MEDAREX INC
Form POS AM
July 30, 2004

As filed with the Securities and Exchange Commission on July 30, 2004

REGISTRATION NO. 333-108325

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1

TO

FORM S-3

REGISTRATION STATEMENT

UNDER THE SECURITIES ACT OF 1933

MEDAREX, INC.

(Exact name of registrant as specified in its charter)

New Jersey	2836	22-2822175
(State or other jurisdiction of incorporation or organization)	(Primary standard industrial classification code number)	(I.R.S. Employer Number)

Medarex, Inc.

707 State Road

Princeton, NJ 08540

(609) 430-2880

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

Donald L. Drakeman

President and Chief Executive Officer

Medarex, Inc.

707 State Road

Princeton, NJ 08540

(609) 430-2880

COPIES TO:

W. Bradford Middlekauff, Esq.

Senior Vice President, General Counsel

and Secretary

Medarex, Inc.

707 State Road

Princeton, NJ 08540

(609) 430-2880

Dwight A. Kinsey, Esq.

Satterlee Stephens Burke & Burke LLP

230 Park Avenue

New York, NY 10169

(212) 818-9200

Approximate date of commencement of proposed sale to the public:

From time to time after the effective date of the Registration Statement, as determined by the Registrant.

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

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. x

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

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

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

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

PROSPECTUS

$48,475,000

MEDAREX, INC.

4.25% Convertible Senior Notes Due August 15, 2010

Shares of Common Stock Issuable Upon Conversion of the Notes

In July 2003, we issued and sold $125,000,000 aggregate principal amount of our 4.25% Convertible Senior Notes, due August 15, 2010, in a private offering. This prospectus will be used by selling securityholders to resell up to $48,475,000 in aggregate principal amount of the notes and the common stock issuable upon conversion of such notes at any time at market prices prevailing at the time of sale or at privately negotiated prices. The selling securityholders may sell the notes or the common stock directly to purchasers or through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, concessions or commissions. We will not receive any proceeds from these resales.

The notes have the following provisions:

- The holders of the notes may convert the notes into shares of our common stock at any time at a conversion price of $6.72 per share, which is equivalent to a conversion rate of 148.8261 shares per each $1,000 principal amount of notes, subject to adjustment;

- We will pay interest on the notes on August 15 and February 15 of each year commencing February 15, 2004;

- The notes are senior unsecured obligations, except we have purchased and pledged a portfolio of U.S. treasury securities as security for the notes, in an amount sufficient to pay the first six scheduled interest payments due on the notes;

- The notes are subject to redemption prior to maturity upon the occurrence of certain events in accordance with the terms and conditions set forth herein under the sections entitled Description of the Notes Provisional Redemption and Optional Redemption ; and

- In the event of a Change of Control, as described in this prospectus, each holder of the notes may require us to repurchase some or all of the holder s notes at 100% of the principal amount of the notes plus accrued and unpaid interest. At our option, we may repurchase the notes for cash or common stock or a combination of cash, common stock or securities of a company that acquires us.

We do not intend to list the notes for trading on any national securities exchange or on the Nasdaq National Market.

Our common stock currently trades on the NASDAQ National Market under the symbol MEDX. The last reported sale price on July 29, 2004 was $5.91 per share.

Investing in our securities involves risks. See Risk Factors on page 9 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is July •, 2004

YOU SHOULD RELY ONLY ON THE INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS PROSPECTUS. WE HAVE NOT AUTHORIZED ANYONE TO PROVIDE YOU WITH DIFFERENT INFORMATION. THE SELLING SECURITYHOLDERS ARE NOT MAKING AN OFFER OF THE SECURITIES TO BE SOLD UNDER THIS PROSPECTUS IN ANY JURISDICTIONS WHERE THE OFFERS OR SALES ARE NOT PERMITTED. YOU SHOULD NOT ASSUME THAT THE INFORMATION CONTAINED IN THIS PROSPECTUS IS ACCURATE AS OF ANY DATE OTHER THAN THE DATE ON THE FRONT COVER OF THIS PROSPECTUS, OR THAT THE INFORMATION CONTAINED IN ANY DOCUMENT INCORPORATED BY REFERENCE IS ACCURATE AS OF ANY DATE OTHER THAN THE DATE OF THE DOCUMENT INCORPORATED BY REFERENCE. THE DELIVERY OF THIS PROSPECTUS DOES NOT, UNDER ANY CIRCUMSTANCES, MEAN THAT THERE HAS NOT BEEN A CHANGE IN OUR AFFAIRS SINCE THE DATE HEREOF. THIS PROSPECTUS WILL ONLY BE DISTRIBUTED IN PRINTED FORM BY HAND OR THROUGH THE MAILS.

TABLE OF CONTENTS

PROSPECTUS SUMMARY

This summary does not contain all the information that is important to you. You should read the entire prospectus, including the section entitled Risk Factors, and the documents incorporated by reference in this prospectus, including the financial statements and related notes, identified under the section entitled Incorporated by Reference carefully before making an investment decision. When used in this prospectus, unless otherwise indicated, the terms we, our, and us refer to Medarex and its subsidiaries.

Medarex, Inc.

We are a biopharmaceutical company focused on the discovery and development of fully human antibody-based therapeutic products. We believe that our UltiMAb Human Antibody Development System® enables us to rapidly create and develop therapeutic products for a wide range of diseases, including cancer, inflammation and autoimmune diseases.

We believe that antibodies are proven candidates for therapeutic products. To date, the United States Food and Drug Administration, or FDA, has approved 17 antibody-based therapeutic products for sale in the United States. In 2003, 15 of these products generated aggregate worldwide sales in excess of $5.0 billion. We intend to participate in this market and, to this end, are developing an expanding pipeline of therapeutic antibody products generated through the use of our proprietary UltiMAb human antibody development technology.

Currently, 17 antibodies derived from our UltiMAb human antibody development technology are in human clinical trials or have had regulatory applications submitted for such trials. These antibodies are designed to treat a wide range of diseases, such as cancer (including various lymphomas), rheumatoid arthritis and other inflammatory and autoimmune diseases.

As of June 30, 2004, we have more than 45 partnerships with pharmaceutical and biotechnology companies to jointly develop and commercialize products or to enable other companies to use our proprietary technology in their development of new therapeutic products.

We are subject to a number of risks which could materially and adversely affect our business, results of operations and financial condition including, among other things, our history of operating losses and anticipation of future losses; uncertainties relating to our technology, product development, patent and proprietary rights, clinical trials, government regulation, obtaining regulatory approval, market acceptance of our products, health care reform and third-party reimbursement; our need for additional capital; our dependence on our key personnel and our research collaborators and scientific advisors; and the risk of product liability. These risks are described in more detail in the section herein entitled Risk Factors.

We were incorporated in 1987. Our principal executive offices are located at 707 State Road, Princeton, New Jersey 08540. Our telephone number is (609) 430-2880. We maintain a worldwide website at *www.medarex.com*. The reference to our worldwide web address does not constitute incorporation by reference of the information contained on our website. Our Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q, our Current Reports on Form 8-K and all amendments to those reports that we file with the Securities and Exchange Commission, or SEC, are currently available free of charge to the general public through our website at *www.medarex.com*. These reports are accessible on our website at a reasonably practicable time after being filed with the SEC.

Medarex®, HuMAb-Mouse®, GenPharm®, UltiMAb Human Antibody Development System®, Trans-Phage Technology® and KM-Mouse® are registered U.S. trademarks of Medarex, Inc. UltiMAb™ and Ultra-Potent Toxin are trademarks of Medarex, Inc. All other company names, trademarks and service marks included herein are trademarks, registered trademarks, service marks or trade names of their respective owners.

The Offering

Issuer	Medarex, Inc.
Securities Offered	$48,475,000 in aggregate principal amount of 4.25% convertible senior notes due August 15, 2010.
Maturity Date	August 15, 2010, unless earlier redeemed, repurchased or converted.
Interest	4.25% per annum on the principal amount, payable semi-annually in arrears in cash on August 15 and February 15 of each year, commencing February 15, 2004. The first interest payment will include interest from July 23, 2003, the date of issuance of the notes.
Security	We have entered into a pledge agreement with Wilmington Trust Company, as securities intermediary, pursuant to which we have purchased and pledged to the securities intermediary, as security for the notes and for the exclusive benefit of the holders of the notes, a portfolio of approximately $15.8 million of U.S. treasury securities. This treasury portfolio consists of U.S. treasury securities that mature on or prior to the business day immediately preceding each of the first six interest payment dates for the notes in such amounts as will be sufficient to provide for payment in full of the first six scheduled interest payments on the notes when due. In limited circumstances involving an event of default under the notes, the pledged U.S. treasury securities and the pledge account will also secure the repayment of the principal amount of the notes and our obligation to pay the additional payment referred to below under the section herein entitled Description of Notes Provisional Redemption. The notes will otherwise not be secured.
Conversion	You may convert the notes at any time into shares of common stock at a conversion rate equal to 148.8261 shares of common stock per $1,000 principal amount of notes, which is equivalent to a conversion price of approximately $6.72 per share of common stock. The conversion rate is subject to adjustment in certain events. You may convert the notes at any time before the close of business on the maturity date, unless we have previously redeemed or repurchased the notes. Holders of notes called for redemption or repurchase will be entitled to convert the notes up to and including the business day prior to the date fixed for redemption or repurchase, as the case may be.
Ranking	The notes are senior unsecured (except as set forth under the section herein entitled Description of the Notes Security) obligations and will rank equal in right of payment with our existing and future unsecured and unsubordinated indebtedness. The notes will be effectively subordinated to any future secured indebtedness to the extent of the value of the assets securing such indebtedness. The notes will also be structurally subordinated to the indebtedness and other liabilities of our existing subsidiaries and any future subsidiaries,

including trade payables in existence on or after the date hereof. As of March 31, 2004, our subsidiaries had approximately $2.7 million of indebtedness and other liabilities as to which the notes would have been structurally subordinated, excluding intercompany liabilities. The indenture under which the notes were issued does not restrict us or any of our subsidiaries from incurring additional senior or other indebtedness and other liabilities, including secured indebtedness.

Provisional Redemption

We may redeem the notes, in whole or in part, at any time prior to August 15, 2006, at a redemption price, payable in cash, equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest to the redemption date and the additional make-whole payment described below if:

- the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day prior to the date of mailing of the provisional redemption notice; and

- the shelf registration statement covering resales of the notes and the common stock issuable upon conversion of the notes is effective and available for use and is expected to remain effective and available for use for the 30 days following the provisional redemption date.

Upon any provisional redemption, we will make an additional make-whole payment on the provisional redemption date with respect to the notes called for redemption in an amount equal to $130.10 per $1,000 principal amount of notes, less the amount of any interest actually paid and any interest accrued and unpaid on such notes before the provisional redemption date. We may make this additional payment, at our option, in either cash or our common stock (or a combination of both). We will state the form of consideration to be paid in the redemption notice. Payments made in our common stock will be valued at 95% of the average of the closing sale prices for the five consecutive trading days ending on the third trading day prior to the redemption date. We will be obligated to make this additional payment on all notes called for provisional redemption, including any notes converted after the notice date and prior to the provisional redemption date.

Optional Redemption

On or after August 15, 2006, we may redeem some or all of the notes at any time at the redemption prices specified in this prospectus, plus accrued and unpaid interest to the redemption date.

Global Notes;

Book Entry System

The notes may be issued only in fully registered form without interest coupons and in denominations of $1,000 and greater multiples. The notes are evidenced by a global note deposited with the trustee for the notes as custodian for The Depository Trust Company, or DTC. Beneficial interests in the global note will be shown on, and transfers of those beneficial interests can only be made through, records maintained by DTC and its direct and indirect participants.

Repurchase at Holder s Option upon A Change in Control	You may require us to repurchase your notes upon a change in control in cash, or, at our option, in our common stock or a combination of cash and common stock, at 100% of the principal amount of the notes to be repurchased plus accrued and unpaid interest to, but excluding, the repurchase date. If we pay the repurchase price in common stock, the common stock will be valued at 95% of the average closing sales price of the common stock on the NASDAQ National Market for the five consecutive trading days ending on the third trading day prior to the repurchase date.
Use of Proceeds	The selling securityholders will receive all of the proceeds from the sale under this prospectus of the notes and the common stock issuable upon conversion of the notes. We will not receive any proceeds from these sales.
Events of Default	The following are events of default under the indenture for the notes: we fail to pay the principal of or any premium on any note when due; we fail to pay any interest or any liquidated damages on any note when due, which failure continues for 30 days; we fail to provide notice of a change in control; we fail to perform any other covenant in the indenture and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes; any indebtedness under any bonds, debentures, notes or other evidences of indebtedness for money borrowed, or any guarantee thereof, by us or any of our significant subsidiaries, in an aggregate principal amount in excess of $20 million is not paid when due either at its stated maturity or upon acceleration thereof, and such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within a period of 30 days after notice as provided in the indenture; the pledge agreement in favor of the holders of the notes governing the pledge of the portfolio of U.S. treasury securities shall cease to be in full force and effect or enforceable in accordance with its terms, other than in accordance with its terms; and events of bankruptcy, insolvency or reorganization specified in the indenture.
The NASDAQ National Market Symbol for Common Stock	MEDX.
Trading of Notes	Prior to this offering, the notes have been eligible for trading on the PORTAL Market of the NASDAQ Stock Market, Inc. Notes sold by means of this prospectus are not expected to remain eligible for trading on the PORTAL Market. We do not intend to list the notes for trading on any national securities exchange or on the NASDAQ National Market.

Governing Law	The indenture and the notes will be governed by the laws of the State of New York.
Risk Factors	You should carefully consider all of the information contained or incorporated by reference in this prospectus prior to investing in the notes. In particular, we urge you to carefully consider the information set forth under Risk Factors beginning on page 9 of this prospectus for a discussion of risks and uncertainties relating to us, our business and an investment in the notes.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following table sets forth consolidated financial information for the periods indicated. The summary consolidated financial information for each of the years in the five-year period ended December 31, 2003 and at December 31 of each of those years has been derived from our audited consolidated financial statements. The financial information set forth below for the three months ended March 31, 2003 and 2004 has been derived from unaudited consolidated financial information, which we believe presents fairly such consolidated information in conformity with accounting principles generally accepted in the United States and includes all adjustments, consisting only of normal recurring adjustments, that in the opinion of management are necessary for a fair presentation. Results for the three months ended March 31, 2004 are not necessarily indicative of the results that may be expected for any other interim periods or for the year as a whole. You should read the summary consolidated financial information in conjunction with our consolidated financial statements and the notes thereto and the other financial information incorporated by reference in this prospectus.

	For the Year Ended December 31,					For the Three Months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
	(in thousands, except share and per share data)					(unaudited)	
Statement of Operations Data:							
Revenues:							
Sales	$ 1,079	$ 264	$ 191	$ 176	$ 25	$ 25	$
Contract and license revenues	8,593	19,619	37,140	24,552	5,833	2,174	1,106
Sales, contract and license revenues from Genmab	252	2,574	4,973	14,751	5,316	1,765	823
Total revenues	9,924	22,457	42,304	39,479	11,174	3,964	1,929
Costs and expenses:							
Cost of sales	709	1,189	642	8,327	3	3	
Research and development	19,929	33,942	38,626	82,626	95,459	23,526	22,988
General and administrative	8,036	18,142	19,344	22,852	21,727	5,684	5,808
Write-off of facility costs				11,294			
Acquisition of in-process technology				16,312	6,500		
Total costs and expenses	28,674	53,273	58,612	141,411	123,689	29,213	28,796
Operating loss	(18,750)	(30,816)	(16,308)	(101,932)	(112,515)	(25,249)	(26,867)
Equity in net loss of affiliate		(353)	(7,334)	(50,625)	(14,997)	(3,754)	(4,766)
Interest and investment income	1,205	21,158	24,728	18,495	12,342	2,632	3,988
Impairment loss on investment in partners				(11,886)	(1,400)		
Additional payments related to asset acquisition				(2,425)	(31)	(86)	
Interest expense	(8)	(3)	(4,615)	(9,065)	(11,777)	(2,308)	(3,635)
Gain on disposition of Genmab stock			1,442				
Gain on extinguishment of debt							326
Income (loss) before provision (benefit) for income taxes	(17,553)	(10,014)	(2,087)	(157,438)	(128,378)	(28,765)	(30,954)
Provision (benefit) for income taxes	(522)	(13,075)	600	103	69	28	6
Income (loss) before cumulative effect of change in accounting principle	$ (17,031)	$ 3,061	$ (2,687)	$ (157,541)	(128,447)	(28,793)	(30,960)
Cumulative effect of change in accounting principle					(830)	(830)	
Net income (loss)	$ (17,031)	$ 3,061	$ (2,687)	$ (157,541)	$ (129,277)	$ (29,623)	$ (30,960)

Basic net income (loss) per share before cumulative effect of change in accounting principle	$ (0.27)	$ 0.04	$ (0.04)	$ (2.09)	$ (1.64)	$ (0.37)	$ (0.39)
Basic net income (loss) per share cumulative effect of change in accounting principle					(0.01)	(0.01)	
Basic net income (loss) per share (1)	$ (0.27)	$ 0.04	$ (0.04)	$ (2.09)	$ (1.65)	$ (0.38)	$ (0.39)
Diluted net income (loss) per share before cumulative effect of change in accounting principle	$ (0.27)	$ 0.04	$ (0.04)	$ (2.09)	$ (1.64)	$ (0.37)	$ (0.39)
Diluted net income (loss) per share cumulative effect of change in accounting principle	$	$	$		(0.01)	(0.01)	
Diluted net income (loss) per share (1)	$ (0.27)	$ 0.04	$ (0.04)	$ (2.09)	$ (1.65)	$ (0.38)	$ (0.39)
Weighted average common shares outstanding (1)							
basic	63,840	71,532	73,937	75,231	78,314	77,953	79,505
diluted	63,840	73,232	73,937	75,231	78,314	77,953	79,505
Ratio (deficiency) of earnings available to cover fixed charges (2)			2.08				

	December 31,					March 31,
	1999	2000	2001	2002	2003	2004
			(in thousands)			(unaudited)
Balance Sheet Data:						
Cash, cash equivalents and marketable securities	$ 30,147	$ 343,603	$ 466,952	$ 350,046	$ 358,458	$ 330,039
Working capital	22,382	329,807	447,326	339,480	350,437	327,066
Total assets	40,482	558,107	720,427	549,051	557.726	520,082
Long term obligations	23		175,000	175,000	300,000	288,986
Cash dividends declared per common share						
Accumulated deficit	(126,436)	(123,375)	(126,062)	(283,603)	(412,880)	(443,840)
Total shareholders equity	22,299	485,289	482,562	352,143	234,011	212,622

(1) Computed on the basis described in note 2 to the consolidated financial statements.

(2) The ratio of earnings to fixed charges is computed by dividing earnings, or loss from continuing operations before income taxes plus fixed charges, by fixed charges. Fixed charges consist of interest expense and that portion of rental payments under operating leases we believe to be representative of interest. Earnings were insufficient to cover fixed charges by $17.6 million, $9.7 million, and $106.8 million and $113.4 million for the years ended December 31, 1999, 2000, 2002 and 2003, respectively, and $25.0 million and $26.2 million for the three months ended March 31, 2003 and 2004, respectively.

RECENT DEVELOPMENTS

On July 13, 2004, we entered into an amendment to Collaboration and License Agreement with Gilead Sciences, Inc. (the successor in interest to NeXtar Pharmaceuticals, Inc.) referred to herein as the Gilead Amendment. Under the terms of the Gilead Amendment, we agreed to pay Gilead a total of $8.5 million in eight equal installments of $1,062,500, payable at our election, in cash, registered shares of our common stock or a combination thereof, in exchange for (i) a reduction of certain future royalty payment obligations, payable by us to Gilead and (ii) an expansion of the scope of certain licenses from Gilead to us relating to certain intellectual property rights regarding anti-CTLA-4 products. The first of these payments is due on August 2, 2004. The seven remaining payments will be made on a quarterly basis, commencing on October 1, 2004 and ending on April 3, 2006.

On June 25, 2004, we entered into an agreement to acquire Ability Biomedical Corporation, a privately held Canadian biotechnology company, including Ability Biomedical s intellectual property related to IP-10. IP-10, also known as CXCL10, is a protein believed to be associated with a variety of immune disorders, including multiple sclerosis, rheumatoid arthritis, inflammatory bowel disease, chronic obstructive pulmonary disease and type I diabetes. We are currently investigating MDX-1100, a fully human antibody that targets IP-10, in preclinical studies, and we expect to file an Investigational New Drug, or IND, application with the FDA for MDX-1100 in the first half of 2005.

Under the terms of the agreement, we will acquire Ability Biomedical for approximately $4.7 million (USD) in a combination of cash and/or common stock. Upon the achievement of certain development milestones with respect to our anti-IP-10 antibody program, but no later than September 4, 2007, we will be required to pay an additional amount of approximately $3.56 million (USD) in cash and/or common stock. In lieu of such additional payment, we also have the option to revert to the original January 2003 joint collaboration agreement with Ability Biomedical. The acquisition is expected to be completed in August 2004.

On June 25, 2004, we filed a registration statement on Form S-4 to register shares of our common stock having a maximum aggregate offering price of $12,000,000. Upon effectiveness of the registration statement, we currently intend to use such shares to satisfy our purchase price obligations under the Ability Biomedical agreement.

On May 3, 2004, we completed a private placement pursuant to Rule 144A of the Securities Act of 1933, as amended, of $150.0 million of 2.25% Convertible Senior Notes due May 15, 2011 (the 2.25% Notes) to qualified institutional investors. The 2.25% Notes are initially convertible into shares of our common stock at the rate of 72.9129 per each $1,000 principal amount of the 2.25% Notes, which is equivalent to an initial conversion price of approximately $13.72 per share, subject to anti-dilution adjustments. We received net proceeds from the private placement of approximately $145.2 million (after deducting the initial purchasers discounts and estimated offering expenses). Concurrent with this private placement, we repurchased $65.6 million in aggregate principal amount of our 4.50% Convertible Subordinated Notes due 2006 for cancellation. On July 1, 2004, we completed the redemption of all of our outstanding 4.50% Convertible Subordinated Notes due 2006. The redemption price was 101.8% of $76,363,000 ($77,737,534), the aggregate principal amount of the notes redeemed, plus accrued and unpaid interest, through June 30, 2004. The accrued and unpaid interest on such principal amount through June 30, 2004 was $1,737,258.

Our wholly-owned subsidiary Celldex Therapeutics, Inc. has filed a registration statement with the Securities and Exchange Commission related to a proposed public offering of a portion of its common stock. As part of this transaction, we have assigned or licensed to Celldex certain intellectual property related to our vaccine technology, including the rights to MDX-1307, one of our product candidates for the treatment of cancer, as well as the IND associated with this product which became effective in February 2004. If the offering is completed, we anticipate that we will continue to hold approximately 75% of the outstanding shares of common stock of Celldex. We cannot assure you that this transaction will be consummated.

RISK FACTORS

An investment in our securities involves a number of risks. In deciding whether to invest, you should carefully consider the following factors, the information contained in this prospectus and the other information that we have referred you to. It is especially important to keep these risk factors in mind when you read forward-looking statements.

Risks Related to Medarex

Our product candidates are in early stages of development, and they have not been and may not ever be approved for sale and/or commercialized.

Our human antibody technology is a new approach to the generation of antibody-based therapeutic products. Active product candidates employing our human antibody technology are in the early and middle stages of clinical development. Based on public disclosures, regulatory applications, including Investigational New Drug Applications, or INDs, have been submitted to the United States Food and Drug Administration, or FDA, or comparable foreign authorities, for 17 product candidates derived from our UltiMAb platform. To date, neither we nor our partners have any product candidates employing our human antibody technology that have been approved for sale by the FDA or comparable foreign authorities and/or commercialized. In addition, we are not aware of any commercialized fully human monoclonal antibody therapeutic products that have been generated from any technologies similar to ours. Product candidates employing our human antibody technology may not advance beyond the early stages of product development or demonstrate clinical safety and effectiveness.

Our human antibody technology may not generate antibodies against all the antigens to which it is exposed in an efficient and timely manner, if at all. If our human antibody technology fails to generate antibody product candidates, or if we or our partners do not succeed in the development of products employing our antibody technology, those product candidates may not be approved or commercialized and our business, financial condition and results of operations may be materially harmed.

Successful development of our products is uncertain. To date, no revenues have been generated from the commercial sale of our products and our products may not generate revenues in the future.

Our development of current and future product candidates is subject to the risks of failure inherent in the development of new pharmaceutical products and products based on new technologies. These risks include:

- delays in product development, clinical testing or manufacturing;
- unplanned expenditures in product development, clinical testing or manufacturing;
- failure in clinical trials or failure to receive regulatory approvals;
- emergence of superior or equivalent products;

inability to manufacture on our own, or through others, product candidates on a commercial scale;

inability to market products due to third-party proprietary rights;

election by our partners not to pursue product development;

failure by our partners to develop products successfully; and

failure to achieve market acceptance.

In certain instances, we have experienced delays in our product development and clinical testing as a result of slower than anticipated patient recruitment. In a small number of instances, we have terminated the development of certain products in the early stages of clinical testing due to a lack of effectiveness. In addition, we determined not to continue the development of one late-stage product candidate due to both a lack of

effectiveness and unforeseen safety issues that arose in clinical testing. None of these products employed our core fully human antibody technology.

Because of these risks, our research and development efforts or those of our partners may not result in any commercially viable products. If a significant portion of these development efforts is not successfully completed, required regulatory approvals are not obtained or any approved products are not commercially successful, our business, financial condition and results of operations may be materially harmed.

Because we and our partners have not begun commercial sales of our products, our revenue and profit potential are unproven and our limited operating history makes it difficult for an investor to evaluate our business and prospects. Our technology may not result in any meaningful benefits to our current or potential partners. No revenues have been generated from the commercial sale of our products, and our products may not generate revenues in the future. Further, due to our limited operating history, we have difficulty accurately forecasting our revenue. Our business and prospects should be considered in light of the heightened risks and unexpected expenses and problems we may face as a company in an early stage of development in a new and rapidly evolving industry.

We have incurred large operating losses and we anticipate that these losses will continue.

We have incurred large operating losses and we anticipate that these losses will continue for the foreseeable future. In particular, as of March 31, 2004, we had an accumulated deficit of approximately $443.8 million. Our net losses were $129.3 million and $31.0 million for the year ended December 31, 2003 and the three month period ended March 31, 2004, respectively. Our losses have resulted principally from:

- research and development costs relating to the development of our technology and antibody product candidates;
- costs associated with the establishment of our new laboratory and manufacturing facilities and manufacturing of products; and
- general and administrative costs relating to our operations.

We intend to continue to make significant investments in:

- research and development;
- preclinical testing and clinical trials;
- establishing new collaborations; and
- new technologies.

In addition, we may be obligated to make milestone payments on certain of our products as they progress through the clinical trial process.

We do not know when or if we or our partners will complete any pending or future product development efforts, receive regulatory approval or successfully commercialize any approved products.

We may continue to incur substantial operating losses even if our revenues increase. As a result, we cannot predict the extent of future losses or the time required for us to achieve profitability, if at all.

Our operating results may vary significantly from period-to-period, which may result in a decrease in the price of our securities.

Our future revenues and operating results are expected to vary significantly from period-to-period due to a number of factors. Many of these factors are outside of our control. These factors include:

the timing of the commencement, completion or termination of partnership agreements;

the introduction of new products and services by us, our partners or our competitors;

delays in, or termination of, preclinical testing and clinical trials;

changes in regulatory requirements for clinical trials;

costs and expenses associated with preclinical testing and clinical trials;

the timing of regulatory approvals, if any;

sales and marketing expenses; and

the amount and timing of operating costs and capital expenditures relating to the expansion of our business operations and facilities.

Period-to-period comparisons of our results of operations may not be relied upon as an indication of future performance.

It is possible that in some future periods, our operating results may be below expectations of analysts and investors. If this happens, the price of our securities may decrease.

We may need substantial additional funding. We may not be able to obtain sufficient funds to grow our business or continue our operations.

We will continue to expend substantial resources for research and development, including costs associated with developing our antibody technology and conducting preclinical testing and clinical trials. Our future capital requirements will depend on a number of factors, including, by way of example:

the size and complexity of research and development programs;

the scope and results of preclinical testing and clinical trials;

the retention of existing and establishment of further partnerships, if any;

continued scientific progress in our research and development programs;

the time and expense involved in seeking regulatory approvals;

competing technological and market developments;

the time and expense of filing and prosecuting patent applications and enforcing patent claims; and

the cost of establishing manufacturing capabilities, conducting commercialization activities and arrangements and in-licensing products.

We believe our current sources of liquidity will be sufficient to meet our near term operating, debt service and capital requirements for at least the next 24 months. However, this 24-month period assumes the use of a significant portion of the proceeds from our convertible notes. To the extent our convertible notes are converted into shares of our common stock on or before their maturity dates, we will have use of that portion of the principal amount of the notes so converted to fund our on-going operations. In any event, we will require additional financing within this time frame and may raise funds through public or private financings, line of credit arrangements, collaborative relationships and/or other methods. The use of cash on hand or other financial alternatives will depend on several factors including, but not limited to, the future success of our products in clinical development, the prevailing interest rate environment, and access to the capital markets. We may be unable to raise sufficient funds to complete development of any of our product candidates, to continue operations or to repay our debt obligations at maturity. As a result, we may face delay, reduction or elimination of research and development programs or preclinical or clinical trials, in which case our business, financial condition or results of operations may be materially harmed.

We have a significant amount of debt and may have insufficient cash to satisfy our debt service obligations. In addition, the amount of our debt could impede our operations and flexibility.

We have a significant amount of debt and debt service obligations, which, unless converted to shares of our common stock or redeemed, will mature in 2010 ($146.986 million) and 2011 ($150.0 million), respectively. Our ability to make payments on our debt, including the notes offered by this prospectus, will depend on our future operating performance and ability to generate cash and may also depend on our ability to obtain additional debt or equity financing. Generally, during the last five years, our operating cash flows were negative and insufficient to cover our fixed charges. Our ability to generate sufficient operating cash flow to service our indebtedness, including the notes, and fund our operating requirements will depend on our ability, alone or with others, to successfully develop, manufacture, and obtain required regulatory approvals and market our product candidates, as well as other factors, including general economic, financial, competitive, legislative and regulatory conditions, some of which are beyond our control. If we are unable to generate sufficient operating cash flow to service our indebtedness and fund our operating requirements, we may need to obtain additional debt or equity financing to do so, which may not be available to us on satisfactory terms or at all. In addition, if new indebtedness is incurred, the risks relating to our ability to service our indebtedness that we face could intensify.

Even if we are able to meet our debt service obligations, the amount of debt we have could adversely affect us in a number of ways, including by:

- limiting our ability to obtain any necessary financing in the future for working capital, capital expenditures, debt service requirements or other purposes;
- limiting our flexibility in planning for, or reacting to, changes in our business;
- placing us at a competitive disadvantage relative to our competitors who have lower levels of debt;
- making us more vulnerable to a downturn in our business or the economy generally; and
- requiring us to use a substantial portion of our cash to pay principal and interest on our debt, instead of applying those funds to other purposes such as working capital and capital expenditures.

Clinical trials required for our product candidates are expensive and time-consuming, and their outcome is uncertain.

In order to obtain FDA approval to market a new drug product, we or our partners must demonstrate proof of safety and efficacy in humans. To meet these requirements, we or our partners will have to conduct extensive preclinical testing and adequate and well-controlled clinical trials. Conducting clinical trials is a lengthy, time-consuming and expensive process. The length of time may vary substantially according to the type, complexity, novelty and intended use of the product candidate, and often can be several years or more per trial. Delays associated with products for which we are directly conducting preclinical or clinical trials may cause us to incur additional operating expenses. Moreover, we will continue to be affected by delays associated with the preclinical testing and clinical trials of certain product candidates conducted by our partners over which we have no control. The commencement and rate of completion of clinical trials may be delayed by many factors, including, for example:

- the inability to manufacture sufficient quantities of qualified materials under current good manufacturing practices, or cGMPs, for use in clinical trials;

slower than expected rates of patient recruitment;

the inability to adequately observe patients after treatment;

changes in regulatory requirements for clinical trials;

the lack of effectiveness during the clinical trials;

unforeseen safety issues;

delays, suspension, or termination of the clinical trials due to the institutional review board responsible for overseeing the study at a particular study site; and

government or regulatory delays or clinical holds requiring suspension or termination of the trials.

Even if we obtain positive results from preclinical or clinical trials, we may not achieve the same success in future trials. Clinical trials may not demonstrate statistically sufficient safety and effectiveness to obtain the requisite regulatory approvals for product candidates employing our human antibody technology. In a number of instances, we have terminated the development of certain products in the early stages of clinical testing due to a lack of effectiveness. None of these products employed our core fully human antibody technology. In addition, we have determined not to continue the development of one late-stage product candidate due to both a lack of effectiveness and unforeseen safety issues that arose in clinical testing. This product did not employ our core fully human antibody technology.

Generally, our clinical trials, including our melanoma trials, are conducted in patients with serious life-threatening diseases for whom conventional treatments have been unsuccessful or for whom no conventional treatment exists, and in some cases, our product is used in combination with approved therapies that themselves have significant adverse event profiles. During the course of treatment, these patients could suffer adverse medical events or die for reasons that may or may not be related to our products. The most common adverse events associated with our melanoma trials have consisted of flu-like symptoms such as fever, chills and nausea. These events were expected and generally responded to standard medical therapy. In addition some patients have experienced anticipated drug-related autoimmune adverse events, such as dermatitis and colitis, ranging from mild in most cases to severe in a very small number of instances. Almost all of these events responded to medical therapy. In a very small number of instances, fatalities have occurred during the course of these trials - such fatalities may or may not be attributable to our product. We believe that these adverse events will not materially affect our ability to continue with clinical trials of this product as planned. We cannot assure you that additional safety issues will not arise with respect to our products in the future.

To date, we have experienced slower than expected rates of patient recruitment in certain of our clinical trials. As a result, in certain instances, we have experienced delays in our product development and clinical testing. In addition, data obtained from clinical trials of our products to date have been insufficient to demonstrate safety and efficacy under applicable FDA guidelines. As a result, these data will not support an application for regulatory approval without further clinical trials. Clinical trials that we conduct or that third parties conduct on our behalf may not demonstrate sufficient safety and efficacy to obtain the requisite regulatory approvals for any of our product candidates. We expect to commence new clinical trials from time to time in the course of our business as our product development work continues. The failure of clinical trials to demonstrate safety and effectiveness for our desired indications could harm the development of that product candidate as well as other product candidates. Any change in, or termination of, our clinical trials could materially harm our business, financial condition and results of operations.

Success in early clinical trials may not be indicative of results obtained in later trials.

Results of our early clinical trials and those of our partners using our human antibody technology are based on a limited number of patients and may, upon review, be revised or negated by authorities or by later stage clinical results. Historically, the results from preclinical testing and early clinical trials have often not been predictive of results obtained in later clinical trials. A number of new drugs and biologics have shown promising results in initial clinical trials, but subsequently failed to establish sufficient safety and effectiveness data to obtain necessary regulatory approvals. Data obtained from preclinical and clinical activities are subject to varying interpretations, which may delay, limit or prevent regulatory approval.

In addition, regulatory delays or rejections may be encountered as a result of many factors, including changes in regulatory policy during the period of product development. For example, the FDA has moved several product categories previously regulated by the agency s Center for Biologics Evaluation and Research, or CBER,

13

to the agency s Center for Drug Evaluation and Research, or CDER. These product categories include monoclonal antibodies as well as cytokines, growth factors, enzymes, interferons and certain proteins. FDA has also recently announced a planned reorganization within CDER to create a new consolidated office for the review of oncology therapies. Oncology therapies are currently reviewed by different offices within CDER. The effect that these reorganizations at the FDA will have on clinical trials and product approval outcomes or timing is uncertain, but could cause delays or other currently unforeseeable effects.

Product candidates employing our antibody technology may fail to gain market acceptance.

Even if clinical trials demonstrate the safety, effectiveness, potency and purity of products developed by us or our partners using our technology and all regulatory approvals have been obtained, product candidates employing our antibody technology may not gain market acceptance among physicians, patients, third-party payors and the medical community. For example, the current delivery systems for antibody-based therapeutic products are intravenous and subcutaneous injection, which are generally less well received by patients than tablet or capsule delivery. The degree of market acceptance of any product candidates employing our technology will depend on a number of factors, including, for example:

- establishment and demonstration of clinical efficacy, potency and safety, especially as compared to conventional treatments;
- cost-effectiveness;
- alternative treatment methods;
- reimbursement policies of government and third-party payors; and
- marketing and distribution support for our product candidates.

In addition, many of our activities involve genetic engineering in animals and animal testing, controversial subjects which have received adverse publicity from animal rights activists and various other interest groups. Such adverse publicity could decrease market acceptance of products employing our technology.

If products employing our technology do not achieve significant market acceptance, our business, financial condition and results of operations may be materially harmed.

The successful commercialization of our antibody products will depend on obtaining coverage and reimbursement for use of these products from third-party payors.

Sales of pharmaceutical products largely depend on the reimbursement of patients medical expenses by government health care programs and private health insurers. Without the financial support of the governments or third-party payors, the market for products employing our human antibody technology will be limited. These third-party payors are increasingly challenging the price and examining the cost effectiveness of medical products and services. In addition, significant uncertainty exists as to the reimbursement status of newly approved healthcare products. We may need to conduct post-marketing studies in order to demonstrate the cost- effectiveness of our products. Such studies may require us to dedicate a significant amount of resources. Our product candidates may not be considered cost-effective. Third-party payors may not reimburse

sales of products employing our human antibody technology, or enable us or our partners to sell them at profitable prices.

Third-party payors control health care costs by limiting both coverage and the level of reimbursement for new health care products. In the future, the United States government may institute price controls and further limits on Medicare and Medicaid spending. Internationally, medical reimbursement systems vary with differing degrees of regulation. Pricing controls and reimbursement limitations could affect the payments we receive from sales of products generated using our human antibody technology. These variations could harm our ability and the ability of our partners to sell products generated using our human antibody technology in commercially acceptable quantities at profitable prices.

We may experience pressure to lower the prices of any prescription pharmaceutical products we are able to obtain approval for because of new and/or proposed federal legislation.

New federal legislation, enacted in December 2003, has added an outpatient prescription drug benefit to Medicare, effective January 2006. In the interim, Congress has established a discount drug card program for Medicare beneficiaries. Both benefits will be provided primarily through private entities, which will attempt to negotiate price concessions from pharmaceutical manufacturers. These negotiations may increase pressures to lower prices. While the new law specifically prohibits the United States government from interfering in price negotiations between manufacturers and Medicare drug plan sponsors, some members of Congress are pursuing legislation that would permit the United States government to use its enormous purchasing power to demand discounts from pharmaceutical companies, thereby creating de facto price controls on prescription drugs. In addition, the new law contains triggers for Congressional consideration of cost containment measures for Medicare in the event Medicare cost increases exceed a certain level. These cost containment measures could include some sorts of limitations on prescription drug prices. Our results of operations could be materially harmed by the Medicare prescription drug coverage legislation, by the potential effect of such legislation on amounts that private insurers will pay for our products and by other healthcare reforms that may be enacted or adopted in the future.

We may face increased competition from products imported from Canada or other countries.

Any products we are able to commercialize may be subject to competition from lower priced versions of such products and competing products from Canada, Mexico, and other countries where there are government price controls or other market dynamics that make the products lower priced. The ability of patients and other customers to obtain these lower priced imports has grown significantly as a result of the Internet, an expansion of pharmacies in Canada and elsewhere targeted to American purchasers, the increase in U.S.-based businesses affiliated with Canadian pharmacies marketing to American purchasers, and other factors. Many of these foreign imports are illegal under current law. However, the volume of imports continues to rise due to the limited enforcement resources of the FDA and the U.S. Customs Service, and the pressure in the current political environment to permit the imports as a mechanism for expanding access to lower priced medicines.

In addition, in December 2003, federal legislation was enacted to change United States import laws and expand the ability to import lower priced versions of our and competing products from Canada, where there are government price controls. These changes to the import laws will not take effect unless and until the Secretary of Health and Human Services certifies that the changes will lead to substantial savings for consumers and will not create a public health safety issue. The current Secretary of Health and Human Services has indicated that there is not a basis to make such a certification at this time. However, it is possible that this Secretary or a subsequent Secretary could make the certification in the future. In addition, legislative proposals have been made to implement the changes to the import laws without any certification, and to broaden permissible imports in other ways. Even if the changes to the import laws do not take effect, and other changes are not enacted, imports from Canada and elsewhere may continue to increase due to market and political forces, and the limited enforcement resources of the FDA, the Customs Service, and other government agencies. For example, state and local governments have suggested that they may import drugs from Canada for employees covered by state health plans or others, and some have already put such plans in place.

The importation of foreign products could adversely affect our profitability. This potential impact could become more significant in the future, and the impact could be even greater if there is a further change in the law or if state or local governments take further steps to import products from abroad.

Our manufacturing facilities may not continue to meet regulatory requirements and have limited capacity.

Before approving a new drug or biologic product, the FDA requires that the facilities at which the product will be manufactured are in compliance with current good manufacturing practices, or cGMP, requirements. To be successful, our therapeutic products must be

manufactured for development and, following approval, in

commercial quantities, in compliance with regulatory requirements and at acceptable costs. While we believe our current facilities are adequate for the limited production of product candidates for clinical trials, our facilities are not adequate to produce sufficient quantities of any products for commercial sale.

If we are unable to establish and maintain a manufacturing facility or secure third party manufacturing capacity within our planned time and cost parameters, the development and sales of our products and our financial performance may be materially harmed.

We may also encounter problems with the following:

- production yields;
- quality control and assurance;
- shortages of qualified personnel;
- compliance with FDA regulations, including the demonstration of purity and potency;
- changes in FDA requirements;
- production costs; and/or
- development of advanced manufacturing techniques and process controls.

We are aware of only a limited number of companies on a worldwide basis that operate manufacturing facilities in which our product candidates can be manufactured under cGMP regulations, a requirement for all pharmaceutical products. We are currently pursuing late-stage clinical and commercial supply agreements with cGMP-compliant third party manufacturers with available capacity to meet our internal production timetables. We have entered into clinical supply agreements with Lonza Group Ltd. with respect to MDX-010 and MDX-060, respectively and discussions are ongoing with respect to terms of a commercial supply agreement. We do not currently have the capability to manufacture our products under development in large commercial quantities and have no experience in commercial-scale manufacturing. It would take a substantial period of time for a contract facility that has not been producing antibodies to begin producing antibodies under cGMP regulations. We cannot make assurances that we will be able to contract with such companies for clinical and/or commercial supply on acceptable terms or in a timely manner, if at all. Moreover, even if we are able to enter into clinical and/or commercial supply manufacturing arrangements with cGMP-compliant third-party manufacturers, we cannot assure you that such manufacturers will be able to produce products that are substantially equivalent to the product candidates that we have produced in our own facilities and used in our clinical trials. If such companies are not able to produce products that are substantially equivalent to our product candidates, the progress of our clinical trials and/or commercialization of our products may be delayed and our business, financial condition and results of operations may be materially harmed.

In addition, we and any third-party manufacturer will be required to register manufacturing facilities with the FDA and other regulatory authorities. The facilities will be subject to inspections confirming compliance with cGMP or other regulations. If we or any of our third-party manufacturers fail to maintain regulatory compliance, the FDA can impose regulatory sanctions including, among other things, refusal to approve a pending application for a new drug product or biologic product, or revocation of a pre-existing approval. As a result, our business, financial condition and results of operations may be materially harmed.

We are, in part, dependent on our partners willingness and/or ability to devote resources to the development of product candidates or otherwise support our business as contemplated in our partnership agreements.

We depend, in part, on our partners to support our business, including the development of products generated through the use of our antibody technology. We currently, or in the future may, rely on our partners to:

access proprietary antigens for the development of product candidates;

access skills and information that we do not possess;

fund our research and development activities;

manufacture products;

fund and conduct preclinical testing and clinical trials;

seek and obtain regulatory approvals for product candidates; and/or

commercialize and market future products.

Our dependence on our partners subjects us to a number of risks, including:

our partners have significant discretion whether to pursue planned activities;

we cannot control the quantity and nature of the resources our partners may devote to product candidates;

our partners may not develop products generated using our antibody technology as expected; and

business combinations or significant changes in a partner s business strategy may adversely affect that partner s willingness or ability to continue to pursue these product candidates.

If we do not realize the contemplated benefits from our partners, our business, financial condition and results of operations may be materially harmed.

Our existing partnerships may be terminated, and we may not be able to establish additional partnerships.

Our licensing partners generally have the right to terminate our partnerships at any time. Our ability to continue our current partnerships and to enter into additional partnerships is dependent in large part on our ability to successfully demonstrate that our UltiMAb technology is an attractive method of developing fully human antibody therapeutic products. We have generated only a limited number of fully human antibody therapeutic product candidates pursuant to our collaboration agreements and only 17 product candidates generated with our human antibody technology have entered clinical testing. Existing or potential partners may pursue alternative technologies, including those of our competitors, or enter into other transactions that could make a collaboration with us less attractive to them. For example, if an existing partner purchases or is purchased by a company that is one of our competitors, that company could be less willing to continue its collaboration with us. In addition, a company that has a strategy of purchasing companies rather than entering into partnership arrangements might have less incentive to enter into a collaboration agreement with us. Moreover, disputes may arise with respect to the ownership of rights to any technology or products developed

with any current or future partner. Lengthy negotiations with potential new partners or disagreements between us and our partners may lead to delays or termination in the research, development or commercialization of product candidates. If we are not able to establish additional partnerships on terms that are favorable to us or if a significant number of our existing partnerships are terminated and we cannot replace them, we may be required to increase our internal product development and commercialization efforts. This would likely:

limit the number of product candidates that we will be able to develop and commercialize;

significantly increase our need for capital; and/or

place additional strain on management s time.

Any of the above may materially harm our business, financial condition and results of operations.

Due to the size of our equity interest in Genmab, we must include a portion of its income and losses in our financial statements.

Due to the size of our interest in Genmab, we are currently required to account for our equity interest in Genmab under the equity method of accounting, which provides that we must include a portion of Genmab s income and losses equal to our percentage equity interest in Genmab in our consolidated financial statements. For the years ended December 31, 2001, 2002 and 2003, our share of Genmab s losses were approximately $7.3 million, $19.6 million and $15.0 million, respectively. For the three-month period ended March 31, 2004, our share of Genmab s net loss was $4.8 million. We expect that during the second half of 2004, the remaining basis of our investment in Genmab will be reduced to zero and, accordingly, recognition of our share of Genmab s net losses will be suspended.

Our strategic investments in our partners whose securities are publicly traded expose us to equity price risk and, in addition, investments in our partners may be deemed impaired, which would affect our results of operations.

We have a number of strategic investments which expose us to equity price risk. These investments may become impaired which would adversely affect our results of operations.

We are exposed to equity price risk on our strategic investments in our publicly-traded partners, including Genmab and Tularik, Inc., and as part of our business strategy, we may choose to make additional similar investments in public companies in the future. On March 29, 2004, Tularik announced a merger with Amgen, Inc. whereby Tularik will become a wholly owned subsidiary of Amgen. The parties expect the transaction to close in the second half of 2004. As these investments are the result of strategic alliances with our collaborative partners, we typically do not attempt to reduce or eliminate our market exposure of these types of strategic investments. Under SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities, these investments are designated as available-for-sale and are reported at fair value on our consolidated balance sheet. Unrealized holding gains and losses on available-for-sale securities are generally excluded from earnings and reported within other comprehensive income which is a separate component of shareholders equity. Under our accounting policy, marketable equity securities are generally considered to be impaired if their fair value is less than our cost basis in such securities for more than six months, or some other period in light of the particular facts and circumstances surrounding the investment. If a decline in the fair value of available-for-sale securities is considered to be other than temporary, the cost basis of the security is written down to fair value as a new cost basis and the amount of the write-down is included in earnings as an impairment charge. For the year ended December 31, 2002, we recorded impairment charges of approximately $40.5 million (of which approximately $31.0 million related to Genmab) on our strategic investments in publicly traded companies. During the year ended December 31, 2003, no impairment charges were recorded related to the value of our investments in publicly traded companies. For the three month period ended March 31, 2004, we recorded an impairment charge of $0.2 million on investments in partners whose securities are publicly traded. If we deem these investments to be further impaired at the end of any future reporting period, we may incur additional impairment charges on these investments.

In addition, we have investments in several of our partners whose securities are not publicly traded such as IDM. Because these securities are not publicly traded, the value of our investments in these companies are inherently more difficult to estimate than our investments in publicly traded companies. We estimate the value of these investments by using information acquired from industry trends, the management of these companies, financial statements, and other external sources. Specifically, our determination of any potential impairment of the value of privately held securities includes an analysis of the following for each company on a periodic basis: review of interim and year-end financial statements, cash position and overall rate of cash used to support operations, the progress and development of technology and product platform, the per share value of subsequent financings and potential strategic alternatives. Based on the information acquired through these sources, we record an investment impairment charge when we believe an investment has experienced a decline in value that is considered to be other than temporary. For the years ended December 31, 2002 and 2003, we recorded impairment charges of approximately $2.4 million and $1.4 million, respectively, on our investments in

18

privately-held companies. For the three month period ended March 31, 2004, we recorded an impairment charge of $0.1 million on investments in partners whose securities are privately held. Future adverse changes in market conditions or adverse changes in operating results of these companies may also require an impairment charge in the future.

We are dependent on our key personnel.

We are highly dependent on the members of our scientific and management staff. If we are not able to retain any of these persons, our business may suffer. In particular, we depend on the services of Donald L. Drakeman, J.D., Ph.D., our President and Chief Executive Officer, Nils Lonberg, Ph.D., our Senior Vice President and Scientific Director; and Geoffrey Nichol, M.D., MBA, our Senior Vice President, Product Development. We maintain a key man life insurance policy for Dr. Drakeman in the amount of $2.0 million and maintain key man life insurance policies in the amount of $1.0 million for each of Dr. Lonberg and Dr. Nichol. We have entered into employment agreements with Dr. Drakeman and all of our other executive officers, which expire in January 2007. Thereafter, all of these agreements are automatically renewed for successive one (1) year terms unless we or the employee elect not to renew.

For us to pursue product development, marketing and commercialization plans, we will need to hire additional qualified scientific personnel to perform research and development. We will also need to hire personnel with expertise in clinical testing, government regulation, manufacturing, sales and marketing, relevant law and finance. We may not be able to attract and retain personnel on acceptable terms, given the competition for such personnel among biotechnology, pharmaceutical and healthcare companies, universities and non-profit research institutions. If we are not able to attract and retain qualified personnel, our business, financial condition and results of operations may be materially harmed.

We depend on patents and proprietary rights.

Our success depends in part on our ability to:

- apply for, obtain, protect and enforce patents
- protect trade secrets;
- operate without infringing upon the proprietary rights of others; and
- in-license certain technologies.

We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We protect our proprietary position by filing United States and foreign patent applications related to our proprietary technology, inventions and improvements that are important to the development of our business. While a number of patents have been issued in the United States and Europe relating to our human antibody technology, we may not be able to obtain patent protection in other countries. Our pending patent applications, those we may file in the future, or those we may license from third parties, may not result in patents being issued or enforceable. The patent position of biotechnology companies involves complex legal and factual questions and, therefore, enforceability cannot be predicted with certainty. Patents, if issued, may be challenged, invalidated or circumvented. Thus, any patents that we own or license from third parties may not provide sufficient protection against competitors. Also, patent rights may not provide us with proprietary protection or competitive advantages against competitors with similar technology. Furthermore,

others may independently develop similar technologies or duplicate any technology that we have developed. The laws of foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States.

In addition to patents, we rely on trade secrets and proprietary know-how. We seek protection, in part, through confidentiality and proprietary information agreements. These agreements may not provide protection or adequate remedies in the event of unauthorized use or disclosure of confidential and proprietary information, or breach of these agreements. Furthermore, our trade secrets may otherwise become known to, or be independently developed by, our competitors.

Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties. In the event that our technologies may infringe on the patents or violate other proprietary rights of third parties, we and our partners may be prevented from pursuing product development, manufacturing or commercialization. Such a result may materially harm our business, financial condition and results of operations.

Third parties may allege our products infringe their patents or may challenge the validity of our patents and other intellectual property rights, resulting in litigation or other time-consuming and expensive proceedings which could deprive us of valuable products and/or rights.

If we become involved in any intellectual property litigation, interference or other judicial or administrative proceedings, we will incur substantial expense and the efforts of our technical and management personnel will be diverted. An adverse determination may subject us to significant liabilities or require us to seek licenses that may not be available from third parties on commercially favorable terms, if at all. Therefore, we and our partners may be restricted or prevented from manufacturing and selling products employing our human antibody technology, which would harm our business.

Even though we have received patents pertaining to the HuMAb-Mouse technology, this does not mean that we and our licensees of HuMAb-Mouse technology will have exclusive rights to antibodies against all targets that are made using this technology, or that we or our licensees will have the right to make, develop, use or sell such antibodies.

Our patents covering the HuMAb-Mouse technology include patents that cover particular human antibodies. These patents do not cover all human antibodies.

Our patents may not protect against the importation of products, such as antibodies, made using HuMAb-Mouse technology.

Moreover, other parties could have blocking patent rights to products made using HuMAb-Mouse technology, such as antibodies, and their production and uses, for instance because of a proprietary position covering the antibody or the antibody s target. For example, we are aware of certain United States and European patents held by third parties relating to particular targets for their human monoclonal antibodies, to human monoclonal antibodies against various targets and bispecific products, and the manufacture and use of such products. In particular, we are aware of certain United States and foreign patents and patent applications owned by third parties that pertain to monoclonal antibodies against CTLA-4, such as MDX-010, and their uses. We are also aware of certain United States and foreign patents and patent applications held by third parties relating to anti-CD4 antibodies, such as HuMax-CD4, anti-CD30 antibodies, such as MDX-060, anti-EGFr antibodies, such as MDX-214 and anti-PSMA antibodies, such as MDX-070, as well as other antibody products under development by us.

We are also aware of a United States patent owned by Genentech, Inc., relating to the production of recombinant antibodies in host cells. We currently produce certain of our products and our partners products using recombinant antibodies from host cells and may choose to produce additional products in this manner. If

20

any of our antibody products are produced in the manner claimed in this patent, then we may need to obtain a license, should one be available. If we are unable to obtain a license on commercially reasonable terms, we may be restricted in our ability to make recombinant antibodies using Genentech s techniques. In addition to the Genentech patent, we are also aware of certain United States patents held by third parties relating to antibody expression in particular types of host cells, including CHO cells, which may be relevant to our current or future manufacturing techniques.

If our antibody products (or those antibody products of our partners using our human antibody technology) or their commercial use or production meet all of the requirements of any of the claims of the aforementioned patents, or patents which may issue from the aforementioned patent applications, then we or our partners may need a license to one or more of these patents. Further, we are aware of a number of other third party patent applications that, if granted, with claims as currently drafted, may cover our and our partners current or planned activities. We expect to seek to obtain licenses to such patents when, in our judgment, such licenses are needed. If any licenses are required, there can be no assurance that we will be able to obtain any such license on commercially favorable terms, if at all, and if these licenses are not obtained, we might be prevented from using certain of our technologies for the generation of our recombinant human antibody products. Our failure to obtain a license to any technology that we may require may materially harm our business, financial condition and results of operations. We cannot assure you that our products and/or actions in developing or selling recombinant human antibody products will not infringe such patents.

In general, our patent protection may not prevent others from developing competitive products using our technology or other technologies. Similarly, others may obtain patents that could limit our ability and the ability of our partners to use, import, manufacture, market or sell products or impair our competitive position and the competitive position of our partners.

We do not have exclusive access to the patents underlying the HuMAb-Mouse. In March 1997, prior to our acquisition of GenPharm International, Inc., GenPharm entered into a cross-license and settlement agreement with Abgenix, Inc., Cell Genesys, Inc., Xenotech, L.P. and Japan Tobacco, Inc., pursuant to which Abgenix and these entities paid us a total of approximately $38.6 million in exchange for a non-exclusive license to certain patents, patent applications, third-party licenses and inventions pertaining to the development and use of certain transgenic rodents, including mice, that produce fully human antibodies that are integral to our products and business. These patents, licenses and inventions form the basis of our HuMAb-Mouse technology. Our business may suffer from the competition of these entities, as well as if any of these entities breach the cross-license and settlement agreement.

We are not the exclusive owner of the technology underlying the KM-Mouse. Effective September 4, 2002, we entered into a Collaboration and License Agreement with Kirin Brewery Co., Ltd., which provides for us to exchange certain cross-licenses for each other s technology for the development and commercialization of human antibody products made using the HuMAb-Mouse, the KM-Mouse and certain other antibody-generating mice. Kirin has certain rights to distribute and use such mice throughout the world. Our business may suffer as a consequence of competition from Kirin or if the Collaboration and License Agreement were breached or terminated for any reason.

We have had and may continue to face product liability claims related to the use or misuse of products employing our antibody technology.

The administration of drugs to humans, in clinical trials or after commercialization, may expose us to product liability claims. Consumers, healthcare producers or persons selling products based on our technology may be able to bring claims against us based on the use of our products in clinical trials and the sale of products based on our technology. Product liability claims may be expensive to defend and may result in large judgments against us. We have obtained limited product liability coverage for our clinical trials, under which coverage

limits are $10 million per occurrence and $10 million in the aggregate. Although we believe these coverage limits are adequate, we cannot be certain that the insurance policies will be sufficient to cover all claims that may be made against us. We intend to increase our coverage limits as we progress into additional late-stage clinical trials and to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for products in development. Product liability insurance is expensive, difficult to obtain and may not be available in the future on acceptable terms.

In November 1998, we voluntarily suspended clinical trials for one of our products after some patients experienced serious adverse events, or SAEs. This product did not employ our core fully human antibody technology and we have determined not to pursue further development of this product. As a result of these SAEs, we received a small number of claims, of which five resulted in lawsuits being filed. All of these lawsuits have been settled for insubstantial amounts. We cannot make assurances that additional claims will not be filed against us relating to these SAEs or arising out of any other clinical trial we have conducted or will conduct in the future.

Generally, our clinical trials, including our melanoma trials, are conducted in patients with serious life-threatening diseases for whom conventional treatments have been unsuccessful or for whom no conventional treatment exists, and in some cases, our product is used in combination with approved therapies that themselves have significant adverse event profiles. During the course of treatment, these patients could suffer adverse medical effects or die for reasons that may or may not be related to our products. The most common adverse events associated with our melanoma trials have consisted of flu-like symptoms such as fever, chills and nausea. These events were expected and generally responded to standard medical therapy. In addition, some patients have experienced anticipated drug-related autoimmune adverse events, such as dermatitis and colitis, ranging from mild in most cases to severe in a very small number of instances. Almost all of these adverse events responded to medical therapy. In a very small number of instances, fatalities have occurred during the course of these trials such fatalities may or may not be attributable to our product. We believe that these adverse events will not materially affect our ability to continue with clinical trials of this product as planned. Any of these events could result in a product liability claim. Any such claims against us, regardless of their merit, could result in significant awards against us which could materially harm our business, financial condition and results of operations.

We face intense competition and rapid technological change.

The development of biotechnology and pharmaceutical products is a highly competitive business subject to significant and rapid technological change. We face competition in several different forms. First, our human antibody generation activities currently face competition from several competitors with similar technology to ours as well as distinctly different technologies. The actual products being developed by us or by our partners also face actual and potential competition. Developments by our competitors may render our human antibody technology obsolete or non-competitive.

We are aware of several pharmaceutical and biotechnology companies that are actively engaged in research and development in areas related to antibody therapeutics. Some of these companies have commenced clinical trials of antibody products or have successfully commercialized antibody products. Many of these companies are addressing the same diseases and disease indications as we and our partners. Also, we compete with companies that offer antibody generation services to other companies that have disease related target antigens. These competitors have specific expertise or technology related to monoclonal antibody development. We compete directly with Abgenix, with respect to the generation of fully human antibodies from transgenic mice. In addition, we have entered into agreements with each of Kirin and Genmab, respectively, that grant these companies licenses to our proprietary transgenic mouse technology platform, enabling them to compete with us in offering antibody generation and development services in certain markets. Xenerex Biosciences and XTL Biopharmaceutical, Ltd. have developed technology that, according to Xenerex and XTL, will allow them to generate fully human monoclonal antibodies in functionally modified mice. Numerous additional companies are developing therapeutic products comprising human antibody components. Furthermore, several companies are developing, or have developed, technologies that do not involve immunization of animals for creating antibodies

comprising human antibody sequences. For example, phage and yeast display technology is being used by companies, such as Cambridge Antibody Technology Group plc, Dyax Corp., Genetastix Corporation and MorphoSys AG to develop therapeutic products comprising human antibody sequences. Companies such as Johnson & Johnson, MedImmune, Inc., Amgen, Biogen Idec, Novartis, Genentech, Inc., Protein Design Labs, Inc., Wyeth, Abbott and Corixa Corporation have generated therapeutic products that are currently on the market and that are derived from recombinant DNA that comprise human antibody components.

Other technologies can also be applied to the treatment of the diseases that we or our partners are pursuing. For example, immunoconjugates monoclonal antibodies linked to toxins or radioactive isotypes are being developed by others. In addition, the application of recombinant DNA technology to develop potential products consisting of proteins (such as growth factors, hormones, enzymes, receptor fragments and fusion proteins, or cytokines) that do not occur normally in the body, or occur only in small amounts, has been underway for some time. Included in this group are interleukins such as IL-2 and IL-11, interferons alpha, beta and gamma, colony stimulating factors such as G-CSF and GM-CSF, clotting factors, growth hormones, erythropoeitin, DNAse, tPA, glucocerebrosidase, PDGF, and a number of other biological response modifiers. Continuing development of new chemical entities and other drugs by large pharmaceutical companies carries with it the potential for discovery of agents for treating disease indications also targeted by drugs that we or our partners are developing.

Some of our competitors have received regulatory approval or are developing or testing product candidates that compete directly with product candidates employing our antibody technology. Many of these companies and institutions, either alone or together with their partners, have substantially greater financial resources and larger research and development staffs than we or some of our partners do. In addition, many of these competitors have significantly greater experience than we do in:

- developing products;
- undertaking preclinical testing and clinical trials;
- obtaining FDA and other regulatory approvals of products; and
- manufacturing and marketing products.

Accordingly, our competitors may obtain patent protection, receive FDA approval or commercialize products before we or our partners do. If we or our partners commence commercial product sales, we or our partners will be competing against companies with greater marketing and manufacturing capabilities, areas in which we and certain of our partners have limited or no experience.

We also face intense competition from other pharmaceutical and biotechnology companies to establish partnerships, as well as relationships with academic and research institutions, and to license proprietary technology from these institutions. These competitors, either alone or with their partners, may succeed in developing technologies or licensing technologies or products that are more effective than ours.

We are subject to extensive and costly government regulation.

Product candidates employing our human antibody technology are subject to extensive and rigorous domestic government regulation including regulation by the FDA, the Centers for Medicare and Medicaid Services, other divisions of the U.S. Department of Health and Human Services, state and local governments and their respective foreign equivalents. The FDA regulates the research, development, preclinical and clinical

testing, manufacture, safety, effectiveness, record-keeping, reporting, labeling, storage, approval, advertising, promotion, sale, distribution, import, and export of biopharmaceutical products. The FDA regulates human antibodies as biologics, subject to a Biologic License Application, or BLA, under the Public Health Services Act, as amended. If products employing our human antibody technology are marketed abroad, they will also be subject to extensive regulation by foreign governments, whether or not we have obtained FDA approval for a given product and its uses. Such foreign regulation may be equally or more demanding than corresponding United States regulation.

Government regulation substantially increases the cost and risk of researching, developing, manufacturing, and selling our products. The regulatory review and approval process, which includes preclinical testing and clinical trials of each product candidate, is lengthy, expensive and uncertain. We or our partners must obtain and maintain regulatory authorization to conduct clinical trials. We or our partners must obtain regulatory approval for each product we intend to market, and the manufacturing facilities used for the products must be inspected and meet legal requirements. Securing regulatory approval requires the submission of extensive preclinical and clinical data and other supporting information for each proposed therapeutic indication in order to establish the product s safety, efficacy, potency and purity for each intended use. The development and approval process takes many years, requires substantial resources, and may never lead to the approval of a product. Failure to obtain regulatory approvals, or delays in obtaining regulatory approvals may:

adversely affect the successful commercialization of any drugs that we or our partners develop;

impose additional costs on us or our partners;

diminish any competitive advantages that we or our partners may attain; and

adversely affect our receipt of revenues or royalties.

Even if we are able to obtain regulatory approval for a particular product, the approval may limit the indicated uses for the product, may otherwise limit our ability to promote, sell, and distribute the product, may require that we conduct costly post-marketing surveillance, and/or may require that we conduct ongoing post-marketing studies. Material changes to an approved product, such as, for example, manufacturing changes or revised labeling, may require further regulatory review and approval. Once obtained, any approvals may be withdrawn, including, for example, if there is a later discovery of previously unknown problems with the product, such as a previously unknown safety issue. If we, our partners or our contract manufacturers fail to comply with applicable regulatory requirements at any stage during the regulatory process, such noncompliance could result in, among other things:

delays in the approval of applications or supplements to approved applications;

refusal of a regulatory authority, including the FDA, to review pending market approval applications or supplements to approved applications;

warning letters;

fines;

import and/or export restrictions;

product recalls or seizures;

injunctions;

total or partial suspension of production;

civil penalties;

withdrawals of previously approved marketing applications or licenses;

recommendations by the FDA or other regulatory authorities against governmental contracts; and

criminal prosecutions.

In certain cases, we expect to rely on our partners to file Investigational New Drug applications, or INDs, with the FDA and to direct the regulatory approval process for products employing our human antibody technology. Our partners may not be able to conduct clinical testing or obtain necessary approvals from the FDA or other regulatory authorities for their product candidates employing our human antibody technology. If they fail to obtain required governmental approvals, our partners will be delayed or precluded from marketing these products. As a result, commercial use of products employing our technology will not occur and our business, financial condition and results of operations may be materially harmed.

We do not have, and may never obtain, the regulatory approvals we need to market our product candidates.

Following completion of clinical trials, the results are evaluated and, depending on the outcome, submitted to the FDA in the form of a BLA or a New Drug Application, or NDA, in order to obtain FDA approval of the product and authorization to commence commercial marketing. In responding to a BLA or NDA, the FDA may require additional testing or information, may require that the product labeling be modified, may impose post-approval study or reporting requirements or other restrictions on product distribution, or may deny the application. The timing of final FDA review and action varies greatly, but can take years in some cases and often involves the input of an FDA advisory committee of outside experts. Product sales in the United States may commence only when a BLA or NDA is approved.

To date, we have not applied for or received the regulatory approvals required for the commercial sale of any of our products in the United States or in any foreign jurisdiction. None of our product candidates has been determined to be safe and effective, and we have not submitted an NDA or BLA to the FDA or an equivalent application to any foreign regulatory authorities for any of our product candidates. We have only limited experience in filing and pursuing applications necessary to obtain regulatory approval. As a result, it is possible that none of our product candidates will be approved for marketing.

Product candidates that appear promising in the early phases of development, such as in early human clinical trials, may fail to reach the market for a number of reasons, such as the product candidate did not demonstrate acceptable clinical trial results even though it demonstrated positive preclinical trial results; the product candidate was not effective in treating the specified disease or condition; the product candidate had harmful side effects on humans or presented unacceptable safety risks; the governing regulatory authorities (such as the FDA) denied approval to the product candidate altogether or denied a commercially important indicated use; the product candidate was not economical for us to manufacture; and/or the product candidate was not cost effective in light of alternative therapies. We cannot guarantee that we will ever be able to produce commercially successful products.

If we or our manufacturing partners do not comply with current good manufacturing practices requirements, we will not be able to commercialize our product candidates.

We will depend on our own manufacturing facilities and on those of our partners and other third parties to manufacture products generated through the use of our human antibody technology. Before commercializing a new drug, manufacturers must demonstrate compliance with the applicable current good manufacturing practices, or cGMP, requirements which include quality control and quality assurance requirements as well as the maintenance of extensive records and documentation. Manufacturing facilities are subject to ongoing periodic inspection by the FDA and corresponding foreign and state authorities, including unannounced inspections, and must be licensed before they can be used in commercial manufacturing for products generated through the use of our technology. In addition, cGMP requirements are constantly evolving, and new or different requirements may apply in the future. We, our partners or third party contract manufacturers may not be able to comply with the applicable regulations. After regulatory approvals are obtained, the subsequent discovery of previously unknown problems, or the failure to maintain compliance with existing or new regulatory requirements, may result in restrictions on the marketing of a product, withdrawal of the product from the market, seizures, the shutdown of manufacturing facilities, injunctions, monetary fines and/or civil or criminal sanctions.

Even if approved, our products will be subject to extensive post-approval regulation.

Once a product is approved, numerous post-approval requirements apply. Among other things, the holder of an approved BLA or NDA is subject to periodic and other FDA monitoring and reporting obligations, including obligations to monitor and report adverse events and instances of the failure of a product to meet the specifications in the BLA or NDA. Application holders must also submit advertising and other promotional material to the FDA and report on ongoing clinical trials.

25

Advertising and promotional materials must comply with FDA rules in addition to other potentially applicable federal and state laws. The distribution of product samples to physicians must comply with the requirements of the Prescription Drug Marketing Act. Manufacturing facilities remain subject to FDA inspection and must continue to adhere to FDA s current good manufacturing practice requirements. Application holders must obtain FDA approval for product, manufacturing and labeling changes, depending on the nature of the change. Sales, marketing, and scientific/educational grant programs must comply with the Medicare-Medicaid Anti-Fraud and Abuse Act, as amended, the False Claims Act, also as amended, and similar state laws. Pricing and rebate programs must comply with the Medicaid rebate requirements of the Omnibus Budget Reconciliation Act of 1990, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. All of these activities are also potentially subject to federal and state consumer protection and unfair competition laws.

Depending on the circumstances, failure to meet these post-approval requirements can result in criminal prosecution, fines or other penalties, injunctions, recall or seizure of products, total or partial suspension of production, denial or withdrawal of pre-marketing product approvals, or refusal to allow us to enter into supply contracts, including government contracts. In addition, even if we comply with FDA and other requirements, new information regarding the safety or effectiveness of a product could lead the FDA to modify or withdraw a product approval.

If we are able to obtain approvals for our products, the law or FDA policy could change and expose us to competition from generic or follow-on versions of our products.

Under current U.S. law and FDA policy, generic versions of conventional chemical drug compounds, sometimes referred to as small molecule compounds, may be approved through an abbreviated approval process. In general terms, the generic applicant references an approved innovator product for which full clinical data demonstrating safety and effectiveness exist for the approved conditions of use. The generic applicant in turn need only demonstrate that its product has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use (labeling) as the referenced innovator drug, and that the generic product is absorbed in the body at the same rate and to the same extent as the referenced innovator drug (this is known as bioequivalence). In addition, the generic application must contain information regarding the manufacturing processes and facilities that will be used to ensure product quality, and must contain certifications to patents listed with the FDA for the referenced innovator drug.

There is no such abbreviated approval process under current law for biological products approved under the Public Health Service Act through a BLA, such as monoclonal antibodies, cytokines, growth factors, enzymes, interferons and certain other proteins. However, various proposals have been made to establish an abbreviated approval process to permit approval of generic or follow-on versions of these types of biological products. The proposals include proposals for legislation, and proposals for FDA to extend its existing authority to this area. For example, some have proposed that FDA allow a generic or follow-on copy of certain therapeutic biologics to be approved under an existing mechanism known as a 505(b)(2) application. A 505(b)(2) application is a form of a New Drug Application, or NDA, where the applicant does not have a right to reference some of the data being relied upon for approval. Under current regulations, 505(b)(2) applications can be used where the applicant is relying in part on published literature or on findings of safety or effectiveness in another company s NDA.

505(b)(2) has not been used to date for therapeutic biologic products. In addition, the use of 505(b)(2) applications even for conventional chemical drug products is the subject of an ongoing legal challenge. It is thus not clear what the permitted use of a 505(b)(2) application might be in the future for biologics products, or whether any other proposals on generic or follow-on biologics will be adopted. However, if the law is changed or if FDA somehow extends its existing authority in new ways, and third parties are permitted to obtain approvals of versions of our products through an abbreviated approval mechanism, and without conducting full clinical studies of their own, it could adversely affect our business. Such products would be significantly less costly than ours to bring to market, and could lead to the existence of multiple lower priced competitive products. This would substantially limit our ability to obtain a return on the investments we have made in those products.

Our operations involve hazardous materials and are subject to environmental, health and safety controls and regulations.

As a biopharmaceutical company, we are subject to environmental, health and safety laws and regulations, including those governing the use of hazardous materials. The cost of compliance with environmental, health and safety regulations is substantial. Our business activities involve the controlled use of hazardous materials and we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident or environmental discharge, we may be held liable for any resulting damages, which may exceed our financial resources and may materially harm our business, financial condition and results of operations.

Our stock price may be volatile.

There has been significant volatility in the market prices of biotechnology companies securities. Various factors and events may have a significant impact on the market price of our common stock. These factors include, by way of example:

- fluctuations in our operating results;
- announcements of technological innovations or new commercial therapeutic products by us or our competitors;
- published reports by securities analysts;
- progress with clinical trials;
- governmental regulation;
- developments in patent or other proprietary rights;
- developments in our relationship with collaborative partners;
- public concern as to the safety and effectiveness of our products; and
- general market conditions.

During the two-year period ended June 30, 2004, the sale prices of our common stock ranged between $2.69 and $11.13. The trading price of our common stock has been, and could continue to be, subject to wide fluctuations in response to these or other factors, including the sale or attempted sale of a large amount of our common stock into the market. Broad market fluctuations may also adversely affect the market price of our common stock.

We have obligations to issue shares of our common stock in the future, which may have a dilutive effect on the shares of our common stock currently outstanding.

As of June 30, 2004, we had 11,641,479 shares of common stock reserved for issuance pursuant to options which had been granted under our stock option plans having a weighted average exercise price of $8.34 per share and we had reserved 3,351,150 shares of common stock for issuance pursuant to future grants of options under our stock option plans. We have filed registration statements on Form S-8 covering all of these shares. Shares issued pursuant to these plans, other than shares issued to affiliates, will be freely tradable in the open market. Shares held by affiliates may be sold pursuant to the requirements of Rule 144.

In addition, as of that date, there were 308,738 shares reserved for issuance pursuant to a deferred compensation plan. The shares reserved for the deferred compensation plan will be issued in various amounts over various periods of time during the next four years. We have filed a registration statement on Form S-8 covering those shares. Shares issued pursuant to this plan, other than shares issued to affiliates, will be freely tradable in the open market. Shares held by affiliates may be sold pursuant to the requirements of Rule 144.

As of June 30, 2004, we had reserved 1,095,447 shares of common stock for issuance pursuant to our 2002 Employee Stock Purchase Plan. We have filed a registration statement on Form S-8 covering 95,447 of those shares. The remaining 1,000,000 shares have not yet been registered but we intend to file a registration statement covering these shares prior to issuance under this plan. Upon the effectiveness of such registration statement, all shares issued under this plan, other than shares issued to affiliates, will be freely tradable on the open market. Shares held by affiliates may be sold pursuant to the requirements of Rule 144.

The exercise of all or a portion of the outstanding options may result in a significant increase in the number of shares of our common stock that will be subject to trading on the NASDAQ National Market, and the issuance and sale of the shares of our common stock upon the exercise thereof may have an adverse effect on the price of our common stock.

As of June 30, 2004, we had 2,647,816 shares of common stock reserved for issuance pursuant to the conversion of the approximately $76.4 million aggregate principal amount of our 4.50% Convertible Subordinated Notes due 2006. Holders of these notes may convert their notes into shares of common stock at any time prior to maturity or their redemption by us at a conversion rate of 34.6789 shares per each $1,000 principal amount of notes ($28.84 per share), subject to adjustment. Shares issued upon conversion of these notes will be freely tradable in the open market without restriction or further registration under the Securities Act except for shares held by our affiliates, which will be subject to the resale limitations of Rule 144. On July 1, 2004, we completed the redemption of all of the remaining issued and outstanding 4.50% Convertible Subordinated Notes due 2006. Upon the redemption of these notes, the shares of common stock issuable upon conversion thereof were no longer be reserved for issuance. See the section herein entitled Recent Developments.

As of June 30, 2004, we had 21,875,353 shares of common stock reserved for issuance pursuant to the conversion of the approximately $147.0 million aggregate principal amount of our 4.25% Convertible Senior Notes due August 15, 2010. Holders of these notes may convert their notes into shares of common stock at any time prior to maturity or their redemption by us at a conversion rate of 148.8261 shares per each $1,000 principal amount of the notes ($6.72 per share), subject to adjustment.

As of June 30, 2004, we had 10,936,935 shares of common stock reserved for the issuance pursuant to the conversion of the $150.0 million aggregate principal amount of our outstanding 2.25% Convertible Senior Notes due May 15, 2011. Holders of these notes may convert their notes into shares of common stock at any time prior to maturity or redemption by us at a conversion rate of 72.9129 shares per each $1,000 principal amount of the notes ($13.72 per share), subject to adjustment.

Future sales of our common stock or other securities could cause the market price of our common stock to decline.

As of June 30, 2004, we had 79,271,264 shares of common stock outstanding, of which 1,407,667 are restricted securities as that term is defined in Rule 144 under the Securities Act. Under certain circumstances, these restricted securities may be sold without registration pursuant to such rule. We are unable to predict the effect that sales made under Rule 144 or pursuant to any registration may have on the market price of our common stock. The sale of a significant number of additional securities, or even the possibility thereof, may lower the market price of our common stock.

We have a filed registration statement on Form S-3 under the Securities Act relating to 3,791,346 shares of common stock that may be offered by one of our stockholders. These shares of common stock are freely tradable without restriction or further registration under the Securities Act except for shares held by our affiliates, which will be subject to resale limitations of Rule 144.

In addition, we have filed a shelf registration statement on Form S-3 under the Securities Act relating to the sale of up to $297.15 million of any of the following securities:

debt securities;

preferred stock;

common stock; or

warrants to purchase debt securities, preferred stock or common stock.

We also have filed a registration statement on Form S-3 under the Securities Act of which this prospectus forms a part, that relates to the sale by certain selling securityholders of our $125.0 million 4.25% Convertible Senior Notes due August 15, 2010, and up to 18,601,190 shares of our common stock which may be issued upon the conversion of the notes. These notes and shares of common stock are freely tradable without restriction or further registration under the Securities Act except for shares held by our affiliates, which will be subject to resale limitation of Rule 144.

We also have filed a registration statement on Form S-3 under the Securities Act that relates to the sale by certain selling securityholders of our $21.986 million 4.25% Convertible Senior Notes due August 15, 2010, and up to 3,271,727 shares of our common stock which may be issued upon the conversion of the notes. Upon the effectiveness of such registration statement, the notes and the shares of common stock will be freely tradable without restriction or further registration under the Securities Act except for shares held by our affiliates, which will be subject to resale limitation of Rule 144.

In connection therewith, we have agreed to use our best efforts to keep these registration statements continuously effective until the earliest of (i) the sale of all outstanding registrable securities registered under the registration statement; (ii) the expiration of the period referred to in Rule 144(k) of the Securities Act with respect to the notes held by non-affiliates of us; (iii) all the registrable securities have ceased to be outstanding (whether as a result of redemption, repurchase, cancellation, conversion or otherwise); and (iv) two years after the respective effective dates of these registration statements.

We have filed a registration statement on Form S-4 to register shares of our common stock having a maximum aggregate offering price of $12,000,000. Upon effectiveness of the registration statement, we currently intend to use such shares to satisfy our purchase price obligations under the Ability Biomedical agreement. Such shares will be freely tradable without restriction or further registration under the Securities Act.

We have filed a registration statement on Form S-3 under the Securities Act relating to our $150.0 million Convertible Senior Notes due May 15, 2011, and up to 10,936,935 shares of our common stock which may be issued upon conversion of the notes. Upon the effectiveness of the registration statement, the notes and the shares of common stock will be freely tradable without restriction or further registration under the Securities Act except for shares held by our affiliates, which will be subject to resale limitation of Rule 144.

Upon the occurrence of certain change of control events of our company, we are required to offer to repurchase all of our debt, which may adversely affect our business and the price of our common stock.

Upon the occurrence of certain change of control events of our company, we are required to offer to repurchase all of our outstanding 4.25% convertible subordinated notes due August 15, 2010. As of June 30, 2004, approximately $147.0 million aggregate principal amount of these notes was outstanding. Upon such change of control event, we are also required to offer to repurchase all of our outstanding 2.25% convertible senior notes due May 11, 2011. As of June 30, 2004, $150.0 million aggregate principal amount of these notes was outstanding. In each instance, we may pay the repurchase price in cash or, at our option, in common stock. These change of control events include, without limitation, (i) the acquisition by any third party of at least 50% of our common stock; or (ii) our merger or consolidation with or into any other person, any merger or consolidation of another person into us or our sale or other disposal of all or substantially all of our assets, except in certain limited circumstances provided in the indentures relating to the notes. Such repurchase rights may be triggered at a time at which we do not have sufficient funds available to pay the repurchase price in cash or determine that payment in cash is otherwise inadvisable. In such event, the issuance of a significant number of additional shares of common stock in payment of the repurchase price may lower the market price of our

common stock.

Our restated certificate of incorporation, by-laws, shareholder rights plan and New Jersey law contain provisions that could delay or prevent an acquisition of our company even if the acquisition would be beneficial to our shareholders, and as a result, our management may be come entrenched and hard to replace.

In May 2001, our board of directors adopted a shareholder rights plan. The shareholder rights plan provides for a dividend of one preferred share purchase right on each outstanding share of our common stock. Each right entitles shareholders to buy 1/1000th of a share of our Series A junior participating preferred stock at an exercise price of $150.00. Each right will become exercisable following the tenth day after a person or group announces an acquisition of 20% or more of our common stock. We will be entitled to redeem the rights at $0.001 per right at any time on or before the close of business on the tenth day following acquisition by a person or group of 20% or more of our common stock.

The shareholder rights plan and certain provisions of our restated certificate of incorporation and amended and restated by-laws may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of us. This could limit the price that certain investors might be willing to pay in the future for our common stock. The provisions of our restated certificate of incorporation and by-laws include:

- a classified board of directors;
- a requirement that special meetings of shareholders be called only by our board of directors, chairman of the board, chief executive officer or president;
- advance notice requirements for shareholder proposals and nominations;
- limitations on the ability of shareholders to amend, alter or repeal our by-laws; and
- the authority of the board of directors to issue, without shareholder approval, preferred stock with such terms as the board of directors may determine.

We are also afforded the protections of the New Jersey Shareholders Protection Act. This New Jersey statute contains provisions that impose restrictions on shareholder action to acquire control of our company. The effect of the provisions of our shareholder rights plan, restated certificate of incorporation and by-laws and New Jersey law may discourage third parties from acquiring control of our company. In addition, these measures may result in the entrenchment of our management and may prevent or frustrate any attempt by shareholders to replace or remove our current management.

We do not intend to pay cash dividends on our common stock in the foreseeable future.

We intend to retain any future earnings to finance the growth and development of our business and we do not plan to pay cash dividends on our common stock in the foreseeable future.

Legislative and regulatory actions, NASDAQ rules, potential new accounting pronouncements and higher insurance costs may impact our future financial position or results of operations.

Future changes in financial accounting standards may cause adverse, unexpected revenue fluctuations and affect our financial position or results of operations. New pronouncements and varying interpretations of pronouncements have occurred with frequency and may occur in the future and we may make changes in our accounting policies in the future. For example, effective January 1, 2003, we changed our method of accounting for asset retirement obligations in accordance with Statement of Financial Accounting Standards No. 143, *Accounting for Asset Retirement Obligations* (SFAS No. 143). Previously, we were not required to recognize amounts related to asset retirement obligations. Under SFAS No. 143, we now recognize asset retirement

obligations in the period in which they are incurred if a reasonable estimate of a fair value can be made. The associated asset retirement costs are capitalized as part of the carrying amount of the long-lived asset. The adoption of SFAS No. 143 resulted in an increase in net property, buildings and equipment of approximately $1.4 million, recognition of an asset retirement obligation liability of approximately $2.2 million and a cumulative effect of a change in accounting principle of approximately $0.8 million or $0.01 per share.

Compliance with changing regulation of corporate governance and public disclosure may result in additional expenses. Changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new SEC regulations and NASDAQ National Market rules, are creating uncertainty with respect to, among other things, the enforcement of these new standards and the potential effect thereof for companies such as ours. Insurance costs are increasing as a result of this uncertainty and other factors. Investments required to comply with changes in SEC, NASDAQ and accounting rules may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

Risks Related to the Offering

The notes are unsecured, and future indebtedness could effectively rank senior to the notes.

The notes are unsecured (except as set forth under the section herein entitled Description of Notes Security) and will rank equal in right of payment with our existing and future unsecured and unsubordinated indebtedness. The notes will be effectively subordinated to any future secured indebtedness to the extent of the value of the assets that secure the indebtedness. The notes will also be structurally subordinated to all indebtedness and other liabilities of our existing and future subsidiaries, including trade payables in existence currently or in the future. In the event of our bankruptcy, liquidation or reorganization or upon acceleration of the notes, payment on the notes could be less, ratably, than on any secured indebtedness. We may not have sufficient assets remaining after payment to our secured creditors and creditors of our existing and future subsidiaries to pay amounts due on any or all of the notes then outstanding.

The indenture governing the notes does not prohibit or limit us or our subsidiaries from incurring additional indebtedness and other liabilities, from pledging assets to secure such indebtedness and liabilities or from providing guarantees of indebtedness under the indenture. The incurrence of additional indebtedness, and in particular the granting of a security interest to secure the indebtedness, could adversely affect our ability to pay our obligations on the notes. We anticipate that from time to time we will incur additional indebtedness in the future, some or all of which may be secured indebtedness.

The notes are not protected by restrictive covenants.

The indenture governing the notes does not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries. The indenture contains no covenants or other provisions to afford protection to holders of the notes in the event of a fundamental change involving Medarex except to the extent described under Description of the Notes Repurchase at Option of Holders Upon a Change in Control.

We may be unable to repurchase the notes upon a repurchase event.

You may require us to repurchase all or any portion of your notes upon a repurchase event, including, for example, the occurrence of a change of control under the terms of the indenture. We may not have sufficient cash funds to repurchase the notes upon a repurchase event. We may elect, subject to certain conditions, to pay the repurchase price in common stock or a combination of cash and common stock. Although there are currently no restrictions on our ability to pay the repurchase price, future debt agreements may prohibit us from repaying

the repurchase price in either cash or common stock. If we are prohibited from repurchasing the notes, we could seek consent from our lenders to repurchase the notes. If we are unable to obtain their consent, we could attempt to refinance the notes. If we were unable to obtain a consent or refinance, we would be prohibited from repurchasing the notes. If we were unable to repurchase the notes upon a repurchase event, it would result in an event of default under the indenture. An event of default under the indenture could result in a further event of default under our other then-existing debt. In addition, the occurrence of the repurchase event may be an event of default under our other debt.

Because it is unlikely that an active trading market for the notes will develop, you may not be able to sell your notes. You should therefore be prepared to hold the notes until maturity unless you convert them into shares of common stock.

On July 23, 2003, we issued the notes to the initial purchasers in a private placement. The notes are eligible to trade in PORTAL, the Private Offering, Resale and Trading through Automated Linkages Market of the National Association of Securities Dealers, Inc., a screen-based automated market for trading securities for qualified institutional buyers. However, the notes resold pursuant to this prospectus will no longer trade on the PORTAL market. As a result, there may be a limited market for the notes. We do not intend to list the notes on any national securities exchange or on the NASDAQ National Market. The notes constitute a new issue of securities for which there is no established trading market. Because the notes will not be listed on NASDAQ or a national securities exchange, it is unlikely that an active trading market for the notes will develop. If an active market for the notes fails to develop or be sustained, the trading price of the notes could fall. If an active trading market were to develop, the notes could trade at prices that may be lower than the initial offering price of the notes. Whether or not the notes will trade at lower prices depends on many factors, including:

prevailing interest rates and the markets for similar securities;

general economic conditions; and

our financial condition, historic financial performance and future prospects.

If a trading market does not develop, you may be required to hold the notes to maturity unless you convert them into shares of common stock.

FORWARD-LOOKING STATEMENTS

This prospectus, including the documents that we incorporate by reference, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding our expectations, beliefs, intentions, or strategies regarding the future. Statements preceded by, followed by or that otherwise include the words believes , expects , anticipates , intends , estimates , plans , forecasts , is likely to , projected and similar expressions or futu verbs such as will , should , would , may , and could are generally forward-looking in nature and not historical facts. Forward-looking statemer include, without limitation, statements in Summary Medarex, Inc., Recent Developments, Risk Factors, Business, and elsewhere in this offerin circular regarding, among other things, uncertainties relating to our technology; history of operating losses and anticipation of future losses; uncertainty of product development; need for additional capital and uncertainty of change; uncertainty of patent and proprietary rights; management of growth, and risks of acquiring new technologies; uncertainties related to clinical trials; government regulation and uncertainty of obtaining regulatory approval; dependence on key personnel; dependence on research collaborators and scientific advisors; uncertainty of health care reform measures and third-party reimbursement and risk of product liability. All forward-looking statements included in this prospectus are based on information available to us, as of the date hereof, and we do not assume any obligation to update any such forward-looking statements. Our actual results may differ materially from the results discussed in the forward-looking statements. Among the factors that could cause actual results to differ materially are the factors detailed above in the section entitled Risk Factors. Accordingly, in addition to the other information in this prospectus, such factors should be considered carefully. References to our products, business, financial results or financial condition should be considered to refer to us and our subsidiaries unless the context otherwise requires.

USE OF PROCEEDS

The selling securityholders will receive all of the proceeds from the sale under this prospectus of the notes and the common stock issuable upon conversion of the notes. We will not receive any proceeds from these sales.

PRICE RANGE OF COMMON STOCK

Our common stock is traded on the NASDAQ National Market under the symbol MEDX. The following table sets forth, during the periods indicated, the high and low closing sales prices per share of our common stock, as reported on the NASDAQ National Market:

	Common Stock Price	
	High	**Low**
Year ended December 31, 2002		
First Quarter	$ 18.46	$ 13.31
Second Quarter	$ 16.83	$ 6.71
Third Quarter	$ 9.00	$ 3.26
Fourth Quarter	$ 5.35	$ 2.55
Year ended December 31, 2003		
First Quarter	$ 4.36	$ 2.69
Second Quarter	$ 7.35	$ 3.15
Third Quarter	$ 7.67	$ 4.48
Fourth Quarter	$ 7.56	$ 5.78
Year ending December 31, 2004		
First Quarter	$ 9.93	$ 6.28

Second Quarter	$ 11.13	$ 6.51
Third Quarter (through July 29, 2004)	$ 7.34	$ 5.40

The last reported sale price of our common stock on the NASDAQ National Market on July 29, 2004 was $5.91. As of such date, there were approximately 600 stockholders of record of our common stock.

DIVIDEND POLICY

We have never declared or paid cash dividends. We do not anticipate declaring or paying cash dividends in the foreseeable future. Instead, we will retain our earnings, if any, for the future operation and expansion of our business.

RATIO OF EARNINGS TO FIXED CHARGES

Ratios of earnings to fixed charges are computed by dividing earnings by fixed charges. For purposes of computing this ratio of earnings to fixed charges, earnings consist of pre-tax loss from continuing operations adjusted by adding fixed charges. Fixed charge consist of interest expense, amortization of financing costs and estimated interest component of rental expense on operating leases.

	Year ended December 31,					Three months ended
	1999	2000	2001	2002	2003	March 31, 2004
Ratio of earnings to fixed charges			2.08			

Earnings were insufficient to cover fixed charges by $17.6 million, $9.7 million, $106.8 million, $113.4 million and $26.2 million for the fiscal years ended December 31, 1999, 2000, 2002 and 2003 and the three months ended March 31, 2004, respectively.

CAPITALIZATION

The following table shows our total current liabilities, non-current liabilities and capitalization at March 31, 2004 and on an as adjusted basis giving effect to the sale of $150.0 million in aggregate principal amount of our 2.25% Convertible Senior Notes due 2011 on May 3, 2004, the application of a portion of the proceeds thereof for the purchase and cancellation of approximately $65.6 million in aggregate principal amount of our 4.50% Convertible Subordinated Notes due 2006 and the redemption and cancellation of the remaining approximately $76.4 million in aggregate principal amount of our 4.50% Convertible Subordinated Notes due 2006, completed on July 1, 2004. You should also refer to our consolidated financial statements and the related notes incorporated by reference in this prospectus.

	March 31, 2004 (1)	
	Actual	As Adjusted
	(dollars in thousands) (unaudited)	
Total current liabilities	$ 14,683	$ 14,683
Deferred contract revenue long term	607	607
Other long-term obligations	3,184	3,184
4.50% Convertible Subordinated Notes due 2006	142,000	
4.25% Convertible Senior Notes due August 15, 2010	146,986	146,986
2.25% Convertible Senior Notes due 2011		150,000
Shareholders equity		
Preferred stock, $1.00 par value, 2,000,000 shares authorized; none issued and outstanding		
Common stock, $.01 par value; 200,000,000 shares authorized; 78,512,124 shares issued and 79,094,077 shares outstanding actual and as adjusted (1)	795	795
Capital in excess of par value	650,080	650,080
Treasury stock, at cost, 418,047 shares	(1,051)	(1,051)
Deferred compensation	855	855
Accumulated other comprehensive income	5,783	5,783
Accumulated deficit (2)	(443,840)	(449,516)
Total shareholders equity	212,622	206,946
Total capitalization	$ 520,082	$ 522,406

(1) Excludes (i) the 10,936,935 shares of common stock issuable upon conversion or repurchase of $150.0 million aggregate principal amount of our 2.25% Convertible Senior Notes due 2011, (ii) 21,875,353 shares of common stock issuable upon conversion or repurchase of approximately $147.0 million aggregate principal amount of our 4.25% Convertible Senior Notes due August 15, 2010, (iii) 3,283,258 shares of our common stock reserved for issuance pursuant to future grants of options under our stock option plans and (iv) 11,730,382 shares of our common stock reserved for issuance pursuant to outstanding options under our stock option plans.

(2) The accumulated deficit for March 31, 2004, as adjusted, includes loss on early extinguishment of debt of approximately $2.6 million, write-off of deferred debt issuance costs of approximately $2.0 million and interest expense of approximately $1.1 million.

BUSINESS

We are a biopharmaceutical company focused on the discovery and development of fully human antibody-based therapeutic products. We believe that our UltiMAb Human Antibody Development System enables us to rapidly create and develop therapeutic products for a wide range of diseases, including cancer, inflammation and autoimmune diseases.

We believe that antibodies are proven candidates for therapeutic products. To date, the United States Food and Drug Administration, or FDA, has approved 17 antibody-based therapeutic products for sale in the United States. In 2003, 15 of these products generated aggregate worldwide sales in excess of $5.0 billion. We intend to participate in this market, and to this end, are developing an expanding pipeline of therapeutic antibody products generated through the use of our proprietary UltiMAb human antibody development technology.

Currently, 17 antibodies derived from our UltiMAb human antibody development technology are in human clinical trials, or have had regulatory applications submitted for such trials. These antibodies are designed to treat a wide range of diseases, such as cancer (including various lymphomas), rheumatoid arthritis and other inflammatory and autoimmune diseases. Five of these antibody products are fully owned by Medarex and its affiliates: MDX-010 (Phase II clinical trials), MDX-060 (Phase II clinical trial), MDX-070 (Phase II clinical trial), MDX-214 (Phase I/II clinical trial) and MDX-1307 (Phase I clinical trial), for the treatment of cancer, lymphoma and/or HIV. In the second quarter of 2004, we submitted a Special Protocol Assessment to the FDA for a pivotal program for MDX-010 in combination with gp100 vaccine and filed the manufacturing data necessary to initiate this pivotal program. Subject to final discussions with the FDA and the completion of study commencement procedures such as Institutional Review Board reviews, we expect to begin enrolling patients in this pivotal program during the third quarter of 2004. One antibody for autoimmune disease, MDX-018 (Phase I/II clinical trial), is being jointly developed with our licensing partner, Genmab A/S, and four are being developed separately by Genmab: HuMax-CD4 (Phase II clinical trials) for cutaneous T-cell lymphoma, HuMax-IL15/AMG714 (Phase II clinical trial) for rheumatoid arthritis, HuMax EGFr (Phase I/II clinical trial) for head and neck cancer and HuMax-CD20 (Phase I/II clinical trial) for lymphomas. Additionally, our licensing partners, including Novartis Pharma AG and Centocor, Inc. (a subsidiary of Johnson & Johnson), among others, are developing a total of seven antibody products for inflammatory and/or autoimmune diseases and cancer that are currently in early clinical trials. We and our partners also have a number of product candidates in preclinical development. The preceding information regarding the clinical status of antibody products is based on our and our partners public disclosure and other publicly available information.

As of June 30, 2004, we have more than 45 partnerships with pharmaceutical and biotechnology companies to jointly develop and commercialize products or to enable other companies to use our proprietary technology in their development of new therapeutic products. These companies include industry leaders such as Amgen, Inc., Centocor, Pfizer, Inc., Eli Lilly & Company, Human Genome Sciences, Inc., Abbott Laboratories, Novartis, Novo Nordisk A/S and Schering AG. Some of our partnerships are licensing partnerships, with the potential to pay us licensing fees, milestone payments and royalty payments; others are collaborative partnerships and provide for the sharing of product development costs, as well as any revenues, expenses and profits associated with products arising under the collaboration.

In addition to our UltiMAb Human Antibody Development System, we have considerable experience in preclinical and clinical development as well as in manufacturing antibodies for clinical trials. Our existing manufacturing facility in Annandale, New Jersey currently has the capacity to develop up to 15 new antibody projects per year for clinical development purposes, meeting our near-term production demands. We have assembled a team of experienced scientific, production, clinical and regulatory personnel to facilitate the discovery and development of antibody-based products for us and for our partners. We intend to add sales and marketing and additional manufacturing capabilities as needed.

Our business strategy is to build one of the industry s largest clinical pipelines of human antibody-based therapeutics for the treatment of cancer and other life-threatening and debilitating diseases. To this end, we intend to capitalize on the value of our own human antibody products by developing them, ourselves or with partners, through late-stage clinical trials and/or regulatory approval. We believe this will allow us to retain substantial commercial rights or profit sharing opportunities with regard to these products. In addition, we intend to enhance and expand our partnerships, which we believe provides us with the opportunity to participate in the development and commercialization of substantially more product candidates than we could using only our own resources.

36

DESCRIPTION OF THE NOTES

The notes were issued under an indenture between us and Wilmington Trust Company, as trustee. Because this section is a summary, it does not describe every aspect of the notes, the indenture and the pledge agreement. The following summaries of certain provisions of these documents do not purport to be complete and are subject to, and are qualified in their entirety by reference to, the detailed provisions of the notes, the indenture, the pledge agreement and the registration rights agreement, including the definitions therein of certain terms.

General

The notes are senior unsecured (except to the extent described under the section below entitled Security) obligations of Medarex. The notes are limited to $125,000,000 aggregate principal amount. The notes mature and we are required to repay the principal amount of the notes in full on August 15, 2010.

The notes bear interest at the rate of 4.25% per annum from July 23, 2003, or from the most recent payment date to which interest has been paid as duly provided for. Interest is payable semi-annually in arrears on August 15 and February 15 of each year, commencing on February 15, 2004. Interest payable per $1,000 principal amount of notes for the period from the issue date to February 15, 2004 will be approximately $23.85.

You may convert the notes into shares of our common stock initially at the conversion rate of 148.8261 shares of common stock per each $1,000 aggregate principal amount of notes, subject to adjustment in certain circumstances, or approximately $6.72 per share, at any time before the close of business on the maturity date, unless the notes have been previously redeemed or repurchased. Holders of notes called for redemption or submitted for repurchase will be entitled to convert the notes up to and including the business day prior to the date fixed for redemption or repurchase, as the case may be. The conversion rate may be adjusted as described below.

Prior to August 15, 2006, we may redeem the notes at our option, in whole or in part, at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest to the redemption date and the make-whole payments described below under the section entitled Provisional Redemption, if the price of our common stock closes above 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day prior to the date of mailing of the notice of redemption. At any time on or after August 15, 2006, we may redeem the notes at our option, in whole or in part, at the redemption prices set forth below under the section entitled Optional Redemption, plus accrued and unpaid interest to the redemption date. If we experience a change in control, you will have the right to require us to repurchase your notes as described below under the section entitled Repurchase at Option of Holders Upon a Change in Control.

The notes will rank equal in right of payment with any existing and future unsecured and unsubordinated indebtedness. The notes will be effectively subordinated to any future secured indebtedness to the extent of the value of the assets securing such indebtedness (other than with respect to payments on the notes derived from U.S. treasury securities pledged by us to the securities intermediary for the exclusive benefit of the holders of the notes). The notes will also be structurally subordinated to the indebtedness and other liabilities of our existing subsidiaries and any future subsidiaries, including trade payables in existence on or after the date hereof. This occurs because our right to receive any assets of our subsidiaries upon their liquidation and reorganization, and your right to participate in those assets, will be effectively subordinated to claims of that subsidiary s creditors, including trade creditors, except to the extent that we are recognized as a creditor of such subsidiary. If we are recognized as a creditor of that subsidiary, our claims would still be subordinate to any security interest in the assets of the subsidiary and any indebtedness of the subsidiary senior to us. In addition, our secured creditors will be entitled to receive payment on their claims by realizing on the collateral securing their claims prior to your right and that of our other senior unsecured creditors in respect of that collateral. As of March 31, 2004, our subsidiaries had approximately $2.7 million of indebtedness and other liabilities as to which the notes would have been structurally

subordinated, excluding intercompany liabilities. Neither we nor our subsidiaries are limited or

restricted from incurring additional indebtedness, including secured debt, or providing guarantees of indebtedness under the indenture. The indenture does not impose any financial or similar covenants on us or our subsidiaries.

Form, Denomination, Transfer, Exchange and Book-Entry Procedures

We initially issued the notes in the form of a global security. Upon the issuance of the global security, DTC (referred to as the depository) credited the accounts of persons holding through it with the respective principal amounts of the notes represented by such global security. Ownership of beneficial interests in the global security is limited to persons that have accounts with the depository (participants) or persons that hold interests through participants. Ownership of beneficial interests by participants in the global security is shown on, and the transfer of that ownership interest will be effected only through, records maintained by the depository for such global security. Ownership of beneficial interests in such global security held through each participant is shown on, and the transfer of that ownership interest through such participant will be effected only through, records maintained by such participant. The foregoing may impair the ability to transfer beneficial interests in the global security.

The global note will not be registered in the name of any person, or exchanged for notes that are registered in the name of any person, other than DTC or its nominee unless either of the following occurs:

- DTC notifies us that it is unwilling, unable or no longer qualified to continue acting as the depositary for the global note or DTC ceases to be a registered clearing agency or ceases doing business or announces an intention to cease doing business; or
- an event of default with respect to the notes represented by the global note has occurred and is continuing.

In those circumstances, DTC will determine in whose names any securities issued in exchange for the global note will be registered.

DTC or its nominee will be considered the sole owner and holder of the global note for all purposes, and as a result:

- you cannot receive notes registered in your name if they are represented by the global note;
- you cannot receive physical certificated notes in exchange for your beneficial interest in the global notes;
- you will not be considered to be the owner or holder of the global note or any note it represents for any purpose; and
- all payments on the global note will be made to DTC or its nominee.

The laws of some jurisdictions require that certain kinds of purchasers, such as insurance companies, can only own securities in definitive certificated form. These laws may limit your ability to transfer your beneficial interests in the global note to these types of purchasers.

Only institutions, such as a securities broker or dealer, that have accounts with DTC or its nominee (called participants) and persons that may hold beneficial interests through participants can own a beneficial interest in the global note. The only place where the ownership of beneficial interests in the global note will appear and the only way the transfer of those interests can be made will be on the records kept by DTC (for their participants interests) and the records kept by those participants (for interests of persons held by participants on their behalf.

Secondary trading in bonds and notes of corporate issuers is generally settled in clearinghouse (that is, next-day) funds. In contrast, beneficial interests in a global note usually trade in DTC s same-day funds settlement system, and settle in immediately available funds. We make no representations as to the effect that settlement in immediately available funds will have on trading activity in those beneficial interests.

We will make payments of interest on and principal of and the redemption or repurchase price of the global note, as well as any payment of liquidated damages, to Cede, the nominee for DTC, as the registered owner of the global note. We will make these payments by wire transfer of immediately available funds on each payment date.

We have been informed that DTC s practice is to credit participants accounts on the payment date with payments in amounts proportionate to their respective beneficial interests in the notes represented by the global note as shown on DTC s records, unless DTC has reason to believe that it will not receive payment on that payment date. Payments by participants to owners of beneficial interests in notes represented by the global note held through participants will be the responsibility of those participants, as is now the case with securities held for the accounts of customers registered in street name.

We will send any redemption notices to Cede. We understand that if less than all the notes are being redeemed, DTC s practice is to determine by lot the amount of the holdings of each participant to be redeemed.

We also understand that neither DTC nor Cede will consent or vote with respect to the notes. We have been advised that under its usual procedure DTC will mail an omnibus proxy to us as soon as possible, after the record date. The omnibus proxy assigns Cede s consenting or voting rights to those participants to whose account the notes are credited on the record date identified in a listing attached to the omnibus proxy.

Because DTC can only act on behalf of participants, who in turn act on behalf of indirect participants, the ability of a person having a beneficial interest in the principal amount represented by the global note to pledge the interest to persons or entities that do not participate in the DTC book-entry system, or otherwise take actions in respect of that interest, may be affected by the lack of a physical certificate evidencing its interest.

DTC has advised us that it will take any action permitted to be taken by a holder of notes (including the presentation of notes for exchange) only at the direction of one or more participants to whose account with DTC interests in the global note are credited and only in respect of such portion of the principal amount of the notes represented by the global note as to which such participant or participants has or have given such direction.

DTC has also advised us as follows:

DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a clearing corporation within the meaning of the Uniform Commercial Code, as amended, and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act;

DTC was created to hold securities for its participants and facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants;

participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations;

certain participants, or their representatives, together with other entities, own DTC; and

indirect access to the DTC system is available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

The policies and procedures of DTC, which may change periodically, will apply to payments, transfers, exchanges and other matters relating to beneficial interests in the global note. We and the trustee have no responsibility or liability for any aspect of DTC s or any participant s records relating to beneficial interests in the global note, including for payments made on the global note. Further, we and the trustee are not responsible for maintaining, supervising or reviewing any of those records.

Security

We entered into a pledge agreement with Wilmington Trust Company, as securities intermediary, we have purchased and pledged to the securities intermediary, as security for the notes and for the exclusive benefit of the holders of the notes, a portfolio of approximately $15.8 million of U.S. treasury securities. This treasury portfolio consists of U.S. treasury securities that mature on or prior to the business day immediately preceding each of the first six interest payment dates for the notes in such amounts as will be sufficient to provide for payments in full of the first six scheduled interest payments on the notes when due.

The treasury portfolio is held by the securities intermediary in a pledge account. Immediately prior to an interest payment date, the securities intermediary will release from the pledge account proceeds sufficient to pay interest then due on the notes. If such funds are not sufficient, we will make an additional payment to the holders of the notes in an amount necessary to ensure that the interest payment due on such interest payment date is paid in full. A failure to pay interest on the notes when due, including on any of the first six scheduled interest payment dates, will constitute an event of default (as defined below) under the indenture.

In limited circumstances involving an event of default under the notes, the pledged U.S. treasury securities and the pledge account will also secure the repayment of the principal amount of the notes and our obligation to pay the additional payment pursuant to a provisional redemption as described below under the section entitled Provisional Redemption. If prior to the date on which the sixth scheduled interest payment on the notes is due:

- an event of default under the notes or the indenture governing the notes occurs and is continuing and there is an acceleration of the notes that is not rescinded; or
- in connection with a provisional redemption, we fail to pay the principal amount (including the additional payment payable upon such provisional redemption) of the notes,

then the proceeds from the pledged U.S. treasury securities will be promptly released for payment to the note holders, subject to the automatic stay provisions of bankruptcy law, if applicable.

Distributions from the pledge account will be applied:

- first, to any accrued and unpaid interest on the notes; and
- second, to the extent available, to the repayment of a portion of the principal amount (including our obligation to pay the additional payment pursuant to a provisional redemption) of the notes.

Thereafter, the note holders would have an unsecured claim against us for the remainder of the unpaid principal amount (including our obligation to pay the additional payment pursuant to a provisional redemption) of their notes.

Upon payment of the sixth scheduled interest payment on the notes on August 15, 2006 or the earlier redemption of the notes in full pursuant to a provisional redemption, all of the remaining pledged U.S. treasury securities and cash, if any, will be released to us from the pledge account

and thereafter the outstanding notes will be unsecured.

Conversion Rights

You have the option to convert any portion of the principal amount of any note that is an integral multiple of $1,000 into shares of our common stock at any time on or prior to the close of business on the maturity date, unless the notes have been previously redeemed or repurchased. The conversion rate will be equal to 148.8261 shares of common stock per $1,000 principal amount of notes. The conversion rate is equivalent to a conversion price of approximately $6.72 per share of common stock. The conversion rate is subject to adjustment as described below. Your right to convert a note called for redemption or delivered for repurchase will terminate at

the close of business on the business day prior to the redemption date or repurchase date for that note, unless we default in making the payment due upon redemption or repurchase.

You may convert all or part of any note by delivering the note at the corporate trust office of the trustee, Wilmington Trust Company, accompanied by a duly signed and completed conversion notice, a copy of which may be obtained by the trustee. In the case of a global note, DTC will affect the conversion upon notice from the holder of a beneficial interest in the global note in accordance with DTC s rules and procedures. The conversion date will be the date on which the note and the duly signed and completed conversion notice are so delivered.

As promptly as practicable on or after the conversion date, we will issue and deliver to the trustee a certificate or certificates for the number of full shares of our common stock issuable upon conversion, together with payment in lieu of any fraction of a share. The certificate(s) will then be sent by the trustee to the conversion agent for delivery to the holder of the note being converted. The shares of our common stock issuable upon conversion of the notes will be fully paid and nonassessable and will rank equally with the other shares of our common stock.

If you surrender a note for conversion on a date that is not an interest payment date, you will not be entitled to receive any interest for the period from the preceding interest payment date to the date of conversion, except as described below. However, if you are a holder of a note on a regular record date, including a note surrendered for conversion after the regular record date, you will receive the interest payable on such note on the next succeeding interest payment date. Accordingly, any note surrendered for conversion during the period from the close of business on a regular record date to the opening of business on the next succeeding interest payment date must be accompanied by payment of an amount equal to the interest payable on such interest payment date on the principal amount of notes being surrendered for conversion. However, you will not be required to make that payment if you are converting a note, or a portion of a note, that we have called for redemption, or that you are entitled to require us to repurchase from you, if your conversion right would terminate because of the redemption or repurchase between the regular record date and the close of business on the second business day following the next succeeding interest payment date.

No other payment or adjustment for interest, or for any dividends in respect of our common stock, will be made upon conversion. Holders of our common stock issued upon conversion will not be entitled to receive any dividends payable to holders of our common stock as of any record time or date before the close of business on the conversion date. We will not issue fractional shares of common stock upon conversion. Instead, we will pay cash in lieu of fractional shares of common stock based on the market price of our common stock at the close of business on the last trading day prior to the conversion date. For a summary of the U.S. federal income tax considerations relating to conversion of a note, see United States Federal Income Tax Considerations Conversion of Notes.

If you deliver a note for conversion, you will not be required to pay any taxes or duties relating to the issue or delivery of our common stock on conversion but you will be required to pay any tax or duty relating to any transfer involved in the issue or delivery of our common stock in a name other than yours. Certificates representing shares of our common stock will not be issued or delivered unless all taxes and duties, if any, payable by you have been paid.

The conversion rate will be adjusted on the occurrence of, among other things:

(1) dividends and other distributions payable in our common stock on shares of our capital stock;

(2) the issuance to all holders of our common stock of rights, options or warrants entitling them to subscribe for or purchase our common stock at less than the then current market price of such common stock as of the record date for shareholders entitled to receive such rights, options or warrants; provided that the conversion rate will be readjusted to the extent that such rights, options or warrants are not exercised prior to their expiration;

(3) subdivisions, combinations and reclassifications of our common stock;

(4) distributions to all holders of our common stock of evidences of our indebtedness, shares of capital stock, cash or assets, not including:

those dividends, rights, options, warrants and distributions referred to above;

dividends and distributions paid exclusively in cash as referred to in clauses (5) or (6) below; and

distributions upon mergers or consolidations discussed below;

(5) distributions consisting exclusively of cash, excluding cash distributed upon a merger or consolidation discussed below, to all or substantially all holders of our common stock, in which case the conversion rate will be adjusted so that it equals the rate determined by multiplying the conversion rate in effect on the record date of the cash distribution by a fraction whose numerator is the market price of a share of our common stock on the record date and whose denominator is the same price per share on the record date less the amount of the cash distribution per share; or

(6) the successful completion of a tender offer made by us or any of our subsidiaries for our common stock which involves an aggregate consideration that, together with:

any cash and the fair market value of other consideration payable in a tender offer by us or any of our subsidiaries for our common stock expiring within the 365-day period preceding the expiration of that tender offer in respect of which no adjustments have been made; and

the aggregate amount of any cash distributions to all holders of our common stock within the 365-day period preceding the expiration of that tender offer in respect of which no adjustments have been made,

exceeds 10% of our market capitalization on the expiration of such tender offer.

Notwithstanding the foregoing, in no event will the conversion rate exceed 189.7533 shares of common stock per $1,000 principal amounts of notes, which we refer to the maximum conversion rate, as a result of an adjustment pursuant to clauses (5) or (6) above.

We have issued rights to all of our holders of common stock pursuant to our shareholder rights plan described under Description of Capital Stock Shareholder Rights Plan. If any holder converts notes prior to the rights trading separately from the common stock, the holder will be entitled to receive rights in addition to the common stock. Following the occurrence of a separation event, holders will only receive common stock upon a conversion of any notes without the right. Instead, upon the occurrence of the separation event, the conversion ratio will be adjusted. If such an adjustment is made and the rights are later redeemed, invalidated or terminated, then a reversing adjustment will be made.

We reserve the right to effect such increases in the conversion rate in addition to those required by the foregoing provisions as we consider to be advisable in order to avoid or diminish any income tax to holders of our common stock resulting from certain dividends, distributions or issuances of rights or warrants. We will not be required to make any adjustment to the conversion rate until the cumulative adjustments amount to 1.0% or more of the conversion rate. We will compute all adjustments to the conversion rate and will give notice by mail to holders of the registered notes of any adjustments.

In the event that we consolidate or merge with or into another entity or another entity is merged into us, or in case of any sale or transfer of all or substantially all of our assets, each note then outstanding will become convertible only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of common stock into which the notes were convertible immediately prior to the consolidation or merger or sale or transfer. This calculation will be made based on the assumption that the holder of common stock failed to exercise any rights of election that the holder may have to select a particular type of consideration. This adjustment will not be made for a merger or sale of all or substantially all of our assets that does not result in any reclassification, conversion, exchange or cancellation of the common stock.

We may increase the conversion rate for any period of at least 20 days if our board of directors determines that the increase would be in our best interest. The board of directors determination in this regard will be conclusive. We will give holders of notes at least 15 days notice of such an increase in the conversion rate. Any increase, however, will not be taken into account for purposes of determining whether the closing price of our common stock equals or exceeds the conversion price by 105% in connection with an event that otherwise would be a change in control as defined below.

If at any time we make a distribution of property to our stockholders that would be taxable to such stockholders as a dividend for United States federal income tax purposes, such as distributions of evidences of indebtedness or assets by us, but generally not stock dividends on common stock or rights to subscribe for common stock, and, pursuant to the anti-dilution provisions of the indenture, the number of shares of common stock into which notes are convertible is increased, that increase may be deemed for United States federal income tax purposes to be the payment of a taxable dividend to holders of the notes. See Material United States Federal Income Tax Considerations U.S. Holders.

Provisional Redemption

We may redeem, at our option, some or all of the notes at any time prior to August 15, 2006 upon at least 30 and not more than 60 days notice by mail to the holders of the notes, at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest to the redemption date and the additional make-whole payment described below, if (1) the closing price of our common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day prior to the date of mailing the notice of redemption and (2) the shelf registration statement covering resales of the notes and the common stock is effective and available for use and is expected to remain effective and available for use for the 30 days following the redemption date, unless registration is no longer required.

If we redeem notes under these circumstances, we will make an additional make-whole payment on the redeemed notes equal to $130.10 per $1,000 principal amount of the notes, less the amount of any interest actually paid and any interest accrued and unpaid on the notes prior to the redemption date. We must make these make-whole payments on all notes called for redemption prior to August 15, 2006, including notes converted after the date we mailed the notice. The make-whole payments will not be reduced by the amount of interest accrued and unpaid to the redemption date in the case of notes converted after the date we mail the notice. We may make these make-whole payments, at our option, either in cash or, subject to the satisfaction of the conditions in the indenture, in our common stock or a combination thereof. We will specify the type of consideration for the make-whole payment in the redemption notice.

Payments made in our common stock will be valued at 95% of the average of the closing sales prices of our common stock on The Nasdaq National Market (or other United States national securities exchange where our common stock is traded) for the five consecutive trading days ending on the third trading day prior to the redemption date.

Optional Redemption

On and after August 15, 2006, we may redeem the notes, in whole or in part, at our option, at any time at the redemption prices specified below. The redemption price, expressed as a percentage of principal amount, is as follows for the 12-month periods beginning on August 15, 2006 of the following years:

Year	Redemption Price

2006	102.4%
2007	101.8%
2008	101.2%
2009	100.6%

In each case, we will also pay accrued and unpaid interest to the redemption date. The indenture requires us to give notice of redemption not more than 60 and not less than 30 days before the redemption date.

No sinking fund is provided for the notes, which means that the indenture does not require us to redeem or retire the notes periodically.

We or a third party may, to the extent permitted by applicable law, at any time purchase notes in the open market, by tender at any price or by private agreement. Any note that we or a third party purchase may, to the extent permitted by applicable law and subject to restrictions contained in the purchase agreement with the initial purchasers, be re-issued or resold or may, at our or such third party s option, be surrendered to the trustee for cancellation. Any notes surrendered for cancellation may not be re-issued or resold and will be canceled promptly.

Payment and Conversion

We will make all payments of principal and interest on the notes by dollar check drawn on an account maintained at a bank in The City of New York. If you hold registered notes with a face value greater than $2,000,000, at your request we will make payments of principal or interest to you by wire transfer to an account maintained by you at a bank in The City of New York.

Payment of any interest on the notes will be made to the person in whose name the note, or any predecessor note, is registered at the close of business on August 1 or February 1, whether or not a business day, immediately preceding the relevant interest payment date (a regular record date). If you hold registered notes with a face value in excess of $2,000,000 and you would like to receive payments by wire transfer, you will be required to provide the trustee with wire transfer instructions at least 15 days prior to the relevant payment date.

Payments on any global note registered in the name of DTC or its nominee will be payable by the trustee to DTC or its nominee in its capacity as the registered holder under the indenture. Under the terms of the indenture, we and the trustee will treat the persons in whose names the notes, including any global note, are registered as the owners for the purpose of receiving payments and for all other purposes. Consequently, neither we, the trustee nor any of our agents or the trustee s agents has or will have any responsibility or liability for:

- any aspect of DTC s records or any participant s or indirect participant s records relating to or payments made on account of beneficial ownership interests in the global note, or for maintaining, supervising or reviewing any of DTC s records or any participant s or indirect participant s records relating to the beneficial ownership interests in the global notes; or

- any other matter relating to the actions and practices of DTC or any of its participants or indirect participants.

We will not be required to make any payment on the notes due on any day which is not a business day until the next succeeding business day. The payment made on the next succeeding business day will be treated as though it were paid on the original due date and no interest will accrue on the payment for the additional period of time.

Notes may be surrendered for conversion at the corporate trust office of the trustee. Notes surrendered for conversion must be accompanied by appropriate notices and any payments in respect of interest or taxes, as applicable, as described above under the section entitled Conversion Rights.

We have initially appointed the trustee as paying agent and conversion agent. We may terminate the appointment of any paying agent or conversion agent and appoint additional or other paying agents and conversion agents. However, until the notes have been delivered to the trustee for cancellation, or moneys sufficient to pay the principal of, premium, if any, and interest on the notes have been made available for payment and either paid or returned to us as provided in the indenture, we will maintain an office or agency in

the Borough of Manhattan, New York for surrender of notes for conversion. Notice of any termination or appointment and of any change in the office through which any paying agent or conversion agent will act will be given in accordance with the section entitled Notices below.

All monies deposited with the trustee or any paying agent, or then held by us, in trust for the payment of principal of, premium, if any, or interest on any notes which remain unclaimed at the end of two years after the payment has become due and payable will be repaid to us, and you will then look only to us for payment.

Repurchase at Option of Holders Upon A Change in Control

If a change in control as defined below occurs, you will have the right, at your option, to require us to repurchase all of your notes not previously called for redemption, or any portion of the principal amount thereof, that is equal to $1,000 or any integral multiple of $1,000. The price we are required to pay is 100% of the principal amount of the notes to be repurchased, together with accrued and unpaid interest to, but excluding, the repurchase date. Because the number of shares of common stock to be delivered to holders of notes in payment of the repurchase price, should we elect this payment option, is determined on the basis of the market price of our common stock after we have given notice of the occurrence of the change in control and prior to the repurchase date, the value of the shares of common stock on the date of delivery to holders may be more or less than the repurchase price had we elected to pay such price in cash.

At our option, instead of paying the repurchase price in cash, we may pay the repurchase price in our common stock or a combination of cash and common stock valued at 95% of the average of the closing sales prices of our common stock on the NASDAQ National Market (or other United States national securities exchange where our common stock is traded) for the five consecutive trading days ending on the third trading day prior to the repurchase date. We may only pay the repurchase price in common stock if we satisfy certain conditions provided in the indenture. If any condition is not satisfied, such as the condition that there be no restrictions on any transfer of the shares, the repurchase price may be paid only in cash.

Within 30 days after the occurrence of a change in control, we are obligated to give each registered holder of notes notice of the change in control and of the repurchase right arising as a result of the change in control. We must also deliver a copy of this notice to the trustee. To exercise the repurchase right, a registered holder must deliver on or before the 30th day after the date of our notice irrevocable written notice to the trustee of such holder s exercise of its repurchase right, together with the notes with respect to which the right is being exercised. We are required to repurchase the notes on the date that is 45 days after the date of our notice.

A change in control will be deemed to have occurred at the time after the notes are originally issued that any of the following occurs:

(1) any person acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of our capital stock entitling the person to exercise 50% or more of the total voting power of all shares of our capital stock that are entitled to vote generally in elections of directors, other than an acquisition by us, any of our subsidiaries or any of our employee benefit plans; or

(2) we merge or consolidate with or into any other person, any merger of another person into us or we convey, sell, transfer or lease or otherwise dispose of all or substantially all of our assets to another person, other than any such transaction:

that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our capital stock; and

pursuant to which the holders of 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors immediately prior to such transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all

shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after such transaction; or

which is effected solely to change our jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of our common stock solely into shares of common stock of the surviving entity.

However, a change in control will not be deemed to have occurred if:

the closing price per share of our common stock for any five trading days within the period of 10 consecutive trading days ending immediately after the later of the change in control or the public announcement of the change in control, in the case of a change in control relating to an acquisition of capital stock, or the period of 10 consecutive trading days ending immediately before the change in control, in the case of a change in control relating to a merger, consolidation or asset sale, equals or exceeds 105% of the conversion price of the notes in effect on each of those five trading days; or

all of the consideration, excluding cash payments for fractional shares of our common stock and cash payments made pursuant to dissenters appraisal rights, in a merger or consolidation otherwise constituting a change in control under clause (1) and (2) in the preceding paragraph above consists of shares of common stock, depository receipts or other certificates representing common equity interests traded on a national securities exchange or quoted on the NASDAQ National Market, or will be so traded or quoted immediately following such merger or consolidation, and as a result of such merger or consolidation the notes become convertible solely into such common stock, depository receipts or other certificates representing common equity interests.

For purposes of these provisions:

the conversion price is equal to $1,000 divided by the conversion rate;

whether a person is a beneficial owner will be determined in accordance with Rule 13d-3 under the Exchange Act; and

a person includes any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

We may arrange for a third party to make an offer to repurchase the notes upon a change in control in the manner and otherwise in compliance with the requirements set forth in the indenture applicable to the offer to repurchase the notes validly tendered and not withdrawn under the terms of the offer to repurchase the notes.

The rules and regulations promulgated under the Exchange Act require the dissemination of prescribed information to security holders in the event of an issuer tender offer and may apply in the event that the repurchase option becomes available to you. We will comply with these rules to the extent they apply at that time.

The definition of change in control includes a phrase relating to the conveyance, transfer, sale, lease or disposition of all or substantially all of our assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, your ability to require us to repurchase your notes as a result of the conveyance, transfer, sale, lease or disposition of less than all of our assets may be uncertain.

The foregoing provisions would not necessarily provide you with protection if we are involved in a highly leveraged or other transaction that may adversely affect you. For example, we could, in the future, enter into transactions, including recapitalizations, that would not constitute a change in control but that would increase the amount of our senior indebtedness or other indebtedness.

Although we have the right to repurchase the notes with our common stock, subject to certain conditions, we cannot assure you that we would have the financial resources, or would be able to arrange financing, to pay the

repurchase price in cash for all the notes that might be delivered by holders of notes seeking to exercise the repurchase right. Moreover, a change in control could cause an event of default under, or be prohibited or limited by, the terms of our other debt. If we were to fail to repurchase the notes when required following a change in control, an event of default under the indenture would occur. Any such default may, in turn, cause an event of default under our other debt.

Mergers and Sales of Assets

We may not consolidate with or merge into any other person or convey, transfer, sell or lease our properties and assets substantially as an entirety to any person, and we may not permit any entity to consolidate with or merge into us or convey, transfer, sell or lease such person s properties and assets substantially as an entirety to us unless:

- the surviving entity formed by such consolidation or into or with which we are merged or the surviving entity to which our properties and assets are so conveyed, transferred, sold or leased, shall be a corporation, limited liability company, partnership or trust organized and existing under the laws of the U.S., any state within the U.S. or the District of Columbia and, if we are not the surviving entity, the surviving entity executes and files with the trustee a supplemental indenture assuming the due and punctual payment of the principal of, premium, if any, and interest on the notes and the performance of our other covenants under the indenture;

- immediately after giving effect to the transaction, no event of default, and no event that, after notice or lapse of time or both, would become an event of default, will have occurred and be continuing; and

- an officer s certificate and legal opinion relating to these conditions is delivered to the trustee.

Upon any permitted consolidation, merger, sale or lease, we will be discharged from, and the surviving or successor corporation will succeed to, all of our obligations under the indenture and the notes.

Events of Default

The following are events of default under the indenture:

- we fail to pay the principal of or premium (including any make-whole payment), if any, on any note when due;

- we fail to pay any interest, including any liquidated damages, on any note when due, which failure continues for 30 days;

- we fail to provide notice of a change in control;

- we fail to perform any other covenant in the indenture, which failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;

any indebtedness under any bonds, debentures, notes or other evidences of indebtedness for money borrowed, or any guarantee thereof, by us or any of our significant subsidiaries, in an aggregate principal amount in excess of $20 million is not paid when due either at its stated maturity or upon acceleration thereof, and such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within a period of 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;

the pledge agreement in favor of the holders of the notes governing the pledge of the portfolio of U.S. treasury securities, as such agreement may be amended, restated, supplemented or otherwise modified from time to time, shall cease to be in full force and effect or enforceable in accordance with its terms, other than in accordance with its terms; and

certain events of bankruptcy, insolvency or reorganization involving us or any of our significant subsidiaries (as defined in the indenture).

Subject to the provisions of the indenture relating to the duties of the trustee in case an event of default shall occur and be continuing, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holder, unless the holder shall have furnished reasonable indemnity to the trustee. Subject to providing indemnification to the trustee and other conditions provided for in the indenture, the holders of a majority in aggregate principal amount of the outstanding notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee.

If an event of default other than an event of default arising from events of insolvency, bankruptcy or reorganization occurs and is continuing, either the trustee or the holders of at least 25% in principal amount of the outstanding notes may accelerate the maturity of all notes. However, after such acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of outstanding notes may, under certain circumstances, rescind and annul the acceleration if all events of default, other than the nonpayment of principal of the notes that have become due solely by such declaration of acceleration, have been cured or waived as provided in the indenture. If an event of default arising from events of insolvency, bankruptcy or reorganization occurs and is continuing, then the principal of, and accrued interest on, all the notes will automatically become immediately due and payable without any declaration or other act on the part of the holders of the notes or the trustee. For information as to waiver of defaults.

You will not have any right to institute any proceeding with respect to the indenture, or for any remedy under the indenture, unless:

- you give the trustee written notice of a continuing event of default;
- the holders of at least 25% in aggregate principal amount of the outstanding notes have made written request and offered reasonable indemnity to the trustee to institute proceedings;
- the trustee has not received from the holders of a majority in aggregate principal amount of the outstanding notes a direction inconsistent with the written request; and
- the trustee shall have failed to institute such proceeding within 60 days of the written request.

However, these limitations do not apply to a suit instituted by you for the enforcement of payment of the principal of, premium, if any, or interest, including liquidated damages, on your note on or after the respective due dates expressed in your note or your right to convert your note in accordance with the indenture.

We will be required to furnish to the trustee annually a statement as to our performance of certain of our obligations under the indenture and as to any default in such performance.

Meetings, Modification and Waiver

The indenture contains provisions for convening meetings of the holders of notes to consider matters affecting their interests.

Certain limited modifications of the indenture may be made without the necessity of obtaining the consent of the holders of the notes.

Other modifications and amendments of the indenture may be made, compliance by us with certain restrictive provisions of the indenture may be waived and any past defaults by us under the indenture (except a default in the payment of principal, premium, if any, or interest) may be waived, either: