

SPECTRUM PHARMACEUTICALS INC

Form 10-Q

May 15, 2009

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2009

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number 000-28782

SPECTRUM PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

93-0979187

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

157 Technology Drive

Irvine, California

(Address of Principal Executive Offices)

92618

(Zip Code)

Registrant's Telephone Number, Including Area Code: (949) 788-6700

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

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

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

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

Indicate the number of shares outstanding of each of the issuer's classes of Common Stock as of the latest practicable date:

Class

Outstanding at May 13, 2009

Common Stock, \$.001 par value

32,995,887

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SPECTRUM PHARMACEUTICALS, INC.
FORM 10-Q
For the Three-month period ended March 31, 2009
(Unaudited)
PART I FINANCIAL INFORMATION

ITEM 1. Financial Statements

Statement Regarding Financial Information

The unaudited condensed consolidated financial statements of Spectrum Pharmaceuticals, Inc. included herein have been prepared by management pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). Certain information normally included in the consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States has been condensed or omitted pursuant to such rules and regulations. However, we believe that the disclosures are adequate to make the information presented not misleading.

We recommend that you read the unaudited condensed consolidated financial statements included herein in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on March 31, 2009.

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SPECTRUM PHARMACEUTICALS, INC.
Condensed Consolidated Balance Sheets
(Unaudited)

	March 31, 2009	December 31, 2008
	(In Thousands, Except Share and Per Share Data)	
Assets		
Current Assets:		
Cash and cash equivalents		
Unrestricted Cash	\$ 4,065	\$ 9,860
Restricted Cash (Note 2)	10,000	
Total cash and cash equivalents	14,065	9,860
Marketable securities	49,833	68,226
Accounts receivable-trade, net	6,306	5,002
Inventory	1,894	1,841
Prepaid expenses and other current assets	736	693
Total current assets	72,834	85,622
Property and equipment, net	1,818	1,782
ZEVALIN related intangible assets, net	36,092	37,042
Other assets	104	289
Total assets	\$ 110,848	\$ 124,735
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable and accrued obligations	\$ 8,221	\$ 5,627
Accrued compensation	1,921	2,956
Note payable in connection with ZEVALIN Acquisition	10,000	7,500
Current portion of deferred revenue and other credits	8,500	8,500
Accrued drug development costs	4,798	3,449
Total current liabilities	33,440	28,032
Capital lease obligations, net of current portion	89	95
Deferred revenue and other credits, net of current portion	31,785	33,929
ZEVALIN related contingent obligations	4,998	8,798
Total liabilities	70,312	70,854
Commitments and contingencies (Note 5)		
Minority interest in consolidated entity		14,262
Stockholders' Equity:		
Preferred Stock, par value \$0.001 per share, 5,000,000 shares authorized:		

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Series B Junior participating preferred stock, 1,000,000 shares authorized,
no shares issued and outstanding

Series E Convertible voting preferred stock, 2,000 shares authorized,
stated value \$10,000 per share, \$0.8 million aggregate liquidation value;
68 shares issued and outstanding at March 31, 2009 and December 31,
2008

Common stock, par value \$0.001 per share, 100,000,000 shares

authorized; Issued and outstanding, 32,547,700 and 32,166,316 shares at
March 31, 2009 and December 31, 2008

Additional paid-in capital

Accumulated other comprehensive loss

Accumulated deficit

Total stockholders' equity

Total liabilities and stockholders' equity

419	419
33	32
297,208	296,531
(531)	(146)
(256,593)	(257,217)
40,536	39,619
\$ 110,848	\$ 124,735

The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

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SPECTRUM PHARMACEUTICALS, INC.
Condensed Consolidated Statements of Operations
(Unaudited)

	Three Months Ended March 31, 2009	Three Months Ended March 31, 2008
	(In Thousands, Except Share and Per Share Data)	
Revenues		
License and contract revenue	\$ 2,125	\$
Product sales	12,038	
Total revenues	\$ 14,163	\$
Operating expenses:		
Cost of product sold	\$ 1,834	\$
Research and development	5,654	6,382
Amortization of purchased intangibles	950	
Selling, general and administrative	6,351	2,585
Total operating expenses	14,789	8,967
Loss from operations	(626)	(8,967)
Other income, net	104	301
Loss before minority interest in consolidated entities	(522)	(8,666)
Minority interest in net loss of consolidated entities	1,146	
Net income (loss)	\$ 624	\$ (8,666)
Net income (loss) per share		
Basic	\$ 0.02	\$ (0.28)
Diluted	\$ 0.02	\$ (0.28)
Weighted average common shares:		
Basic	32,439,523	31,271,281
Diluted	32,644,425	31,271,281

The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

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SPECTRUM PHARMACEUTICALS, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Three Months Ended	
	March 31,	March 31, 2008
	2009	
	(In Thousands, Except Share and Per Share Data)	
Cash Flows From Operating Activities:		
Net Income (loss)	\$ 624	\$ (8,666)
Adjustments to reconcile net loss to net cash from / (used in) operating activities:		
Amortization of deferred revenue	(2,125)	
Depreciation and amortization	136	87
Share-based compensation expense	968	1,731
Fair value of common stock issued in connection with drug license	185	305
Minority interest in consolidated entities	(1,146)	
Changes in operating assets and liabilities:		
Accounts Receivable	(1,304)	107
Inventory	(53)	(562)
Prepaid expenses and other assets	148	188
Accounts payable and accrued obligations	3,942	(170)
Accrued compensation and related taxes	(1,035)	(107)
Deferred revenue and other credits	(25)	(30)
Net cash provided by (used in) operating activities	315	(7,117)
Cash Flows From Investing Activities:		
Net sales of marketable securities	18,112	10,151
Investment in ZEVALIN acquisition	(14,050)	
Restricted Cash in escrow for ZEVALIN acquisition	(10,000)	
Purchases of property and equipment	(172)	(138)
Net cash provided by (used in) investing activities	(6,110)	10,013
Cash Flows From Financing Activities:		
Net cash provided by financing activities		
Net increase (decrease) in cash and cash equivalents	(5,795)	2,896
Cash and cash equivalents, beginning of period	9,860	1,141
Cash and cash equivalents, end of period	\$ 4,065	\$ 4,037
Supplemental Cash Flow Information:		
Interest paid	\$ 7	
Income taxes paid	\$ 45	

Schedule of Non-Cash Investing and Financing Activities:

Fair value of common stock issued in connection with drug license	\$	185	305
Fair value of restricted stock granted employees and directors	\$	182	223
Fair value of stock issued to match employee 401k contributions	\$	108	61
Preferred stock dividends paid with common stock	\$		
Fair value of equity awarded to consultants and placement agents	\$	111	72

The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

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SPECTRUM PHARMACEUTICALS, INC.
Notes to Condensed Consolidated Financial Statements
March 31, 2009
(Unaudited)

1. Business and Basis of Presentation

Business

Spectrum Pharmaceuticals, Inc. (the Company, we, Spectrum, our, or us) is a commercial stage biopharmaceutical company committed to developing and commercializing innovative therapies with a focus primarily in the areas of hematology-oncology and urology. We have a fully developed commercial infrastructure that is responsible for the sales and marketing of two drugs in the United States, FUSILEV and ZEVALIN. Our lead developmental drug is Apaziquone, which is presently being studied in two large Phase 3 clinical trials for non-muscle invasive bladder cancer under a strategic collaboration with Allergan Inc. (Allergan).

The following is a brief update of our most advanced products as of March 31, 2009:

FUSILEV (levoleucovorin) for injection (FUSILEV): We commercially launched FUSILEV in August 2008 and recorded net revenues of \$9.4 million from FUSILEV sales for the three months ended March 31, 2009.

A Prescription Drug User Fee Act (PDUFA) target date of October 2009 has been established by the FDA for a decision regarding the approval for our October 2008 supplemental New Drug Application (sNDA) filing for advanced metastatic colorectal cancer, which is currently under review by the FDA.

ZEVALIN[®] ([90Y]-ibritumomab tiuxetan) (ZEVALIN): In December 2008, we partnered with Cell Therapeutics, Inc. (CTI) to form a 50-50 owned joint venture, RIT Oncology, LLC (RIT) to commercialize and develop ZEVALIN in the United States. In March 2009, we acquired the remaining 50% ownership of RIT, resulting in RIT becoming our wholly-owned subsidiary, for \$16.5 million. For the three months ended March 31, 2009, we recorded net revenues of \$2.6 million from ZEVALIN sales.

In December 2008, the FDA accepted for filing and review, and granted priority review status for RIT's supplemental Biologics License Application (sBLA) for the use of ZEVALIN as first-line therapy for patients with B-cell follicular non-Hodgkin's lymphoma or NHL. A PDUFA target date of July 2, 2009 was established by the FDA for a decision regarding this sBLA which, if approved, will allow for the label to address a substantially larger patient population.

Apaziquone: Pursuant to our October 2008 strategic collaboration agreement with Allergan to co-develop and co-market Apaziquone for bladder cancer, we continue to conduct the two Apaziquone clinical trials pursuant to a joint development plan, with Allergan bearing 65% of these expenses, commencing January 1, 2009. During the three months ended March 31, 2009, Allergan reimbursed us approximately \$2.7 million of research and development costs. In addition, during the three months ended March 31, 2009, we recorded \$2.1 million licensing revenue from the amortization of the up front \$41.5 million fee received from Allergan in October 2008.

We continue to recruit sites and enroll patients in these two studies and our goal is to complete enrollment for both Phase 3 clinical trials by year-end 2009.

For a more detailed description of these and our other drugs in development, refer to our Annual Report on Form 10-K for the year ended December 31, 2008.

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SPECTRUM PHARMACEUTICALS, INC.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements are prepared on a consistent basis in accordance with accounting principles generally accepted in the United States (GAAP) for interim financial information and with the instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals and consolidation and elimination entries) considered necessary for a fair presentation have been included. Operating results for the three month period ended March 31, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. The balance sheet at December 31, 2008 has been derived from the audited financial statements at that date but does not include all of the information and footnotes required by GAAP for complete financial statements. For further information, refer to the consolidated financial statements and footnotes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2008.

2. Summary of Significant Accounting Policies and Estimates

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and of its wholly-owned subsidiaries. As of March 31, 2009, we had three consolidated subsidiaries: RIT, a 100% owned effective March 15, 2009, organized in Delaware in 2008; OncoRx Pharma Private Limited (OncoRx), a 100% owned, organized in Mumbai, India in 2008 and Spectrum Pharmaceuticals GmbH, a wholly-owned inactive subsidiary, incorporated in Switzerland in April 1997; and one consolidated joint venture: Spectrum Pharma Canada, organized in Quebec, Canada in January 2008. We have eliminated all significant intercompany accounts and transactions.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and disclosure of contingent obligations in the financial statements and accompanying notes. Our most significant assumptions are employed in estimates used in determining values of financial instruments and accrued obligations, as well as in estimates used in applying the revenue recognition policy and estimating share-based compensation. The estimation process requires assumptions to be made about future events and conditions, and as such, is inherently subjective and uncertain. Actual results could differ materially from our estimates.

Cash, Cash Equivalents and Marketable Securities

Cash, cash equivalents and marketable securities primarily consist of bank checking deposits, short-term treasury securities, institutional money market funds, corporate debt and equity, municipal obligations, government agency notes, and certificates of deposit. We classify highly liquid short-term investments, with insignificant interest rate risk and maturities of 90 days or less at the time of acquisition, as cash and cash equivalents. Other investments, which do not meet the above definition of cash equivalents, are classified as either held-to-maturity or available-for-sale marketable securities, in accordance with the provisions of FASB Statement (SFAS) No. 115, *Accounting for Certain Investments in Debt and Equity Securities* . Investments that lack immediate liquidity, or which we intend to hold for more than one year are classified as long-term investments, and included in other assets. As of March 31, 2009, \$10 million of our cash funds were held in an escrow account in connection with the March 2009 acquisition of the remaining 50% rights in RIT.

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We have adopted Statement of Financial Accounting Standards No. 157, *Fair Value Measurements*, or FAS 157, and utilize the market approach to measure fair value of our financial assets and liabilities. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

In determining fair value, we utilize valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible, as well as considers counterparty credit risk in its assessment of fair value.

The carrying values of our cash, cash equivalents, marketable securities, and funds held in escrow carried at fair value as of March 31, 2009, are classified in the table below in one of the three categories described above:

	Fair Value Measurements at March 31, 2009			
	Level 1	Level 2	Level 3	Total
Cash & equivalents	\$ 4,065	\$	\$	\$ 4,065
U.S. Treasury T-Bills	6,052			6,052
Money Market Currency Funds	6,530			6,530
FDIC insured bank CDs	12,207			12,207
Medium term Corporate Notes	2,252			2,252
U.S. Treasury Backed Securities	22,792			22,792
Funds held in escrow	10,000			10,000
Other Securities	40			40
	\$ 63,938	\$	\$	\$ 63,938

As described elsewhere funds held in escrow are related to the \$16.5 million acquisition of the 50% rights in RIT.

As of March 31, 2009, substantially all of our cash, cash equivalents and marketable securities were held at major financial institutions, who are required to invest our funds in accordance with our investment policy with the principal objectives being preservation of capital, fulfillment of liquidity needs and above market returns commensurate with preservation of capital. Our investment policy also requires that investments in marketable securities be in only highly rated instruments, which are primarily US treasury bills or US treasury backed securities, with limitations on investing in securities of any single issuer. To a limited degree, these investments are insured by the Federal Deposit Insurance Corporation and by third party insurance. However, these investments are not insured against the possibility of a complete loss of earnings or principal and are inherently subject to the credit risk related to the continued credit worthiness of the underlying issuer and general credit market risks as have existed since late 2007. We manage such risks on our portfolio by matching scheduled investment maturities with our cash requirements and investing in highly rated instruments.

Certain Risks and Concentrations

Our cash and marketable security investments are subject to concentration of credit risk. We manage such risk by diversification of the investment portfolio and by the purchase of investment-grade securities.

Our product sales are concentrated in a limited number of customers. For the three months ended March 31, 2009, approximately 32% of our product sales were derived from Group Purchasing Organizations (GPOs) of oncology products, and approximately 68% from distributors. We do not require collateral or other security to support credit sales, but provide an allowance for bad debts when warranted.

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We are dependent on single source suppliers for raw materials, and the manufacturing of finished product of FUSILEV and ZEVALIN. A disruption in supply could materially affect our sales. Similarly, we have single source suppliers the manufacturing of our development drug product candidates. If we are unable to obtain sufficient quantities of such product, our research and development activities may be adversely affected.

Inventory

Inventory is stated at the lower of cost (first-in, first-out method) or market. The lower of cost or market is determined based on net estimated realizable value after appropriate consideration is given to obsolescence, excessive levels, deterioration, and other factors.

Patents and Licenses

We own or license all the intellectual property that forms the basis of our business model. We expense all licensing and patent application costs as they are incurred.

Purchase price allocation

In December 2008, we partnered with CTI to form a 50/50 owned joint venture, RIT, to commercialize and develop ZEVALIN in the U.S. In March 2009, CTI sold to us their remaining 50% ownership in RIT, resulting in RIT becoming a wholly-owned subsidiary. The assets contributed by CTI to RIT were all of its interests in the ZEVALIN business.

Based on the provisions of SFAS No. 141, Business Combinations, the purchase price for the acquisition of ZEVALIN rights was allocated to identifiable intangible assets acquired and liabilities assumed based on their estimated fair values at the acquisition date, as determined by an independent third-party valuation firm. Such a valuation requires significant estimates and assumptions including but not limited to: determining the timing and expected costs to complete the in-process projects, projecting regulatory approvals, estimating future cash flows from product sales resulting from in-process projects, and developing appropriate discount rates and probability rates by project. We believe the fair values assigned to the assets acquired and liabilities assumed are based on reasonable assumptions. However, these assumptions may be inaccurate, and unanticipated events and circumstances may occur. We recorded intangible assets in connection with the acquisition of ZEVALIN and related amortization as follows:

	March 31, 2009		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Developed technology	\$ 23,100	\$ (660)	\$ 22,440
Core technology	14,100	(447)	13,653
Acquired in-process research and development	4,700	(4,700)	
Total intangible assets	\$ 41,900	\$ (5,807)	\$ 36,093

Identifiable intangible assets with definite lives are amortized on a straight-line basis over their estimated useful lives. The developed and core technology assets will be amortized over 10 years, or approximately \$3.7 million annually through 2018. Included in the intangible assets was an amount of \$4.7 million of in process research and development (IPR&D) for a medical indication still awaiting approval by the FDA. Such amount was completely written off during the year ended December 31, 2008.

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SPECTRUM PHARMACEUTICALS, INC.

Industry Segment and Geographic Information

We operate in one business segment, that of acquiring, developing and commercializing prescription drug products. Accordingly, the accompanying financial statements are reported in the aggregate, including all our activities in one segment. Our foreign operations were not significant for any of the years presented herein.

Revenue Recognition

We follow the provisions as set forth by current accounting rules, which primarily include Staff Accounting Bulletin (SAB) 104, Revenue Recognition, and Emerging Issues Task Force (EITF) No. 00-21, Accounting for Revenue Arrangements with Multiple Deliverables. Generally, revenue is recognized when evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable, and collectability is reasonably assured.

Up-front fees representing non-refundable payments received upon the execution of licensing or other agreements are recognized as revenue upon execution of the agreements where we have no significant future performance obligations and collectability of the fees is reasonably assured. Milestone payments, which are generally based on developmental or regulatory events, are recognized as revenue when the milestones are achieved, collectability is reasonably assured, and we have no significant future performance obligations in connection with the milestone. In those instances where we have collected fees or milestone payments but have significant future performance obligations related to the development of the drug product, we record deferred revenue and recognize it over the period of our future obligations. Pursuant to this policy, as of December 31, 2008, we had recorded all of the \$41.5 million upfront fee we received from Allergan for the October 2008 codevelopment agreement as deferred revenue. We expect that we shall amortize such deferred revenue to income over the anticipated period of Apaziquone s development for bladder cancer. Accordingly, for the three months ended March 31, 2009, we amortized \$2.1 million to licensing revenue, and as of March 31, 2009, classified \$8.5 million of unamortized deferred revenue as current portion of deferred revenue.

Revenue from sales of product is recognized upon shipment of product when title and risk of loss have transferred to the customer, and provisions for estimates, including promotional adjustments, price adjustments, returns, and other potential adjustments are reasonably determinable. Such revenue is recorded, net of such estimated provisions, at the minimum amount of the customer s obligation to us. We also state the related accounts receivable at net realizable value, with any allowance for doubtful accounts charged to general operating expenses. If revenue from sales is not reasonably determinable due to provisions for estimates, promotional adjustments, price adjustments, returns or any other potential adjustments, we defer the revenue and recognize revenue when the estimates are reasonably determinable, even if the monies for the gross sales have been received.

Research and Development

Research and development expenses include salaries and benefits, clinical trial and related manufacturing costs, contract and other outside service fees, and facilities and overhead costs related to our research and development efforts. Research and development expenses also consist of costs incurred for proprietary and collaboration research and development and include activities such as product registries and investigator-sponsored trials. In accordance with Statement of Financial Accounting Standards, or SFAS, No. 2, *Accounting for Research and Development Costs*, research and development costs are expensed as incurred. In certain instances we enter into agreements with third parties for research and development activities, where we may prepay fees for services at the initiation of the contract. In accordance with EITF 07-3, *Accounting for Nonrefundable Advance Payment for Goods or Services to be Used in Future Research and Development Activities*, we record such prepayment as a prepaid asset and charge research and development expense over the period of time the contracted research and development services are performed. In connection with the October 2008 codevelopment agreement, Allergan bears 65% of the development costs incurred for Apaziquone in bladder cancer, commencing January 1, 2009. During the three months ended March 31, 2009, approximately \$2.7 million of development costs were reimbursed by Allergan, and credited against total related research and development expense.

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We review and accrue drug development expenses based on factors such as estimates of work performed, patient enrollment, completion of patient studies and other events. Accrued clinical study costs are subject to revisions as trials progress to completion. Revisions are recorded in the period in which the facts that give rise to the revision become known.

Basic and Diluted Net Income (Loss) per Share

In accordance with FASB Statement No. 128, *Earnings Per Share*, we calculate basic net income (loss) per share by using the weighted average number of common shares outstanding during the periods presented. Diluted net income (loss) per share is calculated by using the weighted average number of common shares outstanding during the periods presented, increased to include all additional dilutive common shares issuable pursuant to outstanding common stock equivalents, determined using the treasury-stock method.

Potentially dilutive common stock equivalents include the common stock issuable upon the conversion of preferred stock and the exercise of warrants and stock options. These are included in the calculation of diluted net income (loss) per share only when their effect is dilutive. We incurred a net loss in each period presented, and as such, did not include the effect of potentially dilutive common stock equivalents in the diluted net loss per share calculation, as their effect would be anti-dilutive for all periods. Dilutive common stock equivalents would include the common stock issuable upon the conversion of preferred stock and the exercise of warrants and stock options that have conversion or exercise prices below the market value of our common stock at the measurement date.

The following table presents the data used in the calculations of basic and diluted net income (loss) per share for the three-month period ended March 31, 2009 and 2008.

	Three-Months Ended March 31, 2009	Three-Months Ended March 31, 2008
Net income (loss)	\$ 624	\$ (8,666)
Less:		
Preferred dividends paid in cash or stock		
Income (loss) attributable to common stockholders	\$ 624	\$ (8,666)
Weighted average shares:		
Basic	32,439,523	31,271,281
Dilutive preferred shares	136,000	
Dilutive options	68,902	
Diluted	32,644,425	31,271,281
Net income (loss) per share:		
Basic	\$ 0.02	\$ (0.28)
Diluted	\$ 0.02	\$ (0.28)

Accounting for Employee Share-Based Compensation

Effective January 1, 2006, we adopted SFAS No. 123(R), *Share-Based Payment*. We measure compensation cost for all share-based awards at fair value on the date of grant and recognize compensation expense in our consolidated statements of operations over the service period that the awards are expected to vest. As permitted under SFAS

No. 123(R), we have elected to recognize compensation cost for all options with graded vesting on a straight-line basis over the vesting period of the entire option.

In estimating the fair value of share-based compensation, we use the closing market price of our common stock for stock awards, and the Black-Scholes Option Pricing Model for stock options and warrants. We estimate future volatility based on past volatility of our common stock, and we estimate the expected length of options based on several criteria, including the vesting period of the grant and the expected volatility.

We recorded share-based compensation expense during the three-month period ended March 31, 2009 and 2008, as follows:

	Three months ended	
	March 31,	
	2009	March 31, 2008
Research and development	\$ 480	