Employment Agreement (Senior Vice Presidents). (10)
10.12	Form of Amendment No. 1 to Employment Agreements (Senior Vice Presidents).
10.13	Agreement of Lease, dated May 9, 2000, between the Company and WE Knotter L.L.C. (13)
10.14	Company's 1992 Stock Option Plan, as amended. (14)
10.15	Company's 2000 Stock Option Plan, as amended. (2)
10.16	Company's 1992 Outside Directors Stock Option Plan, as amended. (14)
10.17	Company's Amended and Restated 2004 Incentive Plan. (15)
10.18	License Agreement dated March 27, 1996 between the Company and Medical Research Council. (16)+
10.19	Research and Development Facility lease, dated February 1, 2002, between the Company and PMSI SRF L.L.C. (17)
10.20	Large-Scale Product Supply Agreement, dated December 18, 2002, between Alexion International Sarl and Lonza Sales AG, as amended. (18)+
10.21	Amendment No. 13 to the Large-Scale Product Supply Agreement dated December 18, 2002, between Alexion International Sarl and Lonza Sales AG, dated June 8, 2007. (15)+
10.22	Form of Stock Option Agreement for Directors. (19)
10.23	Form of Stock Option Agreement for Executive Officers (Form A). (20)
10.24	Form of Stock Option Agreement for Executive Officers (Form B). (20)
10.25	Form of Restricted Stock Award Agreement for Executive Officers (Form A). (21)

10.26	Form of a Stock Option Agreement for named executive officer(s) of Alexion Europe SAS. (12)
10.27	Form of a Restricted Stock Agreement for named executive officer(s) of Alexion Europe SAS. (12)
10.28	Form of Stock Option Agreement (Incentive Stock Options). (15)
10.29	Form of Stock Option Agreement (Nonqualified Stock Options). (15)
10.30	Form of Restricted Stock Award Agreement. (15)
10.31	Form of Stock Option Agreement for Participants in France. (15)
10.32	Form of Restricted Stock Unit Agreement for Participants in France. (15)
10.33	Patent License Agreement, dated December 31, 2008, between the Company and PDL BioPharma, Inc. (15)+
10.34	Settlement Agreement, dated December 31, 2008, between the Company and PDL BioPharma, Inc. (15)+
10.35	Settlement and Assignment Agreement, dated as of February 8, 2008, between the Company and Oklahoma Medical Research Foundation. (22)
10.36	Amended and Restated Credit Agreement, dated January 22, 2010, between the Company, Bank of America, N.A. as administrative agent, the other lenders party thereto, Banc of America Securities LLC and J.P. Morgan Securities Inc. as joint lead arrangers, and Banc of America Securities LLC as lead book manager.
10.37	Amended and Restated Security Agreement, dated January 22, 2010, between the Company, Bank of America, N.A., and the other loan parties named therein.
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges. (1)
21.1	Subsidiaries of Alexion Pharmaceuticals, Inc.
23.1	Consent of PricewaterhouseCoopers LLP.
31.1	Certificate of Chief Executive Officer pursuant to Exchange Act Rules 13a-14 and 15d-14, as adopted pursuant to Section 302 Sarbanes Oxley Act of 2002.
31.2	Certificate of Chief Financial Officer pursuant to Exchange Act Rules 13a-14 and 15d-14, as adopted pursuant to Section 302 of Sarbanes Oxley Act of 2002.
32.1	Certificate of Chief Executive Officer pursuant to Section 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act.
32.2	Certificate of Chief Financial Officer pursuant to Section 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act.

(1) Incorporated by reference to our Registration Statement on Form S-3 (Reg. No. 333-128085), filed on September 2, 2005.
(2) Incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended January 31, 2004.
(3) Incorporated by reference to our Registration Statement on Form S-1 (Reg. No. 333-00202).
(4) Incorporated by reference to our Registration Statement on Form 8-A (Reg. No. 000-27756), filed on February 21, 1997.

(5) Incorporated by reference to Amendment No. 1 to our Registration Statement on Form 8-A (Reg. No. 000-27756), filed on October 6, 2000.
(6) Incorporated by reference to Amendment No. 2 to our Registration Statement on Form 8-A (Reg. No. 000-27756), filed on February 12, 2002.
(7) Incorporated by reference to Amendment No. 3 to our Registration Statement on Form 8-A (Reg. No. 000-27756), filed on November 17, 2004.
(8) Incorporated by reference to our Annual Report on Form 10-K for the year ended December 31, 2006, filed on February 23, 2007.
(9) Incorporated by reference to our report on Form 8-K, filed on January 25, 2005.
(10) Incorporated by reference to our Report on Form 8-K filed on February 16, 2006.
(11) Incorporated by reference to our report on Form 8-K, filed on November 14, 2005.
(12) Incorporated by reference to our Annual Report on Form 10-K for the fiscal year ended December 31, 2007.
(13) Incorporated by reference to our Registration Statement on Form S-3 (Reg. No. 333-36738) filed on May 10, 2000.
(14) Incorporated by reference to our Registration Statement on Form S-8 (Reg. No. 333-71879) filed on February 5, 1999.
(15) Incorporated by reference to our Annual Report on Form 10-K for the fiscal year ended December 31, 2008.
(16) Incorporated by reference to our Annual Report on Form 10-K for the fiscal year ended July 31, 1996.
(17) Incorporated by reference to our quarterly report on Form 10-Q for the quarter ended January 31, 2002.
(18) Incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended January 31, 2003.
(19) Incorporated by reference to our report on Form 8-K, filed on December 16, 2004.
(20) Incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended January 31, 2005.
(21) Incorporated by reference to our report on Form 8-K, filed on March 14, 2005.
(22) Incorporated by reference to our report on Form 8-K, filed on February 14, 2008.
+ Confidential treatment was granted for portions of such exhibit.

Item 15(b) Exhibits

See (a) (3) above.

Item 15(c) Financial Statement Schedules

See (a) (2) above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ALEXION PHARMACEUTICALS, INC.

By: /S/ LEONARD BELL

Leonard Bell, M.D.
Chief Executive Officer,
Secretary and Treasurer
Dated: February 23, 2010

By: /S/ VIKAS SINHA

Vikas Sinha, M.B.A., C.A.
Senior Vice President and Chief Financial Officer
Dated: February 23, 2010

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/S/ LEONARD BELL **Leonard Bell, M.D.**	Chief Executive Officer, Secretary, Treasurer and Director (principal executive officer)	February 23, 2010
/S/ VIKAS SINHA **Vikas Sinha, M.B.A., C.A.**	Senior Vice President and Chief Financial Officer (principal financial officer)	February 23, 2010
/S/ SCOTT PHILIPS **Scott Phillips**	Corporate Controller and Chief Accounting Officer (principal accounting officer)	February 23, 2010
/S/ MAX LINK **Max Link, Ph.D.**	Chairman of the Board of Directors	February 23, 2010
/S/ WILLIAM R. KELLER **William R. Keller**	Director	February 23, 2010
/S/ LARRY L. MATHIS **Larry L. Mathis**	Director	February 23, 2010
/S/ JOSEPH A. MADRI **Joseph A. Madri, Ph.D., M.D.**	Director	February 23, 2010

/S/ R. DOUGLAS NORBY **R. Douglas Norby**	Director	February 23, 2010
/S/ ALVIN S. PARVEN **Alvin S. Parven**	Director	February 23, 2010
/S/ RUEDI E. WAEGER **Ruedi E. Waeger, Ph.D.**	Director	February 23, 2010

Alexion Pharmaceuticals, Inc.

Contents
For the Years Ended December 31, 2009, 2008 and 2007

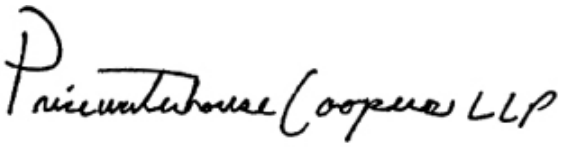
Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders
of Alexion Pharmaceuticals, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Alexion Pharmaceuticals, Inc. and its subsidiaries at December 31, 2009 and December 31, 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.



Hartford, Connecticut
February 23, 2010

Alexion Pharmaceuticals, Inc.

Consolidated Balance Sheets
(amounts in thousands, except per share amounts)

	December 31, 2009	December 31, 2008
Assets		
Current Assets:		
Cash and cash equivalents	$ 157,172	$ 138,012
Marketable securities	19,048	—
Trade accounts receivable, net	113,731	74,476
Inventories	40,885	49,821
Prepaid manufacturing costs	5,762	1,864
Deferred tax assets	16,726	972
Prepaid expenses and other current assets	20,132	11,956
Total current assets	373,456	277,101
Property, plant and equipment, net	164,691	139,885
Intangible assets, net	28,589	32,325
Goodwill, net	19,954	19,954
Restricted cash	1,088	1,699
Deferred tax assets	194,308	3,397
Other assets	4,315	3,190
Total assets	$ 786,401	$ 477,551
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	$ 11,530	$ 8,655
Accrued expenses	71,657	46,200
Deferred revenue	1,652	1,128
License payable	—	25,000
Deferred tax liabilities	1	639
Current debt obligations	—	2,500
Current portion of capital lease obligations	422	296
Total current liabilities	85,262	84,418
Capital lease obligations, less current portion	503	203
Mortgage loan	—	44,000
Convertible notes	9,918	97,222
Deferred tax liabilities	204	906
Other liabilities	2,158	3,801
Total liabilities	98,045	230,550
Commitments and contingencies (Notes 1 and 10)		
Stockholders' equity:		
Preferred stock, $.0001 par value; 5,000 shares authorized, no shares issued or outstanding	—	—
Common stock, $.0001 par value; 145,000 shares authorized; 89,097 and 81,532 shares issued at December 31, 2009 and 2008, respectively	5	5
Additional paid-in capital	1,093,933	941,439
Treasury stock, at cost, 97 and 57 shares at December 31, 2009 and 2008, respectively	(2,676)	(1,260)
Accumulated other comprehensive income (loss)	(1,942)	2,947
Accumulated deficit	(400,964)	(696,130)
Total stockholders' equity	688,356	247,001
Total liabilities and stockholders' equity	$ 786,401	$ 477,551

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

Alexion Pharmaceuticals, Inc.

Consolidated Statements of Operations
(amounts in thousands, except per share amounts)

	Year Ended December 31,		
	2009	2008	2007
Revenues:			
Net product sales	$ 386,800	$259,004	$ 66,381
Contract research revenues	—	95	5,660
Total revenues	386,800	259,099	72,041
Cost of sales	45,059	28,366	6,696
Operating expenses:			
Research and development	81,915	62,581	68,961
Selling, general and administrative	172,767	133,543	96,142
Total operating expenses	254,682	196,124	165,103
Operating income (loss)	87,059	34,609	(99,758)
Other income and expense:			
Investment income	786	2,810	8,080
Interest expense	(606)	(2,407)	(2,489)
Foreign currency gain (loss)	(530)	(282)	1,132
Debt exchange expense	(3,395)	—	—
Income (loss) before income taxes	83,314	34,730	(93,035)
Income tax provision (benefit)	(211,852)	1,581	(745)
Net income (loss)	$ 295,166	$ 33,149	$ (92,290)
Earnings (loss) per common share			
Basic	$ 3.46	$ 0.43	$ (1.27)
Diluted	$ 3.26	$ 0.39	$ (1.27)
Shares used in computing earnings (loss) per share			
Basic	85,326	77,680	72,622
Diluted	90,582	89,967	72,622

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

Alexion Pharmaceuticals, Inc.

Consolidated Statements of Changes in Stockholders' Equity and Comprehensive Income (Loss)
(amounts in thousands)

	Common Stock		Additional Paid-In	Treasury Stock at Cost		Other Comprehensive	Accumulated	Total Stockholders	Comprehensive
	Shares Issued	Amount	Capital	Shares	Amount	Income (Loss)	Deficit	Equity	Income (Loss)
Balances, December 31, 2006	71,136	4	763,691	57	(1,260)	(177)	(637,581)	124,677	$ (131,376)
Adoption of FASB Interpretation No. 48	—	—	—	—	—	—	592	592	
Opening balance at January 1, 2007, as adjusted	71,136	4	763,691	57	(1,260)	(177)	(636,989)	125,269	
Foreign currency translation	—	—	—	—	—	(1,316)	—	(1,316)	$ (1,316)
Net change in unrealized gains on marketable securities	—	—	—	—	—	50	—	50	50
Issuance of common stock from exercise of options	4,192	—	47,005	—	—	—	—	47,005	—
Issuance of restricted common stock	418	—	—	—	—	—	—	—	—
Recognition of equity impact on R&D tax credit	—	—	813	—	—	—	—	813	—
Share-based compensation expense	—	—	22,025	—	—	—	—	22,025	—
Net loss	—	—	—	—	—	—	(92,290)	(92,290)	(92,290)
Balances, December 31, 2007	75,746	4	833,534	57	(1,260)	(1,443)	(729,279)	101,556	$ (93,556)
Foreign currency translation	—	—	—	—	—	(74)	—	(74)	$ (74)
Unrealized loss on pension obligation	—	—	—	—	—	(471)	—	(471)	(471)
Unrealized gain on hedging activities	—	—	—	—	—	4,935	—	4,935	4,935
Costs associated with 2 for 1 stock split	—	—	(99)	—	—	—	—	(99)	—
Conversion of convertible notes to common stock	3,356	1	52,184	—	—	—	—	52,185	—
Issuance of common stock from exercise of options	2,120	—	28,893	—	—	—	—	28,893	—
Issuance of restricted common stock	310	—	—	—	—	—	—	—	—
Recognition of equity impact on R&D tax credit	—	—	404	—	—	—	—	404	—
Share-based compensation expense	—	—	26,523	—	—	—	—	26,523	—
Net income	—	—	—	—	—	—	33,149	33,149	33,149
Balances, December 31, 2008	81,532	$ 5	$ 941,439	57	$ (1,260)	$ 2,947	$ (696,130)	$ 247,001	$ 37,539

Alexion Pharmaceuticals, Inc.

Consolidated Statements of Changes in Stockholders' Equity and Comprehensive Income (Loss)—(Continued)
(amounts in thousands)

	Common Stock		Additional Paid-In	Treasury Stock at Cost		Other Comprehensive	Accumulated	Total Stockholders	Comprehensive
	Shares Issued	Amount	Capital	Shares	Amount	Income (Loss)	Deficit	Equity	Income (Loss)
Foreign currency translation	—	—	—	—	—	415	—	415	$ 415
Net change in unrealized gains on marketable securities	—	—	—	—	—	22	—	22	22
Unrealized loss on pension obligation	—	—	—	—	—	(416)	—	(416)	(416)
Unrealized loss on hedging activities	—	—	—	—	—	(4,910)	—	(4,910)	(4,910)
Exchange of convertible notes to common stock	5,644	—	89,893	—	—	—	—	89,893	—
Issuance of common stock from exercise of options	1,564	—	30,733	40	(1,416)	—	—	29,317	—
Issuance of restricted common stock	357	—	—	—	—	—	—	—	—
Excess tax benefit from stock options	—	—	764	—	—	—	—	764	—
Share-based compensation expense	—	—	31,104	—	—	—	—	31,104	—
Net income	—	—	—	—	—	—	295,166	295,166	295,166
Balances, December 31, 2009	89,097	$ 5	$1,093,933	97	$ (2,676)	$ (1,942)	$ (400,964)	$ 688,356	$ 290,277

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

Alexion Pharmaceuticals, Inc.

Consolidated Statements of Cash Flows
(amounts in thousands)

	Year Ended December 31,		
	2009	2008	2007
Cash flows from operating activities:			
Net income (loss)	$ 295,166	$ 33,149	$ (92,290)
Adjustments to reconcile net income (loss) to net cash used by operating activities:			
Non-cash exit costs	—	—	(375)
Loss on disposal of property, plant and equipment	271	44	542
Depreciation and amortization	12,473	7,608	4,927
Share-based compensation expense	28,731	23,682	22,025
Deferred taxes	(208,726)	—	—
Non-cash debt exchange expense	3,395	—	—
Unrealized foreign currency (gain) loss	(997)	3	—
Unrealized (gain) loss on forward contracts	(2,233)	473	—
Changes in operating assets and liabilities:			
Accounts receivable	(36,440)	(31,262)	(49,545)
Inventories	14,596	(15,700)	(30,593)
Prepaid expenses and other assets	(6,926)	951	(440)
Accounts payable and accrued expenses	14,131	32,912	11,478
Deferred revenue	400	1,339	(5,343)
Net cash provided by (used in) operating activities	113,841	53,199	(139,614)
Cash flows from investing activities:			
Purchases of marketable securities	(19,026)	—	—
Proceeds from maturity or sale of marketable securities	—	9,368	39,266
Purchases of property, plant and equipment	(35,275)	(39,733)	(68,825)
Purchase of technology rights	(27,740)	(8,624)	—
Decrease in restricted cash	618	339	32,636
Net cash (used in) provided by investing activities	(81,423)	(38,650)	3,077
Cash flows from financing activities:			
Debt issuance costs	(50)	(312)	—
Payments on capital leases	(301)	(273)	(161)
Proceeds from mortgage loan	—	—	18,000
Payments on mortgage loan	(44,000)	—	—
Excess tax benefit from stock options	764		
Payment of taxes in exchange of treasury shares	(1,416)	—	—
Net proceeds from issuance of common stock	30,733	28,893	47,005
Net cash (used in) provided by financing activities	(14,270)	28,308	64,844
Effect of exchange rate changes on cash	1,012	(166)	188
Net change in cash and cash equivalents	19,160	42,691	(71,505)
Cash and cash equivalents at beginning of period	138,012	95,321	166,826
Cash and cash equivalents at end of period	$ 157,172	$138,012	$ 95,321
Supplemental disclosures			
Cash paid for interest (net of amounts capitalized)	$ 4,282	$ 6,688	$ 6,146
Cash paid for income taxes	$ 4,268	$ —	$ 24

See Notes 4, 5, 8, 9, 11 and 12 for investing and financing non-cash disclosures

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

1. Business Overview and Summary of Significant Accounting Policies

Business

Alexion Pharmaceuticals, Inc. ("Alexion" or the "Company") is a biopharmaceutical company engaged in the discovery, development and commercialization of biologic therapeutic products aimed at treating patients with severe and life-threatening disease states, including hematologic, kidney and neurologic diseases, transplant rejection, cancer and autoimmune disorders. Our marketed product Soliris® (eculizumab) is the first and only therapy approved for the treatment of patients with paroxysmal nocturnal hemoglobinuria, or PNH. We were incorporated in 1992 and began commercial sale of Soliris in 2007.

Stock Split

In July 2008, the Company's Board of Directors approved a two-for-one stock split to be effected in the form of a 100 percent stock dividend. The additional shares were distributed on August 22, 2008 to stockholders of record as of the close of trading on August 12, 2008. All share and per share data presented in the accompanying consolidated financial statements and throughout these notes have been retroactively restated to reflect this stock split.

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Alexion Pharmaceuticals, Inc. and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

We have evaluated subsequent events through February 23, 2010. No material subsequent events, other than those disclosed in Note 8, have occurred since December 31, 2009 that required recognition or disclosure in these financial statements.

Dividend Policy

We have never paid a cash dividend on shares of our stock. We currently intend to retain our earnings to finance future operations and do not anticipate paying any cash dividends on our stock in the foreseeable future.

Use of Estimates

Under accounting principles generally accepted in the United States of America, we are required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and disclosure of contingent assets and liabilities in our financial statements. Actual results could differ from those estimates.

Foreign Currency Translation

The financial statements of our subsidiaries with functional currencies other than the U.S. dollar are translated into U.S. dollars using period-end exchange rates for assets and liabilities, historical exchange rates for stockholders' equity and weighted average exchange rates for operating results. Translation gains and losses are included in accumulated other comprehensive income (loss) in stockholders' equity. Foreign currency transaction gains and losses are included in the results of operations in other income (expense).

Segment Reporting

The authoritative guidance establishes annual and interim reporting standards for an enterprise's operating segments and related disclosures about its products, services, geographic areas and major customers. We operate in a single segment; the discovery, development and commercialization of biologic therapeutic products (see Note 16 for geographic information).

Cash and Cash Equivalents

Cash and cash equivalents are stated at cost plus accrued interest, which approximates fair value, and include short-term highly liquid investments with original maturities of three months or less.

Restricted Cash

At December 31, 2009 and 2008, we held $1,088 and $1,699, respectively of restricted cash. At December 31, 2009 and 2008, we maintained $1,088 and $1,100 of restricted cash related to a facility operating lease as a lease guarantee. Under the terms of our mortgage loan (Note 8), we maintained a restricted cash balance for the payment of taxes, insurance and other required amounts, equal to the amount required under our mortgage loan agreement. In association with the full prepayment of the mortgage loan, these restricted cash amounts were reclassified to unrestricted cash and cash equivalents.

Fair Value of Financial Instruments

The carrying amounts reflected in the consolidated balance sheets for cash and cash equivalents, accounts receivable, other current assets, accounts payable and accrued expenses approximate fair value due to their short-term maturities. Our derivative financial instruments are carried at fair value based on quoted prices of similar assets and liabilities. Our marketable securities, all of which are available-for-sale, are carried at fair value based on quoted market prices. Our convertible notes and other debt obligations are carried at historical cost (see Notes 8 and 14 for fair value information).

Marketable Securities

We invest our excess cash balances in marketable securities of highly rated financial institutions and investment-grade debt instruments. We limit the amount of investment exposure as to institution, maturity and investment type. We classify our marketable securities as "available-for-sale" and, accordingly, record such securities at fair value.

(amounts in thousands, except per share amounts)

Unrealized gains and losses that are deemed temporary, are included in accumulated other comprehensive income (loss) as a separate component of stockholders' equity. If any adjustment to fair value reflects a significant decline in the value of the security, we consider all available evidence to evaluate the extent to which the decline is "other than temporary" and would mark the security to market through a charge to our statement of operations. Credit losses are identified when we do not expect to receive cash flows sufficient to recover the amortized cost basis of a security. In the event of a credit loss, only the amount associated with the credit loss is recognized in operating results, with the amount of loss relating to other factors recorded in accumulated other comprehensive income (loss).

Accounts Receivable

Our standard credit terms vary based on the country of sale and range from 30 to 120 days. Our average days' sales outstanding ranges from 80 to 100 days. We sell Soliris to a limited number of customers, and we evaluate the creditworthiness of each such customer on a regular basis. In certain European countries, sales by us are subject to payment terms that are statutorily determined. This is primarily the case in countries where the payor is government-owned or government-funded, which we consider to be creditworthy. It has been our experience that length of time from sale to receipt of payment in such countries typically exceeds our credit terms. We make judgments as to our ability to collect outstanding receivables and provide allowances for the portion of receivables if and when collection becomes doubtful.

For the year ended December 31, 2009, one individual customer accounted for 20% of the accounts receivable balance. For the year ended December 31, 2008, two individual customers each accounted for 20% of the accounts receivable balance. For the year ended December 31, 2009, a single individual customer accounted for 20% of net product sales. For the year ended December 31, 2008, a single individual customer accounted for 21% of net product sales. No other customer accounted for more than 10% of net product sales or accounts receivable.

Inventories

Inventories are stated at the lower of cost or estimated realizable value. We determine the cost of inventory using the weighted average cost method.

The components of inventories as of December 31 are as follows:

	December 31,	
	2009	2008
Raw materials	$ 2,678	$ 3,805
Work-in-process	6,900	27,017
Finished goods	31,307	18,999
	$ 40,885	$ 49,821

Capitalization of Inventory Costs

We capitalize inventory produced for commercial sale, including costs incurred prior to regulatory approval but subsequent to the filing of a Biologics License Application, or BLA, when the Company has determined that the inventory has probable future economic benefit. Inventory is not capitalized prior to completion of a phase III clinical trial. Included in inventory are raw materials and purchased drug product associated with clinical development programs. This inventory is charged to research and development expense when consumed. We also capitalize the cost of inventory manufactured at our manufacturing plant in property, plant and equipment prior to the approval of the facility by regulatory authorities.

The cost of some product sold during the year ended December 31, 2007 was expensed to R&D prior to submission of our BLA and therefore is not included in the cost of sales during this period. The previously expensed inventory was fully depleted during the fourth quarter of 2007.

Inventory Write-Offs

We analyze our inventory levels to identify inventory that may expire prior to sale, inventory that has a cost basis in excess of its estimated realizable value, or inventory in excess of expected sales requirements. Although the manufacturing of our product is subject to strict quality control, certain batches or units of product may, after a period of time, no longer meet quality specifications or may expire, at which point we would adjust our inventory values. Soliris currently has a maximum estimated life of 48 months and, based on our sales forecasts, we expect to realize the carrying value of the Soliris inventory.

Derivative Instruments

We record the fair value of derivative instruments as either assets or liabilities on the balance sheet. The accounting for gains and losses resulting from changes in fair value is dependent on the use of the derivative and whether it is designated and qualifies for hedge accounting.

All hedging activities are documented at the inception of the hedge and must meet the definition of highly effective in offsetting changes to future cash flows within the meaning of the authoritative guidance to be a qualifying hedge. The effectiveness of the qualifying hedge contract is assessed quarterly to ensure compliance with the authoritative guidance. We record the fair value of the qualifying hedges in other current assets, other assets and other current liabilities. Gains or losses resulting from changes in the fair value of qualifying hedges are recorded in other comprehensive income (loss) until the forecasted transaction occurs. When the forecasted transaction occurs, this amount is reclassified into revenue. Any non-qualifying portion of the gains or losses resulting from changes in fair value, if any, is reported in other income or other expense.

In March 2008, the Financial Accounting Standards Board (“FASB”) revised the authoritative guidance for disclosures about derivative instruments and hedging activities, which requires entities to provide enhanced disclosures about how and why the entity uses derivative instruments, how the instruments and related hedged

items are accounted for and how the instruments and related hedged items affect the financial position, results of operations, and cash flows of the entity. The Company adopted the provisions of the guidance during the three month period ended March 31, 2009.

Prepaid Manufacturing Costs

Cash advances paid by us prior to receipt of the inventory are recorded as prepaid manufacturing costs. The cash advances are subject to forfeiture if we terminate the scheduled production. We expect the carrying value of the prepaid manufacturing costs to be fully realized.

Property, Plant and Equipment

Property, plant and equipment are stated at cost and are depreciated on a straight-line basis over the estimated useful lives of the assets. We estimate economic lives as follows:

- Building and improvements—five to thirty years
- Machinery and laboratory equipment—three to fifteen years
- Computer hardware and software—three to five years
- Furniture and office equipment—three to five years

Leasehold improvements and assets under capital lease arrangements are amortized over the lesser of the estimated useful life or the term of the respective lease. Maintenance costs are expensed as incurred.

Construction-in-progress reflects amounts incurred for property, plant, or equipment construction or improvements that have not been placed in service.

Long-Lived Assets

We evaluate our long-lived assets, which are primarily comprised of intangible assets and property, plant and equipment, for impairment whenever events or changes in circumstances indicate the carrying value of an asset or group of assets is not recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to future undiscounted net cash flows expected to be generated by the assets group. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. The Company did not recognize any impairment loss for long-lived assets during the years ended December 31, 2009, 2008 and 2007.

Goodwill

Goodwill represents the difference between the purchase price of acquired businesses and the fair value of their identifiable tangible and intangible net assets and is not amortized. Goodwill is reviewed for impairment

annually and whenever events or changes in circumstances indicate the carrying amount of goodwill might not be recoverable. No impairment charges have occurred as a result of our annual impairment assessments.

Revenue Recognition

Our principal sources of revenue are product sales and contract research revenues. We have applied the following principles in recognizing revenue:

Net Product Sales

Our principal source of revenue is product sales. We have applied the following principles in recognizing revenue:

We recognize revenue from product sales when persuasive evidence of an arrangement exists, title to product and associated risk of loss has passed to the customer, the price is fixed or determinable, collection from the customer is reasonably assured and we have no further performance obligations. Revenue is recorded upon receipt of the product by the patients' health care provider, which is typically a hospital, physician's office, pharmacy or health care facility. Amounts collected from customers and remitted to governmental authorities, which are primarily comprised of value-added taxes (VAT) in foreign jurisdictions, are presented on a net basis in the Company's statements of operations and do not impact net product sales.

In the United States, our customers are primarily specialty distributors and specialty pharmacies which supply physician office clinics, hospital outpatient clinics, infusion clinics or home health care providers. We also sell Soliris to government agencies. Outside the United States, our customers are primarily hospitals, hospital buying groups, pharmacies, other health care providers and distributors.

In addition to sales where Soliris is commercially available, we have also recorded revenue on sales for individual patients through named-patient programs outside the United States. The relevant authorities or institutions in those countries have agreed to reimburse for product sold on a named-patient basis where Soliris has not received final approval for commercial sales.

Because of the pricing of Soliris, the limited number of patients, the short period from sale of product to patient infusion and the lack of contractual return rights, Soliris customers generally carry limited inventory. We monitor inventory within our distribution channel to determine whether deferral of sales is required. To date, actual refunds and returns have been negligible.

We record estimated rebates payable under governmental programs, including Medicaid and programs in Europe, as a reduction of revenue at the time product sales are recorded. Our calculations related to these rebate accruals require estimates, including estimates of customer mix, to determine which sales will be subject to rebates and the amount of such rebates. We update our estimates and assumptions each period and record any necessary adjustments. Generally, the length of time between product sale and the processing and reporting of the rebates is

three to six months. Upon review of historical rebate payments compared to our accruals, we revise our estimates of rebates payable, which may have an impact on revenue in the period in which the adjustment is made.

We record distribution and other fees paid to our customers as a reduction of revenue. These costs are typically known at the time of sale, resulting in minimal adjustments subsequent to the period of sale.

We record the effective portion of our cash flow hedges to revenue in the period in which the derivative contract is settled.

Contract Research Revenue

In January 1999, we and Procter & Gamble Pharmaceuticals, or P&G, entered into an exclusive collaboration to develop and commercialize pexelizumab. In 2006, we completed a final Phase III trial of pexelizumab. After reviewing results from that trial, we along with P&G, determined not to pursue further development of pexelizumab. Effective March 30, 2007, we and P&G mutually agreed to terminate the 1999 collaboration agreement. As the relevant agreement was terminated in March 2007, the remaining portion of the $10,000 non-refundable up-front license fee, or $5,343, was recognized as revenue in the year ended December 31, 2007 and is included in contract research revenues.

Research and Development Expenses

Research and development expenses are comprised of costs incurred in performing research and development activities including salaries and benefits, pre-clinical, clinical trial and related clinical manufacturing costs, manufacturing development and scale-up costs, product development and regulatory costs, contract services and other outside contractor costs, research license fees, depreciation and amortization of lab facilities, and lab supplies. These costs are expensed as incurred. We accrue costs for clinical trial activities based upon estimates of the services received and related expenses incurred that have yet to be invoiced by the vendors that perform the services.

Stock-Based Compensation

We have one stock-based compensation plan known as the 2004 Incentive Plan. Under this plan, restricted stock, restricted stock units, stock options and other stock-related awards may be granted to our directors, officers, employees and consultants or advisors of the Company or any subsidiary. To date, stock-based compensation issued under the plan consists of incentive and non-qualified stock options, restricted stock and restricted stock units. Stock options are granted to employees at exercise prices equal to the fair market value of our stock at the dates of grant. Generally, stock options, restricted stock and restricted stock units granted to employees fully vest four years from the grant date. Stock options have a contractual term of 10 years. We recognize stock-based compensation expense, based on the fair value of stock awards, on a straight-line basis over the requisite service period of the individual grants, which typically equals the vesting period.

Earnings (Loss) Per Common Share

Basic earnings per share (EPS) are computed by dividing net income (loss) by the weighted-average number of shares of common stock outstanding. For purposes of calculating diluted EPS, net income (loss) is adjusted for the after-tax amount of interest and deferred financing costs associated with our convertible debt, and the denominator reflects the potential dilution that could occur, if options, unvested restricted stock or other contracts to issue common stock were exercised or converted into common stock, using the treasury stock method, as well as the potential dilution if the remaining convertible notes were converted to common stock.

The following table summarizes the calculation of basic and diluted EPS for years ended December 31, 2009, 2008 and 2007:

For the Years Ended December 31, 2009, 2008 and 2007
(amounts in thousands, except per share amounts)

	December 31		
	2009	2008	2007
Net income (loss) used for basic calculation	$ 295,166	$ 33,149	$ (92,290)
Weighted average effect of dilutive securities:			
Interest expense and deferred financing cost amortization, net of tax, related to our 1.375% convertible senior notes	298	1,943	—
Net income (loss) used for diluted calculation	$ 295,464	$ 35,092	$ (92,290)
Shares used in computing net income (loss) per common share—basic	85,326	77,680	72,622
Weighted average effect of dilutive securities:			
Shares issuable upon the assumed conversion of our 1.375% convertible senior notes	2,459	8,970	—
Stock awards	2,797	3,317	—
Dilutive potential common shares	5,256	12,287	—
Shares used in computing net income (loss) per common share—diluted	90,582	89,967	72,622
Earnings (loss) per share:			
Basic	$ 3.46	$ 0.43	$ (1.27)
Diluted	$ 3.26	$ 0.39	$ (1.27)

(amounts in thousands, except per share amounts)

The following table represents the potentially dilutive shares excluded from the calculation of EPS for the years ended December 31, 2009, 2008 and 2007 because their effect is anti-dilutive:

	December 31		
	2009	2008	2007
Potentially dilutive securities:			
Shares issuable upon conversion of our convertible notes	—	—	9,537
Stock awards	2,247	1,459	9,298
Dilutive potential common shares	2,247	1,459	18,836

Income Taxes

The Company utilizes the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement carrying amounts and tax basis of assets and liabilities using enacted tax rates in effect for years in which the temporary differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. The Company recognizes the benefit of an uncertain tax position that it has taken or expects to take on income tax returns it files if such tax position is more likely than not to be sustained.

Comprehensive Income (Loss)

Comprehensive income (loss) is comprised of net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) includes changes in equity that are excluded from net income (loss), such as translation adjustments, changes in pension liability, unrealized holding gains and losses on available-for-sale marketable securities and unrealized hedging gains and losses. All of these changes in equity are reflected net of tax.

2. Marketable Securities

The following table summarizes our marketable securities at December 31, 2009. We had no marketable securities at December 31, 2008.

	Amortized Cost Basis	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Other Than Temporary Impairments	Aggregate Fair Value
December 31, 2009					
Corporate bonds	$ 19,026	$ 22	$ —	$ —	$ 19,048
Total	$ 19,026	$ 22	$ —	$ —	$ 19,048

(amounts in thousands, except per share amounts)

No realized gains or losses were recorded for the year ended December 31, 2009, 2008 and 2007. We utilize the specific identification method in computing realized gains and losses.

3. Other Assets

Prepaid expenses and other current assets consist of the following:

	December 31, 2009	December 31, 2008
Prepaid taxes	$ 7,682	$ —
Forward contract receivable	5,209	5,409
State tax refund receivable	1,501	2,060
Other	5,740	4,487
	$ 20,132	$ 11,956

Other non-current assets consist of the following:

	December 31, 2009	December 31, 2008
Forward contract receivable	$ 2,061	$ —
Leasehold deposits	1,913	1,600
Deferred financing costs, net	272	1,571
Other	69	19
	$ 4,315	$ 3,190

4. Property, Plant and Equipment

A summary of property, plant and equipment is as follows:

Asset	December 31, 2009	December 31, 2008
Land	$ 692	$ 692
Buildings and improvements	132,675	20,585
Machinery and laboratory equipment	38,946	17,204
Computer hardware and software	13,245	10,853
Furniture and office equipment	4,216	2,302
Construction-in-progress	3,294	110,021
	193,068	161,657
Less: Accumulated depreciation and amortization	(28,377)	(21,772)
	$ 164,691	$ 139,885

(amounts in thousands, except per share amounts)

Depreciation and amortization of property, plant and equipment was approximately $7,566, $5,688 and $4,243 for the year ended December 31, 2009, 2008 and 2007, respectively.

At December 31, 2009 and 2008, computer software costs included in property, plant and equipment, net, was $4,440 and $4,427, respectively. Depreciation and amortization expense for capitalized computer software costs was $2,091, $1,318 and $730 for the years ended December 31, 2009, 2008 and 2007, respectively.

In July 2006, we acquired a manufacturing plant in Smithfield, Rhode Island for the commercial production of Soliris and development and manufacturing of future products. Since this date, we have incurred costs related to the construction of the plant to support full-scale commercial manufacturing. We have also capitalized costs related to validation activities, including engineering runs and inventory production necessary to obtain approval of the facility from government regulators for the production of a commercially approved drug. In December 2009, we received final regulatory approval for production of commercial quantities of eculizumab by the European Commission. Accordingly, our plant is substantially complete and ready for its intended use. As a result of the approval, we placed the plant in service. Based on the approval, we expect to sell certain pre-approval inventory, and we therefore reclassified $4,514 from property, plant and equipment to inventory. In the fourth quarter of 2009, the FDA commenced its inspection of our Rhode Island manufacturing facility and requested additional information regarding our manufacturing process.

Through December 31, 2009, we have capitalized $143,822 related to the facility, which includes all costs associated with construction, renovation and upgrades, engineering runs, pre-approval inventory production and capitalized interest. We capitalized interest of $3,427, $4,717 and $3,400 in the years ended December 31, 2009, 2008 and 2007, respectively.

5. Intangible Assets

Intangible assets and goodwill, net of accumulated amortization, are as follows:

		December 31, 2009			December 31, 2008		
	Estimated Life (months)	Cost	Accumulated Amortization	Net	Cost	Accumulated Amortization	Net
Licenses	28-72	$ 25,509	$ (4,895)	$ 20,614	$ 24,512	$ (1,215)	$ 23,297
Patents	90	10,430	(2,455)	7,975	10,500	(1,472)	9,028
Total		$ 35,939	$ (7,350)	$ 28,589	$ 35,012	$ (2,687)	$ 32,325
Goodwill	Indefinite	$ 22,855	$ (2,901)	$ 19,954	$ 22,855	$ (2,901)	$ 19,954

(amounts in thousands, except per share amounts)

Amortization of our intangible assets was approximately $4,663, $1,176 and $264 for the years ended December 31, 2009, 2008 and 2007, respectively. Assuming no changes in the gross costs basis of intangible assets, the estimated amortization of intangible assets for the next five fiscal years is as follows:

Year	
2010	4,566
2011	4,909
2012	5,464
2013	6,436
2014	7,245

In February 2008, we agreed to purchase certain patents related to complement-inhibition technology from Oklahoma Medical Research Foundation, or OMRF. We agreed to pay a total of $10,000, plus interest, to OMRF for the rights to the patents. In addition to the initial payment of $3,000 paid in February 2008 and $4,500 in December 2008, we made a final payment of $2,500 in July 2009. We recorded the $10,000 as an intangible asset which is amortized in proportion to product sales through 2014, which represents the expiration of the acquired patents.

In December 2008, we entered into a definitive license agreement with PDL BioPharma, Inc. on a patent portfolio relating to the humanization of antibodies for $25,000. The initial payment of $12,500 was paid in January 2009, with a final payment of $12,500 made in June 2009. No additional payments will be owed by Alexion to PDL for these patents in respect of Soliris sales for any indication. As a result of the settlement, we recorded an intangible asset which will be amortized in proportion to product sales through November 2014, which represents the expiration of the PDL patents. Based on the settlement and evaluation of other potential royalties, we recorded a reduction in cost of goods sold of approximately $1,800 during the fourth quarter of 2008 related to an adjustment of estimated accrued royalties on sales of Soliris prior to the fourth quarter.

In December 2008, we acquired the outstanding shares of Legend K.K. for 100 million Japanese yen ($1,090 on acquisition date). We also recorded a deferred tax liability of $791 representing the difference in book versus tax basis of the assets acquired. The acquisition was treated as an acquisition of an asset with substantially all of the purchase price of $1,881 allocated to a license. The license will be amortized over the remaining useful life of 28 months.

6. Derivative Instruments and Hedging Activities

We operate internationally and, in the normal course of business, are exposed to fluctuations in foreign currency exchange rates. The exposures result from portions of our revenues, as well as the related receivables, and costs that are denominated in currencies other than the U.S. dollar, primarily the Euro, Japanese Yen, Swiss Franc and British Pound. We manage our foreign currency transaction risk within specified guidelines through the use of derivatives. All of our derivative instruments are utilized for risk management purposes, and we do not use derivatives for speculative trading purposes.

(amounts in thousands, except per share amounts)

We enter into foreign exchange contracts, with durations of up to 24 months, to hedge exposures resulting from portions of our forecasted intercompany revenues that are denominated in currencies other than the U.S. dollar. The purpose of the hedges of revenue is to reduce the volatility of exchange rate fluctuations on our operating results as to increase the visibility of forecasted revenues. These hedges are designated as cash flow hedges upon inception. At December 31, 2009, we have open contracts with notional amounts totaling $211,546 that qualified for hedge accounting.

The impact on other comprehensive income (OCI) and earnings from foreign exchange contracts that qualified as cash flow hedges, for the years ended December 30, 2009 and 2008 are as follows:

	December 31,	
Foreign Exchange Contracts	**2009**	**2008**
Gain (loss) recognized in OCI	$(4,910)	$4,935
Gain (loss) reclassified from OCI to net product sales (Effective portion)	$ 3,363	$4,141
Gain (loss) reclassified from OCI to other income and expense (Ineffective portion)	$ (258)	$ 345

There are no gains (losses) from derivative contracts that qualify as cash flow hedges during the year ended December 31, 2007 as we initiated our derivative program during the year ended December 31, 2008.

Assuming no change in foreign currency rates from market rates at December 31, 2009, $2,103 of the loss recognized in other comprehensive income is expected to be reclassified to revenue over the next twelve months.

We enter into foreign exchange contracts, with durations of approximately 30 days, designed to limit the balance sheet exposure of monetary assets and liabilities of our foreign subsidiaries. We enter into these hedges to reduce the impact of fluctuating exchange rates on our operating results. These derivative instruments do not qualify for hedge accounting under the guidance; however, gains and losses on these hedge transactions are designed to offset gains and losses on underlying balance sheet exposures. At December 31, 2009, the notional settlement amount of forward foreign exchange contracts relating to monetary assets and liabilities was $73,349.

We recognized a gain (loss) of $(3,820) and $3,177, in other income (expense), for the years ended December 31, 2009 and 2008, respectively, associated with the foreign exchange contracts not designated as hedging instruments under the guidance. These amounts were largely offset by gains or losses in monetary assets and liabilities.

(amounts in thousands, except per share amounts)

7. Accrued Expenses

Accrued expenses consist of the following:

	December 31, 2009	December 31, 2008
Royalties	$ 29,177	$ 13,343
Payroll and employee benefits	17,251	14,153
Rebates payable	4,068	3,347
Forward contract payable	4,742	—
Other	16,419	$ 15,357
	$ 71,657	$ 46,200

Exit Activities

In December 2006, we initiated an integration plan with our subsidiary, Alexion Antibody Technologies, Inc., to consolidate certain functions and operations, including the termination of all Alexion Antibody personnel, closure of Alexion Antibody facilities, and impairment of equipment in that facility. The following table summarizes the liabilities established for exit activities and subsequent cash payments and revision of estimates:

	Employee Related Benefits	Facility Lease Costs	Other Exit Activities	Total Exit Activities
Balance at December 31, 2006	5,358	1,379	539	7,276
Revision of estimate	21	—	(144)	(123)
Payments and other settlements	(5,379)	(616)	(395)	(6,390)
Balance at December 31, 2007	—	763	—	763
Revision of estimate	—	(18)	—	(18)
Payments and other settlements	—	(149)	—	(149)
Balance at December 31, 2008	$ —	$ 596	$ —	$ 596
Revision of estimate	—	59	—	59
Payments and other settlements	—	(182)	—	(182)
Balance at December 31, 2009	$ —	$ 473	$ —	$ 473

Employee benefits consist of expenses for severance compensation as well as accelerated vesting of share-based grants. Facility lease costs are associated with the lease on our San Diego, California facility and other exit activities consist of impairment charges on equipment. The Company remains obligated for lease payments through 2012. In September 2007, the Company entered into a sub-lease for the AAT facility, which provides for sub-lease payments through the term of the lease, or 2012. The accrual for restructuring activities reflects the present value of lease obligations, reduced by estimated sub-lease income.

8. Debt

Convertible Notes

In January 2005 we sold $150,000 principal amount of 1.375% Convertible Senior Notes due February 1, 2012 (the "1.375% Notes"). The interest rate on the notes is 1.375% per annum on the principal amount from January 25, 2005, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning August 1, 2005. The 1.375% Notes are convertible into our common stock at an initial conversion rate of 63.5828 shares of common stock (equivalent to a conversion price of approximately $15.73 per share) per $1 principal amount of the 1.375% Notes, subject to adjustment, at any time prior to the close of business on the final maturity date of the notes. We do not have the right to redeem any of the 1.375% Notes prior to maturity. The convertible notes payable do not have covenants related to our financial performance.

In October 2008, certain holders of our convertible notes exercised conversion rights with respect to an aggregate principal amount of $52,778 of the notes resulting in the issuance of 3,356 shares of common stock. The shares were issued in November 2008. As a result of the conversion of $52,778 of the notes, we reclassified $775 from deferred financing costs to equity.

In April and May 2009, we issued an aggregate of 5,644 shares of our common stock in exchange for $87,304 principal amount of our 1.375% Convertible Senior Notes due 2012 owned by certain note holders. The issuance of the shares was made solely in exchange of the notes pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended, under Section 3(a)(9) of such Act. We did not receive any cash proceeds as a result of the exchange, and the notes were retired and cancelled. The note holders received shares from the exchange in excess of the amount that they would have received pursuant to their conversion rights under the notes. In the second quarter of 2009, we recorded a non-cash expense of $3,395 for the fair value of the additional shares over the stated conversion rate. We reclassified $1,105 of deferred financing costs to equity in 2009 as a result of the exchange and have a remaining balance of $272 at December 31, 2009. At December 31, 2009, $9,918 of the convertible notes remains outstanding, and the fair value, based on quoted market prices, was estimated at $30,732.

Amortization expense associated with deferred financing costs for the year ended December 31, 2009, 2008 and 2007 was approximately $260, $733 and $677, respectively.

Mortgage Loan

In July 2006, we entered into a mortgage loan agreement to borrow $26,000 to finance the purchase and construction of our Smithfield, Rhode Island manufacturing facility. In July 2007, we amended our existing mortgage loan agreement to increase the loan amount by $18,000, resulting in an aggregate principal balance of $44,000. The mortgage loan accrued interest at a rate of 9.12% per annum.

On June 30, 2009, we amended our mortgage loan agreement to permit the prepayment of the mortgage loan without penalty. We prepaid a portion of the mortgage loan each month beginning in July 2009 and made a final payment of the remaining principal balance in October 2009.

Revolving Credit Facility

In February 2008, we entered into a Credit Agreement with a financial institution to provide for an available $25,000 revolving credit facility that could be used for working capital requirements and other general corporate purposes. The loan was collateralized by substantially all of Alexion Pharmaceuticals, Inc.'s assets, including the pledge of the equity interests of certain direct subsidiaries, but excluding intellectual property, assets of foreign subsidiaries and assets related to our manufacturing facility in Smithfield, RI. The borrowing base was limited to the lesser of $25,000 or 80% of eligible domestic receivables. At December 31, 2009, we had no outstanding balance under the revolving credit facility. We had open letters of credit of $5,263 at December 31, 2009.

In the second quarter 2009, we determined that we were not in compliance with a negative covenant relating to investments in subsidiaries under the revolving credit facility. In July 2009, our lender waived non-compliance, and we amended the credit agreement to modify the negative covenant.

In September 2009, we further amended the credit agreement to modify other financial, non-financial and negative covenants. The covenants were modified to address the Company's expanding operations since the credit agreement was originally executed in early 2008.

In January 2010, we amended and restated the credit agreement, the Amended Credit Agreement, to, among other things, increase the revolving credit facility by $25,000. The Amended Credit Agreement provides for a $50,000 facility, with up to a $20,000 sublimit for letters of credit that can be used for working capital requirements and other general corporate purposes. With the consent of the lenders and the administrative agent and subject to satisfaction of certain conditions, we may increase the facility to $75,000 in accordance with the Amended Credit Agreement. The loan is secured by substantially all of Alexion Pharmaceuticals, Inc.'s assets, including the pledge of the equity interests of certain direct subsidiaries and the real estate owned by Alexion Manufacturing LLC, its wholly owned subsidiary, but excluding intellectual property and assets of foreign subsidiaries.

We may elect that the loans under the agreement bear interest at a rate per annum equal to (i) LIBOR plus 2.50% to 3.00% depending on the ratio of our cash to liabilities (as calculated in accordance with the agreement), or (ii) a Base Rate equal to the higher of the (A) Prime Rate then in effect, (B) Federal Funds Rate then in effect plus 0.50%, and (C) Eurodollar Rate then in effect plus 1%, plus 0.50% to 1.00% depending on the ratio of our cash to liabilities (as calculated in accordance with the agreement). We may prepay the loans, in whole or in part, in minimum amounts without premium or penalty, other than customary breakage costs with respect to LIBOR borrowings. Interest is payable quarterly for Base Rate loans and, in the case of LIBOR-based loans, at the end of the applicable interest period, with the principal due on January 22, 2013, the maturity date. We may borrow, repay and reborrow under the facility until January 22, 2013.

The Amended Credit Agreement requires us to comply with certain financial covenants on a quarterly basis. Further, the agreement includes negative covenants, subject to exceptions, restricting or limiting our ability and the ability of our subsidiaries to, among other things, incur additional indebtedness, grant liens, engage in certain

(amounts in thousands, except per share amounts)

investment, acquisition and disposition transactions, and enter into transactions with affiliates. The agreement also contains customary representations and warranties, affirmative covenants and events of default, including payment defaults, breach of representations and warranties, covenant defaults and cross defaults. If an event of default occurs, the interest rate would increase and the administrative agent would be entitled to take various actions, including the acceleration of amounts due under the loan.

9. Capital Leases

We lease office equipment and software licenses under capital lease agreements expiring in 2013. The assets and liabilities under capital leases are recorded at the lesser of the present value of the minimum lease payments or the fair value of the asset. The assets are amortized over the lower of their related lease terms or their estimated useful lives. Amortization of assets under capital lease is included in depreciation expense. As of December 31, 2009, the cost of equipment under capital lease is $1,663 and accumulated amortization is $853. The weighted-average interest rate on the capital leases is approximately 3.76%.

Minimum future lease payments under capital lease as of December 31, 2009 are:

Year	
2010	$434
2011	232
2012	213
2013	58
	937
Less: Amount representing interest	12
Present value of minimum lease payments	$925

10. Commitments and Contingencies

Royalties

Our cost of sales for the year ended December 31, 2009, 2008 and 2007 includes royalties to third parties related to the sale and commercial manufacture of Soliris. We estimate our royalty obligations based on existing contractual obligations and our assessment of estimated royalties owed to other third parties. These estimates may be influenced by the outcome of future litigation or other claims, if any, the results of which are uncertain. On a periodic basis and based on specific events such as the outcome of litigation or settlement of claims, we may reassess these estimates, resulting in adjustments to cost of sales.

(amounts in thousands, except per share amounts)

Operating Leases

As of December 31, 2009, we lease our headquarters and primary research and development facilities in Cheshire, Connecticut. The lease is set to expire in May 2017. Monthly fixed rent started at approximately $162, increasing to approximately $193 over the term of this lease.

We lease additional research space in San Diego, California, starting at a monthly fixed rent of approximately $35 and increasing to approximately $55. In connection with the closure of Alexion Antibody Technologies ("AAT") in 2006, we accrued the fair value of future payments under the lease (Note 7). In September 2007, the Company signed a sub-lease for the AAT facility, which provides for sub-lease payments through the term of the lease, or 2012.

We also lease space for our regional executive and sales offices in Lausanne, Switzerland, as well as in certain other countries to facilitate our operations as a global organization.

Aggregate lease expense for our facilities was $6,817, $4,728 and $4,021 for the years ended December 31, 2009, 2008 and 2007, respectively. Lease expense is being recorded on a straight-line basis over the applicable lease terms.

Aggregate future minimum annual rental payments for the next five years and thereafter under non-cancellable operating leases (including facilities and equipment) as of December 31, 2009 are:

Year	
2010	$8,486
2011	8,104
2012	6,722
2013	5,258
2014	3,994
Thereafter	5,805

The amounts listed above will be reduced by estimated sublease income of $1,085 related to the AAT facility sublease (see Note 7).

License and Research and Development Agreements

We have entered into a number of license, research and development and manufacturing development agreements since our inception. These agreements have been made with various research institutions, universities, contractors, collaborators, and government agencies in order to advance and obtain technologies and services related to our business.

(amounts in thousands, except per share amounts)

License agreements generally provide for us to pay an initial fee followed by annual minimum royalty payments. Additionally, certain agreements call for future payments upon the attainment of agreed upon milestones, such as, but not limited to, Investigational New Drug, or IND, application or approval of Biologics License Application. These agreements require minimum royalty payments based on sales of products developed from the applicable technologies, if any.

Clinical and manufacturing development agreements generally provide for us to fund manufacturing development and on-going clinical trials. Clinical trial and development agreements include contract services and outside contractor services including contracted clinical site services related to patient enrolment for our clinical trials. Manufacturing development agreements include clinical manufacturing and manufacturing development and scale-up. We have executed a large-scale product supply agreement with Lonza Sales AG for the long-term commercial manufacture of Soliris.

In order to maintain our rights under these agreements, we may be required to provide a minimum level of funding or support. Accordingly, we recognize the expense and related obligation related to these arrangements over the period of performance.

The minimum fixed payments (assuming non-termination of the above agreements) as of December 31, 2009, for each of the next five years are as follows:

Years Ending December 31,	License Agreements	Clinical and Manufacturing Development Agreements
2010	$ 365	$ 11,250
2011	370	7,725
2012	370	8,000
2013	370	8,200
2014	365	—
	$ 1,840	$ 35,175

Product Supply

The Large-Scale Product Supply Agreement dated December 18, 2002, or the Lonza Agreement, between Lonza Sales AG, or Lonza, and us, relating to the manufacture of Soliris, was amended in June 2007. We amended our supply agreement to provide for additional purchase commitments of Soliris of $30,000 to $35,000 from 2009 through 2013. Such commitments may only be cancelled in limited circumstances.

(amounts in thousands, except per share amounts)

11. Income Taxes

The income tax provision (benefit) is based on income (loss) before income taxes as follows:

	2009	2008	2007
U.S.	$ 86,803	$23,756	$(71,432)
Non-U.S.	(3,489)	10,974	(21,603)
	$ 83,314	$34,730	$(93,035)

The components of the income tax provision (benefit) are as follows:

	2009	2008	2007
Income Tax Provision (Benefit)			
Domestic			
Current	$ (7,742)	$ 2,514	$ (745)
Deferred	(207,604)	(2,633)	—
	(215,346)	(119)	(745)
Foreign			
Current	4,601	1,902	—
Deferred	(1,107)	(202)	—
	3,494	1,700	—
Total			
Current	(3,141)	4,416	(745)
Deferred	(208,711)	(2,835)	—
	$(211,852)	$ 1,581	$ (745)

The change in valuation allowance of $264,595 was related to the realization of net operating losses (NOL's) utilized against 2009 taxable income, including $215,516 associated with the release of the valuation allowance against certain deferred tax assets. In the fourth quarter of 2009, we reversed the valuation allowance recorded against a significant portion of our deferred tax assets in the United States. The decision to reverse the valuation allowance was made after management determined , based on an assessment of historical profitability and forecasts of future taxable income, that it was more likely than not that these deferred tax assets would be realized. We continue to maintain a valuation allowance against certain other deferred tax assets where realizability is not certain, including a valuation allowance of $872 related to our foreign deferred tax assets. We will continue to evaluate the necessity for a valuation allowance on these deferred tax assets during 2010 based on such factors as historical profitability levels and forecasts of future taxable income.

Due to the amount of our NOL's and credit carryforwards, we do not anticipate paying substantial U.S. federal income taxes in the foreseeable future. We do expect to pay cash taxes in various US states and foreign

jurisdictions where we have operations and have utilized all of our net operating losses. We were subject to the alternative minimum tax during 2009 and expect that we will continue to be subject to cash payments for the alternative minimum tax in the near term. The payment of an alternative minimum tax amount generates a credit that may be carried forward indefinitely and used to offset our regular income tax liability.

At December 31, 2009, we have federal and state net operating loss carryforwards of $665,740 and $117,778, respectively. Included in the NOL's are federal and state NOL's of $174,545 and $72,070, respectively, attributable to excess tax benefits from the exercise of non-qualified stock options. The tax benefits attributable to these NOL's will be credited directly to additional paid in capital when utilized to offset taxes payable. Our NOL's expire between 2010 and 2028. We also have federal and state income tax credit carryforwards of approximately $34,208 and $7,689, respectively. These income tax credits expire between 2010 and 2028. Additionally, included in these income tax credit carryforwards are federal income tax credit carryforwards of $4,767, attributable to excess tax benefits from the exercise of non-qualified stock options.

Certain stock option exercises resulted in tax deductions in excess of previously recorded benefits based on the option value at the time of grant. Although these additional tax benefits or "windfalls" are reflected in net operating loss carryforwards, pursuant to authoritative guidance, the additional tax benefit associated with the windfall is not recognized until the deduction reduces taxes payable. Accordingly, since the tax benefit does not reduce our current taxes payable due to net operating loss carryforwards, these "windfall" tax benefits are not reflected in our net operating losses in deferred tax assets for all periods presented.

At December 31, 2008, we had federal, state, and foreign net operating loss carryforwards of $745,102, $713,040, and $20,310, respectively. Included in the NOL's were federal and state NOL's of $142,812 and $147,432, respectively, attributable to excess tax benefits from the exercise of non-qualified stock options. The tax benefits attributable to these NOL's will be credited directly to additional paid in capital when utilized to offset taxes payable. We also had federal and state research and development income tax credit carryforwards of approximately $18,826 and $8,834 respectively. Additionally, included in these research and development carryforwards are federal and state research and development credit carryforwards of $3,430 and $4,514, respectively, attributable to excess tax benefits from the exercise of non-qualified stock options.

The Company was granted an incentive tax holiday in the Canton of Vaud in Switzerland effective January 1, 2010, with a final expiration date in 2019. The tax holiday will exempt the Company from most local corporate income taxes in Switzerland through the end of 2014 and is subject to renewal for an additional 5 years.

The Tax Reform Act of 1986 contains certain provisions that can limit a taxpayer's ability to utilize net operating loss and tax credit carryforwards in any given year resulting from cumulative changes in ownership interests in excess of 50 percent over a three-year period. We have determined that these limiting provisions were triggered during a prior year. However, we believe that such limitation is not expected to result in the expiration or loss of any of our federal NOL's and income tax credit carryforwards.

(amounts in thousands, except per share amounts)

The provision (benefit) for income taxes differs from the U.S. federal statutory tax rate. The reconciliation of the statutory U.S. federal income tax rate to our effective income tax rate is as follows:

	Year Ended December 31,		
	2009	2008	2007
U.S. federal statutory tax rate	35.0%	35.0%	-35.0%
State and local income taxes	0.8%	0.9%	-4.1%
Foreign income tax rate differential	5.0%	-3.3%	6.7%
Income tax credits	-12.1%	-2.9%	-3.6%
Foreign income subject to U.S. taxation	0.2%	8.6%	0.0%
Provision (benefit) attributable to foreign currency	0.0%	4.8%	0.0%
Stock option compensation	2.0%	0.9%	0.7%
Other nondeductible and permanent differences	0.3%	1.7%	0.6%
Provision (benefit) attributable to valuation allowances	-285.5%	-41.1%	33.9%
Effective income tax rate	-254.3%	4.6%	-0.8%

Provisions have been made for deferred taxes based on the differences between the basis of the assets and liabilities for financial statement purposes and the basis of the assets and liabilities for tax purposes using currently enacted tax rates and regulations that will be in effect when the differences are expected to be recovered or settled. The components of the deferred tax assets and liabilities are as follows:

	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Deferred tax assets:			
Net operating losses	$ 174,424	$ 242,054	$ 249,558
Income tax credits	34,438	18,205	17,063
Stock compensation	12,799	10,854	5,917
Accruals and allowances	16,439	9,587	2,247
Intangible assets	7,568	6,571	122
Depreciable assets	—	—	197
	245,668	287,271	275,104
Valuation allowance	(3,296)	(267,891)	(275,104)
Total deferred tax assets	242,372	19,380	—
Deferred tax liabilities:			
Depreciable assets	(31,090)	(16,072)	—
Unrealized (gains) and losses	(453)	(484)	—
Total deferred tax liabilities	(31,543)	(16,556)	—
Net deferred tax asset	$ 210,829	$ 2,824	$ —

(amounts in thousands, except per share amounts)

We follow authoritative guidance regarding accounting for uncertainty in income taxes, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The interpretation also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosures, and transition. The interpretation was effective for fiscal years beginning after December 15, 2006.

The beginning and ending amounts of unrecognized tax benefits reconciles as follows:

	2009	2008	2007
Beginning of period balance	$ 9,569	$6,671	$6,671
Increases for tax positions taken during a prior period	59	306	—
Decreases for tax positions taken during a prior period	(3,018)	—	—
Increases for tax positions taken during the current period	695	2,817	—
Reduction as a result of a lapse of statute of limitations	—	(225)	—
	$ 7,305	$9,569	$6,671

Due to the amount of our NOL's and income tax credit carryforwards, we have not accrued interest relating to these unrecognized tax benefits. Accrued interest and penalties, however, would be disclosed within the related liabilities lines in the consolidated balance sheet. Unless related to excess tax benefits from stock options, all of our unrecognized tax benefits, if recognized, would impact the effective tax rate.

We file federal and state income tax returns in the U.S. and in numerous foreign jurisdictions. The U.S. and foreign jurisdictions have statute of limitations ranging from 3 to 5 years. However, the statute of limitations could be extended due to our NOL carryforward position in a number of our jurisdictions. The tax authorities, generally, have the ability to review income tax returns for periods where the statute of limitation has previously expired and can subsequently adjust the NOL carryforward or tax credit amounts. Accordingly, we do not expect to reverse any portion of the unrecognized tax benefits within the next year.

There are no cumulative foreign earnings as of December 31, 2009. As such, we have not provided for U.S. deferred income taxes on undistributed earnings of our non-U.S. subsidiaries.

12. Stock Options and Restricted Stock

At December 31, 2009, we have one stock option plan, the 2004 Incentive Plan ("2004 Plan"). Under the 2004 Plan, restricted stock and restricted stock units (collectively referred to as Restricted Stock), incentive and non-qualified stock options, and other stock-related awards, may be granted for up to a maximum of 14,937 shares to our directors, officers, key employees and consultants. Stock options granted under all Plans have a maximum contractual term of ten years from the date of grant, have an exercise price not less than the fair value of the stock on the grant date and generally vest over four years.

(amounts in thousands, except per share amounts)

For the years ended December 31, 2009, 2008 and 2007, we recognized stock compensation expense of $19,751, $18,054 and $16,438 for stock options and $8,980, $5,628 and $3,736 for Restricted Stock, respectively.

The following table summarizes the stock-based compensation capitalized to inventory and fixed assets:

	December 31,		
	2009	2008	2007
Stock-based compensation expense capitalized to inventory	$ 1,403	$ 1,215	$ 325
Stock-based compensation expense capitalized to fixed assets	$ 970	$ 1,626	$ 1,526

The weighted average fair value at the date of grant for options granted during the years ended December 31, 2009, 2008 and 2007 is $14.94, $16.93 and $11.47 per option, respectively.

As of December 31, 2009, there was $28,969 of total unrecognized compensation expense related to non-vested share-based compensation arrangements granted under the Plan. The expense is expected to be recognized over a weighted-average period of 1.33 years.

(amounts in thousands, except per share amounts)

A summary of the status of our stock option plans at December 31, 2009 and changes during the year then ended is presented in the table and narrative below:

	Number of shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2008	7,043	$ 21.42		
Granted	1,372	37.18		
Exercised	(1,564)	19.69		
Forfeited and cancelled	(377)	28.33		
Outstanding at December 31, 2009	6,474	$ 24.78	6.61	$ 155,648
Vested and unvested expected to vest at December 31, 2009	6,196	$ 24.50	6.54	$ 150,661
Exercisable at December 31, 2009	3,955	$ 19.91	5.52	$ 114,343

Total intrinsic value of stock options exercised during the years ended December 31, 2009, 2008 and 2007 was $33,335, $52,082 and $68,927, respectively. The Company primarily utilizes newly issued shares to satisfy the exercise of stock options. The total fair value of shares vested during the years ended December 31, 2009, 2008 and 2007 was $20,734, $20,034 and $15,816, respectively.

The fair value of options at the date of grant was estimated using the Black-Scholes model with the following ranges of weighted average assumptions:

	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Expected life in years	3.67 - 6.24	3.67 - 7.73	4.17 - 9.46
Interest rate	1.41% - 2.19%	1.44% - 3.53%	3.10% - 4.94%
Volatility	40.30% - 48.03%	40.25% - 61.39%	42.91% - 69.98%
Dividend yield	-	-	-

The expected stock price volatility rates are based on historical volatilities of our common stock. The risk-free interest rates are based on the U.S. Treasury yield curve in effect at the time of grant for periods corresponding with the expected life of the option. The average expected life represents the weighted average period of time that options granted are expected to be outstanding. We have evaluated three distinct employee groups in determining the expected life assumptions, and we estimate the expected life of stock options based on historical experience of exercises, cancellations and forfeitures of our stock options.

(amounts in thousands, except per share amounts)

A summary of the status of our non-vested Restricted Stock and changes during the periods then ended are:

	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Nonvested restricted stock, beginning of period	1,034	909	649
Shares issued	456	518	534
Shares cancelled	(101)	(208)	(116)
Shares exercised	(445)	(184)	(158)
Nonvested restricted stock, end of period	944	1,034	909
Weighted average grant date fair value	$ 36.47	$ 26.14	$ 17.39

13. Common and Preferred Stock

Preferred Stock

In February 1997, our Board of Directors declared a dividend of one preferred stock purchase right for each outstanding share of Common Stock (including all future issuances of Common Stock). Under certain conditions, each right may be exercised to purchase one one-hundredth of a share of a new series of preferred stock at an exercise price of $75.00, subject to adjustment (see below). The rights may be exercised only after a public announcement that a party acquired 20 percent or more of our Common Stock or after commencement or public announcement to make a tender offer for 20 percent or more of our Common Stock. The rights, which do not have voting rights, expire on March 6, 2017, and may be redeemed by us at a price of $0.01 per right at any time prior to their expiration or the acquisition of 20 percent or more of our stock. The preferred stock purchasable upon exercise of the rights will have a minimum preferential dividend of $10.00 per year, but will be entitled to receive, in the aggregate, a dividend of 100 times the dividend declared on a share of Common Stock. In the event of liquidation, the holders of the shares of preferred stock will be entitled to receive a minimum liquidation payment of $100 per share, but will be entitled to receive an aggregate liquidation payment equal to 100 times the payment to be made per share of Common Stock.

On February 23, 2007, our Board of Directors amended the purchase price under the preferred stock purchase rights. Further, as a result of the two-for-one stock split of the Company's outstanding shares of Common Stock effected on August 22, 2008, the number of shares of preferred stock purchasable upon proper exercise of each preferred stock purchase right automatically adjusted from one one-hundredth of a share of preferred stock to one two-hundredth of a share of preferred stock. Therefore, the purchase price, for each one two-hundredth of a share of preferred stock to be issued upon the exercise of each preferred stock purchase right is $300.00. Except for the increase in the purchase price, the terms and conditions of the rights remain unchanged.

(amounts in thousands, except per share amounts)

In the event that we are acquired in a merger, other business combination transaction, or 50 percent or more of our assets, cash flow, or earning power are sold, proper provision shall be made so that each holder of a right shall have the right to receive, upon exercise thereof at the then current exercise price, that number of shares of Common Stock of the surviving company which at the time of such transaction would have a market value of two times the exercise price of the right.

14. Fair Value Measurement

Authoritative guidance establishes a valuation hierarchy for disclosure of the inputs to the valuation used to measure fair value. This hierarchy prioritizes the inputs into three broad levels as follows. Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities. Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument. Level 3 inputs are unobservable inputs based on our own assumptions used to measure assets and liabilities at fair value.

The following table presents information about our assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2009, and indicates the fair value hierarchy of the valuation techniques we utilized to determine such fair value:

		Fair Value Measurement at December 31, 2009			
Balance Sheet Classification	Type of Instrument	Total	Level 1	Level 2	Level 3
Cash equivalents	Money market funds	$87,971	$ —	$87,971	$ —
Marketable securities	Corporate bonds	$19,048	$ —	$19,048	$ —
Other current assets	Foreign exchange forward contracts	$ 5,209	$ —	$ 5,209	$ —
Other assets	Foreign exchange forward contracts	$ 2,061	$ —	$ 2,061	$ —
Accrued expenses	Foreign exchange forward contracts	$ (4,742)	$ —	$ (4,742)	$ —

Valuation Techniques

Our cash equivalents classified as Level 2 within the valuation hierarchy consist of an institutional money market fund held at a multinational financial institution and corporate bonds are valued based upon pricing of securities with similar investment characteristics and holdings. Our derivative assets and liabilities include foreign exchange derivatives that are measured at fair value using observable market inputs such as forward rates, interest rates, our own credit risk and our counterparties' credit risks. Based on these inputs, the derivative assets and liabilities are classified within Level 2 of the valuation hierarchy. Based on our continued ability to trade securities and enter into forward contracts, we consider the markets for our fair value instruments to be active.

(amounts in thousands, except per share amounts)

As of December 31, 2009, there has not been any impact to the fair value of our derivative liabilities due to our own credit risk. Similarly, there has not been any significant adverse impact to our derivative assets based on our evaluation of our counterparties' credit risks.

15. Employee Benefit Plans

Defined Contribution Plans

We have two qualified 401(k) plans covering all eligible employees. Under the plans, employees may contribute up to the statutory allowable amount for any calendar year. We make matching contributions equal to:

- $1.00 for each dollar contributed up to the first 3 percent; and
- $0.50 for each dollar contributed of the next 2 percent of compensation.

For the years ended December 31, 2009, 2008 and 2007, we recorded matching contributions of approximately $3,150, $2,336 and $1,535, respectively.

Defined Benefit Plan

We maintain defined benefit plans for employees in Switzerland. The assets of the funded plan are held independently of our assets in a legally distinct and independent collective trust fund which serves various unrelated employers. The plan is valued by independent actuaries using the projected unit credit method. The liabilities correspond to the projected benefit obligations of which the discounted net present value is calculated based on years of employment, expected salary increases, and pension adjustments.

The following table sets forth the funded status and the amounts recognized for defined benefit plan in Switzerland:

	December 31,	
	2009	2008
Change in benefit obligation:		
Projected benefit obligation, beginning of year	$ 2,897	$ 886
Service cost	763	238
Interest cost	105	31
Change in assumptions	70	—
Recognized actuarial net (gain) loss	351	236
Foreign currency exchange rate changes	194	107
Transfers into plan	1,275	1,399
Projected benefit obligation, end of year	$ 5,655	$ 2,897
Accumulated benefit obligation, end of year	4,598	2,301

(amounts in thousands, except per share amounts)

	December 31, 2009	December 31, 2008
Change in plan assets:		
Fair value of plan assets, beginning of year	$2,420	$ 630
Return on plan assets	107	26
Employer contributions	508	174
Plan participants' contributions	264	96
Foreign currency exchange rate changes	163	95
Transfers into plan	1,275	1,399
Fair value of plan assets, end of year	$4,737	$2,420
Funded status at end of year	$ (918)	$ (477)

The following table provides information about the fair value of the plan assets per asset category as of December 31:

	December 31, 2009		December 31, 2008	
	Fair Value (Level 2)	as % of total plan assets	Fair Value (Level 2)	as % of total plan assets
Equity security funds	$ 1,326	28%	$ 678	28%
Debt security funds	2,700	57%	1,379	57%
Real estate funds	711	15%	363	15%
	$ 4,737	**100%**	**$ 2,420**	**100%**

At December 31, 2009, we have recorded a liability of $908 in other non-current liabilities and an accumulated other comprehensive amount of $886 related to an additional minimum liability.

The following table provides the weighted average assumptions used to calculate net periodic benefit cost and the actuarial present value of projected benefit obligations:

	December 31, 2009	December 31, 2008
Weighted average assumptions:		
Discount rate	3.5%	3.5%
Long term rate of return on assets	4.0%	4.0%
Rate of compensation increase	1.5%	1.5%

The expected long-term rate of return on plan assets represents a weighted average of expected returns per asset category. It considers historical and estimated future risk free rates of return as well as risk premiums for the relevant investment categories.

(amounts in thousands, except per share amounts)

The components of net pension expense are as follows:

	December 31,	
	2009	2008
Service cost	$ 763	$238
Interest cost	105	31
Expected return on plan assets	(99)	(26)
Employee contributions	(264)	(96)
Amortization and deferral of actuarial gain (loss)	12	8
Net pension expense	$ 517	$155

The investment objective of the collective trust is to maximize the overall return from investment income and capital appreciation considering investment strategies and asset allocation limits as determined by Swiss pension law. The targeted allocation for these funds (if any) is as follows:

	Target Allocation Ranges in %
Cash and notes receivable issued by banks or insurance companies	0-10%
Equity securities Switzerland including funds	8-20%
Equity securities foreign issuers including funds	8-20%
Debt securities in CHF including funds	30-60%
Debt securities in foreign currencies including funds	8-16%
Real estate including funds	10-20%

Other changes in plan assets and benefit obligations recognized in other comprehensive income (OCI) for the year ended December 31, 2009 are as follows:

Amount included in OCI-beginning of year	$(470)
Net gain (loss) arising during the period	(344)
Change in assumptions	(71)
Amortization of net gain (loss) [1)]	12
Foreign currency exchange rate changes	(20)
Taxes	7
Amount included in OCI-end of year	**$(886)**

(amounts in thousands, except per share amounts)

We estimate that we will pay employer contributions of approximately $645 in 2010. The expected future cash flows to be paid in respect of the pension plans as of December 31 were as follows:

Estimated future benefit payments	
2010	$ 233
2011	236
2012	228
2013	226
2014	251
2015 to 2019	1,179

16. Revenue and assets by geography

Revenues and tangible long-lived assets by significant geographic region are as follows:

	Year Ended December 31,		
Revenues:	2009	2008	2007
United States	$ 159,829	$ 113,299	$ 51,856
Europe	215,763	143,645	20,185
Other	11,208	2,155	—
	$ 386,800	$ 259,099	$ 72,041

	December 31,		
Long-lived assets (1):	2009	2008	2007
United States	$ 158,621	$ 138,200	$ 103,735
Europe	5,637	1,478	545
Other	433	207	—
	$ 164,691	$ 139,885	$ 104,280

(1)Long-lived assets consist of property, plant and equipment.

(amounts in thousands, except per share amounts)

17. Quarterly Financial Information (unaudited)

The following condensed quarterly financial information is for the years ended December 31, 2009 and 2008:

	Quarter Ended			
	March 31	June 30	September 30	December 31
2009:				
Revenues	$81,267	$92,256	$ 102,628	$ 110,649
Cost of sales	9,959	10,313	11,895	12,892
Operating expenses	55,741	60,993	62,846	75,102
Operating income	15,567	20,950	27,887	22,655
Net income	$14,506	$16,802	$ 26,731	$ 237,127(3)
Earnings per common share				
Basic	$ 0.18	$ 0.20	$ 0.31	$ 2.70
Diluted	$ 0.16	$ 0.19	$ 0.29	$ 2.59
	March 31	June 30	September 30	December 31
2008:				
Revenues	$45,641	$59,559	$ 76,500(1)	$ 77,399
Cost of sales	5,464	7,142	8,948	6,812(2)
Operating expenses	45,390	49,732	46,938	54,064
Operating income (loss)	(5,213)	2,685	20,614	16,523
Net income (loss)	(4,249)	2,374	19,689	15,336
Earnings (loss) per common share				
Basic	(0.06)	0.03	0.26	0.19
Diluted	(0.06)	0.03	0.23	0.17

(1) During the three months ended September 30, 2008, certain government payors agreed to reimburse for Soliris shipments which were delivered in prior periods. Accordingly, we recognized $5,300 of net product sales in the third quarter associated with these prior shipments.

(2) In the fourth quarter of 2008, we entered into a patent license agreement and settlement agreement with PDL BioPharma for a fully paid, perpetual license. As a result of the settlement and evaluation of other potential royalties, we recorded a reduction in cost of goods sold of approximately $1,800 related to an adjustment of estimated accrued royalties for sales of Soliris prior to the fourth quarter.

(3) In the fourth quarter of 2009, we determined that it was more likely than not that a significant portion of our deferred tax assets in the United States, primarily net operating losses and research and development credits, would be realized. Accordingly, we recorded a tax benefit of $215,516 as a result of reversing the valuation allowance on these deferred tax assets.

Exhibit 10.2

AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT, dated as of December 23, 2009, is by and between Alexion Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and Leonard Bell, M.D. (the "Employee").

WHEREAS, the Company and Employee are parties to that certain Employment Agreement dated as of February 14, 2006 (the "Employment Agreement");

WHEREAS, the Company and the Employee desire to enter into Amendment No. 1 to the Employment Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. To add to the following sentence to the end of Section 3(b) to read as follows: "Payment of the annual performance bonus will be made as soon as practicable after the right to payment vests and in all events by March 15 of the calendar year following the calendar year in which the right to payment vests. For purposes of the foregoing sentence, a right to payment will be treated as having vested when it is no longer subject to a substantial risk of forfeiture for purposes of Section 1.409A-1(d) of the Treasury Regulations."

2. To add to the following sentence to the end of Section 3(d) to read as follows:

"provided that (i) the amount of expenses eligible for reimbursement during any calendar year may not affect the expenses eligible for reimbursement in any other taxable year, (ii) reimbursement is made not later than December 31 of the calendar year following the calendar year in which the expense was incurred, and (iii) the right to reimbursement is not subject to liquidation or exchange for any other benefit."

3. The last sentence of Section 9(c)(i) shall be deleted and replaced with the following sentence: "Such Severance Payment will be paid to the Employee immediately upon such Separation from Service in a cash lump sum. For purposes of this Agreement, the Severance Period shall be two years."

4. The first sentence of both Section 9(c)(ii) and 9(d)(ii) shall be amended to conclude with the following proviso: "provided that all such payments shall comply with the reimbursement rules of Treasury Regulations Sections 1.409A-1(b)(9)(v) or 1.409A-3(i)(1)(iv)."

5. To amend Sections 3(c), 6(a), 6(b), 9(c)(iii) and 9(d)(iii) to provide that following Change in Control under Section 3(c) and following termination pursuant to Sections 6(a), 6(b), 9(c) and 9(d), all Time-Vesting Equity Awards granted to the Employee shall remain exercisable for such periods as provided under the terms of the Company's applicable stock option or incentive plan and any individual award agreements under which such stock options or equity awards were granted.

6. To add Sections 9(g)and 9(h) to the Employment Agreement to read as follows:

“(g) Termination of Employment and Separation From Service. All references in the Agreement to termination of employment, a termination, retirement, cessation of employment, separation from service, and correlative terms, that result in the payment or vesting of any amounts or benefits that constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code shall be construed to require a Separation from Service, and the date of such termination in any such case shall be construed to mean the date of the Separation from Service.”

“(h) Payment to a “Specified Employee”: to the extent any payment hereunder that is payable by reason of termination of the Employee’s employment constitutes “nonqualified deferred compensation” subject to Section 409A and would otherwise have been required to be paid during the six (6)-month period following such termination of employment, it shall instead (unless at the relevant time the Employee is no longer a Specified Employee) be delayed and paid, without interest, in a lump sum on the date that is six (6) months and one day after the Employee’s termination (or, if earlier, the date of the Employee’s death).”

7. To add Sections 14(d), 14(e) and 14(f) to the Employment Agreement to read as follows:

“(d) “Code” means the Internal Revenue Code of 1986, as amended.”

“(e) “Separation from Service” shall mean a “separation from service” (as that term is defined at Section 1.409A-1(h) of the Treasury Regulations under Section 409A of the Code) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Section 1.409A-1(h)(3) of such Treasury Regulations. In the case of a separation from service due to disability, a separation from service will be determined pursuant to Section 1.409A-1(h)(1)(i) of the Treasury Regulations. The Board of Directors or the Compensation Committee of the Board of Directors may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(h) of the Treasury Regulations for purposes of determining whether a “separation from service” has occurred. Any such written election shall be deemed part of the Agreement.”

“(f) “Specified Employee” shall mean an individual determined by the Board of Directors, Compensation Committee of the Board of Directors or their delegate to be a specified employee as defined in subsection (a)(2)(B)(i) of Section 409A. The Committee may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(i) of the Treasury Regulations for purposes of determining “specified employee” status. Any such written election shall be deemed part of the Agreement.”

8. To add Section 19(f) to the Employment Agreement to read as follows:

"This Agreement is intended to comply with the applicable requirements of Section 409A of the Code and shall be construed accordingly."

9. Unless otherwise specifically defined in this Amendment No. 1, each term used herein that is defined in the Employment Agreement shall have the meaning assigned to such term in the Employment Agreement.

10. Except as set forth expressly herein, all terms of the Employment Agreement shall remain in full force and effect without change.

11. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, effective as of December 23, 2009.

ALEXION PHARMACEUTICALS, INC.

By: /s/ Thomas I.H. Dubin
Name: Thomas I.H. Dubin
Title: Senior Vice President and General Counsel

By: /s/ Leonard Bell
Leonard Bell, M.D.

Exhibit 10.4

AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT, dated as of December 23, 2009, is by and between Alexion Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and Stephen P. Squinto, Ph.D. (the "Employee").

WHEREAS, the Company and Employee are parties to that certain Employment Agreement dated as of February 14, 2006 (the "Employment Agreement");

WHEREAS, the Company and the Employee desire to enter into Amendment No. 1 to the Employment Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. To add to the following sentence to the end of Section 3(b) to read as follows: "Payment of the annual performance bonus will be made as soon as practicable after the right to payment vests and in all events by March 15 of the calendar year following the calendar year in which the right to payment vests. For purposes of the foregoing sentence, a right to payment will be treated as having vested when it is no longer subject to a substantial risk of forfeiture for purposes of Section 1.409A-1(d) of the Treasury Regulations."

2. To add the following clause to the end of Section 3(d):

"provided that (i) the amount of expenses eligible for reimbursement during any calendar year may not affect the expenses eligible for reimbursement in any other taxable year, (ii) reimbursement is made not later than December 31 of the calendar year following the calendar year in which the expense was incurred, and (iii) the right to reimbursement is not subject to liquidation or exchange for any other benefit."

3. To amend Sections 3(c), 6(a), 6(b), 9(c)(iii) and 9(d)(iii) to provide that following Change in Control under Section 3(c) and following termination pursuant to Sections 6(a), 6(b), 9(c) and 9(d), all Time-Vesting Equity Awards granted to the Employee shall remain exercisable for such periods as provided under the terms of the Company's applicable stock option or incentive plan and any individual award agreements under which such stock options or equity awards were granted.

4. The last sentence of Section 9(c)(i) shall be deleted and replaced with the following sentence: "Such Severance Payment will be paid to the Employee immediately upon such Separation from Service in a cash lump sum. For purposes of this Agreement, the Severance Period shall be one year."

5. The first sentence of both Section 9(c)(ii) and 9(d)(ii) shall be amended to conclude with the following proviso: “provided that all such payments shall comply with the reimbursement rules of Treasury Regulations Sections 1.409A-1(b)(9)(v) or 1.409A-3(i)(1)(iv).”

6. To add Sections 9(f)and 9(g) to the Employment Agreement to read as follows:

“(f) Termination of Employment and Separation From Service. All references in the Agreement to termination of employment, a termination, retirement, cessation of employment, separation from service, and correlative terms, that result in the payment or vesting of any amounts or benefits that constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code shall be construed to require a Separation from Service, and the date of such termination in any such case shall be construed to mean the date of the Separation from Service.”

“(g) Payment to a “Specified Employee”: to the extent any payment hereunder that is payable by reason of termination of the Employee’s employment constitutes “nonqualified deferred compensation” subject to Section 409A and would otherwise have been required to be paid during the six (6)-month period following such termination of employment, it shall instead (unless at the relevant time the Employee is no longer a Specified Employee) be delayed and paid, without interest, in a lump sum on the date that is six (6) months and one day after the Employee’s termination (or, if earlier, the date of the Employee’s death).”

7. To add Sections 14(d), 14(e) and 14(f) to the Employment Agreement to read as follows:

“(d) “Code” means the Internal Revenue Code of 1986, as amended.”

“(e) “Separation from Service” shall mean a “separation from service” (as that term is defined at Section 1.409A-1(h) of the Treasury Regulations under Section 409A of the Code) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Section 1.409A-1(h)(3) of such Treasury Regulations. In the case of a separation from service due to disability, a separation from service will be determined pursuant to Section 1.409A-1(h)(1)(i) of the Treasury Regulations. The Board of Directors or the Compensation Committee of the Board of Directors may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(h) of the Treasury Regulations for purposes of determining whether a “separation from service” has occurred. Any such written election shall be deemed part of the Agreement.”

“(f) “Specified Employee” shall mean an individual determined by the Board of Directors, Compensation Committee of the Board of Directors or their delegate to be a specified employee as defined in subsection (a)(2)(B)(i) of Section 409A. The Committee may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(i) of the Treasury Regulations for purposes of determining “specified employee” status. Any such written election shall be deemed part of the Agreement.”

8. To add Section 19(f) to the Employment Agreement to read as follows:

"This Agreement is intended to comply with the applicable requirements of Section 409A of the Code and shall be construed accordingly."

9. Unless otherwise specifically defined in this Amendment No. 1, each term used herein that is defined in the Employment Agreement shall have the meaning assigned to such term in the Employment Agreement.

10. Except as set forth expressly herein, all terms of the Employment Agreement shall remain in full force and effect without change.

11. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, effective as of December 23, 2009.

ALEXION PHARMACEUTICALS, INC.

By: /s/ Thomas I.H. Dubin
Name: Thomas I.H. Dubin
Title: Senior Vice President and General Counsel

By: /s/ Stephen P. Squinto
Stephen P. Squinto, Ph.D.

Exhibit 10.6

AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT, dated as of December 23, 2009, is by and between Alexion Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and Vikas Sinha (the "Employee").

WHEREAS, the Company and Employee are parties to that certain Employment Agreement dated as of February 14, 2006 (the "Employment Agreement");

WHEREAS, the Company and the Employee desire to enter into Amendment No. 1 to the Employment Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. To add to the following sentence to the end of Section 3(b) to read as follows: "Payment of the annual performance bonus will be made as soon as practicable after the right to payment vests and in all events by March 15 of the calendar year following the calendar year in which the right to payment vests. For purposes of the foregoing sentence, a right to payment will be treated as having vested when it is no longer subject to a substantial risk of forfeiture for purposes of Section 1.409A-1(d) of the Treasury Regulations."

2. To add the following clause to the end of Section 3(d):

"provided that (i) the amount of expenses eligible for reimbursement during any calendar year may not affect the expenses eligible for reimbursement in any other taxable year, (ii) reimbursement is made not later than December 31 of the calendar year following the calendar year in which the expense was incurred, and (iii) the right to reimbursement is not subject to liquidation or exchange for any other benefit."

3. To amend Sections 3(c), 6(a), 6(b), 9(c)(iii) and 9(d)(iii) to provide that following Change in Control under Section 3(c) and following termination pursuant to Sections 6(a), 6(b), 9(c) and 9(d), all Time-Vesting Equity Awards granted to the Employee shall remain exercisable for such periods as provided under the terms of the Company's applicable stock option or incentive plan and any individual award agreements under which such stock options or equity awards were granted.

4. The last sentence of Section 9(c)(i) shall be deleted and replaced with the following sentence: "Such Severance Payment will be paid to the Employee immediately upon such Separation from Service in a cash lump sum. For purposes of this Agreement, the Severance Period shall be nine months."

5. The first sentence of both Section 9(c)(ii) and 9(d)(ii) shall be amended to conclude with the following proviso: “provided that all such payments shall comply with the reimbursement rules of Treasury Regulations Sections 1.409A-1(b)(9)(v) or 1.409A-3(i)(1)(iv).”

6. To add Sections 9(f)and 9(g) to the Employment Agreement to read as follows:

“(f) Termination of Employment and Separation From Service. All references in the Agreement to termination of employment, a termination, retirement, cessation of employment, separation from service, and correlative terms, that result in the payment or vesting of any amounts or benefits that constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code shall be construed to require a Separation from Service, and the date of such termination in any such case shall be construed to mean the date of the Separation from Service.”

“(g) Payment to a “Specified Employee”: to the extent any payment hereunder that is payable by reason of termination of the Employee’s employment constitutes “nonqualified deferred compensation” subject to Section 409A and would otherwise have been required to be paid during the six (6)-month period following such termination of employment, it shall instead (unless at the relevant time the Employee is no longer a Specified Employee) be delayed and paid, without interest, in a lump sum on the date that is six (6) months and one day after the Employee’s termination (or, if earlier, the date of the Employee’s death).”

7. To add Sections 14(d), 14(e) and 14(f) to the Employment Agreement to read as follows:

“(d) “Code” means the Internal Revenue Code of 1986, as amended.”

“(e) “Separation from Service” shall mean a “separation from service” (as that term is defined at Section 1.409A-1(h) of the Treasury Regulations under Section 409A of the Code) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Section 1.409A-1(h)(3) of such Treasury Regulations. In the case of a separation from service due to disability, a separation from service will be determined pursuant to Section 1.409A-1(h)(1)(i) of the Treasury Regulations. The Board of Directors or the Compensation Committee of the Board of Directors may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(h) of the Treasury Regulations for purposes of determining whether a “separation from service” has occurred. Any such written election shall be deemed part of the Agreement.”

“(f) “Specified Employee” shall mean an individual determined by the Board of Directors, Compensation Committee of the Board of Directors or their delegate to be a specified employee as defined in subsection (a)(2)(B)(i) of Section 409A. The Committee may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(i) of the Treasury Regulations for purposes of determining “specified employee” status. Any such written election shall be deemed part of the Agreement.”

8. To add Section 19(f) to the Employment Agreement to read as follows:

"This Agreement is intended to comply with the applicable requirements of Section 409A of the Code and shall be construed accordingly."

9. Unless otherwise specifically defined in this Amendment No. 1, each term used herein that is defined in the Employment Agreement shall have the meaning assigned to such term in the Employment Agreement.

10. Except as set forth expressly herein, all terms of the Employment Agreement shall remain in full force and effect without change.

11. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, effective as of December 23, 2009.

ALEXION PHARMACEUTICALS, INC.

By: /s/ Thomas I.H. Dubin
Name: Thomas I.H. Dubin
Title: Senior Vice President and General Counsel

By: /s/ Vikas Sinha
Vikas Sinha

Exhibit 10.12

AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT, dated as of December 23, 2009, is by and between Alexion Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and (the "Employee").

WHEREAS, the Company and Employee are parties to that certain Employment Agreement dated as of (the "Employment Agreement");

WHEREAS, the Company and the Employee desire to enter into Amendment No. 1 to the Employment Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. To add to the following sentence to the end of Section 3(b) to read as follows: "Payment of the annual performance bonus will be made as soon as practicable after the right to payment vests and in all events by March 15 of the calendar year following the calendar year in which the right to payment vests. For purposes of the foregoing sentence, a right to payment will be treated as having vested when it is no longer subject to a substantial risk of forfeiture for purposes of Section 1.409A-1(d) of the Treasury Regulations."

2. To add the following clause to the end of Section 3(d):

"provided that (i) the amount of expenses eligible for reimbursement during any calendar year may not affect the expenses eligible for reimbursement in any other taxable year, (ii) reimbursement is made not later than December 31 of the calendar year following the calendar year in which the expense was incurred, and (iii) the right to reimbursement is not subject to liquidation or exchange for any other benefit."

3. To amend Sections 3(c), 6(a), 6(b), 9(c)(iii) and 9(d)(iii) to provide that following Change in Control under Section 3(c) and following termination pursuant to Sections 6(a), 6(b), 9(c) and 9(d), all Time-Vesting Equity Awards granted to the Employee shall remain exercisable for such periods as provided under the terms of the Company's applicable stock option or incentive plan and any individual award agreements under which such stock options or equity awards were granted.

4. The last sentence of Section 9(c)(i) shall be deleted and replaced with the following sentence: "Such Severance Payment will be paid to the Employee immediately upon such Separation from Service in a cash lump sum. For purposes of this Agreement, the Severance Period shall be nine months."

5. The first sentence of both Section 9(c)(ii) and 9(d)(ii) shall be amended to conclude with the following proviso: “provided that all such payments shall comply with the reimbursement rules of Treasury Regulations Sections 1.409A-1(b)(9)(v) or 1.409A-3(i)(1)(iv).”

6. To add Sections 9(f)and 9(g) to the Employment Agreement to read as follows:

“(f) Termination of Employment and Separation From Service. All references in the Agreement to termination of employment, a termination, retirement, cessation of employment, separation from service, and correlative terms, that result in the payment or vesting of any amounts or benefits that constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code shall be construed to require a Separation from Service, and the date of such termination in any such case shall be construed to mean the date of the Separation from Service.”

“(g) Payment to a “Specified Employee”: to the extent any payment hereunder that is payable by reason of termination of the Employee’s employment constitutes “nonqualified deferred compensation” subject to Section 409A and would otherwise have been required to be paid during the six (6)-month period following such termination of employment, it shall instead (unless at the relevant time the Employee is no longer a Specified Employee) be delayed and paid, without interest, in a lump sum on the date that is six (6) months and one day after the Employee’s termination (or, if earlier, the date of the Employee’s death).”

7. To add Sections 14(d), 14(e) and 14(f) to the Employment Agreement to read as follows:

“(d) “Code” means the Internal Revenue Code of 1986, as amended.”

“(e) “Separation from Service” shall mean a “separation from service” (as that term is defined at Section 1.409A-1(h) of the Treasury Regulations under Section 409A of the Code) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Section 1.409A-1(h)(3) of such Treasury Regulations. In the case of a separation from service due to disability, a separation from service will be determined pursuant to Section 1.409A-1(h)(1)(i) of the Treasury Regulations. The Board of Directors or the Compensation Committee of the Board of Directors may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(h) of the Treasury Regulations for purposes of determining whether a “separation from service” has occurred. Any such written election shall be deemed part of the Agreement.”

“(f) “Specified Employee” shall mean an individual determined by the Board of Directors, Compensation Committee of the Board of Directors or their delegate to be a specified employee as defined in subsection (a)(2)(B)(i) of Section 409A. The Committee may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(i) of the Treasury Regulations for purposes of determining “specified employee” status. Any such written election shall be deemed part of the Agreement.”

8. To add Section 19(f) to the Employment Agreement to read as follows:

"This Agreement is intended to comply with the applicable requirements of Section 409A of the Code and shall be construed accordingly."

9. Unless otherwise specifically defined in this Amendment No. 1, each term used herein that is defined in the Employment Agreement shall have the meaning assigned to such term in the Employment Agreement.

10. Except as set forth expressly herein, all terms of the Employment Agreement shall remain in full force and effect without change.

11. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, effective as of December 23, 2009.

ALEXION PHARMACEUTICALS, INC.

By: _____
Name:
Title:

By: _____

Exhibit 10.36

[EXECUTION COPY]

Published CUSIP Number: _____

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of January 22, 2010

among

ALEXION PHARMACEUTICALS, INC.,
as the Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent,

THE OTHER LENDERS PARTY HERETO,

BANC OF AMERICA SECURITIES LLC

and

J.P. MORGAN SECURITIES INC.
as Joint Lead Arrangers

and

BANC OF AMERICA SECURITIES LLC
as Lead Book Manager

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AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** ("Agreement") is entered into as of January 22, 2010, among **ALEXION PHARMACEUTICALS, INC.,** a Delaware corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), **BANK OF AMERICA, N.A.,** as Administrative Agent, **BANC OF AMERICA SECURITIES LLC** and **J.P. MORGAN SECURITIES INC.**, as Joint Lead Arrangers, and **BANC OF AMERICA SECURITIES LLC** as Lead Book Manager.

The Borrower, various financial institutions party thereto as lenders and Bank of America, N.A., as administrative agent, are parties to a Credit Agreement, dated as of February 13, 2008 (the "Existing Credit Agreement").

The parties hereto have agreed to amend and restate, in its entirety, the Existing Credit Agreement pursuant to this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Account Control Agreements" each Deposit Account Control Agreement, Securities Account Control Agreement and each other account control agreement entered into pursuant to the terms of this Agreement or any other Loan Document, in each case, in form and substance reasonably satisfactory to Administrative Agent.

"Activation Notice" has the meaning specified in Section 6.19(b).

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Commitments" means the Commitment of all the Lenders. The Aggregate Commitments, as of the date of this Agreement, are $50,000,000.

"Agreement" means this Amended and Restated Credit Agreement.

"Alexion Manufacturing" means Alexion Manufacturing LLC.

"Alternative Currency" means each of Euro, Yen, and each other currency (other than Dollars) that is approved in accordance with Section 1.08 and shall only be available with respect to Letters of Credit.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the applicable L/C Issuer at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

"Applicable Percentage" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Lender's Commitment at such time. If the Commitment of each Lender has been terminated pursuant to Section 8.02, or if the Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means (a) from the Closing Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to Section 6.02(b) for the fiscal quarter ending June 30, 2010, 0.750% per annum for Base Rate Loans, 2.750% per annum for Eurodollar Rate Loans and Letter of Credit Fees and 0.375% per annum for the Commitment Fee and (b) thereafter, the applicable percentage per annum set forth below determined by reference to the Consolidated Quick Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(b):

	Applicable Rate			
Pricing Level	**Consolidated Quick Ratio**	**Eurodollar Rate and Letters of Credit**	**Base Rate**	**Commitment Fee**
I	³ 2.50 to 1.00	2.500%	0.500%	0.250%
II	³ 1.50 to 1.00 but < 2.50 to 1.00	2.750%	0.750%	0.375%
III	< 1.50 to 1.00	3.000%	1.000%	0.500%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Quick Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level III shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the first Business Day immediately following the date such Compliance Certificate is delivered, provided, further, that the Applicable Rate at such time shall be determined by reference to the Consolidated Quick Ratio as set forth in such Compliance Certificate.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

"Applicable Time" means, with respect to any payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the applicable L/C Issuer to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"ARIMF Capital Expenditures" means Capital Expenditures incurred by the Borrower solely in connection with the commissioning, regulatory approval and the validation of inventory production (including, without limitation, engineering runs) at Alexion Manufacturing's manufacturing facility located at 100 Technology Way, Smithfield, Rhode Island 02917.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2008**,** and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(b)(iii).

"Availability Period" means the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Commitments pursuant to Section 2.06, and (iii) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 8.02.

"Bank of America" means Bank of America, N.A. and its successors.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) the Eurodollar Rate plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrower Guaranty" means, the Guarantee of the Guaranteed Guarantor Obligations made by the Borrower in favor of the Secured Parties pursuant to Article XI hereof.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"Capital Expenditures" means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations and inventory produced for commercial sale). For purposes of this definition, (a) the purchase price of equipment that is purchased with the trade-in or disposition proceeds of existing equipment or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time or the amount of such insurance proceeds, as the case may be and (b) all amounts (including the fair market value of all Equity Interests consisting solely of common stock of the Borrower) used as consideration for an acquisition permitted pursuant to Section 7.03(i) shall be excluded from the calculation of Capital Expenditures.

"Capitalized Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuers and the Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing.

"Cash Equivalents" means any of the following types of Investments, to the extent owned by the Borrower or any Guarantor free and clear of all Liens (other than Liens created under the Collateral Documents):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) Repurchase agreements with banks described in clause (b) above for government obligations described in clause (a) above, with maturities of not more than 360 days from the date of acquisition and for the stated price thereof in such agreements; and

(f) corporate debt instruments, including medium term notes and floating rate notes, issued by entities organized under the laws of the United States and payable in Dollars; provided that such corporate debt instruments are rated A2 or better by Moody's or A or better by S&P and mature in two years or less from the date of issuance.

"Cash Management Agreement" means any arrangement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management services.

"Cash Management Bank" means any Person that is a Lender or an Affiliate of a Lender, in its capacity as a party to a Cash Management Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the immediate right to acquire (such right, an "option right")), directly or indirectly, of 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower, or control over the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 35% or more of the combined voting power of such securities; or

(d) the Borrower shall cease, directly or indirectly, to own and control legally and beneficially 100% of the Equity Interests in any of its Domestic Subsidiaries and, except with respect to any Investments permitted pursuant to Section 7.03(i), 100% of the Equity Interests in any of its Foreign Subsidiaries.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

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

"Collateral" means all of the "Collateral" and "Mortgaged Property" referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

"Collateral Documents" means, collectively, the Security Agreement, the Securities Pledge Agreement, the Mortgage, the Account Control Agreements, and each of the mortgages, collateral assignments, landlord's waiver and consent agreements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"Collection Account" has the meaning specified in Section 6.19(b).

"Commitment" means, as to each Lender, its obligation to (a) make Loans to the Borrower pursuant to Section 2.01, and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the caption "Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Commitment Fee" has the meaning set forth in Section 2.09.

"Committed Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Consolidated Cash Operating Expenses" means, at any date of determination, for the most recently completed fiscal quarter, (a) the sum of (i) research and development expense, (ii) selling, general and administrative expense, and (iii) Consolidated Interest Charges payable during such fiscal quarter, minus (b) the sum of (i) capitalized interest expense during such fiscal quarter, (ii) deferred financing charges and (iii) non-cash expenses to the extent included in clauses (a)(i) - (iii), provided, however, that deductions pursuant to clause (b)(iii) (other than for compensation paid to employees in the form of common stock for such period, any write-down of intangible assets and depreciation and amortization expense for such period) shall be subject to the approval of the Administrative Agent, in its reasonable discretion.

"Consolidated Current Liabilities" means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to (a) the sum of (i) all Indebtedness, liabilities and other obligations of the Borrower and its Subsidiaries that have been or should be, in accordance with GAAP, recorded as current liabilities at such time plus (ii) without duplication, the amount of Total Outstandings hereunder at such time, minus (b) solely to the extent that (i) such Indebtedness, liabilities and other obligations are (x) included in calculating clause (a) above, (y) non-recourse to any Loan Party and is not otherwise an obligation of any Loan Party (contingent or otherwise) and (ii) the aggregate cash on hand and Cash Equivalents of the non-Guarantor Foreign Subsidiaries shall be an amount sufficient to pay all such Indebtedness, liabilities and other obligations, the Foreign Current Liabilities at such time.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income taxes, (iii) depreciation and amortization expense, (iv) compensation paid to employees in the form of common stock, and (v) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Borrower and its Subsidiaries for such Measurement Period) and minus (b) the following to the extent included in calculating such Consolidated Net Income: all non-cash items increasing Consolidated Net Income (in each case of or by the Borrower and its Subsidiaries for such Measurement Period).

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a) Consolidated EBITDA minus the sum of (i) non-financed Capital Expenditures made by the Borrower and each of its Subsidiaries during the most recently completed Measurement Period and (ii) aggregate amount of Federal, state, local and foreign income taxes paid in cash, in each case, of or by the Borrower and its Subsidiaries for the most recently completed Measurement Period to (b) the sum of (i) Consolidated Interest Charges payable in cash for the most recently completed Measurement Period, (ii) the aggregate principal amount of all regularly scheduled principal payments or redemptions of outstanding debt for borrowed money, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02, in each case, of or by the Borrower and its Subsidiaries for the most recently completed Measurement Period, and (iii) the aggregate amount of all cash Restricted Payments made by the Borrower and its Subsidiaries during the most recently completed Measurement Period; provided, that, in the event of an acquisition permitted by Section 7.03 made during the Measurement Period, the foregoing ratio shall be calculated on a pro forma basis as if such acquisition had occurred on the first day of such Measurement Period, with such pro forma adjustments as may be reasonably satisfactory to the Administrative Agent.

"Consolidated Funded Indebtedness" means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (other than commercial letters of credit issued for the payment of trade payables incurred in the ordinary course of business), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

"Consolidated Interest Charges" means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for the most recently completed Measurement Period; provided, that, in the event of an acquisition permitted by Section 7.03 made during the Measurement Period, the foregoing ratio shall be calculated on a pro forma basis as if such acquisition had occurred on the first day of such Measurement Period, with such pro forma adjustments as may be reasonably satisfactory to the Administrative Agent.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains (or extraordinary non-cash losses, reasonably approved by the Administrative Agent, in an aggregate amount not to exceed $5,000,000 during the term of this Agreement) for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

"Consolidated Quick Ratio" means, as of any date of determination, the ratio of (a) the sum of (x) unencumbered, unrestricted domestic cash on hand and Cash Equivalents of the U.S. Loan Parties (to the extent such cash or Cash Equivalents are held in a Liquidity Account and as to which Administrative Agent shall have a first priority perfected Lien), plus (y) 80% of Eligible Receivables to (b) Consolidated Current Liabilities.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Account" means each domestic deposit account and domestic securities account now or hereafter owned by any Loan Party, other than (x) disbursement accounts, payroll accounts, withholding tax and other fiduciary accounts and (y) any deposit account with an average daily balance of less than $100,000**,** provided that the aggregate daily balances in all such accounts do not exceed $1,000,000.

"Credit Extension" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

"Defaulting Lender" means any Lender that, as determined by the Administrative Agent (a) has failed to perform its obligation to fund any portion of its Loans (or participations in respect of Letters of Credit) within one Business Day of the date required to be funded by it hereunder, unless such obligation is the subject of a good faith dispute, (b) has notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) has failed, within one Business Day after written request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent and each L/C Issuer that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans (or participations in respect of Letters of Credit), (d) otherwise has failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (e) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Laws, or (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in such Lender or direct or indirect parent company thereof by a Governmental Authority. A Lender that has become a Defaulting Lender because of an event referenced in this definition may cure such status and shall no longer constitute a Defaulting Lender as provided in the last paragraph of Section 2.16.

"Deposit Account Control Agreement" shall mean an agreement substantially in form and substance reasonably satisfactory to the Administrative Agent establishing the Administrative Agent's "control" (as such term is defined in Section 9-104 of the UCC) with respect to any deposit account.

"Disclosed Litigation" has the meaning set forth in Section 5.06.

"Disposition" or "Dispose" means the sale, transfer, exclusive license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dollar" and "$" mean lawful money of the United States.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the applicable L/C Issuer at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

"Eligible Collateral" means Eligible Receivables.

"Eligible Receivables" means, without duplication, Receivables of the Borrower subject to the Lien of the Collateral Documents, the value of which shall be determined by taking into consideration, among other factors, their book value determined in accordance with GAAP; provided, however, that none of the following classes of Receivables shall be deemed to be Eligible Receivables (which classes of Receivables may be revised from time to time by the Administrative Agent in the Administrative Agent's Permitted Discretion, upon 3 days prior notice to the Borrower):

(a) Receivables that do not arise out of sales of goods or rendering of services in the ordinary course of the Borrower's business;

(b) Receivables payable other than in Dollars or that are otherwise on terms other than those normal or customary in the Borrower's business;

(c) Receivables more than 120 days past original invoice date;

(d) Receivables owing from any Person from which an aggregate amount of more than 25% of the Receivables owing therefrom is more than 120 days past original invoice date;

(e) Receivables owing from any Person that (i) has disputed liability for any Receivable owing from such Person or (ii) has otherwise asserted any claim, demand or liability against the Borrower, whether by action, suit, counterclaim or otherwise; provided that for purposes of subclause (f)(i), such Receivables shall be excluded only to the extent of the amounts being disputed by such Person at any date of determination;

(f) Receivables owing from any Person that shall take or be the subject of any action or proceeding of a type described in Section 8.01(f);

(g) Receivables (i) owing from any Person that is also a supplier to or creditor of the Borrower or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling the Borrower to discounts on future purchase therefrom; provided that for purposes of subclause (g)(i), such Receivables shall be excluded only to the extent of the amounts owing to such supplier or creditor at any date of determination;

(h) Receivables arising out of sales to account debtors outside the United States, unless such Receivables are fully backed by an irrevocable letter of credit on terms (including transfer provisions to the Administrative Agent), and issued by a financial institution, reasonably acceptable to the Administrative Agent and such irrevocable letter of credit is in the possession of the Administrative Agent; provided that the aggregate amount of all Receivables eligible under this clause (h) shall not exceed 10% of the sum of all Eligible Receivables at any time;

(i) Receivables arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, setoff or charge back;

(j) Receivables owing from an account debtor that is an agency, department or instrumentality of the United States or any state thereof; provided that for purposes of this clause (j), such Receivables shall be excluded only to the extent that they exceed $2,000,000 in the aggregate;

(k) Receivables owing from any Non-Investment Grade Account Debtor if all such Receivables, in the aggregate, from such Person represent 25% or more of all Eligible Receivables; provided that, notwithstanding the foregoing, such Receivables may be included as Eligible Receivables to the extent (and only to the extent) that such Receivables together with all other Receivables which would otherwise be excluded pursuant to this clause (k) do not exceed 20% of the sum of all Eligible Receivables at any time;

(l) Receivables in respect of which the Security Agreement, after giving effect to the related filings of financing statements that have then been made, if any, does not or has ceased to create a valid and perfected first priority lien or security interest in favor of the Administrative Agent, on behalf of the Secured Parties, securing the Obligations; and

(m) Receivables owing from any Subsidiary or any Affiliate of the Borrower.

"EMU" means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

"EMU Legislation" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"Environmental Indemnity Agreement" means that certain Environmental Indemnification and Release Agreement dated as of the date hereof made by each Loan Party in favor of the Administrative Agent.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) which is considered a single employer together with the Borrower or any of its Subsidiaries within the meaning of Section 414(b), (c). (m) or (o) of the Code.

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower, any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan; (d) a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or, on and after the effectiveness of the applicable provisions of the Pension Act with respect to such Multiemployer Plan, is or is expected to be in endangered or critical status, within the meaning of Section 305 of ERISA or Section 432 of the Code; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate, a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate; (h) prior to the effectiveness of the applicable provisions of the Pension Act with respect to a Pension Plan, the existence with respect to the Pension Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA as in effect prior to the effective date of the Pension Act) in excess of $500,000 or, on and after the effectiveness of the applicable provisions of the Pension Act with respect to such Pension Plan, any failure by the Pension Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, in each case whether or not waived; (i) the filing pursuant to, prior to the effectiveness of the applicable provisions of the Pension Act with respect to a Pension Plan, Section 412(d) of the Code or Section 303(d) of ERISA or, on and after the effectiveness of the applicable provisions of the Pension Act with respect to the Pension Plan, Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to such Pension Plan; (j) on and after the effectiveness of the applicable provisions of the Pension Act with respect to a Pension Plan, a determination that the Pension Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code).

"Euro" and "EUR" mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"Eurodollar Rate" means:

(a) with respect to each Eurodollar Rate Loan, for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such Date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained by Bank of America and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Eurodollar Rate."

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01(a).

"Existing Credit Agreement" has the meaning specified in the preliminary statements to this Agreement.

"Existing Loans" means "Loans" under and as defined in the Existing Credit Agreement.

"Existing Letters of Credit" means each of the letters of credit issued under the Existing Credit Agreement and set forth on Schedule 1.01(e).

"Export Control Regulations" means all regulations administered and requirements imposed by OFAC, including compliance with the Specially Designated Nationals/Blocked Persons Lists and the OFAC Country Sanctions Programs, and any associated Executive Orders, and U.S. Department of Commerce regulations and requirements related to the Export Administration Regulations, Commerce Control List, the Commerce Country Chart, and Denied Persons List, as applicable to each of the Borrowers and its Subsidiaries.

"Export Violation" means any violation of any Export Control Regulation.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FDA" means the U.S. Food and Drug Administration.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of $^{1}/_{100}$ of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means the letter agreement, dated January 22, 2010, among the Borrower and the Administrative Agent.

"Foreign Current Liabilities" means, as of any date of determination, the aggregate amount of all Indebtedness, liabilities and other obligations of the non-Guarantor Foreign Subsidiaries of the Borrowers that have been or should be, in accordance with GAAP, recorded as current liabilities.

"Foreign Government Scheme or Arrangement" has the meaning specified in Section 5.12(d).

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Plan" has the meaning specified in Section 5.12(d).

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, with respect to the applicable L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which (i) such Defaulting Lender's participation obligation has been reallocated pursuant to subsection 2.16(d), or (ii) Cash Collateral or other credit support acceptable to such L/C Issuer shall have been provided in accordance with Section 2.03.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Guarantor Obligations" has the meaning specified in Section 11.01(a).

"Guarantee Lender" means a foreign branch or subsidiary of Bank of America issuing a Lender Issued Guarantee.

"Guarantors" means, collectively, the Subsidiaries of the Borrower listed on Schedule 6.12 and each other Subsidiary of the Borrower that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

"Guarantor Primary Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, each Guarantor arising under any (x) treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management services under or in respect of Secured Cash Management Agreements of the Guarantors and (y) rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of the foregoing under or in respect of Secured Hedge Agreements of the Guarantors or otherwise with respect to any Letter of Credit or Lender Issued Guarantee issued for the account of any Guarantor, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Guarantor or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Guaranty" means, collectively, the Amended and Restated Guaranty made by the Guarantors in favor of the Secured Parties, substantially in the form of Exhibit E, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hedge Bank" means any Person that, at the time it enters into a Secured Hedge Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Hedge Agreement.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than 60 days);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or, following a notice of intent to exercise, any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Interest Payment Date" means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date seven (7) or fourteen (14) days or one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in the following calendar week, in respect of any seven (7) or fourteen (14) day Interest Period, or in another calendar month, in respect of any other Interest Period, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (for cash or non-cash consideration, in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.17.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the applicable L/C Issuer and the Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

"Joint Lead Arrangers" means Banc of America Securities LLC and J.P. Morgan Securities Inc., in their capacity as joint lead arrangers.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing. All L/C Borrowings shall be denominated in Dollars.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means Bank of America or an Affiliate of Bank of America, JPMorgan Chase Bank, N.A. or an Affiliate of JPMorgan Chase Bank, N.A. or any other Lender or an Affiliate of such Lender, in each case, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Book Manager" means Banc of America Securities LLC, in its capacity as lead book manager.

"Lender" has the meaning specified in the introductory paragraph hereto.

"Lender Issued Guarantee" means a guarantee issued by the Guarantee Lender, the terms, conditions, fees and structure of which shall be determined by the Guarantee Lender in its sole discretion, and which, in any event shall include, without limitation, provisions substantially similar to those set forth in Section 2.15 (as they apply to Letters of Credit) requiring the Borrower to Cash Collateralize such Lender Issued Guarantee under certain circumstances, and with respect to each Lender's risk participation and reimbursement obligations, provisions substantially similar to those set forth in Section 2.03 (as they apply to Letters of Credit). Lender Issued Guarantees shall be part of the Letter of Credit Sublimit.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Letter of Credit" means any standby letter of credit issued hereunder and shall include the Existing Letters of Credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(h).

"Letter of Credit Sublimit" means an amount equal to $20,000,000. Lender Issued Guarantees are part of, and not in addition to, the Letter of Credit Sublimit. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Liquidity Account" means each Control Account established by the Borrower (a) for which the Administrative Agent shall act as the depository or securities intermediary, as the case may be, and designated as an "Alexion Liquidity Account" or (b) at a financial institution selected or approved by the Administrative Agent in its reasonable discretion, which account(s) shall, in the case of this clause (b), (x) be subject to an Account Control Agreement in favor of the Administrative Agent evidencing its first priority perfected Lien for the benefit of Secured Parties and (y) provide the Administrative Agent with the ability to accurately monitor the account balances in such account(s) (including information regarding any withdrawals and deposits relating to such account(s) and receipt by the Administrative Agent of continuous account information and monitoring) in a manner and pursuant to terms reasonably acceptable to the Administrative Agent.

"Loan" has the meaning specified in Section 2.01 and shall include all Existing Loans.

"Loan Documents" means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) the Post-Closing Agreement, (g) each of the Related Mortgage Documents, (h) each Issuer Document, (i) each Secured Hedge Agreement, (j) each Secured Cash Management Agreement and (k) any agreement creating or perfecting rights in Cash Collateral or other credit support pursuant to the provisions of Section 2.15 of this Agreement; provided that for purposes of the definition of "Material Adverse Change" and Articles IV through IX, "Loan Documents" shall not include Secured Hedge Agreements or Secured Cash Management Agreements.

"Loan Parties" means, collectively, the Borrower and each Subsidiary of the Borrower party to the Security Agreement. As of the Closing Date, the Loan Parties are the Borrower, Alexion Delaware Holding LCC and Alexion Manufacturing.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Manufacturing Lease" means that certain Lease, dated as of July 11, 2006, between the Borrower and Alexion Manufacturing, as in effect on the date hereof.

"Material Adverse Change" means any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect upon (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole; (b) the ability of the Borrower or the other Loan Parties (taken as a whole) to perform any of their respective obligations under any Loan Document; (c) the Collateral, or the Administrative Agent's Liens on the Collateral or the priority of such Liens, or (d) the rights and remedies of, or benefits available to, the Administrative Agent, the Lenders and the L/C Issuers under the Loan Documents.

"Material Contract" means, with respect to any Person, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of $5,000,000 or more in any year or otherwise material to the business, condition (financial or otherwise), operations, performance, or properties of such Person.

"Maturity Date" means January 22, 2013; provided, however, that, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"Measurement Period" means, at any date of determination, the most recently completed four fiscal quarters of the Borrower.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means that certain Open-End Mortgage to Secure Present and Future Loans under Chapter 25 of Title 34 of the Rhode Island General Laws Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of January 22, 2010, pursuant to which Alexion Manufacturing has granted to the Administrative Agent, for the benefit of Secured Parties, Liens upon the Real Estate of Alexion Manufacturing located at 100 Technology Way, Smithfield, Rhode Island 02917, as security for the Obligations.

"Mortgaged Property" all "Secured Property" under and as defined in the Mortgage.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Net Product Sales" means, for any Measurement Period, net product sales (net of any Medicaid rebate accruals) of the Borrower and its Subsidiaries as set forth in the Borrower's profit and loss statement for such period.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B.

"Non-Extension Notice Date" has the meaning specified in Section 2.03(b)(iii).

"Non-Investment Grade Account Debtor" means, with respect to any account debtor of the Borrower, a Person that does not maintain a rating of BBB- or better from S&P or Baa3 or better from Moody's.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document (including, without limitation, (x) any treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management services under or in respect of Secured Cash Management Agreements and (y) all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of the foregoing under or in respect of Secured Hedge Agreements) or otherwise with respect to any Loan, Letter of Credit or Lender Issued Guarantee, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means the United States Department of Treasury Office of Foreign Assets Control.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means (a) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts; and (c) with respect to any Lender Issued Guarantees on any date, the maximum amount required to be paid under such Lender Issued Guarantees, including all principal, interest and fees thereunder.

"Participant" has the meaning specified in Section 10.06(d).

"Participating Member State" means each state so described in any EMU Legislation.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Act" means the Pension Protection Act of 2006, as amended.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate or to which the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset based lender) business judgment.

"Permitted Factoring Arrangements" means non-recourse sales by Alexion Pharma Italy S.r.l., Alexion Pharma Spain S.L. and any Foreign Subsidiary of the Borrower either organized under the laws of Greece or supplying drug products to patients in Greece of its receivables in the ordinary course of business, whether pursuant to a purchase facility or otherwise and not as a financing arrangement, at a discount for such Receivables of not greater than 20%.

"Permitted Liens" has the meaning specified in Section 7.01.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) maintained by the Borrower or any Subsidiary of the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA, any such plan maintained by the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate.

"Platform" has the meaning specified in Section 6.02.

"Pledged Debt" has the meaning specified in Section 4.1 of the Security Agreement.

"Post-Closing Agreement" means that certain Post-Closing Agreement dated as of Closing Date, among the Borrower and the Administrative Agent with respect to certain documents and actions to be delivered or taken after the Closing Date, as amended, restated, supplemented or otherwise modified from time to time.

"Public Lender" has the meaning specified in Section 6.02.

"Real Estate" means all right, title and interest in any real property or any buildings, structures, parking areas or other improvements thereon.

"Receivables" means all (a) Accounts, (b) Chattel Paper, (c) Payment Intangibles, (d) General Intangibles, (e) Instruments (as each such term is defined in the UCC) and (f) to the extent not otherwise covered above, all other rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, regardless of how classified under the UCC.

"Register" has the meaning specified in Section 10.06(c).

"Related Mortgage Documents" has the meaning specified in Section 4.01(a).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Loans, a Committed Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

"Required Lenders" means, as of any date of determination (a) at any time there shall be less than three non-Affiliated Lenders, all Lenders and (b) at any time there shall be three or more non-Affiliated Lenders, Lenders holding more than 50% of the sum of the (i) Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Lender for purposes of this definition) and (ii) aggregate unused Commitments; provided that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

"Revaluation Date" means with respect to any Letter of Credit, each of the following: (a) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (b) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (c) each date of any payment by any L/C Issuer under any Letter of Credit denominated in an Alternative Currency, and (d) such additional dates as the Administrative Agent or any L/C Issuer shall reasonably determine or the Required Lenders shall require.

"Revolving Credit Facility" means, at any time, the aggregate amount of the Lenders' Commitments at such time. The Revolving Credit Facility, as of the date of this Agreement, is $50,000,000.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Cash Management Agreement" means any Cash Management Agreement that is entered into by and between the Borrower or any other Loan Party and any Cash Management Bank.

"Secured Hedge Agreement" means any Swap Contract that is entered into by and between the Borrower or any other Loan Party and any Hedge Bank.

"Secured Parties" means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

"Securities Pledge Agreement" means, collectively, (a) that certain Amended and Restated Securities Pledge Agreement, executed and delivered on the Closing Date, by and between the U.S. Loan Parties and the Administrative Agent, and (b) any other securities pledge agreement that may be entered into after the Closing Date with respect to a Subsidiary of the Borrower formed or acquired after the Closing Date, in each case, in form and substance reasonably satisfactory to the Administrative Agent and as amended and in effect from time to time.

"Security Agreement" means, collectively, (a) that certain Amended and Restated Security Agreement, executed and delivered on the Closing Date, between the Loan Parties and the Administrative Agent, and (b) any other Security Agreement that may be entered into after the Closing Date with respect to a Subsidiary of the Borrower formed or acquired after the Closing Date, in each case, in form and substance reasonably satisfactory to the Administrative Agent and as amended and in effect from time to time.

"Securities Account Control Agreement" shall mean an agreement substantially in form and substance reasonably satisfactory to the Administrative Agent establishing the Administrative Agent's "control" (as such term is defined in Section 9-104 of the UCC) with respect to any securities account.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Spot Rate" for a currency means the rate determined by an L/C Issuer to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that such L/C Issuer may obtain such spot rate from another financial institution designated by such L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that such L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Debt" means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) for income tax purposes but are not otherwise included in the definition of "Indebtedness" or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Threshold Amount" means $5,000,000.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"UCC" means the Uniform Commercial Code as in effect in the Commonwealth of Massachusetts; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the Commonwealth of Massachusetts, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code or Section 302 of ERISA for the applicable plan year.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"U.S. Loan Party" means any Loan Party that is organized under the laws of any political subdivision of the United States.

"Yen" and "¥" mean the lawful currency of Japan.

1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03. Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

1.04. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07. Exchange Rates; Currency Equivalents. (a) Each L/C Issuer shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of L/C Credit Extensions and Outstanding Amounts with respect to L/C Obligations owing to such L/C Issuer denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the applicable L/C Issuer.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the applicable L/C Issuer.

1.08. Additional Alternative Currencies. (a) The Borrower may from time to time request that Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency;" provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request, such request shall be subject to the approval of the Administrative Agent and each L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 20 Business Days prior to the date of the desired L/C Credit Extension (or such other time or date as may be agreed by each L/C Issuer, in their sole discretion). The Administrative Agent shall promptly notify each L/C Issuer of any such request. Each L/C Issuer shall notify the Administrative Agent, not later than 11:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the issuance of Letters of Credit, in such requested currency.

(c) Any failure by any L/C Issuer to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such L/C Issuer to permit Letters of Credit to be issued in such requested currency. If the Administrative Agent and the each L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.08, the Administrative Agent shall promptly so notify the Borrower.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01. The Revolving Credit Facility. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans ("Loans") to the Borrower from time to time, on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; provided, however, that after giving effect to any Borrowing, (i) the Total Outstandings shall not exceed the Revolving Credit Facility, and (ii) the aggregate Outstanding Amount of the Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Commitment. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. All Existing Loans shall be deemed to have been made pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

2.02. Borrowings, Conversions and Continuations of Loans. (a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 12:00 noon (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans; provided, however, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 12:00 noon four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is available to all of them. Not later than 12:00 noon, three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof. Except as provided in Section 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than 5 Interest Periods in effect in respect of the Revolving Credit Facility.

2.03. Letters of Credit. (a) The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower or, with the consent of the Administrative Agent, its Subsidiaries, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Revolving Credit Facility, (y) the aggregate Outstanding Amount of the Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if:

(A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the Administrative Agent and the applicable L/C Issuer have approved such expiry date (it being understood that in the event the expiry date of any requested Letter of Credit would occur after the Letter of Credit Expiration Date, from and after the Letter of Credit Expiration Date, the Borrower shall immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations in respect of such Letters of Credit in accordance with Section 2.15).

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than $50,000;

(D) such L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

(E) such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency; or

(F) any Lender is at such time a Defaulting Lender, unless such L/C Issuer has entered into arrangements satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure with respect to such Lender as to either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which such L/C Issuer has such actual or potential risk, as it may elect in its sole discretion.

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) the such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included each L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by such L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as such L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as such L/C Issuer may require. Additionally, the Borrower shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by such L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date (unless the Administrative Agent and the applicable L/C Issuer have approved such expiry date); provided, however, that such L/C Issuer shall not permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations. (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the applicable L/C Issuer in such Alternative Currency, unless (A) such L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the applicable L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse such L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the applicable L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 12:00 noon on the date of any payment by the applicable L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by such L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the Borrower shall reimburse the L/C Issuer directly in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the applicable L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by any L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (including for this purpose the application of available Cash Collateral and other credit support provided for this purpose pursuant to Section 2.03(a)(iii)(F)) to the Administrative Agent for the account of the applicable L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of such L/C Issuer.

(v) Each Lender's obligation to make Loans or L/C Advances to reimburse each L/C Issuer for amounts drawn under Letters of Credit issued by such L/C Issuer, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the applicable L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of any L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the applicable L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. (i) At any time after any L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the applicable L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse each L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary of the Borrower or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any of its Subsidiaries.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuers. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each standby Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral or other credit support arrangements satisfactory to the applicable L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable law, to the other Lenders to the extent of and in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to subsection 2.16(d), with the balance of such fee (to the extent the remaining obligations of the Defaulting Lender with respect to such Letter of Credit are not Cash Collateralized by the Borrower), if any, payable to the applicable L/C Issuer for its own account**.** For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers.

(i) The Borrower shall pay directly to Bank of America, in its capacity as an L/C Issuer, for its own account a fronting fee with respect to each Letter of Credit issued by Bank of America, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06.

(ii) The Borrower shall pay to each L/C Issuer (other than Bank of America), for their own respective accounts, fronting fees in the amounts and at the times specified mutually agreed.

(iii) The Borrower shall pay directly to each L/C Issuer, for its respective account, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be named as an account party in such Letter of Credit and shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(l) Obligations of L/C Issuers. In addition to any of the other applicable requirements set forth in this Section 2.03, each L/C Issuer agrees to provide the Administrative Agent, in form and substance satisfactory to Agent, each of the following on the following dates: (i) (A) on or prior to any issuance or any amendment (increasing the amount available to be drawn thereunder) of any Letter of Credit by such L/C Issuer, (B) immediately after any drawing under any such Letter of Credit and (C) immediately after any payment (or failure to pay when due) by the Borrower of any related L/C Obligation, notice thereof, which shall contain a reasonably detailed description of such issuance, amendment, drawing or payment, and the Administrative Agent shall provide copies of such notices to each Lender reasonably promptly after receipt thereof; (ii) upon the request of the Administrative Agent, copies of any Letter of Credit issued by such L/C Issuer and any related Issuer Document and such other documents and information as may reasonably be requested by the Administrative Agent; and (iii) (x) on or prior to the 10th Business Day before the end of each calendar quarter and (y) within three (3) Business Days after the Administrative Agent's request therefor, a schedule of the Letters of Credit issued by such L/C Issuer, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the L/C Obligations (including any fluctuations in the Outstanding Amounts with respect to L/C Obligations owing to such L/C Issuer denominated in Alternative Currencies) for such Letters of Credit then outstanding. Each L/C Issuer hereby agrees that, notwithstanding anything to the contrary contained herein or in any other Loan Document, if such L/C issuer (other than Bank of America) shall fail to comply with the requirements of this Section 2.03(l), the Administrative Agent may, in its reasonable discretion, cause the L/C Obligations in respect of Letters of Credit issued by such L/C Issuer to be, in whole or in part, subordinated with respect to any distributions pursuant to Section 8.03 in a manner determined by the Administrative Agent.

2.04. Discretionary Issuance of Lender Issued Guarantees. Upon request of the Borrower, and at the sole discretion of the Administrative Agent, the Guarantee Lender shall issue Lender Issued Guarantees (within the Letter of Credit Sublimit), the form and substance of which shall be satisfactory to the Administrative Agent.

2.05. Prepayments. (a) Optional. Subject to the last sentence of this Section 2.05(a), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 12:00 noon (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) one Business Day prior to any date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) Mandatory. If for any reason the Total Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrower shall immediately prepay Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess. Prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings, second, shall be applied ratably to the outstanding Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral in accordance with the terms hereof shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the applicable L/C Issuer or the Lenders, as applicable. For the avoidance of doubt, all such amounts required to be prepaid by the Borrower pursuant to this Section 2.05(b) shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05 and shall be made without a corresponding reduction in the Commitments.

2.06. Termination or Reduction of Commitments. (a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility or the Letter of Credit Sublimit, or from time to time permanently reduce the Revolving Credit Facility or the Letter of Credit Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 noon five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $1,000,000 or any whole multiple of $500,000 in excess thereof, (iii) any such termination or reduction shall be accompanied by any fees payable pursuant to the Fee Letter, and (iv) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Revolving Credit Facility, or (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit.

(b) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit or the Commitment under this Section 2.06. Upon any reduction of the Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

2.07. Repayment of Loans. Loans. The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding on such date.

2.08. Interest. (a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate, and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09. Fees. In addition to certain fees described in Sections 2.03(i) and (j):

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee (the "Commitment Fee") equal to the Applicable Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrower shall pay to the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10. Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate. (a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) Consolidated Quick Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Quick Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.08(b) or under Article VIII. The Borrower's obligations under this paragraph shall terminate upon the termination of the Commitments and the indefeasible repayment of all other Obligations hereunder.

2.11. Evidence of Debt. (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12. Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or any L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or each of the L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Authorization for Borrowings and Payment of Interest and Fees. At the election of the Administrative Agent, all payments of interest, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 10.04), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder, whether made following a request by the Borrower pursuant to Section 2.02 or a deemed request as provided in this Section 2.12, or may be deducted from any Control Account of the Borrower maintained with the Administrative Agent. The Borrower hereby irrevocably authorizes (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.02, and (ii) the Administrative Agent to charge any Control Account of the Borrower maintained with the Administrative Agent for each payment of interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.13. Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of collateral or other credit support (and proceeds thereof) in respect of obligations relating to Letters of Credit (including related Lender participation obligations) provided for in Section 2.15, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply unless such assignment is made with the consent of the Required Lenders and is accompanied by a cancellation of the Obligations so assigned in accordance with subsection 10.06(b)(v)).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.14. Increase in Revolving Credit Facility. (a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time, request an increase in the Revolving Credit Facility by an amount (for all such requests) not exceeding $25,000,000; provided that any such request for an increase shall be in a minimum amount of $5,000,000. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, and subject to the approval of the Administrative Agent and the L/C Issuers (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Revolving Credit Facility is increased in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date (the "Revolving Credit Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Revolving Credit Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrower shall (i) deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Credit Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrower, certifying that, before and after giving effect to such increase, (x) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Revolving Credit Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, (y) the Borrower shall be in compliance with the financial covenants set forth in Section 7.11, and (z) no Default exists, and (ii) pay all upfront fees, as mutually agreed, for the account of the Lenders participating in such increase. The Borrower shall prepay any Loans outstanding on the Revolving Credit Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

2.15. Cash Collateral and Other Credit Support.

(a) Certain Credit Support Events; Grant of Security Interest. If (i) any L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all such L/C Obligations. In addition, (y) Section 8.02(c) sets forth certain additional requirements to deliver Cash Collateral hereunder and (z) Section 2.03(a)(iii)(F) contemplates the delivery of Cash Collateral or other credit support in certain circumstances to support the issuance of Letters of Credit. The Borrower, and to the extent provided by any Lender, such Lender, hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Lenders**,** a security interest in all such cash, deposit accounts and all balances therein, and all other property provided as collateral pursuant to Section 2.03 and Section 8.02(c), and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America**.** For the avoidance of doubt, to the extent that any other Person may have a claim, by virtue of an intercreditor arrangement, tag-along right or any other term in any other document or instrument, to share in any Cash Collateral or other credit support provided pursuant to any of the aforementioned sections of this Agreement, the L/C Issuers or Administrative Agent, as applicable, may take such provisions into account in determining whether Cash Collateral or other credit support is satisfactory.

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, (i) Cash Collateral or other credit support (and proceeds thereof) provided by any Defaulting Lender pursuant to Section 2.03 to support the obligations of such Lender in respect of Letters of Credit shall be held and applied, first, to fund the L/C Advances of such Lender or such Lender's Applicable Percentage of Base Rate Loans used to repay L/C Borrowings or L/C Advances with respect to which such collateral or other credit support was provided, as applicable, and, second, to fund any interest accrued for the benefit of the applicable L/C Issuers pursuant to Section 2.03(c)(vi) allocable to such Lender, and (ii) Cash Collateral and other credit support (and proceeds thereof) otherwise provided by or on behalf of the Borrower under Section 2.03 or Section 8.02(c) to support L/C Obligations shall be held and applied, first, to the satisfaction of the specific L/C Obligations or obligations to fund participations therein of the applicable Defaulting Lender for which the Cash Collateral or other credit support was so provided and, second, if remedies under Section 8.02 shall have been exercised, to the application of such collateral or other credit support (or proceeds thereof) to any other Obligations in accordance with Section 8.03.

(c) Release. Cash Collateral and other credit support provided under Section 2.03 in connection with any Lender's status as a Defaulting Lender shall be released (except as any L/C Issuer and the Person providing such collateral or other credit support may agree otherwise (as applicable)) promptly following the earlier to occur of (A) the termination of such Lender's status as a Defaulting Lender or (B) following the applicable L/C Issuer's good faith determination that there remain outstanding no L/C Obligations as to which it has actual or potential Fronting Exposure in relation to such Defaulting Lender as to which it desires to maintain Cash Collateral or other credit support; subject, however, to the additional condition that, as to any such collateral or other credit support provided by or on behalf of the Borrower, no Default or Event of Default shall then have occurred and be continuing.

(d) Release of Lenders' Obligations. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that (i) an L/C Issuer shall have issued, in accordance with Section 2.03(a)(ii)(B), a Letter of Credit with an expiry date occurring after the Letter of Credit Expiration Date and (ii) the Borrower shall have Cash Collateralized the Outstanding Amount of all such L/C Obligations in respect of such Letter of Credit pursuant to Section 2.15(a) above, then, upon the provision of such Cash Collateral and without any further action, each Lender hereunder shall be automatically released from any further obligation to such L/C Issuer in respect of such Letter of Credit, including, without limitation, any obligation of any such Lender to reimburse such L/C Issuer for amounts drawn under such Letter of Credit or to purchase any risk participation therein; provided, however, that all such obligations of each Lender hereunder to such L/C Issuer in respect of such Letter of Credit shall be revived if any Cash Collateral provided by the Borrower in respect of such Letter of Credit is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such L/C Issuer) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such Cash Collateral had not been provided. The obligations of the Lenders under this paragraph shall survive termination of this Agreement.

2.16. Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Loan Payments. Any payment or prepayment (i) of any portion of the principal amount of Loans of such Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) shall be applied, first, to the Loans of other Lenders as if such Defaulting Lender had no Loans outstanding, until such time as the Outstanding Amount of Loans of each Lender shall equal its pro rata share thereof based on its Applicable Percentage (without giving effect to subsection 2.16(d)), then ratably to the Lenders in accordance with their Applicable Percentages of Loans being repaid or prepaid; second, to the then outstanding amounts (including interest thereon) owed under the terms hereof by such Defaulting Lender to the Administrative Agent or (to the extent the Administrative Agent has received notice thereof) to any other Lender, ratably to the Persons entitled thereto, and third, to the posting of Cash Collateral in respect of its Applicable Percentage (without giving effect to the last sentence in the definition thereof) of L/C Obligations, ratably to each L/C Issuer in accordance with its respective applicable Fronting Exposures, and (ii) any other amounts thereafter received by the Administrative Agent for the account of such Defaulting Lender (including amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.08) to have been paid to such Defaulting Lender and applied on behalf of such Defaulting Lender, first, to the liabilities above referred to in item second of clause (i) above, and second, to the matters above referred to in item third of clause (i) above. Any of such amounts as are reallocated pursuant to this subsection 2.16(b)) that are payable or paid (including pursuant to Section 10.08) to such Defaulting Lender shall be deemed paid to such Defaulting Lender and applied by the Administrative Agent on behalf of such Defaulting Lender, and each Lender hereby irrevocably consents thereto.

(c) Certain Fees. Such Defaulting Lender (i) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) its right to Letter of Credit Fees shall be limited as provided in Section 2.03(h).

(d) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender as to which any L/C Issuer has not received cash collateral or other credit support acceptable to it in respect of the related participation and funding obligations of such Defaulting Lender, then upon the request of the applicable L/C Issuer to the Administrative Agent, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of such Defaulting Lender; provided, that, in all cases, the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, between (1) the Commitment of such non-Defaulting Lender and (2) the aggregate Outstanding Amount of the Loans of such Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all other L/C Obligations (prior to giving effect to such reallocation).

A Lender that has become a Defaulting Lender because of an event referenced in the definition of Defaulting Lender may cure such status and shall no longer constitute a Defaulting Lender as a result of such event when (i) such Defaulting Lender shall have fully funded or paid, as applicable, all Loans, participations in respect of Letters of Credit or other amounts required to be funded or paid by it hereunder as to which it is delinquent (together, in each case, with such interest thereon as shall be required to any Person as otherwise provided in this Agreement), (ii) the Administrative Agent and the Borrower shall have received a certification by such Defaulting Lender of its ability and intent to comply with the provisions of this Agreement going forward, and (iii) each of (x) the Administrative Agent, (y) each L/C Issuer and any other Lender as to which a delinquent obligation was owed, and (z) in the case of the failure to fund any Loan, the Borrower, shall have determined (and notified the Administrative Agent) that they are satisfied, in their sole discretion, that such Defaulting Lender intends to continue to perform its obligations as a Lender hereunder and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. No reference in this subsection to an event being "cured" shall by itself preclude any claim by any Person against any Lender that becomes a Defaulting Lender for such direct damages as may otherwise be available to such Person arising from any failure to fund or pay any amount when due hereunder or from any other event that gave rise to such Lender's status as a Defaulting Lender.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01. Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrower shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, any Lender or any L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or such L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or any L/C Issuer determines, in its reasonable discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, such Lender or such L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Administrative Agent, such Lender or such L/C Issuer, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or such L/C Issuer if the Administrative Agent, such Lender or such L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans, the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case, until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate)**,** either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent, upon receipt of the copy of the demand made by the Borrower to such Lender, shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof**.** Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03. Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case, until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04. Increased Costs. (a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Lender or any L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender or such L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or such L/C Issuer); or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

3.05. Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss (other than loss of anticipated profits, except as otherwise provided in clause (c) below), cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13; including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06. Mitigation Obligations; Replacement of Lenders. (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

3.07. Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01. Conditions of Initial Credit Extension. The obligation of each L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent except to the extent such conditions are subject to the Post Closing Agreement:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) executed counterparts of each other Loan Document, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower, together with:

(A) certificates representing the Securities Collateral referred to in the Securities Pledge Agreement accompanied by undated transfer powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank,

(B) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement,

(C) completed requests for information, dated on or before the date of the initial Credit Extension**,** listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements,

(D) evidence of the completion of, or arrangements reasonably satisfactory to the Administrative Agent for, all other actions, recordings and filings of or with respect to the Security Agreement that the Administrative Agent may reasonably deem necessary or desirable in order to perfect the Liens created thereby;

(E) Deposit Account Control Agreements with respect to each Control Account that is a deposit account, duly executed by each of the parties thereto;

(F) Securities Account Control Agreements with respect to each Control Account that is a securities account, duly executed by each of the parties thereto;

(G) landlord's waiver and consent agreements with respect to the chief executive office and each manufacturing facility of the Borrower, duly executed by each lessor of such real property;

(H) evidence that all other actions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement have been taken (including receipt of duly executed payoff letters, UCC-3 termination statements, and bailees' waiver and consent agreements);

(iv) executed counterparts of the Mortgage, acknowledged and delivered in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may reasonably deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor of the Administrative Agent for the benefit of the Secured Parties together with (x) evidence that all filing, documentary, stamp, intangible and recording taxes and fees have been paid and (y) each of the following documents (collectively, the "Related Mortgage Documents"):

(A) a mortgagee title policy (or binder therefor) covering the Administrative Agent's interest under the Mortgage, in a form and amount and by an insurer reasonably acceptable to the Administrative Agent, which must be fully paid on such effective date;

(B) such assignments of leases, rents, estoppel letters, attornment agreements, consents, waivers and releases as the Administrative Agent may require with respect to other Persons having an interest in the Real Estate; and

(C) a Phase I (and to the extent appropriate, Phase II) environmental assessment report, prepared by an environmental consulting firm reasonably satisfactory to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the Administrative Agent may reasonably require, which shall all be in form and substance reasonably satisfactory to the Administrative Agent.

(v) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(vi) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Borrower and each other Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Change;

(vii) a favorable opinion of Ropes & Gray LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, covering such matters relating to the Loan Documents and the transactions contemplated thereby as the Administrative Agent and the Lenders shall reasonably request;

(viii) a favorable opinion of Hinckley, Allen & Snyder LLP, Rhode Island counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, covering such matters relating to the Mortgage and the transactions contemplated thereby as the Administrative Agent and the Lenders shall reasonably request;

(ix) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(x) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Change;

(xi) a business plan and forecast of the Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower, of consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries for the fiscal years of the Borrower ending on December 31, 2010 through December 31, 2012;

(xii) certificate of the Borrower attesting to the Solvency of each Loan Party before and after giving effect to the transaction contemplated by the Loan Documents, from its chief financial officer;

(xiii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(xiv) a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying and attaching calculations demonstrating that after giving effect to the transactions contemplated hereby, on a pro forma basis, the Borrower shall be in compliance with each of the financial covenants set forth in Section 7.11; and

(xv) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuers or the Required Lenders reasonably may require.

(b) The Administrative Agent shall have received (i) the results of all asset appraisals, commercial finance audits, field audits and such other reports, audits and other information or certifications as the Administrative Agent may reasonably request with respect to the Collateral and (ii) copies of all so called "Warning Letters", or similar notifications, that have been received by the Borrower or any of its Subsidiaries from the FDA (or analogous foreign, state or local Governmental Authority).

(c) There shall have been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Change.

(d) (i) All fees required to be paid to the Administrative Agent on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(e) Unless waived by the Administrative Agent, the Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02. Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the applicable L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of any Committed Loan Notice for any proposed Borrowing (or series of related Borrowings) in an amount equal to $25,000,000 or more, the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower immediately prior to the making of such Borrowing, in form and substance reasonably satisfactory to the Administrative Agent, certifying and attaching calculations demonstrating that after giving effect to the use of proceeds of such Borrowing, on a pro forma basis, the Borrower shall be in compliance with each of the financial covenants set forth in Section 7.11.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01. Existence, Qualification and Power. Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Change.

5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.03. Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof, subject only to Permitted Liens) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

5.04. Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to bankruptcy, insolvency, moratorium and other laws applicable to creditors rights generally and general principles of equity.

5.05. Financial Statements; No Material Adverse Change. (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated September 30, 2009, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Except as reflected in such financial statements, Schedule 5.05 sets forth all material indebtedness and other liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Change.

(d) The consolidated forecasted balance sheet, statements of income and cash flows of the Borrower and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.01(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were reasonably believed to be fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's best estimate of its future financial condition and performance.

5.06. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower after due and diligent investigation, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transaction, or (b) except as specifically disclosed in Schedule 5.06 (the "Disclosed Litigation")**,** either individually or in the aggregate could reasonably be expected to have a Material Adverse Change, and there has been no material adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described in Schedule 5.06.

5.07. No Default. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Change. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08. Ownership of Property; Liens; Investments. (a) Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

(b) Schedule 5.08(b) sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries as of the date hereof, showing the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 5.08(b), and Permitted Liens.

(c) Schedule 5.08(c) sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries as of the date hereof, showing the street address, county or other relevant jurisdiction, state, record owner and book and fair value thereof. Each Loan Party and each of its Subsidiaries has good and marketable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Liens created or permitted by the Loan Documents.

(d) (i) Schedule 5.08(d)(i) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Domestic Subsidiary of a Loan Party is the lessee as of the date hereof, showing the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms.

(ii) Schedule 5.08(d)(ii) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Domestic Subsidiary of a Loan Party is the lessor as of the date hereof, showing the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms.

(e) Schedule 5.08(e) sets forth a complete and accurate list of all Investments held by any Loan Party or any Domestic Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

5.09. Environmental Compliance. (a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

(b) To the Borrower's knowledge, except as set forth on Schedule 5.09: none of the properties currently or formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries.

(c) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

5.10. Insurance. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

5.11. Taxes. The Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Change. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

5.12. ERISA Compliance. (a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS covering all tax law changes prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), and has either made timely application to the IRS for a favorable determination letter covering tax law changes effected by EGTRRA or remains within the applicable EGTRRA remedial amendment period under Section 401(b) of the Code and IRS Revenue Procedure 2007-44, and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrower, each of its Subsidiaries and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code or Section 302 of ERISA, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 or 431 of the Code or Section 302 or 304 of ERISA has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in a Material Adverse Change. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Change.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower, any of its Subsidiaries nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower, any of its Subsidiaries nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(d) With respect to each scheme or arrangement mandated by a government other than the United States (a "Foreign Government Scheme or Arrangement") and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a "Foreign Plan"):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

5.13. Subsidiaries; Equity Interests; Loan Parties. No Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13 (as such Schedule may be updated or supplemented from time to time pursuant to Section 6.02(i)), and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents. No Loan Party has any equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13 (as such Schedule may be updated or supplemented from time to time pursuant to Section 6.02(i)). All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable. Set forth on Part (d) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any Foreign Subsidiary that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. The copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a)(v) is a true and correct copy of each such document, each of which is valid and in full force and effect.

5.14. Margin Regulations; Investment Company Act. (a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15. Disclosure. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16. Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Change.

5.17. Intellectual Property; Licenses, Etc. Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, and Schedule 5.17(a) (as such Schedule may be updated or supplemented from time to time pursuant to Section 6.02(i)) sets forth a complete and accurate list of all such registered IP Rights owned or used by each Loan Party and each of its Subsidiaries. Except as specifically disclosed in Schedule 5.17(b), to the best knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of its Subsidiaries infringes upon any rights held by any other Person, except in each case, to the extent that such infringement could not reasonably be expected to result in a Material Adverse Change. Except as specifically disclosed in Schedule 5.17(b), no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Change.

5.18. Solvency. Each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

5.19. Casualty, Etc. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Change.

5.20. Labor Matters. There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

5.21. Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject only to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

5.22. Warning Letters. Neither the Borrower nor any of its Subsidiaries has received any so called "Warning Letters", or similar notifications, from the FDA (or analogous foreign, state or local Governmental Authority) for which the Borrower or such Subsidiary has not provided a response to or which has not otherwise been satisfied.

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01. Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 95 days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 50 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event within 50 days after the end of each fiscal year of the Borrower, an annual business plan and budget of the Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations of the Borrower and its Subsidiaries on a quarterly basis for the immediately following fiscal year.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02. Certificates; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants certifying such financial statements and, upon becoming aware of the existence of any Default of a financial nature during the review of such financial statements, stating the nature and status of such Default;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if necessary for the determination of compliance with Section 7.11, a statement of reconciliation conforming such financial statements to GAAP;

(c) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(g) not later than five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may reasonably request;

(h) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Change;

(i) as soon as available, but in any event within 45 days after the end of each fiscal year of the Borrower, and at such other times as the Borrower may reasonably deem necessary (i) a report supplementing Schedules 5.08(c), 5.08(d)(i) and 5.08(d)(ii), including an identification of all owned and leased real property disposed of by any Loan Party or any Domestic Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of property, lessor, lessee, expiration date and annual rental cost thereof) of all real property acquired or leased during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; (ii) a report supplementing Schedule 5.17(a), setting forth (A) a list of registration numbers for all domestic, and material foreign, patents, trademarks, service marks, trade names and copyrights awarded to any Loan Party or any Subsidiary thereof during such fiscal year and (B) a list of all domestic, and material foreign, patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by any Loan Party or any Subsidiary thereof during such fiscal year and the status of each such application; and (iii) a report supplementing Schedules 5.08(e) and 5.13 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent;

(j) **[**Intentionally Omitted**]**;

(k) promptly after the same are available, copies of any contract, commitment to enter into any contract, or arrangement that, upon the consummation thereof, will result in any Person, or two or more Persons acting in concert, having the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower, or control over the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 35% or more of the combined voting power of such securities, and

(l) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request, including copies of manufacturing safety and efficacy data filed with the FDA.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, the Borrower shall be under no Obligation to mark any Borrower Materials "PUBLIC".

6.03. Notices. Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Change, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof, including any determination by the Borrower referred to in Section 2.10(b);

(e) of any intent by the Borrower or any of its Subsidiaries to initiate a voluntary product recall affecting the products manufactured or distributed by the Borrower or any Subsidiary; and

(f) the receipt by the Borrower or any of its Subsidiaries of (i) any so called "Warning Letter", or similar notification, or (ii) any notification of a mandated or requested recall affecting the products manufactured or distributed by the Borrower or such Subsidiary, in each case, from the FDA (or analogous foreign, state or local Governmental Authority).

Each notice pursuant to Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04. Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05. Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Change; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation or non-renewal of which could reasonably be expected to have a Material Adverse Change.

6.06. Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Change; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07. Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance. The Borrower shall cause original policies or certificates thereof reasonably satisfactory to the Administrative Agent evidencing such insurance to be delivered to the Administrative Agent at least 30 days prior to the expiration of the existing or preceding policies.

6.08. Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Change.

6.09. Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Subsidiary, as the case may be.

6.10. Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender with the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that (a) except during the occurrence and continuance of an Event of Default, the Borrower shall only be required to reimburse the Administrative Agent for the charges, costs and expenses of the Administrative in connection with two such field examinations per fiscal year and (b) after the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender with the Administrative Agent (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice. It is anticipated that, so long as the Borrower has not requested any Credit Extension pursuant to this Agreement, only one such field examination per fiscal year will be conducted. From and after such time the Borrower requests any Credit Extension pursuant to this Agreement, it is anticipated that two such field examination per fiscal year will be conducted.

6.11. Use of Proceeds. Use the proceeds of the Credit Extensions for working capital and general corporate purposes not in contravention of any Law or of any Loan Document.

6.12. Covenant to Guarantee Obligations and Give Security. (a) Upon the formation or acquisition of any new direct or indirect Subsidiary (other than any Foreign Subsidiary or a Subsidiary that is held directly or indirectly by a Foreign Subsidiary) by any Loan Party, then the Borrower shall, at the Borrower's expense:

(i) within 10 days after such formation or acquisition, cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance reasonably satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within 10 days after such formation or acquisition, furnish to the Administrative Agent a description of the real and personal properties of such Subsidiary, in detail reasonably satisfactory to the Administrative Agent,

(iii) within 15 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent such security agreements and other security and pledge agreements, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all instruments of the type specified in Section 4.01(a)(iii)), securing payment of all the Obligations of such Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all personal properties,

(iv) within 30 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the security agreements, intellectual property security agreements and other security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms, and

(v) within 60 days after such formation or acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request,

(b) Upon the acquisition of any property by any Loan Party, if such property, in the judgment of the Administrative Agent, shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties, then the Borrower shall, at the Borrower's expense:

(i) within 10 days after such acquisition, furnish to the Administrative Agent a description of the property so acquired in detail reasonably satisfactory to the Administrative Agent,

(ii) within 15 days after such acquisition, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent such security agreements and other security and pledge agreements, as specified by and in form and substance reasonably satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties,

(iii) within 30 days after such acquisition, cause the applicable Loan Party to take whatever action (including the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties, and

(iv) within 60 days after such acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above and as to such other matters as the Administrative Agent may reasonably request,

(c) Upon the earlier to occur of (x) the Administrative Agent's reasonable request therefor and (y) the occurrence of any Event of Default, the Borrower shall, at the Borrower's expense:

(i) within 10 days after such request or the occurrence of such Event of Default, furnish to the Administrative Agent a description of the real and personal properties of the Loan Parties and their respective Subsidiaries in detail satisfactory to the Administrative Agent,

(ii) within 15 days after such request or the occurrence of such Event of Default, duly execute and deliver, and cause each Loan Party and each of their Subsidiaries (other than any Foreign Subsidiary or a Subsidiary that is held directly or indirectly by a Foreign Subsidiary) (if it has not already done so) to duly execute and deliver, to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, such security agreements, other security and pledge agreements, and, with respect to any domestic manufacturing facility of such Loan Party or Subsidiary, leasehold mortgages, and leasehold deeds of trust, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all instruments of the type specified in Section 4.01(a)(iii)), securing payment of all the Obligations of the applicable Loan Party and each such Subsidiary under the Loan Documents and constituting Liens on all such properties; provided that, in respect of any lease with any third party that prohibits the entering into of any leasehold mortgage by such Loan Party or such Subsidiary without the landlord's consent and which consent has not been obtained by such Loan Party or such Subsidiary after using its reasonable best efforts, such Loan Party or Such Subsidiary, as applicable shall not be obligated to enter into a leasehold mortgage in favor of the Administrative Agent as provided herein,

(iii) within 30 days after such request or the occurrence of such Event of Default, take, and cause each Loan Party and each of their Subsidiaries (other than any Foreign Subsidiary or a Subsidiary that is held directly or indirectly by a Foreign Subsidiary) to take, whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, the security agreements and other security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(iv) within 60 days after such request or the occurrence of such Event of Default, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above, and as to such other matters as the Administrative Agent may reasonably request, and

(v) as promptly as practicable after such request or the occurrence of such Event of Default, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to each parcel of real property owned or held by the Borrower and its Subsidiaries, title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(d) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may reasonably deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, such security agreements, other security and pledge agreements, and, with respect to any domestic manufacturing facility, leasehold mortgages, and leasehold deeds of trust.

6.13. Compliance with Environmental Laws. Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.14. Preparation of Environmental Reports. At the reasonable request of the Required Lenders from time to time, provide to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental site assessment report for any of its properties described in such request, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance, removal or remedial action in connection with any Hazardous Materials on such properties; without limiting the generality of the foregoing, if the Administrative Agent determines at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and the Borrower hereby grants and agrees to cause any Subsidiary that owns any property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, subject to the rights of tenants, to enter onto their respective properties to undertake such an assessment.

6.15. Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

6.16. Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations in respect of all leases of real property to which the Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Change.

6.17. Lien Searches. Promptly following receipt of the acknowledgment copy of any financing statements filed under the Uniform Commercial Code in any jurisdiction by or on behalf of the Secured Parties, deliver to the Administrative Agent completed requests for information listing such financing statement and all other effective financing statements filed in such jurisdiction that name any Loan Party as debtor, together with copies of such other financing statements.

6.18. Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon the reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so.

6.19. Cash Management.

(a) Enter into, and cause each of the other Loan Parties to enter into, Account Control Agreements with respect to each Control Account.

(b) From and after the occurrence and during the continuance of an Event of Default and the receipt of a notice (an "Activation Notice") from the Administrative Agent, (i) each Deposit Account Control Agreement shall require wire transfer, at the request and option of the Administrative Agent, no less frequently than once per Business Day of all available cash balances and cash receipts of each Control Account to an account maintained with the Administrative Agent (the "Collection Account"), and (ii) the Borrower shall, at the request and option of the Administrative Agent, enter into a lockbox arrangement with the Administrative Agent (reasonably satisfactory to the Administrative Agent) and notify each account debtor and other persons obligated on any Receivable that payment thereof is to be made directly to a lockbox under the sole control of the Administrative Agent or any other financial institution designated by the Administrative Agent as the Administrative Agent's agent therefor. All amounts received by the Administrative Agent pursuant to this Section 6.19(b) shall be applied to prepay the Obligations in accordance with Section 8.03. The Borrower shall not, and shall not permit any of its Subsidiaries to, cause proceeds of any Control Account or any Receivable, as the case may be, to be otherwise redirected. The Administrative Agent agrees not to deliver an Activation Notice or similar notice to the depositary bank under any Account Control Agreement unless an Event of Default has occurred and is continuing.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor (other than precautionary lease filings covering only the property subject to any such lease), or assign any accounts or other right to receive income, other than the following (collectively, "Permitted Liens"):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 5.08(b) and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(e), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(e);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's, lessor's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Sections 7.02(g); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed $20,000,000.

7.02. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(b) Indebtedness of the Borrower or a Subsidiary of the Borrower owed to any Loan Party, which Indebtedness shall (i) be evidenced by a promissory note, (ii) constitute "Pledged Debt" under the Security Agreement, (ii) be on terms (including subordination terms) reasonably acceptable to the Administrative Agent and (iii) to the extent such Indebtedness is permitted under the provisions of Section 7.03;

(c) Indebtedness of Subsidiaries of the Borrower that are not Loan Parties (other than Alexion Manufacturing) owed to other Subsidiaries that are not Loan Parties, to the extent such Indebtedness is permitted under the provisions of Section 7.03;

(d) unsecured Indebtedness of the Borrower; provided that (i) immediately before and immediately after giving pro forma effect to any such Indebtedness, no Default shall have occurred and be continuing, (ii) such Indebtedness shall be on terms (including subordination terms) reasonably satisfactory to the Administrative Agent, and (iii) with respect to the incurrence by the Borrower of any unsecured Indebtedness in an aggregate principal amount of $20,000,000 or more, (x) the Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the incurrence of such Indebtedness (including copies of all loan documents related to such Indebtedness in "draft" form not less than five (5) Business Days prior to the incurrence thereof and final copies of all loan documents related to such Indebtedness upon the closing of such Indebtedness) and (y) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying and attaching calculations demonstrating that after the incurrence of such Indebtedness, on a pro forma basis, the Borrower shall be in pro forma compliance with each of the financial covenants set forth in Section 7.11;

(e) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and provided, still further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(f) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Loan Party;

(g) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed $25,000,000;

(h) Indebtedness of the Borrower owing to former officers and employees as deferred payment for the repurchase of shares of capital stock upon termination of their employment; provided, however, that (i) the aggregate principal amount of such Indebtedness shall not exceed $100,000 at any one time outstanding and (ii) such Indebtedness shall be on terms (including subordination terms) reasonably acceptable to the Administrative Agent; and

(i) other secured Indebtedness in an aggregate principal amount not to exceed $20,000,000 at any one time outstanding.

7.03. Investments. Make or hold any Investments, except:

(a) Investments held by the Borrower and its Subsidiaries in the form of Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed $1,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof and set forth on Schedule 7.03(c), (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments in the form of loans made by the Borrower in Alexion International Sarl, in an aggregate amount not to exceed $20,000,000 at any one time outstanding, and (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 5.08(e);

(g) Investments by the Borrower in Swap Contracts permitted under Section 7.02(a);

(h) Notes received by the Borrower from officers and employees as deferred payment for the issuance of capital stock of the Borrower; provided that such notes shall be pledged by the Borrower to the Administrative Agent and shall be duly endorsed in a manner reasonably satisfactory to the Administrative Agent; and

(i) other Investments (including acquisitions and in-licensing transactions) (i) made in cash (including all cash indemnities, earnouts and other contingent payment obligations, and all assumptions of Consolidated Funded Indebtedness, liabilities and other obligations in connection therewith) in an aggregate amount not to exceed $50,000,000 during the term of this Agreement or (ii) made solely with the issuance of common stock of the Borrower; provided that, in each case, (A) in the event that the Borrower or any Subsidiary of the Borrower shall acquire all or substantially all of the Equity Interests in, or all or substantially all of the property of, any Person that, upon the consummation thereof, will be wholly-owned directly by the Borrower or one or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation) (1) any such newly-created or acquired Subsidiary shall comply with the requirements of Section 6.12, and (2) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same lines of business as one or more of the principal businesses of the Borrower and its Subsidiaries in the ordinary course, (B) immediately before and immediately after giving pro forma effect to any such Investment, no Default shall have occurred and be continuing, and (C) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying and attaching calculations demonstrating that after the making of any such Investment, on a pro forma basis, the Borrower shall be in compliance with each of the financial covenants set forth in Section 7.11, provided, that the Loan Parties shall not be required to comply with the requirements of this clause (C) in connection with Investments made after the Closing Date by the Loan Parties in Subsidiaries of the Loan Parties in an aggregate amount not to exceed $15,000,000.

7.04. Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party; and

(d) so long as no Default has occurred and is continuing or would result therefrom, each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving corporation, (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving corporation, and (iii) the case of any such merger to which any Subsidiary (other than a Loan Party) is a party, such Subsidiary is the surviving corporation.

7.05. Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to the Borrower or to a wholly-owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be the Borrower or a Guarantor;

(e) Dispositions permitted by Section 7.04;

(f) licenses of IP Rights in the ordinary course of business in the biotechnology industry and licenses of research programs at fair market value and on customary terms;

(g) Dispositions pursuant to Permitted Factoring Arrangements;

(h) Dispositions of defaulted Receivables for collection purposes for fair value; and

(i) Other dispositions in an aggregate amount not exceeding $5,000,000 in any fiscal year.

provided, however, that any Disposition pursuant to Section 7.05(a) through Section 7.05(f) shall be for fair market value.

7.06. Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that:

(a) each Subsidiary may make Restricted Payments to the Borrower, any Subsidiaries of the Borrower that are Guarantors and any other Person that owns a direct Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrower and each Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(d) the Borrower may issue and sell its common Equity Interests; and

(e) the Borrower may repurchase Equity Interests at a price not exceeding fair value upon termination of employment of its officers and employees, provided that the aggregate amount of payments for all such repurchases shall not exceed $5,000,000 in any fiscal year.

7.07. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08. Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate.

7.09. Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to or invest in the Borrower or any Guarantor, except for any agreement in effect (A) on the date hereof and set forth on Schedule 7.09 or (B) at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.02(g) or Section 7.02(h) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.10. Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case so as to result in a violation of Regulation U.

7.11. Financial Covenants. (a) Maximum Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio, as of the end of any fiscal quarter, to be greater than 2.50 to 1.00.

(b) Minimum Consolidated Quick Ratio. Permit the Consolidated Quick Ratio, as of the end of any fiscal quarter to be less than 1.25 to 1:00.

(c) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, as of the end of any fiscal quarter, to be less than the ratio set forth below opposite such period:

Fiscal Quarter Ending	Minimum Consolidated Fixed Charge Coverage Ratio
December 31, 2009	3.50 to 1.00
March 31, 2010	3.50 to 1.00
June 30, 2010	3.50 to 1.00
September 30, 2010	3.50 to 1.00
December 31, 2010	3.50 to 1.00
March 31, 2011 and each fiscal quarter thereafter	4.00 to 1.00

7.12. Capital Expenditures.

(a) Make any ARIMF Capital Expenditure, except for ARIMF Capital Expenditures not exceeding, in the aggregate for the Borrower and it Subsidiaries during each fiscal year set forth below, the amount set forth opposite such fiscal year:

Fiscal Year	Amount
2009	$38,000,000
2010	$25,000,000
2011	$28,000,000
2012	$31,000,000

; provided, however, that so long as no Default has occurred and is continuing or would result from such expenditure, any portion of any amount set forth in this clause (a), if not expended in the fiscal year for which it is permitted above, may be carried over for expenditure in the next following fiscal year; and provided, further, if any such amount is so carried over, it will be deemed used in the applicable subsequent fiscal year before the amount set forth opposite such fiscal year above.

(b) Make any other Capital Expenditure not otherwise permitted under Section 7.12(a), except for Capital Expenditures for any purpose not exceeding, in the aggregate for the Borrower and it Subsidiaries during each fiscal year set forth below, the amount set forth opposite such fiscal year:

Fiscal Year	Amount
2009	$20,000,000
2010	$20,000,000
2011	$20,000,000
2012	$20,000,000

; provided, however, that so long as no Default has occurred and is continuing or would result from such expenditure, any portion of any amount set forth in this clause (b), if not expended in the fiscal year for which it is permitted above, may be carried over for expenditure in the next following fiscal year; and provided, further, if any such amount is so carried over, it will be deemed used in the applicable subsequent fiscal year before the amount set forth opposite such fiscal year above.

7.13. Amendments of Organization Documents. Amend any of its Organization Documents in a manner adverse in any material respect to the interests of the Lenders.

7.14. Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year, except with the consent of the Administrative Agent, which consent shall not be unreasonably withheld.

7.15. Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement, (b) refinancings and refundings of Indebtedness in compliance with Section 7.02(e).

7.16. Amendment, Etc. of Permitted Factoring Arrangements. (a) Agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its material rights under any Permitted Factoring Arrangement if such amendment, restatement, supplement or other modification to, or waiver of material rights, would be adverse in any material respect to the interests of the Lenders, without obtaining the prior written consent of the Required Lenders to such amendment, restatement, supplement or other modification or waiver; (b) amend, modify or change in any manner that would be adverse in any material respect to the interests of the Lenders any term or condition of the Manufacturing Lease; or (c) amend, modify or change in any manner that would be adverse in any material respect to the interests of the Lenders any term or condition of any Indebtedness set forth in Schedule 7.02, except for any refinancing, refunding, renewal or extension thereof permitted by Section 7.02(e). The Borrower shall deliver to the Administrative Agent complete and correct copies of any material amendment, restatement, supplement or other modification to or waiver of the Permitted Factoring Arrangements permitted hereunder.

7.17. OFAC. (a) Become a Person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) directly or indirectly conduct any business or engage in any dealings or transactions that violate in any material respect Section 2 of such Executive Order, or be otherwise associated with any such Person in any manner that violates in any material respect Section 2, (c) directly or indirectly engage in any dealings or transactions that violate in any material respect the OFAC Country Sanctions Programs or otherwise involving operations, facilities or any Governmental Authority in countries in which such conduct would be a material Export Violation, (d) directly or indirectly engage in or conspire to engage in any dealings or transactions that evade or avoid, or has the purpose of evading or avoiding, or attempts to violate in any material respect any of the prohibitions set forth in Executive Order 13224 of September 23, 2001, or (e) otherwise become a Person on OFAC's list of Specially Designated Nationals and Blocked Persons. None of the Borrower or its Subsidiaries will use any portion of the proceeds of the Loans directly or indirectly in violation of the OFAC Country Sanctions Programs or otherwise to support any operations or facilities or any Governmental Authority in countries in which such conduct would be an Export Violation.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01. Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) pay within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) pay within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05(a), 6.10, 6.11, 6.12, 6.14, 6.19 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for a period of 30 days after any Responsible Officer knows or should have reasonably known of such failure; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 45 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least “A” by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 20 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower or any of its Subsidiaries under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower, any of its Subsidiaries or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject only to Permitted Liens) on the Collateral purported to be covered thereby; or

(m) Product Recall. Any mandatory product recall shall be required pursuant to any order or directive of any Governmental Authority affecting the products manufactured by the Borrower or any of its Subsidiaries and distributed to any healthcare facility or end-user (including any patient), if the aggregate sales price of the products so recalled shall, individually or together with all other similar recalls of such products during any twelve consecutive month period, equal or exceed $25,000,000. For the avoidance of doubt, a recall does not include product as to which the Borrower or any of its Subsidiaries retains title and that has not yet been delivered to any to any healthcare facility or end-user (including any patient).

8.02. Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03. Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16 be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the respective L/C Issuers and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and amounts owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to sections 2.03 and 2.15, ratably among the L/C Issuers in proportion to the respective amounts described in this clause Fifth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX.
ADMINISTRATIVE AGENT

9.01. Appointment and Authority. (a) Each of the Lenders and each of the L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (in its capacities as a Lender, potential Hedge Bank and potential Cash Management Bank) and each L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

9.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03. Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or an L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06. Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08. No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Joint Lead Arrangers nor the Lead Book Manager listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

9.09. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer or in any such proceeding.

9.10. Collateral and Guaranty Matters. The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(b) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11. Secured Cash Management Agreements and Secured Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, the Borrower Guaranty, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE X.
MISCELLANEOUS

10.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Rate that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate;

(e) change (i) Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(h) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuers under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders may be effected with the consent of all Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or the modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

10.02. Notices; Effectiveness; Electronic Communications. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or the L/C Issuers, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and each L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03. No Waiver; Cumulative Remedies. No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.04. Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by each L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit by such Person or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the relevant L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or any L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or any L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each party hereto agrees that it shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent and any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06. Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of each L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) without the consent of the Required Lenders and the Administrative Agent and cancellation of the Commitments and Obligations assigned with such consent, to the Borrower or any of the Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person. Any Commitments or Obligations assigned (with or without Required Lender consent) to the Borrower or any Subsidiary or Affiliate of the Borrower shall be deemed cancelled and no longer outstanding and no such assignee shall have any right whatsoever with respect to that portion of the Commitments of Obligations so assigned, including to (x) consent to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document, or otherwise to vote on any matter related to any Loan Document or require the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to any Loan Document, (y) attend any meeting with the Administrative Agent or any Lender or receive any information from the Agent or any Lender, or to the benefit of any advice provided by counsel to the Administrative Agents or the other Lenders or to challenge the attorney-client privilege of the communications between the Administrative Agent, such other Lenders and such counsel, or (z) make or bring any claim, in the capacity of a Lender, against the Administrative Agent with respect to the duties of the Administrative Agent to such assignee.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Lender assigns all of its Commitment and Loans pursuant to Section 10.06(b), such Lender, may, upon 30 days' notice to the Borrower and the other Lenders, resign as an L/C Issuer. In the event of any such resignation as an L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of any such Lender as an L/C Issuer. If a Lender resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of such retiring L/C Issuer with respect to such Letters of Credit.

10.07. Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (f) with the consent of the Borrower or (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower, its Subsidiaries or its attorneys or accountants.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person in its capacity described in clause (a) of the preceding paragraph has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to the confidential information of the Administrative Agent, the applicable Lender or the applicable L/C Issuer, as the case may be.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

10.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or any L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13. Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender fails to consent to an amendment or modification to any Loan Document that requires the consent of all Lenders and is approved by the Required Lenders, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.14. Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF MASSACHUSETTS (WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF THE DOMESTIC SUBSTANTIVE LAWS OF ANY OTHER STATE).

(b) THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS SITTING IN SUFFOLK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF MASSACHUSETTS, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH MASSACHUSETTS COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Joint Lead Arrangers and the Lead Book Manager are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Joint Lead Arrangers and the Lead Book Manager, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent, each Joint Lead Arranger and the Lead Book Manager is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Joint Lead Arranger, nor the Lead Book Manager has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Joint Lead Arrangers, the Lead Book Manager and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any Joint Lead Arranger nor the Lead Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Joint Lead Arrangers or the Lead Book Manager with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17. USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

10.18. Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

10.19. Amendment and Restatement of Existing Credit Agreement. On the Closing Date, this Agreement shall amend, restate and supersede the Existing Credit Agreement in its entirety, except as provided in this **Section 10.19**. On the Closing Date, the rights and obligations of the parties evidenced by the Existing Credit Agreement shall be evidenced by this Agreement and the other Loan Documents and the grant of security interest in the Collateral by the relevant Loan Parties under the Existing Credit Agreement and the other "Loan Documents" (as defined in the Existing Credit Agreement) shall continue under but as amended by this Agreement and the other Loan Documents, and shall not in any event be terminated, extinguished or annulled but shall hereafter be governed by this Agreement and the other Loan Documents. All references to the Existing Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement and the provisions hereof. Without limiting the generality of the foregoing and to the extent necessary, the existing lenders, the Lenders and the Administrative Agent reserve all of their rights under the Existing Credit Agreement and the other "Loan Documents" (as defined in the Existing Credit Agreement) which by their express terms survive the termination of the Existing Credit Agreement and each of the Guarantors hereby obligates itself again in respect of all such present and future "Obligations" (as defined in the Existing Credit Agreement). Nothing contained herein shall be construed as a novation of the "Obligations" outstanding under and as defined in the Existing Credit Agreement, which shall remain in full force and effect, except as modified hereby.

ARTICLE XI.
GUARANTY

11.01. Guaranty of Guarantor Primary Obligations. The Borrower hereby absolutely and unconditionally, and jointly and severally, guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of the Guarantor Primary Obligations, including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Administrative Agent and any other Secured Party in connection with the collection or enforcement thereof, and whether recovery upon such indebtedness and liabilities may be or hereafter become unenforceable or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any Guarantor or the Borrower under any Debtor Relief Law, and including interest that accrues after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws (collectively, the "Guaranteed Guarantor Obligations"). The Administrative Agent's and the other Secured Parties' books and records showing the amount of the Guaranteed Guarantor Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon the Borrower and conclusive for the purpose of establishing the amount of the Guaranteed Guarantor Obligations, absent demonstrable error. This Borrower Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Guarantor Obligations or any instrument or agreement evidencing any Guaranteed Guarantor Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Guarantor Obligations which might otherwise constitute a defense to the obligations of the Borrower under this Borrower Guaranty, and the Borrower hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing. Anything contained herein to the contrary notwithstanding, the obligations of the Borrower under this Borrower Guaranty at any time shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any similar federal or state law.

11.02. Rights of the Administrative Agent and the other Secured Parties. The Borrower consents and agrees that the Administrative Agent and the other Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness of this Borrower Guaranty : (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Guarantor Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Borrower Guaranty or any Guaranteed Guarantor Obligations; (c) apply such security to the Guaranteed Guarantor Obligations and direct the order or manner of sale thereof as the Administrative Agent and the other Secured Parties in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Guarantor Obligations. Without limiting the generality of the foregoing, the Borrower consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Borrower under this Borrower Guaranty or which, but for this provision, might operate as a discharge of the Borrower.

11.03. Certain Waivers. The Borrower waives (a) any defense arising by reason of any disability or other defense of any Loan Party, or the cessation from any cause whatsoever (including any act or omission of the Administrative Agent or any other Secured Party) of the liability of any Loan Party; (b) any defense based on any claim that the Borrower's obligations under this Borrower Guaranty exceed or are more burdensome than those of the Guarantors; (c) the benefit of any statute of limitations affecting the Borrower's liability under this Borrower Guaranty; (d) any right to require the Administrative Agent or any other Secured Party to proceed against any other Loan Party, proceed against or exhaust any security for the Guarantor Primary Obligations, or pursue any other remedy in the Administrative Agent's or any other Secured Parties' power whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by the Administrative Agent or any other Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. The Borrower expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Guarantor Obligations, and all notices of acceptance of this Borrower Guaranty or of the existence, creation or incurrence of new or additional Guaranteed Guarantor Obligations.

11.04. Obligations Independent. The obligations of the Borrower under this Borrower Guaranty are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Guarantor Obligations and the obligations of any other guarantor, and a separate action may be brought against the Borrower to enforce this Borrower Guaranty whether or not any Loan Party or any other person or entity is joined as a party.

11.05. Subrogation. The Borrower shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Borrower Guaranty until all of the Guaranteed Guarantor Obligations and any amounts payable under this Borrower Guaranty have been indefeasibly paid and performed in full and any commitments of the Lenders or facilities provided by the Lenders with respect to the Guaranteed Guarantor Obligations are terminated. If any amounts are paid to the Borrower in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Administrative Agent for the benefit of the Secured Parties to reduce the amount of the Guaranteed Guarantor Obligations, whether matured or unmatured. The obligations of the Borrower under this paragraph shall survive termination of this Borrower Guaranty.

11.06. Termination; Reinstatement. This Borrower Guaranty is a continuing and irrevocable guaranty of all Guaranteed Guarantor Obligations now or hereafter existing and shall remain in full force and effect until all Obligations (other than contingent indemnification obligations for which no claim has been asserted) are indefeasibly paid in full in cash and the Commitments of the Lenders are terminated. Notwithstanding the foregoing, this Borrower Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or the Administrative Agent or any other Secured Party exercises its right of setoff, in respect of the Guaranteed Guarantor Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or any other Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Administrative Agent is in possession of or has released this Borrower Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Borrower under this paragraph shall survive termination of this Borrower Guaranty.

11.07. Subordination. The Borrower hereby subordinates the payment of all obligations and indebtedness of the Guarantors owing to the Borrower, whether now existing or hereafter arising, including but not limited to any obligation of any Guarantor to the Borrower as subrogee of the Administrative Agent or any other Secured Party or resulting from the Borrower's performance under this Borrower Guaranty, to the indefeasible payment in full in cash of all Guaranteed Guarantor Obligations. If the Administrative Agent so requests at any time when an Event of Default shall have occurred and is continuing, any such obligation or indebtedness of the Guarantors to the Borrower shall be enforced and performance received by the Borrower as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Administrative Agent for the benefit of the Secured Parties on account of the Guaranteed Guarantor Obligations, but without reducing or affecting in any manner the liability of the Borrower under this Borrower Guaranty.

[Remainder of Page Left Intentionally Blank**]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ALEXION PHARMACEUTICALS, INC.

By: /s/ Vikas Sinha
Name: Vikas Sinha
Title: Senior Vice President and Chief Financial Officer

BANK OF AMERICA, N.A., As
Administrative Agent

By: /s/ George S. Carey
Name: George S. Carey
Title: Assistant Vice President

BANK OF AMERICA, N.A., as
a Lender and an L/C Issuer

By: /s/ Linda Alto
Name: Linda Alto
Title: Senior Vice President

JPMORGAN CHASE BANK, N.A., as
a Lender and an L/C Issuer

By: /s/ Peter M. Killea
Name: Peter M. Killea
Title: Vice President

[Exhibits and Schedules Intentionally Omitted]

Exhibit 10.37

[EXECUTION COPY]

AMENDED AND RESTATED SECURITY AGREEMENT

AMENDED AND RESTATED SECURITY AGREEMENT (this "Agreement"), dated as of January 22, 2010, among **ALEXION PHARMACEUTICALS, INC.**, a Delaware corporation (the "Company"), each other party as shall from time to time become a party hereto (each such other party and the Company being hereinafter referred to from time to time, individually, as a "Grantor" and, collectively, as the "Grantors"), and **BANK OF AMERICA, N.A.**, as administrative agent (hereinafter, in such capacity, the "Administrative Agent") for itself and the other lending institutions (hereinafter, collectively, the "Lenders") which are or may become parties to that certain Amended and Restated Credit Agreement, dated as of January 22, 2010 (as amended and in effect from time to time, the "Credit Agreement"), among the Company, the Lenders and the Administrative Agent.

WHEREAS, the Company, certain of the Lenders and the Administrative Agent are parties to the Credit Agreement, dated as of February 13, 2008 (as amended and in effect immediately prior to giving effect to the Credit Agreement, the "Existing Credit Agreement"), pursuant to which, the Lenders party thereto have, subject to the terms and conditions set forth therein, made loans and otherwise extended credit to the Company;

WHEREAS, pursuant to the Security Agreement, dated as of February 13, 2008 (as (a) supplemented and modified by that certain Guarantor Joinder Agreement, Affirmation and Amendment, dated as of September 11, 2009, among Alexion Manufacturing LLC, the Company, Alexion Delaware Holding LLC and the Administrative Agent, and (b) further amended and in effect immediately prior to giving effect to this Agreement, the "Existing Security Agreement"), among the Grantors and the Administrative Agent, each Grantor granted to the Administrative Agent, for the benefit of the "Secured Parties" (as defined in the Existing Credit Agreement), a security interest in and pledged and assigned to the Administrative Agent all of its "Collateral" (as defined in the Existing Security Agreement) to secure the payment and performance in full of all of the "Obligations" (as defined in the Existing Credit Agreement);

WHEREAS, the Company, the Lenders and the Administrative Agent are amending and restating, in its entirety, the Existing Credit Agreement pursuant to the terms and conditions set forth in the Credit Agreement;

WHEREAS, it is a condition precedent to the Lenders' making any loans or otherwise extending credit to and each L/C Issuer issuing, extending or renewing letters of credit for the benefit of the Company under the Credit Agreement that the Grantors execute and deliver to the Administrative Agent, for the benefit of the Secured Parties (as defined in the Credit Agreement), a security agreement in substantially the form hereof; and

WHEREAS, each Grantor wishes to (a) continue, confirm and ratify its grant of a security interest in favor of the Administrative Agent, for the benefit of the "Secured Parties" (as defined in the Existing Credit Agreement), made pursuant to the Existing Security Agreement and (b) grant a security interest in favor of the Administrative Agent, for the benefit of the Secured Parties, as herein provided.

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the Credit Agreement. The term "State", as used herein, means the Commonwealth of Massachusetts. All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9. The term "electronic document" applies in the event that the 2003 revisions to Article 7, with amendments to Article 9, of the Uniform Commercial Code, in substantially the form approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, are now or hereafter adopted and become effective in the State or in any other relevant jurisdiction.

2. Grant of Security Interest.

2.1. Grant; Collateral Description. Each Grantor hereby (a) ratifies, restates and confirms the security interest granted in favor of the Administrative Agent, for the benefit of the "Secured Parties" (as defined in the Existing Credit Agreement) pursuant to the Existing Security Agreement and (b) grants to the Administrative Agent, for the benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations, a security interest in and pledges and assigns to the Administrative Agent, for the benefit of the Secured Parties, the following properties, assets and rights of such Grantor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): all personal and fixture property of every kind and nature including all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents (including, if applicable, electronic documents), accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles). The Administrative Agent acknowledges that the attachment of its security interest in any commercial tort claim of any Grantor as original collateral is subject to such Grantor's compliance with §4.6.

2.2. Excluded Collateral. The grant of the security interest contained in §2.1 shall not extend to, and the term "Collateral" shall not include, (a) any trademarks, service marks, trade names, copyrights, patents, patent applications, patent rights, licenses and other intellectual property rights, (b) contracts (other than any contracts between Grantors or any Grantor and any Subsidiary of a Grantor) and governmental permits and licenses (and rights and property acquired thereunder) that by their terms or the terms of any applicable law effectively prohibit the creation of a Lien on such contracts, permits or licenses (or rights and property acquired thereunder), (c) more than sixty-six percent (66%) of the voting stock of any Foreign Subsidiary, and (d) any margin stock (within the meaning of Regulation U of the FRB) (collectively, "Excluded Collateral"). Notwithstanding the foregoing, the grant of the security interest contained in §2.1 shall extend to, and the term "Collateral" shall specifically include, any and all proceeds of such Excluded Collateral.

3. Authorization to File Financing Statements. Each Grantor hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets (other than items set forth in §2.2(a) above) of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State or such other jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Each Grantor agrees to furnish any such information to the Administrative Agent promptly upon the Administrative Agent's request. Each Grantor also ratifies its authorization for the Administrative Agent to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

4. Other Actions. Further to insure the attachment, perfection and first priority of, and the ability of the Administrative Agent to enforce, the Administrative Agent's security interest in the Collateral, each Grantor agrees, in each case at such Grantor's expense, to take the following actions with respect to the following Collateral and without limitation on such Grantor's other obligations contained in this Agreement:

4.1. Promissory Notes and Tangible Chattel Paper. If any Grantor shall, now or at any time hereafter, hold or acquire any promissory notes or tangible chattel paper (collectively, "Pledged Debt"), such Grantor shall forthwith endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify provided, however, so long as no Event of Default shall be continuing or would result therefrom, the Grantors shall not be required to take any of the foregoing actions to the extent Pledged Debt for all Grantors, for which the foregoing actions have not been taken, is less than $100,000 in the aggregate.

4.2. Control Accounts. For each deposit account that is a Control Account that any Grantor, now or at any time hereafter, opens or maintains, such Grantor shall, at the Administrative Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (a) cause the depositary bank to agree to comply without further consent of such Grantor, at any time with instructions from the Administrative Agent to such depositary bank directing the disposition of funds from time to time credited to such deposit account, or (b) arrange for the Administrative Agent to become the customer of the depositary bank with respect to such Control Account, with such Grantor being permitted, only with the consent of the Administrative Agent, to exercise rights to withdraw funds from such deposit account. The Administrative Agent agrees with each Grantor that the Administrative Agent shall not give any instructions or withhold any withdrawal rights from such Grantor, unless an Event of Default has occurred and is continuing, or, if effect were given to any withdrawal not otherwise permitted by the Loan Documents, would occur.

4.3. Investment Property. If any Grantor shall, now or at any time hereafter, hold or acquire Collateral evidenced by any certificated securities, such Grantor shall forthwith endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify. If any securities constituting Collateral now or hereafter acquired by any Grantor are uncertificated and are issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall immediately notify the Administrative Agent thereof and, at the Administrative Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (a) cause the issuer to agree to comply, without further consent of such Grantor or such nominee, at any time with instructions from the Administrative Agent as to such securities, or (b) arrange for the Administrative Agent to become the registered owner of the securities. If any securities constituting Collateral, whether certificated or uncertificated, or other investment property now or hereafter acquired by any Grantor are held by such Grantor or its nominee through a securities intermediary or commodity intermediary, such Grantor shall immediately notify the Administrative Agent thereof and, at the Administrative Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply, in each case without further consent of such Grantor or such nominee, at any time with entitlement orders or other instructions from the Administrative Agent to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Administrative Agent to such commodity intermediary, or (ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for the Administrative Agent to become the entitlement holder with respect to such investment property, with such Grantor being permitted, only with the consent of the Administrative Agent, to exercise rights to withdraw or otherwise deal with such investment property. The Administrative Agent agrees with each Grantor that the Administrative Agent shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Grantor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the Loan Documents, would occur.

4.4. Collateral in the Possession of a Bailee. If any Collateral of any Grantor with an aggregate fair market value in excess of $100,000 is, now or at any time hereafter, in the possession of a bailee, such Grantor shall promptly notify the Administrative Agent thereof and, at the Administrative Agent's request and option, shall promptly obtain an acknowledgement from the bailee, in form and substance reasonably satisfactory to the Administrative Agent, that the bailee holds such Collateral for the benefit of the Administrative Agent and such bailee's agreement to comply, without further consent of such Grantor, at any time with instructions of the Administrative Agent as to such Collateral. The Administrative Agent agrees with each Grantor that the Administrative Agent shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to the bailee.

4.5. Electronic Chattel Paper, Electronic Documents and Transferable Records. If any Grantor, now or at any time hereafter, holds or acquires an interest in any electronic chattel paper, any electronic document or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Administrative Agent thereof and, at the request and option of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent control, under §9-105 of the Uniform Commercial Code of the State or any other relevant jurisdiction, of such electronic chattel paper, control, under §7-106 of the Uniform Commercial Code of the State or any other relevant jurisdiction, of such electronic document or control, under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record; provided, however, so long as no Event of Default shall be continuing or would result therefrom, none of the Grantors shall be required to take any of the foregoing actions to the extent electronic chattel paper, electronic documents and transferable records for all Grantors, for which the foregoing actions have not been taken, have an original face value of less than $100,000 in the aggregate. The Administrative Agent agrees with each Grantor that the Administrative Agent will arrange, pursuant to procedures reasonably satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent's loss of control, for such Grantor to make alterations to the electronic chattel paper, electronic document or transferable record permitted under UCC §9-105, UCC §7-106, or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or §16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Company with respect to such electronic chattel paper, electronic document or transferable record. The provisions of this §4.5 relating to electronic documents and "control" under UCC §7-106 apply in the event that the 2003 revisions to Article 7, with amendments to Article 9, of the Uniform Commercial Code, in substantially the form approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, are now or hereafter adopted and become effective in the State or in any other relevant jurisdiction.

4.6. Letter-of-credit Rights. If any Grantor is, now or at any time hereafter, a beneficiary under a letter of credit, such Grantor shall promptly notify the Administrative Agent thereof and, at the request and option of the Administrative Agent, such Grantor shall, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, either (a) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Administrative Agent of the proceeds of the letter of credit or (b) arrange for the Administrative Agent to become the transferee beneficiary of the letter of credit, with the Administrative Agent agreeing, in each case, that the proceeds of the letter of credit are to be applied to the Obligations as provided in the Credit Agreement.

4.7. Commercial Tort Claims. If any Grantor shall, now or at any time hereafter, hold or acquire a commercial tort claim, such Grantor shall immediately notify the Administrative Agent in a writing signed by such Grantor of the particulars thereof and grant to the Administrative Agent, for the benefit of the Secured Parties, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Administrative Agent.

4.8. Other Actions as to any and all Collateral. Each Grantor further agrees, upon the request of the Administrative Agent and at the Administrative Agent's option, to take any and all other actions as the Administrative Agent may reasonably determine to be necessary for the attachment, perfection and first priority of, and the ability of the Administrative Agent to enforce, the Administrative Agent's security interest in any and all of the Collateral, including (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code of any relevant jurisdiction, to the extent, if any, that such Grantor's signature thereon is required therefor, (b) causing the Administrative Agent's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Administrative Agent to enforce, the Administrative Agent's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Administrative Agent to enforce, the Administrative Agent's security interest in such Collateral, (d) obtaining governmental and other third party waivers, consents and approvals, in form and substance reasonably satisfactory to the Administrative Agent, including any consent of any licensor, lessor or other person obligated on Collateral and any party or parties whose consent is required for the security interest of the Administrative Agent to attach under §2, (e) obtaining waivers from mortgagees and landlords in form and substance reasonably satisfactory to the Administrative Agent and (f) taking all actions under any earlier versions of the Uniform Commercial Code or under any other law, as reasonably determined by the Administrative Agent to be applicable in any relevant Uniform Commercial Code or other jurisdiction, including any foreign jurisdiction.

5. Relation to Other Security Documents. The provisions of this Agreement supplement the provisions of any real estate mortgage or deed of trust granted by any Grantor to the Administrative Agent, for the benefit of the Secured Parties, and which secures the payment or performance of any of the Obligations. Nothing contained in any such real estate mortgage or deed of trust shall derogate from any of the rights or remedies of the Administrative Agent or any of the other Secured Parties hereunder. In addition, to the provisions of this Agreement being so read and construed with any such real estate mortgage or deed of trust, the provisions of this Agreement shall be read and construed with the other Collateral Documents referred to below in the manner so indicated.

5.1. Securities Pledge Agreement. Concurrently herewith the Company and each other Grantor is executing and delivering to the Administrative Agent, for the benefit of the Secured Parties, that certain Securities Pledge Agreement pursuant to which each Grantor is pledging to the Administrative Agent all of the Equity Interests of its Subsidiaries (other than any CFC or a Subsidiary that is held directly or indirectly by a CFC). Such pledge shall be governed by the terms of such Securities Pledge Agreement and not by the terms of this Agreement.

6. Representations and Warranties Concerning Grantor's Legal Status. Each Grantor has previously delivered to the Administrative Agent a certificate, dated as of the date hereof, signed by such Grantor and entitled "Perfection Certificate" (each, a "Perfection Certificate"). Each Grantor represents and warrants to the Administrative Agent and the other Secured Parties as follows: (a) such Grantor's exact legal name is that indicated on its Perfection Certificate and on the signature page hereof, (b) each Grantor is an organization of the type, and is organized in the jurisdiction, set forth in its Perfection Certificate, (c) the Perfection Certificate of the applicable Grantor accurately sets forth such Grantor's organizational identification number or accurately states that such Grantor has none, (d) the Perfection Certificate of the applicable Grantor accurately sets forth such Grantor's place of business or, if more than one, its chief executive office as well as such Grantor's mailing address, if different, (e) all other information set forth on the Perfection Certificate of the applicable Grantor pertaining to such Grantor is accurate and complete, and (f) there has been no change in any of such information since the date on which the Perfection Certificate of the applicable Grantor was signed by such Grantor.

7. Covenants Concerning Grantor's Legal Status. Each Grantor covenants with the Administrative Agent and the other Secured Parties as follows: (a) without providing at least thirty (30) days prior written notice to the Administrative Agent, such Grantor will not change its name, its chief executive office, or its mailing address or organizational identification number if it has one, (b) if such Grantor does not have an organizational identification number and later obtains one, such Grantor will forthwith notify the Administrative Agent of such organizational identification number, and (c) such Grantor will not change its type of organization, jurisdiction of organization or other legal structure.

8. Representations and Warranties Concerning Collateral, Etc. Each Grantor further represents and warrants to the Administrative Agent and the other Secured Parties as follows: (a) such Grantor is the owner of or has other rights in or power to transfer the Collateral, free from any right or claim of any person or any adverse Lien, except for the security interest created by this Agreement and other Permitted Liens, (b) except to the extent that the Administrative Agent has received written notice to the contrary, none of the Collateral constitutes, or is the proceeds of, "farm products" as defined in §9-102(a)(34) of the Uniform Commercial Code of the State, (c) except as set forth in Schedule 8 hereto and except to the extent that the Administrative Agent has received written notice to the contrary, none of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral, (d) such Grantor holds no commercial tort claim except as indicated on its Perfection Certificate or as otherwise identified in writing to the Administrative Agent from time to time pursuant to §4.7 of this Agreement, (e) such Grantor has at all times operated its business in compliance in all material respects with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (f) as of the date hereof, all other information set forth on the Perfection Certificate of the applicable Grantor pertaining to the Collateral is accurate and complete.

9. Covenants Concerning Collateral, Etc. Each Grantor further covenants with the Administrative Agent and the other Secured Parties as follows: (a) the Collateral, to the extent not delivered to the Administrative Agent pursuant to §4, will be kept at those locations listed on such Grantor's Perfection Certificate and such Grantor will not remove the Collateral from such locations, without providing at least fifteen (15) days prior written notice to the Administrative Agent, except for inventory in the ordinary course of business and equipment being repaired, (b) except for the security interest herein granted and other Permitted Liens, such Grantor shall be the owner of or have other rights in the Collateral free from any right or claim of any other person or any Lien, and such Grantor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to the Administrative Agent or any of the other Secured Parties, (c) such Grantor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any Lien in the Collateral in favor of any person, or become bound (as provided in Section 9-203(d) of the Uniform Commercial Code of the State or any other relevant jurisdiction or otherwise) by a security agreement in favor of any person as secured party, other than the Administrative Agent except for Permitted Liens, (d) such Grantor will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon, (e) as provided in the Credit Agreement, such Grantor will permit the Administrative Agent, or its designee, to inspect the Collateral at any reasonable time, wherever located, (f) as provided in the Credit Agreement, such Grantor will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement, (g) such Grantor will continue to operate its business in compliance in all material respects with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (h) such Grantor will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except as permitted by the Credit Agreement.

10. Insurance.

10.1. Maintenance of Insurance. Each Grantor will maintain with financially sound and reputable insurers insurance with respect to its properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that such Grantor will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms, be in such forms and be for such periods as may be reasonably satisfactory to the Administrative Agent. In addition, all such insurance shall be payable to the Administrative Agent as loss payee under a "standard" or "New York" loss payee clause for the benefit of the Secured Parties. Without limiting the foregoing, each Grantor will (a) keep all of its physical property insured with casualty or physical hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages and electronic data processing coverage, with a full replacement cost endorsement and an "agreed amount" clause in an amount equal to 100% of the full replacement cost of such property, (b) maintain all such workers' compensation or similar insurance as may be required by law and (c) maintain, in amounts and with deductibles equal to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of such Grantor; business interruption insurance; and product liability insurance.

10.2. Insurance Proceeds. The proceeds of any casualty insurance in respect of any casualty loss of any of the Collateral shall, subject to the rights, if any, of other parties with an interest having priority in the property covered thereby, shall be applied as provided in §2.05(b) of the Credit Agreement.

10.3. Continuation of Insurance. All policies of insurance shall provide for at least thirty (30) days prior written cancellation notice to the Administrative Agent. In the event of failure by any Grantor to provide and maintain insurance as herein provided, the Administrative Agent may, at its option, provide such insurance and charge the amount thereof to the Company. Each Grantor shall furnish the Administrative Agent with certificates of insurance and policies evidencing compliance with the foregoing insurance provision.

11. Collateral Protection Expenses; Preservation of Collateral.

11.1. Expenses Incurred by Administrative Agent. In the Administrative Agent's discretion after the occurrence and during the continuance of an Event of Default, the Administrative Agent may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, maintain any of the Collateral, make repairs thereto and pay any necessary filing fees or insurance premiums, in each case if the Company fails to do so. Each Grantor agrees to reimburse the Administrative Agent on demand for all expenditures so made. The Administrative Agent shall have no obligation to any Grantor to make any such expenditures, nor shall the making thereof be construed as a waiver or cure of any Default or Event of Default.

11.2. Administrative Agent's Obligations and Duties. Anything herein to the contrary notwithstanding, each Grantor shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by such Grantor thereunder. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any other Secured Party of any payment relating to any of the Collateral, nor shall the Administrative Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Administrative Agent or any other Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Administrative Agent or to which the Administrative Agent or any other Secured Party may be entitled at any time or times. The Administrative Agent's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under §9-207 of the Uniform Commercial Code of the State or otherwise, shall be to deal with such Collateral in the same manner as the Administrative Agent deals with similar property for its own account.

12. Securities and Deposits. The Administrative Agent may at any time following and during the continuance of an Event of Default, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Administrative Agent may following and during the continuance of an Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Administrative Agent or any other Secured Party to any Grantor may at any time be applied to or set off against any of the Obligations then due and owing.

13. Notification to Account Debtors and Other Persons Obligated on Collateral. If an Event of Default shall have occurred and be continuing, each Grantor shall, at the request and option of the Administrative Agent, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Administrative Agent in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Administrative Agent or to any financial institution designated by the Administrative Agent as the Administrative Agent's agent therefor, and the Administrative Agent may itself, if an Event of Default shall have occurred and be continuing, without notice to or demand upon such Grantor, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, such Grantor shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by such Grantor as trustee for the Administrative Agent, for the benefit of the Secured Parties, without commingling the same with other funds of such Grantor and shall turn the same over to the Administrative Agent in the identical form received, together with any necessary endorsements or assignments. The Administrative Agent shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Administrative Agent to the Obligations, such proceeds to be immediately credited after final payment in cash or other immediately available funds of the items giving rise to them.

14. Power of Attorney.

14.1. Appointment and Powers of Administrative Agent. Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of such Grantor or in the Administrative Agent's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do the following:

(a) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State or any other relevant jurisdiction and as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and to do, at such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary or useful to protect, preserve or realize upon the Collateral and the Administrative Agent's security interest therein, in order to effect the intent of this Agreement, all no less fully and effectively as such Grantor might do, including (i) the filing and prosecuting of registration and transfer applications with the appropriate federal, state or local agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (ii) upon written notice to such Grantor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Administrative Agent so elects, with a view to causing the liquidation of assets of the issuer of any such securities and (iii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and

(b) to the extent that such Grantor's authorization given in §2.2 is not sufficient, to file such financing statements with respect hereto, with or without such Grantor's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Administrative Agent may deem appropriate and to execute in such Grantor's name such financing statements and amendments thereto and continuation statements which may require such Grantor's signature.

14.2. **Ratification by Grantors**. To the extent permitted by law, each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

14.3. **No Duty on Administrative Agent**. The powers conferred on the Administrative Agent hereunder are solely to protect the interests of the Administrative Agent and the other Secured Parties in the Collateral and shall not impose any duty upon the Administrative Agent to exercise any such powers. The Administrative Agent shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act, except for the Administrative Agent's own gross negligence or willful misconduct.

15. **Rights and Remedies**. If an Event of Default shall have occurred and be continuing, the Administrative Agent, without any other notice to or demand upon the applicable Grantor, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of the State or any other relevant jurisdiction and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located, including the right to take possession of the Collateral, and for that purpose the Administrative Agent may, so far as such Grantor can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Administrative Agent may in its discretion require such Grantor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of such Grantor's principal office(s) or at such other locations as the Administrative Agent may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Administrative Agent shall give to such Grantor at least ten (10) Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. Each Grantor hereby acknowledges that ten (10) Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, each Grantor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Administrative Agent's rights and remedies hereunder, including its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

16. Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for the Administrative Agent (a) to fail to incur expenses reasonably deemed significant by the Administrative Agent to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Administrative Agent against risks of loss, collection or disposition of Collateral or to provide to the Administrative Agent a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Administrative Agent, to obtain the services of brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this §16 is to provide non-exhaustive indications of what actions or omissions by the Administrative Agent would fulfill the Administrative Agent's duties under the Uniform Commercial Code of the State or any other relevant jurisdiction in the Administrative Agent's exercise of remedies against the Collateral and that other actions or omissions by the Administrative Agent shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this §16. Without limitation upon the foregoing, nothing contained in this §16 shall be construed to grant any rights to any Grantor or to impose any duties on the Administrative Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this §16.

17. No Waiver by Administrative Agent, etc. The Administrative Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Administrative Agent with the consent of the Required Lenders. No delay or omission on the part of the Administrative Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Administrative Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Administrative Agent deems expedient.

18. Suretyship Waivers by Company. Each Grantor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, each Grantor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Administrative Agent may deem advisable. The Administrative Agent shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in §11.2. Each Grantor further waives any and all other suretyship defenses.

19. Marshaling. Neither the Administrative Agent nor any other Secured Party shall be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the rights and remedies of the Administrative Agent or any other Secured Party hereunder and of the Administrative Agent or any other Secured Party in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Administrative Agent's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

20. Proceeds of Dispositions; Expenses. Each Grantor shall pay to the Administrative Agent on demand any and all reasonable expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Administrative Agent in protecting, preserving or enforcing the Administrative Agent's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as is provided in the Credit Agreement, proper allowance and provision being made for any Obligations not then due. In the absence of final payment and satisfaction in full of all of the Obligations, each Grantor shall remain jointly and severally liable for any deficiency.

21. Overdue Amounts. Until paid, all amounts due and payable by any Grantor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the Default Rate set forth in the Credit Agreement.

22. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF MASSACHUSETTS (WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF THE DOMESTIC SUBSTANTIVE LAWS OF ANY OTHER STATE).

23. Notice, etc. All notices, requests and other communications hereunder shall be made in the manner set forth in Section 10.02 of the Credit Agreement and, in the case of each Grantor, to such Grantor in care of the Borrower.

24. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon each Grantor and its successors and assigns, and shall inure to the benefit of the Administrative Agent, the other Secured Parties and their successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. Each Grantor acknowledges receipt of a copy of this Agreement.

25. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page to this Agreement by telecopier (or electronic mail (in PDF format)) shall be effective as delivery of a manually executed counterpart of this Agreement.

26. Additional Grantors. Subsidiaries of the Grantors (each, an "Additional Grantor") may hereafter become parties to this Agreement by executing and delivering a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel. Upon such execution and delivery by any Additional Grantor, such Additional Grantor shall be bound by all of the terms, covenants and conditions hereof to the same extent as if such Additional Grantor had executed this Agreement as of the Closing Date, and the Administrative Agent, for itself and the benefit of the other Secured Parties, shall be entitled to all of the benefits of such Additional Grantor's obligations hereunder.

27. Amendment and Restatement. This Agreement amends, restates, supersedes, and replaces in its entirety the Existing Security Agreement. The security interest granted by each Grantor to the Administrative Agent in the "Collateral" under as defined in the Existing Security Agreement continues without interruption under this Agreement and such security interest is hereby ratified and confirmed in all respects. Nothing contained herein shall be construed as a novation of the obligations outstanding under the Existing Security Agreement, which shall remain in full force and effect, except as modified hereby. Nothing express or implied in this Agreement shall be construed as a release or discharge of the Grantor under the Existing Security Agreement.

28. Termination. Upon indefeasible payment and performance in full in cash of the Obligations (other than indemnification obligations for which no claim has been asserted) and the termination of all lending and other credit commitments of the Administrative Agent and the Secured Parties in respect thereof (including all outstanding Letters of Credit), this Agreement shall terminate and the Administrative Agent shall, at the Grantors' request and expense, return any Collateral in the possession of the Administrative Agent, together with any moneys and other property at the time held by the Administrative Agent hereunder.

[*Remainder of Page Left Intentionally Blank*]

IN WITNESS WHEREOF, intending to be legally bound, the undersigned have caused this Agreement to be duly executed as of the date first above written.

The Grantors:

ALEXION PHARMACEUTICALS, INC.

By: /s/ Vikas Sinha
Name: Vikas Sinha
Title: Senior Vice President and Chief Financial Officer

ALEXION DELAWARE HOLDING LLC

By Alexion Pharmaceuticals, Inc., its sole member

By: /s/ Vikas Sinha
Name: Vikas Sinha
Title: Senior Vice President and Chief Financial Officer

ALEXION MANUFACTURING LLC

By Alexion Pharmaceuticals, Inc., its sole member

By: /s/ Vikas Sinha
Name: Vikas Sinha
Title: Senior Vice President and Chief Financial Officer

Accepted:

BANK OF AMERICA, N.A., as
Administrative Agent

By: /s/ George S. Carey
Name: George S. Carey
Title: Assistant Vice President

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF CONNECTICUT)
) ss.
COUNTY OF NEW HAVEN)

On this 22nd day of January, 2010, before me, the undersigned notary public, personally appeared Vikas Sinha, proved to me through satisfactory evidence of identification, which were , to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose (as for Alexion Pharmaceuticals, Inc., a Delaware corporation).

/s/ Taina Badillo
(official signature and seal of notary)

My commission expires:
8/31/2011

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF CONNECTICUT)
) ss.
COUNTY OF NEW HAVEN)

On this 22nd day of January, 2010, before me, the undersigned notary public, personally appeared Vikas Sinha, proved to me through satisfactory evidence of identification, which were , to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose (as for Alexion Delaware Holding LLC, a Delaware LLC).

/s/ Taina Badillo
(official signature and seal of notary)

My commission expires:
8/31/2011

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF CONNECTICUT)
) ss.
COUNTY OF NEW HAVEN)

On this 22nd day of January, 2010, before me, the undersigned notary public, personally appeared Vikas Sinha, proved to me through satisfactory evidence of identification, which were , to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose (as for Alexion Manufacturing LLC, a Delaware LLC).

/s/ Taina Badillo
(official signature and seal of notary)

My commission expires:
8/31/2011

Exhibit 21.1

SUBSIDIARIES OF ALEXION PHARMACEUTICALS, INC.

Alexion Manufacturing LLC is formed in Delaware

Alexion Delaware Holding LLC is formed in Delaware

Alexion Bermuda L.P. is registered in Bermuda

Alexion Holding B.V. is registered in the Netherlands

Alexion Europe SAS is incorporated in France

Alexion Pharma International Sarl is incorporated in Switzerland

Alexion Pharmaceuticals Australasia PTY LTD is incorporated in Australia

Alexion Pharma Belgium Sarl is incorporated in Belgium

Alexion Farmacêutica Brasil Serviços de Administração de Vendas Ltda. (doing business as Alexion Brasil) is incorporated in Brazil

Alexion Farmacêutica América Latina Serviços de Administração de Vendas Ltda. (doing business as Alexion Latina America) is incorporated in Brazil

Alexion Pharma Canada Corp., is incorporated in Canada

Alexion Pharma Colombia SAS is incorporated in Colombia

Alexion Pharma France is incorporated in France

Alexion Pharma Germany GmbH is incorporated in Germany

Alexion Pharma Israel Ltd. is incorporated in Israel

Alexion Pharma Italy Sarl is incorporated in Italy

Alexion Pharma KK is incorporated in Japan

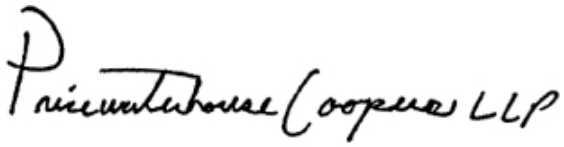
Alexion Pharma Spain S.L. is incorporated in Spain

Alexion Pharma UK is incorporated in the United Kingdom

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-127471, 333-123828, 333-91265, 333-29617, 333-41397, 333-47645, 333-89343, 333-36738, 333-52886 and 333-59702) and Form S-8 (No. 333-146319, 333-139600, 333-123212, 333-119749, 333-24863, 333-52856, 333-69478, 333-71879, 333-71985, 333-106854 and 333-153612) of Alexion Pharmaceuticals, Inc. of our report dated February 23, 2010 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.



Hartford, Connecticut
February 23, 2010

Exhibit 31.1

I, Leonard Bell, M.D., certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2009 of Alexion Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 23, 2010

/s/ LEONARD BELL, M.D.

Chief Executive Officer

Exhibit 31.2

I, Vikas Sinha, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2009 of Alexion Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 23, 2010

/s/ VIKAS SINHA

Senior Vice President and Chief Financial Officer

Exhibit 32.1

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

In connection with the annual report on Form 10-K of Alexion Pharmaceuticals, Inc. (the "Company") for the year ended December 31, 2009 as filed with the Securities and Exchange Commission (the "Report"), I, Leonard Bell, M.D., Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 23, 2010

/s/ LEONARD BELL, M.D.
Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

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

In connection with the annual report on Form 10-K of Alexion Pharmaceuticals, Inc. (the "Company") for the year ended December 31, 2009 as filed with the Securities and Exchange Commission (the "Report"), I, Vikas Sinha, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 23, 2010

/s/ VIKAS SINHA
Senior Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.