

MANNKIND CORP  
Form 424B5  
February 06, 2012  
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As filed pursuant to Rule 424(b)(5)  
File No. 333-166404

**Prospectus Supplement**

To Prospectus dated May 11, 2010

**\$75,000,000**

**Units Consisting of**

**One Share of Common Stock and**

**A Warrant to Purchase 0.6 of a Share of Common Stock**

We are offering 31,250,000 units, with each unit consisting of one share of our common stock and a warrant to purchase 0.6 of a share of our common stock (and the 18,750,000 shares of our common stock issuable from time to time upon exercise of the offered warrants). The purchase price for each unit is \$2.40 (\$2.39 per share of common stock and \$0.01 per warrant to purchase 0.6 of a share of common stock). Each warrant will have an exercise price of \$2.40 per share, will be exercisable upon issuance and will expire four years from the date of issuance. The units will not be issued or certificated. The shares of common stock and the warrants are immediately separable and will be issued separately, but will be purchased together in this offering.

Our common stock is listed on The NASDAQ Global Market under the symbol MNKD. The last reported sale price of our common stock on The NASDAQ Global Market on February 2, 2012 was \$2.47 per share. We do not intend to list the warrants on The NASDAQ Global Market, any other national securities exchange or any other nationally recognized trading system.

**Investing in our securities involves a high degree of risk. See Risk Factors beginning on page S-7 of this prospectus supplement.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

	Per Unit	Total
Public offering price(1)	\$ 2.40	\$ 75,000,000
Underwriting discounts and commissions	\$ 0.144	\$ 4,500,000
Proceeds to MannKind (before expenses)	\$ 2.256	\$ 70,500,000

(1) The public offering price is \$2.39 per share of common stock and \$0.01 per warrant to purchase 0.6 of a share of common stock. The above summary of offering proceeds to us does not give effect to any exercise of the warrants being issued in this offering.

Concurrently with this offering, we anticipate selling to The Mann Group LLC, an entity controlled by our chief executive officer and principal stockholder, 31,250,000 restricted shares of our common stock in a separate private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended, or the concurrent private placement. The restricted shares will be sold to The Mann Group at a price of \$2.47 per share (the consolidated closing bid price for our common stock as reported by The NASDAQ Global Market on February 2, 2012) which is expected to be paid by cancelling outstanding principal under our \$350 million loan arrangement provided by The Mann Group. Any purchase by The Mann Group would be expected to close following the expiration or termination of the waiting period applicable to the

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concurrent private placement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or the HSR Act, and receipt of stockholder approval to increase the number of our authorized shares, as necessary. The concurrent private placement is not contingent upon the completion of this offering, and this offering is not contingent upon the completion of the concurrent private placement. See Concurrent Private Placement to The Mann Group.

At this time we are not pursuing the concurrent convertible debt offering previously described in the preliminary prospectus supplement relating to this offering.

Delivery of the shares of common stock and warrants is expected to be made on or about February 8, 2012. We have granted the underwriters an option for a period of 30 days to purchase up to an additional 4,687,500 shares of common stock and/or warrants to purchase 2,812,500 shares of common stock solely to cover over-allotments, if any. If the underwriters exercise this option in full, the total underwriting discounts and commissions payable by us will be \$5,175,000, and the total proceeds to us, before expenses, will be \$81,075,000.

*Joint Book-Running Managers*

**Jefferies**

**Cowen and Company**

**Piper Jaffray**

*Co-Manager*

**JMP Securities LLC**

February 2, 2012

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You should rely only on the information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and in any free writing prospectus that we have authorized for use in connection with this offering. We have not, and the underwriters have not, authorized anyone to provide you with different information. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and in any free writing prospectus that we have authorized for use in connection with this offering, is accurate only as of the date of those respective documents. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus that we have authorized for use in connection with this offering, in their entirety before making an investment decision. You should also read and consider the information in the documents to which we have referred you in the sections of this prospectus supplement entitled **Where You Can Find More Information** and **Incorporation of Certain Information by Reference**.



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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is the prospectus supplement, which describes the specific terms of the units being offered by us, and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference. The second part, the accompanying prospectus, including the documents incorporated by reference therein, provides more general information, some of which may not apply to this offering of units. Generally, when we refer to this prospectus, we are referring to both parts of this document combined. To the extent there is a conflict between the information contained in this prospectus supplement, on the one hand, and the information contained in the accompanying prospectus or in any document incorporated by reference that was filed with the Securities and Exchange Commission, or SEC, before the date of this prospectus supplement, on the other hand, you should rely on the information in this prospectus supplement. If any statement in one of these documents is inconsistent with a statement in another document having a later date—for example, a document incorporated by reference in the accompanying prospectus—the statement in the document having the later date modifies or supersedes the earlier statement.

This prospectus supplement, the accompanying prospectus and the information incorporated herein and therein by reference include trademarks, servicemarks and tradenames owned by us or other companies. AFREZZA®, MedTone® and Technosphere® are our registered trademarks in the United States. We have also applied for other trademark registrations and have registered company trademarks in other jurisdictions, including Europe and Japan. All trademarks, servicemarks and tradenames included or incorporated by reference in this prospectus supplement or the accompanying prospectus are the property of their respective owners.

Unless the context requires otherwise, references in this prospectus supplement and the accompanying prospectus to MannKind, the company, we, us and our refer to MannKind Corporation.

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**PROSPECTUS SUPPLEMENT SUMMARY**

*This summary highlights selected information contained elsewhere or incorporated by reference in this prospectus supplement and the accompanying prospectus. This summary does not contain all the information you should consider before investing in our securities. You should read and consider carefully the more detailed information in this prospectus supplement and the accompanying prospectus, including the factors described under the heading "Risk Factors" in this prospectus supplement beginning on page S-7 and the financial and other information incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the information included in any free writing prospectus that we have authorized for use in connection with this offering, before making an investment decision.*

**Company Overview**

We are a biopharmaceutical company focused on the discovery, development and commercialization of therapeutic products for diseases such as diabetes and cancer. Our lead product candidate, AFREZZA (insulin human [rDNA origin]) Inhalation Powder, is an ultra rapid-acting insulin that is in late-stage clinical investigation for the treatment of adults with type 1 or type 2 diabetes for the control of hyperglycemia.

Diabetes is a significant health concern. According to the Centers for Disease Control and Prevention, in the United States in 2011, approximately 25.8 million people had diabetes and if current trends continue, one in three adults in the United States are expected to have diabetes by 2050. The International Diabetes Federation has estimated that approximately 366 million people have diabetes today; by 2030 this is expected to have risen to approximately 552 million.

In March 2009, we submitted a new drug application, or NDA, for AFREZZA in which we sought approval of the product using our first-generation inhaler, known as MedTone. In March 2010, we received a Complete Response letter from the U.S. Food and Drug Administration, or FDA, that requested information and currently available clinical data to support the clinical utility of AFREZZA as well as information about the comparability of the commercial version of the MedTone inhaler to the earlier version of this device that was used in pivotal clinical trials. After meeting with the FDA in June 2010, we determined that the best way to address the agency's inhaler-related questions was to submit information regarding the bioequivalence of the MedTone inhaler and our next-generation inhaler, known as Dreamboat, which by that time had become our preferred device from a clinical and commercial perspective, given that it is smaller, easier to use and lower in cost than the MedTone inhaler. In June 2010, we submitted to the FDA the available bioequivalency data for the two devices along with additional evidence of efficacy of AFREZZA as part of our response to the 2010 Complete Response letter.

In January 2011, we received a second Complete Response letter in which the FDA requested that we conduct two clinical studies with the Dreamboat inhaler (one in patients with type 1 diabetes and one in patients with type 2 diabetes), with at least one trial including a treatment group using the MedTone inhaler in order to obtain a head-to-head comparison of the pulmonary safety data for the two devices. Over the next eight months, we participated in a number of written and verbal exchanges with the FDA in order to clarify the agency's requirements for approval of AFREZZA, culminating in an in-person meeting in August 2011 in which we confirmed with the FDA the designs of the two requested studies.

The study in patients with type 1 diabetes, known as study 171, is an open-label study in which all patients are first optimized on their basal insulin regimen before being randomized to one of three arms: a control arm, in which patients utilize an injected insulin analog at mealtimes, or one of two AFREZZA arms, one each for our MedTone device and our Dreamboat device. After the mealtime insulin is titrated, there will be a 12-week observation period on relatively stable doses of the mealtime insulin to assess A1c levels. The primary endpoint is to show non-inferiority of the change in A1c levels in the Dreamboat group compared to the injected insulin analog group. The inclusion of two AFREZZA arms will permit us to perform a head-to-head comparison of the

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pulmonary safety data for the two devices, which we anticipate will provide a bridge to the extensive safety data that we collected in our earlier clinical studies of the MedTone inhaler. The basic design of this study (comparing different mealtime insulins in combination with a basal insulin regimen) is similar in design to a previous Phase 3 study that we conducted in patients with type 1 diabetes using our MedTone inhaler.

The other requested study, known as study 175, is a placebo-controlled study in patients with type 2 diabetes who are inadequately controlled on metformin with or without a second or third oral medication. Patients are assigned to treatment with AFREZZA or placebo powder in a randomized fashion. There is a titration period followed by a 12-week observation period to assess A1c levels. The primary objective of this study is to show superiority of the AFREZZA group over the placebo group in lowering A1c levels. We have previously compared AFREZZA to placebo powder in successful Phase 2 studies involving patients with type 2 diabetes using the MedTone inhaler.

Both studies are currently enrolling subjects. If enrollment continues at current levels, we expect to complete both of these studies by or near the end of 2012. We then would expect to submit the results to the FDA as an amendment to our NDA during the first half of 2013. However, the data collected from these clinical trials may not reach statistical significance or otherwise be sufficient to support an amendment to our NDA, or FDA approval. Moreover, there can be no assurance that we will be able to satisfy all of the FDA's requirements with these two clinical studies or that the FDA will ultimately find our proposed approach to these clinical studies acceptable. The FDA could also request that we conduct additional clinical studies beyond the currently planned studies in order to provide sufficient data for approval of AFREZZA.

AFREZZA utilizes our proprietary Technosphere formulation technology, which is based on a class of organic molecules that are designed to self-assemble into small particles onto which drug molecules can be loaded. With AFREZZA, we load recombinant human insulin onto the Technosphere particles; however, this technology is not limited to insulin delivery. We believe it represents a versatile drug delivery platform that may allow pulmonary administration of certain drugs that currently require administration by injection. Beyond convenience, we believe the key advantage of drugs inhaled as Technosphere formulations is that they have been shown to be absorbed very rapidly into the arterial circulation, essentially mimicking intra-arterial administration. Currently, we are actively working with several parties to assess the feasibility of formulating different active ingredients on Technosphere particles.

In addition to our Technosphere platform, we have evaluated an investigational cancer immunotherapy product, MKC1106-MT, in a Phase 2 clinical trial. We have also conducted preclinical studies of a drug candidate, MKC204, that may have the potential to treat certain malignancies and inflammatory diseases. Due to resource constraints, we have halted most of our internal development activities in our non-AFREZZA programs.

We have held extensive discussions with a number of pharmaceutical companies concerning a potential strategic business collaboration for AFREZZA. To date we have not reached an agreement regarding a collaboration with any of these companies. Although we have stated an objective to complete a partnership by mid-2012, there can be no assurance that any such collaboration will be available to us on a timely basis or on acceptable terms, if at all.

Our Technosphere drug formulation technology, including AFREZZA, enjoys patent protection relating to the particles, their manufacture, and their use for pulmonary delivery of drugs. As of January 15, 2012, AFREZZA was protected by 312 issued patents, and we also had over 300 pending applications in the United States and selected jurisdictions around the world.

We are a development stage enterprise and have incurred significant losses since our inception in 1991. As of September 30, 2011, we have incurred a cumulative net loss of \$1.9 billion and an accumulated stockholders' deficit of \$280.8 million. To date, we have not generated any product revenues and have funded our operations primarily through the sale of equity securities, convertible debt securities and borrowings under our related party

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loan. If we are unable to obtain additional funding in the future, there will be substantial doubt about our ability to continue as a going concern. See *Risk Factors We will be required to raise additional capital to fund our operations, and our inability to do so could raise doubt about our ability to continue as a going concern.*

We do not expect to record sales of any product prior to regulatory approval and commercialization of AFREZZA. We currently do not have the required approvals to market any of our product candidates, and we may not receive such approvals. We may not be profitable even if we succeed in commercializing any of our product candidates. We expect to make substantial expenditures and to incur additional operating losses for at least the next several years as we:

continue the clinical development of AFREZZA and new inhalation systems for the treatment of diabetes;

seek regulatory approval to sell AFREZZA in the United States and other markets;

seek development and commercialization collaborations for AFREZZA; and

develop additional applications of our proprietary Technosphere formulation technology for the pulmonary delivery of other drugs. Our business is subject to significant risks, including but not limited to the risks inherent in our ongoing clinical trials and the regulatory approval process, our potential inability to enter into sales and marketing collaborations or to commercialize AFREZZA in a timely manner, the results of our research and development efforts, competition from other products and technologies and uncertainties associated with obtaining and enforcing patent rights.

## **Legal Proceedings**

On December 13, 2011, we announced that we reached a final resolution of the arbitration proceedings initiated by John Arditi, our former Senior Director GCP Regulatory Affairs. In connection with the resolution of the matter, Mr. Arditi withdrew his wrongful discharge and related claims against us. In return, we withdrew our claims against Mr. Arditi. Neither party paid any monetary consideration to the other party in connection with the resolution of the arbitration proceedings.

Beginning January 31, 2011, several complaints were filed in the U.S. District Court for the Central District of California against us and four of our officers—Alfred E. Mann, Hakan S. Edstrom, Dr. Peter C. Richardson and Matthew J. Pfeffer—on behalf of certain purchasers of our common stock. The complaints include claims asserted under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and have been brought as purported shareholder class actions. In general, the complaints allege that the defendants violated federal securities laws by making materially false and misleading statements regarding our business and prospects for AFREZZA, thereby artificially inflating the price of our common stock. The plaintiffs are seeking unspecified monetary damages and other relief. The complaints have been transferred to a single court and consolidated for all purposes. The court appointed a lead plaintiff and lead counsel and a consolidated complaint was filed on June 27, 2011. On August 12, 2011, we filed a motion to dismiss the complaint and a motion to strike the expert report attached to that complaint. On December 16, 2011, the Court denied both motions. We expect discovery to commence shortly, and will vigorously defend against the claims advanced.

In February 2011, shareholder derivative complaints were filed in the Superior Court of California for the County of Los Angeles and in the U.S. District Court for the Central District of California against all of our directors and certain of our officers. The complaints in the shareholder derivative actions allege breaches of fiduciary duties by the defendants and other violations of law. In general, the complaints allege that the defendants caused or allowed for the dissemination of materially false and misleading statements regarding our business and prospects



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for AFREZZA, thereby artificially inflating the price of our common stock. The plaintiffs are seeking unspecified monetary damages and other relief, including reforms to our corporate governance and internal procedures. The Superior Court of California for the County of Los Angeles has consolidated the actions pending before it and the parties have stipulated to stay the litigation. Likewise, the U.S. District Court for the Central District of California has consolidated the actions pending before it. The U.S. District Court for the Central District of California has also appointed lead plaintiffs and lead counsel and a consolidated complaint was filed on August 12, 2011. We filed a motion to dismiss this complaint on September 26, 2011 and the parties subsequently stipulated to stay the litigation. That stay has expired, and the parties are now negotiating a briefing and hearing schedule on defendants' motion to dismiss the consolidated derivative complaint. We will vigorously defend against the claims advanced.

## **Preliminary Fourth Quarter 2011 Results**

Our cash, cash equivalents and marketable securities were approximately \$3.2 million as of December 31, 2011. This financial result is preliminary, unaudited and subject to completion and may differ from what will be reflected in our audited condensed consolidated financial statements as of and for the year ended December 31, 2011. Our audited condensed consolidated financial statements will not be available until after this offering is complete, and consequently will not be available to you prior to investing in this offering.

As of December 31, 2011, the principal amount outstanding under our existing revolving loan arrangement provided by The Mann Group, an entity controlled by our chief executive officer and principal stockholder, was \$277.2 million, and we had \$45.0 million of available borrowings under the arrangement.

## **Corporate Information**

We were incorporated in the State of Delaware on February 14, 1991. Our principal executive offices are located at 28903 North Avenue Paine, Valencia, California 91355, and our telephone number at that address is (661) 775-5300. MannKind Corporation and the MannKind Corporation logo are our service marks. Our website address is <http://www.mannkindcorp.com>. The information contained in, and that can be accessed through, our website is not incorporated into and does not form a part of this prospectus.

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### **The Offering**

Common Stock Offered by Us in this Offering	31,250,000 shares, plus 18,750,000 shares of our common stock underlying the warrants offered in this offering.
Warrants Offered by Us in this Offering	Warrants to purchase up to 18,750,000 shares of common stock. Each warrant will have an exercise price of \$2.40 per share, will be exercisable upon issuance and will expire four years from the date of issuance. This prospectus supplement also relates to the offering of the shares of common stock issuable upon exercise of the warrants.
Common Stock to Be Outstanding Immediately After this Offering	162,587,279 shares, or 181,337,279 shares of our common stock if the warrants offered in this offering are issued and exercised in full.
Over-allotment Option	We have granted the underwriters an option to purchase up to 4,687,500 additional shares of common stock and/or warrants to purchase 2,812,500 shares of common stock to cover over-allotments, if any. This option is exercisable, in whole or in part, for a period of 30 days from the date of this prospectus supplement.
Use of Proceeds	We intend to use the net proceeds from this offering for general corporate purposes, including research and development expenses, capital expenditures, working capital and general administrative expenses. See <b>Use of Proceeds</b> on page S-12 of this prospectus supplement.
NASDAQ Global Market Listing	Our common stock is listed on The NASDAQ Global Market under the symbol <b>MNKD</b> .
Risk Factors	Investing in our securities involves a high degree of risk. See <b>Risk Factors</b> beginning on page S-7 of this prospectus supplement.
The number of shares of common stock to be outstanding immediately after this offering is based on 131,337,279 shares of our common stock outstanding as of September 30, 2011 (including 9 million shares issued in connection with our August 2010 share lending arrangement, pursuant to which the share borrower is obligated to return the borrowed shares (or identical shares or, in certain circumstances, the cash value thereof) to us on or by the 45th business day following the date the entire principal on the outstanding convertibles notes ceases to be outstanding (subject to extension, acceleration or early termination in certain circumstances)). Unless otherwise indicated, the number of shares of common stock presented in this prospectus supplement excludes the shares of common stock issuable upon exercise of the warrants being offered by us in this offering and also excludes, as of September 30, 2011:	

9,937,284 shares of common stock issuable upon the exercise of outstanding stock options with a weighted average exercise price of \$5.73 per share;

4,132,083 shares of common stock issuable upon the settlement of outstanding restricted stock units;

14,708,590 shares of common stock issuable upon the conversion of our outstanding 5.75% senior convertible notes due 2015 at a conversion price of approximately \$6.80 per share and up to 2,041,820

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shares issuable as make-whole premiums if the notes are converted in connection with certain fundamental changes;

5,117,523 shares of common stock issuable upon the conversion of our outstanding 3.75% Senior Convertible Notes due 2013 at a conversion price of approximately \$22.47 per share and up to 1,484,064 shares issuable as make-whole premiums if the 3.75% Senior Convertible Notes due 2013 are converted in connection with certain fundamental changes, which share amounts have not been adjusted to reflect the anticipated repurchase of indebtedness with the net proceeds of the concurrent convertible note transaction; and

8,497,236 shares of common stock available for future grant under our 2004 equity incentive plan, 2004 non-employee directors stock option plan and 2004 employee stock purchase plan.

Except as otherwise indicated, all information in this prospectus assumes no exercise by the underwriters of their over-allotment option. In addition, except as otherwise indicated, all information in this prospectus assumes no issuance of the 31,250,000 restricted shares at a purchase price of \$2.47 per share to The Mann Group pursuant to the concurrent private placement.

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### **RISK FACTORS**

*Investing in our securities involves a high degree of risk. You should carefully consider the risks described below and discussed under the section captioned **Risk Factors** contained in our **Quarterly Report on Form 10-Q** for the quarter ended September 30, 2011, which is incorporated by reference in this prospectus supplement, and all other information contained in this prospectus supplement and the accompanying prospectus and incorporated by reference in this prospectus supplement and the accompanying prospectus, and in any free writing prospectus that we have authorized for use in connection with this offering, before purchasing our securities. These risks and uncertainties are not the only ones facing us. Additional risks and uncertainties that we are unaware of, or that we currently deem immaterial, also may become important factors that affect us. If any of such risks or the risks described below or in our **Quarterly Report on Form 10-Q** for the quarter ended September 30, 2011 or in our **Current Report on Form 8-K** filed with the SEC on January 31, 2012 occur, our business, financial condition or results of operations could be materially and adversely affected. In that case, the trading price of our common stock and the value of the warrants could decline, and you may lose some or all of your investment.*

#### **Risks Related to Our Business**

***We will be required to raise additional capital to fund our operations, and our inability to do so could raise doubt about our ability to continue as a going concern.***

Based upon our current expectations, we believe that our existing capital resources, including the available borrowings under our loan arrangement with The Mann Group, as amended on January 16, 2012, as well as the anticipated net proceeds of this offering, will enable us to continue planned operations into the third quarter of 2012. However, we cannot assure you that our plans will not change or that changed circumstances will not result in the depletion of our capital resources more rapidly than we currently anticipate. In any event, we plan to raise additional funds, whether through the sale of equity or debt securities (including the other concurrent financing transactions discussed elsewhere in this prospectus supplement), the entry into strategic business collaborations, the establishment of other funding facilities, licensing arrangements, asset sales or other means, or an increase in the borrowings available under the loan arrangement with our related party, in order to continue the development and commercialization of AFREZZA and other product candidates and to support our other ongoing activities. However, it may be difficult for us to raise additional funds through these planned measures. As of September 30, 2011, we had a stockholders deficit of \$280.8 million which may raise concerns about our solvency and affect our ability to raise additional capital. The amount of additional funds we need will depend on a number of factors, including:

rate of progress and costs of our clinical trials and research and development activities, including costs of procuring clinical materials and operating our manufacturing facilities;

our success in establishing strategic business collaborations or other sales or licensing of assets, and the timing and amount of any payments we might receive from any such transactions we are able to establish;

actions taken by the FDA and other regulatory authorities affecting our products and competitive products;

our degree of success in commercializing AFREZZA assuming receipt of required regulatory approvals;

the emergence of competing technologies and products and other adverse market developments;

the costs of preparing, filing, prosecuting, maintaining and enforcing patent claims and other intellectual property rights or defending against claims of infringement by others;

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the level of our legal expenses, including those expenses associated with the securities class actions and derivative lawsuits filed against us and certain of our executive officers and directors and any settlement or damages payments associated with litigation;

the costs of discontinuing projects and technologies; and

the costs of decommissioning existing facilities, if we undertake such activities.

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We have raised capital in the past primarily through the sale of equity and debt securities. We may in the future pursue the sale of additional equity and/or debt securities (including the other concurrent financing transactions discussed elsewhere in this prospectus supplement), or the establishment of other funding facilities. There can be no assurances, however, that we will be able to raise additional capital on acceptable terms, or at all. Issuances of additional debt or equity securities or the conversion of any of our currently outstanding convertible debt securities into shares of our common stock could impact the rights of the holders of our common stock and may dilute their ownership percentage. Moreover, the establishment of other funding facilities may impose restrictions on our operations. These restrictions could include limitations on additional borrowing and specific restrictions on the use of our assets, as well as prohibitions on our ability to create liens, pay dividends, redeem our stock or make investments. We also may seek to raise additional capital by pursuing opportunities for the licensing or sale of certain intellectual property and other assets. We cannot offer assurances, however, that any strategic collaborations, sales of securities or sales or licenses of assets will be available to us on a timely basis or on acceptable terms, if at all. We may be required to enter into relationships with third parties to develop or commercialize products or technologies that we otherwise would have sought to develop independently, and any such relationships may not be on terms as commercially favorable to us as might otherwise be the case.

In the event that sufficient additional funds are not obtained through strategic collaboration opportunities, sales of securities, funding facilities, licensing arrangements and/or asset sales on a timely basis, we will be required to reduce expenses through the delay, reduction or curtailment of our projects, including AFREZZA development activities, or further reduction of costs for facilities and administration. Moreover, if we do not obtain such additional funds, there will be substantial doubt about our ability to continue as a going concern and increased risk of insolvency and loss of investment to the holders of our securities. As of the date hereof, we have not obtained a solvency opinion or otherwise conducted a valuation of our properties to determine whether our debts exceed the fair value of our property within the meaning of applicable solvency laws. If we are or become insolvent, investors in our stock may lose the entire value of their investment.

Because we will not be able to generate operating cash flow unless and until AFREZZA is commercialized, which we expect will require us to reach an agreement with a commercialization partner, we cannot provide assurances that changed or unexpected circumstances, including, among other things, delays in obtaining regulatory approval and in identifying and reaching agreements with a commercialization partner, will not result in the depletion of our capital resources more rapidly than we currently anticipate, in which case we may be required to raise additional capital in advance of our current expectations. There can be no assurances that we will be able to raise additional capital on acceptable terms, or at all. If planned operating results are not achieved or we are not successful in raising additional capital through equity or debt financings or entering into a strategic business collaboration with a pharmaceutical or biotechnology company, we will be required to reduce expenses through the delay, reduction or curtailment of our projects, including AFREZZA development activities, or further reduction of costs for facilities and administration, and there will be substantial doubt about our ability to make payment on outstanding debt or even continue as a going concern.

***If we are unable to protect our proprietary rights, we may not be able to compete effectively, or operate profitably.***

Our commercial success depends, in large part, on our ability to obtain and maintain intellectual property protection for our technology. Our ability to do so will depend on, among other things, complex legal and factual questions, and it should be noted that the standards regarding intellectual property rights in our fields are still evolving. We attempt to protect our proprietary technology through a combination of patents, trade secrets and confidentiality agreements. We own a number of domestic and international patents, have a number of domestic and international patent applications pending and have licenses to additional patents. We cannot assure you that our patents and licenses will successfully preclude others from using our technologies, and we could incur substantial costs in seeking enforcement of our proprietary rights against infringement. Even if issued, the patents may not give us an advantage over competitors with alternative technologies. Moreover, the term of a patent is limited and, as a result, the patents protecting our products expire at various dates. For example, although some patents providing protection for our AFREZZA inhalation powder expire in 2012, other patents providing similar protection will remain in force into 2020. In addition, patents providing protection for our inhaler and cartridges

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will remain in force into 2023, and we have been allowed method of treatment claims that can be maintained in force into 2029. As and when these different patents expire, AFREZZA could become subject to increased competition. As a consequence, we may not be able to recover our development costs.

Moreover, the issuance of a patent is not conclusive as to its validity or enforceability and it is uncertain how much protection, if any, will be afforded by our patents. A third party may challenge the validity or enforceability of a patent after its issuance by various proceedings such as oppositions in foreign jurisdictions or re-examinations in the United States. If we attempt to enforce our patents, they may be challenged in court where they could be held invalid, unenforceable, or have their breadth narrowed to an extent that would destroy their value.

On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The USPTO is currently developing regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act will not become effective until one year or 18 months after its enactment. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

We also rely on unpatented technology, trade secrets, know-how and confidentiality agreements. We require our officers, employees, consultants and advisors to execute proprietary information and invention and assignment agreements upon commencement of their relationships with us. We also execute confidentiality agreements with outside collaborators. There can be no assurance, however, that these agreements will provide meaningful protection for our inventions, trade secrets, know-how or other proprietary information in the event of unauthorized use or disclosure of such information. If any trade secret, know-how or other technology not protected by a patent were to be disclosed to or independently developed by a competitor, our business, results of operations and financial condition could be adversely affected.

### **Risks Related to this Offering**

***There is no public market for the warrants to purchase shares of our common stock being offered in this offering.***

There is no established public trading market for the warrants being offered in this offering, and we do not expect a market to develop. In addition, we do not intend to apply to list the warrants on any national securities exchange or other nationally recognized trading system, including The NASDAQ Global Market. Without an active market, the liquidity of the warrants will be limited.

***Management will have broad discretion as to the use of the proceeds from this offering and the concurrent financing transactions, and we may not use the proceeds effectively.***

Our management will have broad discretion as to the application of the net proceeds from this offering and the other concurrent financing transactions discussed elsewhere in this prospectus supplement, and could spend the proceeds in ways that do not necessarily improve our operating results or enhance the value of our common stock or warrants.

***You will experience immediate and substantial dilution if you invest in this offering.***

Since the price per unit being offered is substantially higher than the net tangible book value per share of our common stock, you will incur substantial dilution in the net tangible book value of the common stock you purchase in this offering. Based on the public offering price of \$2.40 per unit, if you purchase units in this

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offering, you will incur immediate and substantial dilution of \$3.70 per share in the net tangible book value of the common stock. This does not take into consideration the restricted shares of our common stock issuable pursuant to the concurrent private placement to The Mann Group. See Dilution beginning on page S-13 of this prospectus supplement for a more detailed discussion of the dilution you will incur if you purchase units in this offering.

***Our Chairman and Chief Executive Officer and principal stockholder can individually control our direction and policies, and his interests may be adverse to the interests of our other stockholders. After his death, his stock will be left to his funding foundations for distribution to various charities, and we cannot assure you of the manner in which those entities will manage their holdings.***

As of December 31, 2011, Mr. Mann beneficially owned approximately 39.2% of our outstanding shares of capital stock. Assuming the completion of the public offering described in this prospectus supplement and after giving effect to the issuance of shares of our common stock in this offering, excluding the 18,750,000 shares of common stock that may be issued from time to time upon exercise of the warrants being offered in this offering, as of December 31, 2011, Mr. Mann would have beneficially owned approximately 31.8% of our outstanding shares of capital stock. If further effect is given to the issuance of 31,250,000 restricted shares of our common stock in the concurrent private placement issuable upon receipt of applicable HSR clearance, as of December 31, 2011, Mr. Mann would have beneficially owned approximately 42.8% of our outstanding shares of capital stock. By virtue of his holdings, Mr. Mann may be able to continue to effectively control the election of the members of our board of directors, our management and our affairs and prevent corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets that may be favorable from our standpoint or that of our other stockholders or cause a transaction that we or our other stockholders may view as unfavorable.

Subject to compliance with United States federal and state securities laws, Mr. Mann is free to sell the shares of our stock he holds at any time. Upon his death, we have been advised by Mr. Mann that his shares of our capital stock will be left to the Alfred E. Mann Medical Research Organization, or AEMMRO, and AEM Foundation for Biomedical Engineering, or AEMFBE, not-for-profit medical research foundations that serve as funding organizations for Mr. Mann's various charities, including the Alfred Mann Foundation, or AMF, and the Alfred Mann Institutes at the University of Southern California, the Technion-Israel Institute of Technology, and Purdue University, and that may serve as funding organizations for any other charities that he may establish. The AEMMRO is a membership foundation consisting of six members, including Mr. Mann, his wife, three of his children and Dr. Joseph Schulman, the chief scientist of the AEMFBE. The AEMFBE is a membership foundation consisting of five members, including Mr. Mann, his wife, and the same three of his children. Although we understand that the members of AEMMRO and AEMFBE have been advised of Mr. Mann's objectives for these foundations, once Mr. Mann's shares of our capital stock become the property of the foundations, we cannot assure you as to how those shares will be distributed or how they will be voted.

***The sale of our common stock in the concurrent private placement is contingent upon the receipt of clearance under the HSR Act and receipt of stockholder approval to increase the number of our authorized shares, as necessary, and there can be no assurance that such clearance will be obtained.***

We cannot consummate the sale of our common stock in the concurrent private placement until the expiration or termination of the applicable waiting period under the HSR Act and receipt of stockholder approval to increase the number of our authorized shares, as necessary. The aggregate purchase price for the shares of common stock we issue and sell to The Mann Group in the concurrent private placement is expected to be paid by cancelling outstanding principal under our \$350 million existing revolving loan arrangement provided by The Mann Group. If we are unable to consummate the sale of our common stock in the concurrent private placement due to an inability to obtain clearance for the transaction under the HSR Act and obtain requisite stockholder approval, or for any other reason, in a timely fashion or at all, then our outstanding debt under the loan arrangement with The Mann Group will not be reduced, and we will eventually be required to repay such debt using other capital resources.



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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus supplement and the accompanying prospectus, including the documents that we incorporate by reference herein and therein, contain statements that are not strictly historical in nature and are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and within the meaning of Section 21E of the Exchange Act. These forward-looking statements are subject to the safe harbor created by Section 27A of the Securities Act and Section 21E of the Exchange Act and may include, but are not limited to, statements about:

the progress or success of our research, development and clinical programs, including the application for and receipt of regulatory clearances and approvals, and the timing or success of the commercialization of AFREZZA, our ultra rapid-acting insulin product, or any other products or therapies that we may develop;

our ability to market, commercialize and achieve market acceptance for AFREZZA, or any other products or therapies that we may develop;

our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;

our estimates regarding anticipated operating losses, future revenues, capital requirements and our needs for additional financing;

our estimates for future performance;

the proposed terms of and our ability to consummate the concurrent private placement to The Mann Group;

our anticipated use of proceeds from this offering or the concurrent private placement to The Mann Group; and

scientific studies and the conclusions we draw from them.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, goal, intent, plans, potential, predicts, projects, should, will, would, the negative of these words and words or similar expressions intended to identify forward-looking statements. These statements reflect our views as of the date on which they were made with respect to future events and are based on assumptions and subject to risks and uncertainties. The underlying information and expectations are likely to change over time. Given these uncertainties, you should not place undue reliance on these forward-looking statements as actual events or results may differ materially from those projected in the forward-looking statements due to various factors, including, but not limited to, those set forth under the heading Risk Factors in this prospectus supplement, in the accompanying prospectus, and in our SEC filings. These forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement.

You should rely only on the information contained, or incorporated by reference, in this prospectus supplement, the accompanying prospectus, the registration statement of which this prospectus supplement is a part, and any free writing prospectus that we authorize for use in connection with this offering. You should also understand that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. Before deciding to purchase our securities, you should carefully consider the risk factors discussed or incorporated by reference herein, in addition to the other information set forth in this prospectus supplement, the accompanying prospectus and in the documents incorporated by reference.

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**USE OF PROCEEDS**

We estimate that the net proceeds from the sale of the 31,250,000 units that we are offering in this offering will be approximately \$70,500,000 million, or approximately \$81,075,000 million if the underwriters exercise in full their option to purchase additional shares and/or warrants, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us and excluding the proceeds, if any, from the exercise of the warrants issued pursuant to this offering. This does not take into consideration any net proceeds raised pursuant to the concurrent private placement to The Mann Group.

We intend to use the net proceeds from this offering for general corporate purposes, including research and development expenses, capital expenditures, working capital and general administrative expenses. We may also use a portion of the net proceeds to acquire or invest in complementary businesses, products and technologies. Although we have no specific agreements, commitments or understandings with respect to any acquisition, we evaluate acquisition opportunities and engage in related discussions with other companies from time to time.

As of the date of this prospectus supplement, we cannot specify with certainty all of the particular uses of the proceeds, if any, from this offering. Accordingly, we will retain broad discretion over the use of any such proceeds. Pending the use of the net proceeds, from this offering as described above, we intend to invest the net proceeds in investment-grade, interest-bearing instruments.

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**Table of Contents****DILUTION**

Our net tangible book deficit as of September 30, 2011 was approximately \$280 million, or \$2.14 per share. Net tangible book deficit per share is determined by dividing our total tangible assets, less total liabilities, by the number of shares of our common stock outstanding as of September 30, 2011.

After giving effect to the sale of 31,250,000 units in this offering at the public offering price of \$2.40 per unit and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us and excluding the proceeds, if any, from the exercise of the warrants issued pursuant to this offering, our as adjusted net tangible book deficit as of September 30, 2011 would have been approximately \$210.7 million, or \$1.30 per share of common stock. This does not take into consideration the securities issuable in connection with the concurrent private placement to The Mann Group.

The following table illustrates the as adjusted increase in net tangible book value of \$0.84 per share and the dilution to new investors purchasing units in this offering at the public offering price:

Public offering price per unit	\$ 2.40
Net tangible book deficit per share as of September 30, 2011	\$ 2.14
Increase in net tangible book value per share attributable to new investors purchasing units in this offering	0.84
As adjusted net tangible book deficit per share on September 30, 2011, after giving effect to this offering	1.30
Dilution per share to new investors purchasing units in this offering	\$ 3.70

If the underwriters exercise in full their option to purchase 4,687,500 additional shares and warrants to purchase 2,812,500 shares of common stock at the public offering price of \$2.40 per unit, the as adjusted net tangible book deficit after this offering would have been approximately \$1.20 per share, representing an increase in net tangible book value of \$0.94 per share to existing stockholders and immediate dilution in net tangible book value of \$3.60 per share to new investors purchasing units in this offering at the public offering price.

The above discussion and table are based on 131,337,279 shares issued and outstanding as of September 30, 2011 (including 9 million shares issued in connection with our August 2010 share lending arrangement, pursuant to which the share borrower is obligated to return the borrowed shares (or identical shares or, in certain circumstances, the cash value thereof) to us on or by the 45th business day following the date the entire principal on the outstanding convertibles notes ceases to be outstanding (subject to extension, acceleration or early termination in certain circumstances)) and excludes the shares of common stock issuable upon exercise of the warrants being offered by us in this offering and also excludes, as of such date:

9,937,284 shares of common stock issuable upon the exercise of outstanding stock options with a weighted average exercise price of \$5.73 per share;

4,132,083 shares of common stock issuable upon the settlement of outstanding restricted stock units;

14,708,590 shares of common stock issuable upon the conversion of our outstanding 5.75% senior convertible notes due 2015 at a conversion price of approximately \$6.80 per share and up to 2,041,820 shares issuable as make-whole premiums if the notes are converted in connection with certain fundamental changes;



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5,117,523 shares of common stock issuable upon the conversion of the 3.75% Senior Convertible Notes due 2013 at a conversion price of approximately \$22.47 per share and up to 1,484,064 shares issuable as make-whole premiums if the 3.75% Senior Convertible Notes due 2013 are converted in connection with certain fundamental changes; and

8,497,236 shares of common stock available for future grant under our 2004 equity incentive plan, 2004 non-employee directors stock option plan and 2004 employee stock purchase plan.

To the extent that outstanding options are exercised or outstanding restricted stock units are settled, or securities are issued in connection with the concurrent private placement to The Mann Group, you will experience further dilution. We plan to raise additional capital. See **Risk Factors** *We will be required to raise additional capital to fund our operations, and our inability to do so could raise doubt about our ability to continue as a going concern.* In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if at that time we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

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### **DESCRIPTION OF THE SECURITIES WE ARE OFFERING**

In this offering, we are offering 31,250,000 units, consisting of an aggregate of 31,250,000 shares of common stock and warrants to purchase an aggregate of 18,750,000 shares of common stock. Each unit consists of one share of common stock and a warrant to purchase 0.6 of a share of common stock at an exercise price of \$2.40 per share (\$2.39 per share of common stock and \$0.01 per warrant to purchase 0.6 of a share of common stock). Units will not be issued or certificated. The shares of common stock and the warrants are immediately separable and will be issued separately. This prospectus supplement also relates to the offering of the shares of common stock issuable upon exercise of the offered warrants.

#### **Common Stock**

The material terms and provisions of our common stock are described under the caption **Description of Common Stock** starting on page 7 of the accompanying prospectus.

#### **Warrants**

The following is a brief summary of certain terms and conditions of the warrants and is subject in all respects to the provisions contained in the warrants.

*Form.* The warrants will be issued as individual warrant agreements to the investors. You should review a copy of the form of warrant, which will be filed with the SEC by us as an exhibit to a Current Report on Form 8-K in connection with this offering, for a complete description of the terms and conditions applicable to the warrants.

*Exercisability.* The warrants are exercisable at any time after their original issuance, expected to be February 8, 2012, and at any time up to the date that is four years after their original issuance. The warrants will be exercisable, at the option of each holder, in whole or in part by delivering to us a duly executed exercise notice and, at any time a registration statement registering the issuance of the shares of common stock underlying the warrants under the Securities Act is effective and available for the issuance of such shares, or an exemption from registration under the Securities Act is available for the issuance of such shares, by payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise. If a registration statement registering the issuance of the shares of common stock underlying the warrants under the Securities Act is not effective or available and an exemption from registration under the Securities Act is not available for the issuance of such shares, the holder may, in its sole discretion, elect to exercise the warrant through a cashless exercise, in which case the holder would receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the warrant. No fractional shares of common stock will be issued in connection with the exercise of a warrant. In lieu of fractional shares, we will pay the holder an amount in cash equal to the fractional amount multiplied by the exercise price.

*Exercise Limitation.* A holder will not have the right to exercise any portion of the warrant if the holder (together with its affiliates) would beneficially own in excess of 4.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the warrants. However, any holder may increase or decrease such percentage to any other percentage not in excess of 9.99% upon at least 61 days' prior notice from the holder to us.

*Exercise Price.* The exercise price per share of common stock purchasable upon exercise of the warrants is \$2.40 per share of common stock. The exercise price is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock and also upon any distributions of assets, including cash, stock or other property to our stockholders.

*Transferability.* Subject to applicable laws, the warrants may be offered for sale, sold, transferred or assigned without our consent.

*Exchange Listing.* We do not plan on applying to list the warrants on the NASDAQ Global Market, any other national securities exchange or any other nationally recognized trading system.

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*Fundamental Transactions.* In the event of a fundamental transaction, as described in the warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, the holders of the warrants will be entitled to receive upon exercise of the warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the warrants immediately prior to such fundamental transaction.

*Rights as a Stockholder.* Except as otherwise provided in the warrants or by virtue of such holder's ownership of shares of our common stock, the holder of a warrant does not have the rights or privileges of a holder of our common stock, including any voting rights, until the holder exercises the warrant.

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**CONCURRENT PRIVATE PLACEMENT TO THE MANN GROUP**

On February 2, 2012, we entered into a common stock purchase agreement with The Mann Group. Pursuant to this common stock purchase agreement, contingent upon the expiration or termination of the waiting period applicable to the concurrent private placement under the HSR Act and receipt of stockholder approval to increase the number of our authorized shares, as necessary, we are required to issue and sell, and The Mann Group is obligated to purchase, 31,250,000 restricted shares of our common stock at a price of \$2.47 per share (the consolidated closing bid price for our common stock as reported by The NASDAQ Global Market on February 2, 2012). The aggregate purchase price for the shares of common stock we issue and sell to The Mann Group is expected to be paid by cancelling outstanding principal under our \$350 million existing revolving loan arrangement provided by The Mann Group. As of December 31, 2011, the principal amount outstanding under the loan arrangement was \$277.2 million, and we had \$45.0 million of available borrowings under the arrangement. Any amount of indebtedness cancelled in connection with the concurrent private placement cannot be reborrowed under the loan arrangement.

The concurrent private placement is not contingent upon the completion of this offering, and this offering is not contingent upon the completion of the concurrent private placement. There can be no assurance that the concurrent private placement can be consummated. See Risk Factors *The sale of our common stock in the concurrent private placement is contingent upon the receipt of clearance under the HSR Act and receipt of stockholder approval to increase the number of our authorized shares, as necessary, and there can be no assurance that such clearance and approval will be obtained.*

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**UNDERWRITING**

The underwriters named below have agreed to buy, subject to the terms of the underwriting agreement, the number of units listed opposite their names below. Jefferies & Company, Inc., Piper Jaffray & Co. and Cowen and Company, LLC are acting as joint book-running managers for this offering and as representatives of the underwriters. The underwriters are severally committed to purchase and pay for all of the units offered by this prospectus supplement if any are purchased.

<b>Underwriters</b>	<b>Number of Units</b>
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