

Opko Health, Inc.  
Form 10-Q/A  
November 10, 2010

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549  
FORM 10-Q/A  
(Amendment No. 1)**

(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, 2010.  
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 001-33528  
OPKO Health, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

75-2402409

(State or Other Jurisdiction of  
Incorporation or Organization)

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

4400 Biscayne Blvd.  
Miami, FL 33137

(Address of Principal Executive Offices) (Zip Code)

(305) 575-4100

(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  YES  NO  
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T 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 the definitions of large accelerated filer, accelerated filer and smaller reporting company (in Rule 12b-2 of the Exchange Act) (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

As of November 3, 2010, the registrant had 255,356,326 shares of common stock outstanding.



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**Explanatory Note:**

OPKO Health, Inc. (the Company) is filing this Amendment No. 1 to the Quarterly Report on Form 10-Q (the Form 10-Q/A) to amend its Quarterly Report on Form 10-Q for the quarter ended March 31, 2010, which was filed with the Securities and Exchange Commission (SEC) on May 10, 2010 (the Original Filing and together with the Form 10-Q/A, the Form 10-Q) to include restated financial statements as described in Note 12 to the accompanying condensed consolidated financial statements.

The Company has also filed an Amendment No. 1 to the Annual Report on Form 10-K (the Form 10-K/A) to amend its Annual Report on Form 10-K for the year ended December 31, 2009, which was filed with the Securities and Exchange Commission (SEC) on March 17, 2010 (the Original 10-K Filing and together with the Form 10-K/A, the Form 10-K) to include restated consolidated financial statements as described in Note 21 to those consolidated financial statements, included therein.

The Company has restated its previously issued consolidated financial statements as of and for the year ended December 31, 2009, to reflect the Company's determination that it did not properly account for the September 28, 2009 Series D Convertible Preferred Stock (the Preferred Stock) offering. In connection with the issuance of 1,209,667 shares of Preferred Stock, we issued warrants to purchase up to an aggregate of 3,024,194 shares of our common stock at an exercise price of \$2.48 per share. The Company is correcting the classification of the Preferred Stock from a component of equity to the mezzanine section of the balance sheet.

The restatement does not change the Company's previously reported revenues, operating income or cash and cash equivalents shown in its consolidated financial statements for the quarter ended March 31, 2010.

This Form 10-Q/A amends the following items in the Company's Original Filing to reflect the change in accounting treatment:

- Part I, Item 1. Financial Statements
- Part I, Item 4. Controls and Procedures
- Part II, Item 6. Exhibits

Other than as described above, none of the other disclosures in the Original Filing have been amended or updated. Among other things, forward-looking statements made in the Original Filing have not been revised to reflect events that occurred or facts that became known to the Company after the filing of the Original Filing, and such forward-looking statements should be read in their historical context. Accordingly, this Annual Report on Form 10-Q/A should be read in conjunction with the Company's filings with the Securities and Exchange Commission subsequent to the Original Filing.

**PART I. FINANCIAL INFORMATION**

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**Table of Contents****PART I. FINANCIAL INFORMATION**

Unless the context otherwise requires, all references in this Quarterly Report on Form 10-Q to the Company, OPKO, we, our, ours, and us refer to OPKO Health, Inc., a Delaware corporation, including our wholly-owned subsidiaries.

**Item 1. Financial Statements**

**OPKO Health, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(unaudited) (in thousands except share data)

	March 31, 2010 (restated, Refer to Note 12)	December 31, 2009 (restated, Refer to Note 12)
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 33,674	\$ 42,658
Marketable securities	4,999	
Accounts receivable, net	11,832	8,767
Inventory, net	10,153	10,520
Prepaid expenses and other current assets	2,068	1,873
<b>Total current assets</b>	<b>62,726</b>	<b>63,818</b>
Property and equipment, net	2,393	593
Intangible assets, net	11,883	12,722
Goodwill	5,257	5,408
Investments	4,216	4,447
Other assets	428	442
<b>Total assets</b>	<b>\$ 86,903</b>	<b>\$ 87,430</b>
<b>LIABILITIES, SERIES D PREFERRED STOCK AND SHAREHOLDERS' EQUITY</b>		
Current liabilities		
Accounts payable	\$ 5,539	\$ 4,784
Accrued expenses, including interest payable to related party	7,608	3,918
Current portion of lines of credit, including related parties, net of unamortized discount of \$51 and \$0, respectively	16,690	4,321
<b>Total current liabilities</b>	<b>29,837</b>	<b>13,023</b>
Long-term interest payable to related party		3,409
Deferred tax liabilities	1,222	1,339
Line of credit with related party, net of unamortized discount of \$0 and \$68, respectively		11,932
<b>Total liabilities</b>	<b>31,059</b>	<b>29,703</b>
Commitments and contingencies		

Series D preferred stock \$0.01 par value, 2,000,000 shares authorized; 1,209,677 and 1,209,677 shares issued and outstanding (liquidation value of \$31,213 and \$30,613) at March 31, 2010 and December 31, 2009, respectively	26,128	26,128
Shareholders' equity		
Series A Preferred stock \$0.01 par value, 4,000,000 shares authorized; 987,539 and 1,025,934 shares issued and outstanding (liquidation value of \$2,530 and \$2,564) at March 31, 2010 and December 31, 2009, respectively	10	10
Series C Preferred Stock \$0.01 par value, 500,000 shares authorized; No shares issued or outstanding		
Common Stock \$0.01 par value, 500,000,000 shares authorized; 255,229,380 and 253,762,552 shares issued and outstanding at March 31, 2010 and December 31, 2009, respectively	2,552	2,538
Treasury stock 45,154 shares at March 31, 2010 and December 31, 2009, respectively	(61)	(61)
Additional paid-in capital	370,222	367,028
Accumulated other comprehensive income	969	1,313
Accumulated deficit	(343,976)	(339,229)
Total shareholders' equity	29,716	31,599
Total liabilities, Series D Preferred Stock and shareholders' equity	\$ 86,903	\$ 87,430

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

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**OPKO Health, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(unaudited)

(in thousands, except share data)

	For the three months ended March	
	31,	
	2010	2009
Revenue	\$ 7,922	\$ 2,301
Cost of goods sold, excluding amortization of intangible assets	5,528	1,561
Gross margin, excluding amortization of intangible assets	2,394	740
Operating expenses		
Selling, general and administrative	4,243	3,257
Research and development	1,328	5,659
Other operating expenses, principally amortization of intangible assets	889	406
Total operating expenses	6,460	9,322
Operating loss	(4,066)	(8,582)
Other expense, net	(340)	(450)
Loss before income taxes and investment losses	(4,406)	(9,032)
Income tax provision (benefit)	47	(35)
Loss before investment losses	(4,453)	(8,997)
Loss from investments in investees	(231)	
Net loss	(4,684)	(8,997)
Preferred stock dividend	(662)	(58)
Net loss attributable to common shareholders	\$ (5,346)	\$ (9,055)
Loss per share, basic and diluted	\$ (0.02)	\$ (0.05)
Weighted average number of common shares outstanding, basic and diluted	254,452,451	199,598,277

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



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**OPKO Health, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(unaudited)  
(in thousands)

	For the three months ended March 31,	
	2010	2009
Cash flows from operating activities		
Net loss	\$ (4,684)	\$ (8,997)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	971	466
Accretion of debt discount related to notes payable	60	16
Equity-based compensation employees and non-employees	1,205	618
Loss from investments in investees	231	
Net recovery of bad debts	(10)	(135)
(Disposal of) provision for inventory obsolescence	(63)	46
Changes in:		
Accounts receivable	(1,668)	(347)
Inventory	885	(1,037)
Prepaid expenses and other current assets	(272)	(844)
Other assets	103	(24)
Accounts payable	513	1,164
Accrued expenses	50	1,097
Net cash used in operating activities	(2,679)	(7,977)
Cash flows from investing activity		
Acquisition of a business, net of cash	(1,447)	
Purchase of marketable securities	(4,999)	
Capital expenditures	(203)	(25)
Net cash used in investing activity	(6,649)	(25)
Cash flows from financing activities:		
Borrowing under lines of credit	1,165	
Repayments under lines of credit	(821)	
Proceeds from bridge loan with related party		3,000
Insurance financing		217
Proceeds from the exercise of stock options and warrants	2	348
Repayments of notes payable and capital lease obligations	(2)	(81)
Net cash provided by financing activities	344	3,484
Net decrease in cash and cash equivalents	(8,984)	(4,518)
Cash and cash equivalents at beginning of period	42,658	6,678
Cash and cash equivalents at end of period	\$ 33,674	\$ 2,160

SUPPLEMENTAL INFORMATION

Interest paid	\$	46	\$	1
Issuance of capital stock to acquire Pharmacos Exakta	\$	2,000	\$	

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

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**OPKO Health, Inc. and Subsidiaries**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (unaudited)**

**NOTE 1 BUSINESS AND ORGANIZATION**

We are a specialty healthcare company involved in the discovery, development, and commercialization of pharmaceutical products, medical devices, vaccines, diagnostic technologies, and imaging systems. Initially focused on the treatment and management of ophthalmic diseases, we have since expanded into other areas of major unmet medical need. We are a Delaware corporation, headquartered in Miami, Florida.

**NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Basis of presentation.* The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, all adjustments (consisting of only normal recurring adjustments) considered necessary to present fairly the Company's results of operations, financial position and cash flows have been made. The results of operations and cash flows for the three months ended March 31, 2010, are not necessarily indicative of the results of operations and cash flows that may be reported for the remainder of 2010 or for future periods. The interim condensed consolidated financial statements should be read in conjunction with the Consolidated Financial Statements and the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K/A for the year ended December 31, 2009.

*Principles of consolidation.* The accompanying unaudited condensed consolidated financial statements include the accounts of OPKO Health, Inc. and our wholly-owned subsidiaries. All significant intercompany accounts and transactions are eliminated in consolidation.

*Use of estimates.* The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*Comprehensive loss.* Our comprehensive loss for the three months ended March 31, 2010 includes net loss for the three months and the cumulative translation adjustment, net of \$(0.3) million, for the translation results of our subsidiaries in Chile and Mexico. Comprehensive loss for the three months ended March 31, 2009 is comprised entirely of our net loss.

*Revenue recognition.* Generally, we recognize revenue from product sales when goods are shipped and title and risk of loss transfer to our customers. Certain of our instrumentation products are sold directly to end-users and require that we deliver, install and train the staff at the end-users' facility. As a result, we do not recognize revenue until the product is delivered, installed and training has occurred.

*Derivative financial instruments.* We record derivative financial instruments on our balance sheet at their fair value and the changes in the fair value are recognized in income when they occur, the only exception being derivatives that qualify as hedges. To qualify the derivative instrument as a hedge, we are required to meet strict hedge effectiveness and contemporaneous documentation requirements at the initiation of the hedge and assess the hedge effectiveness on an ongoing basis over the life of the hedge. At March 31, 2010 and December 31, 2009, our forward contracts for inventory purchases did not meet the documentation requirements to be designated as hedges. Accordingly, we recognize all changes in fair values in income. Refer to Note 7.

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*Product warranties.* Product warranty expense is recorded concurrently with the recording of revenue for product sales. The costs of warranties are accounted for as a component of cost of sales. We estimate warranty costs based on our estimated historical experience and adjust for any known product reliability issues.

*Allowance for doubtful accounts.* We analyze accounts receivable and historical bad debt levels, customer credit worthiness and current economic trends when evaluating the adequacy of the allowance for doubtful accounts using the specific identification method. Our reported net loss is directly affected by our estimate of the collectability of accounts receivable. Estimated allowances for sales returns are based upon our history of product returns. The amount of allowance for doubtful accounts at March 31, 2010 and December 31, 2009, was \$0.4 million and \$0.4 million, respectively.

*Segment reporting.* Our chief operating decision-maker ( CODM ) is comprised of our executive management with the oversight of our board of directors. Our CODM review our operating results and operating plans and make resource allocation decisions on a company-wide or aggregate basis. Accordingly, we have aggregated our three operating segments, instrumentation, pharmaceutical operating business and pharmaceutical and device research and development activities into two reporting segments, instrumentation and pharmaceutical as we expect the businesses to have similar long-term economic characteristics.

*Equity-based compensation.* We measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. That cost is recognized in the statement of operations over the period during which an employee is required to provide service in exchange for the award. We record excess tax benefits, realized from the exercise of stock options as a financing cash inflow rather than as a reduction of taxes paid in cash flow from operations. Equity-based compensation arrangements to non-employees are recorded at their fair value on the measurement date. The measurement of equity-based compensation is subject to periodic adjustment as the underlying equity instruments vest. During the three months ended March 31, 2010 and 2009, we recorded \$1.2 million and \$0.6 million, respectively, of equity-based compensation expense.

*Recent accounting pronouncements.* In March 2010, the Financial Accounting Standards Board, or FASB, issued updated guidance to amend and clarify how entities should evaluate credit derivatives embedded in beneficial interests in securitized financial assets. The updated guidance eliminates the scope exception for bifurcation of embedded credit derivatives in interests in securitized financial assets, unless they are created solely by subordination of one financial instrument to another. The update allows entities to elect the fair value option for any beneficial interest in securitized financial assets upon adoption. This guidance is effective by the first day of the first fiscal quarter beginning after June 15, 2010. Early adoption is permitted. We have not adopted this guidance early and are currently evaluating the potential effect of the adoption of this amendment on our results of operation and financial condition.

In March 2010, the FASB reached a consensus to issue an amendment to the accounting for revenue arrangements under which a vendor satisfies its performance obligations to a customer over a period of time, when the deliverable or unit of accounting is not within the scope of other authoritative literature and when the arrangement consideration is contingent upon the achievement of a milestone. The amendment defines a milestone and clarifies whether an entity may recognize consideration earned from the achievement of a milestone in the period in which the milestone is achieved. This amendment is effective for fiscal years beginning on or after June 15, 2010, with early adoption permitted. The amendment may be applied retrospectively to all arrangements or prospectively for milestones achieved after the effective date. We have not adopted this guidance early and adoption of this amendment is not expected to have a material impact on our results of operation or financial condition.

In January 2010, the FASB issued an amendment to the accounting for fair value measurements and disclosures. This amendment details additional disclosures on fair value measurements, requires a gross presentation of activities within a Level 3 rollforward and adds a new requirement to the disclosure of transfers in and out of Level 1 and Level 2 measurements. The new disclosures are required of all entities that are required to provide disclosures about recurring and nonrecurring fair value measurements. This amendment was effective as of January 1, 2010, with an exception for the gross presentation of Level 3 rollforward information, which is required for annual reporting periods beginning after December 15, 2010, and for interim reporting periods within those years. The adoption of the remaining provisions of this amendment is not expected to have a material impact on our financial statement disclosures.

In October 2009, the FASB issued an amendment to the accounting for multiple-deliverable revenue arrangements. This amendment provides guidance on determining whether multiple deliverables exist, how the

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arrangements should be separated and how the consideration paid should be allocated. As a result of this amendment, entities may be able to separate multiple-deliverable arrangements in more circumstances than under existing accounting guidance. This guidance amends the requirement to establish the fair value of undelivered products and services based on objective evidence and instead provides for separate revenue recognition based upon management's best estimate of the selling price for an undelivered item when there is no other means to determine the fair value of that undelivered item. The existing guidance previously required that the fair value of the undelivered item reflect the price of the item either sold in a separate transaction between unrelated third parties or the price charged for each item when the item is sold separately by the vendor. If the fair value of all of the elements in the arrangement was not determinable, then revenue was deferred until all of the items were delivered or fair value was determined. This amendment will be effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Early adoption and retrospective application is also permitted. We have not adopted this guidance early and are currently evaluating the potential effect of the adoption of this amendment on our results of operations and financial condition.

**NOTE 3 LOSS PER SHARE**

Basic loss per share is computed by dividing our net loss by the weighted average number of shares outstanding during the period. Diluted earnings per share is computed by dividing our net loss by the weighted average number of shares outstanding and the impact of all dilutive potential common shares, primarily stock options. The dilutive impact of stock options and warrants are determined by applying the treasury stock method.

A total of 19,071,146 and 14,784,137 potential common shares have been excluded from the calculation of net loss per share for the three months ended March 31, 2010 and 2009, respectively, because their inclusion would be anti-dilutive. As of March 31, 2010, the holders of our Series A Preferred Stock and Series D Preferred Stock could convert their Preferred Shares into approximately 1,012,171 and 12,586,017 shares of our Common Stock, respectively.

**NOTE 4 COMPOSITION OF CERTAIN FINANCIAL STATEMENT CAPTIONS**

(in thousands)	March 31, 2010	December 31, 2009
Accounts receivable, net:		
Accounts receivable	\$ 12,193	\$ 9,118
Less allowance for doubtful accounts	(361)	(351)
	\$ 11,832	\$ 8,767
Inventories, net:		
Raw materials (components)	\$ 2,839	\$ 3,764
Work-in process	1,006	1,365
Finished products	6,481	5,632
Less provision for inventory reserve	(173)	(241)
	\$ 10,153	\$ 10,520
Intangible assets, net:		
Customer relationships	\$ 7,211	\$ 7,259
Technology	4,597	4,597
Product registrations	3,807	3,829
Tradenname	636	578

Covenants not to compete	363	317
Other	7	7
Less amortization	(4,738)	(3,865)
	\$ 11,883	\$ 12,722

The change in value of the intangible assets reflects the foreign currency fluctuation between the Chilean peso and the US dollar at March 31, 2010 and December 31, 2009.

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On February 17, 2010, acquired Pharmacos Exakta, S.A. de C.V., a privately-owned Mexican company ( Exakta ), engaged in the manufacture, marketing and distribution of ophthalmic and other pharmaceutical products for government and private markets since 1957. Pursuant to a purchase agreement (the Exakta Purchase Agreement ) we acquired all of the outstanding stock of Exakta and real property owned by an affiliate of Exakta for a total aggregate purchase price of \$3.6 million, of which an aggregate of \$1.6 million was paid in cash and \$2.0 million was paid in shares of our Common Stock, par value \$.01. The number of shares to be issued was determined by the average closing price of the Company s Common Stock as reported on the NYSE Amex for the ten trading days ending on February 12, 2010. A total of 1,372,428 shares of OPKO Common Stock were issued in the transaction which were valued at \$2.0 million due to trading restrictions. A portion of the proceeds will remain in escrow for a period of time for working capital adjustments and to satisfy indemnification claims.

On October 1, 2009, we entered into a definitive agreement to acquire Pharma Genexx S.A. ( Pharma Genexx ), a privately-owned Chilean company engaged in the representation, importation, commercialization and distribution of pharmaceutical products, over-the-counter products and medical devices for government, private and institutional markets in Chile. Pursuant to a stock purchase agreement with Pharma Genexx and its shareholders, Farmacias Ahumada S.A., FASA Chile S.A., and Laboratorios Volta S.A., we acquired all of the outstanding stock of Pharma Genexx in exchange for \$16 million in cash. A portion of the proceeds will remain in escrow for a period of time to satisfy indemnification claims. The transaction closed on October 7, 2009.

Effective September 21, 2009, we entered into an agreement pursuant to which we invested \$2.5 million in cash in Cocrysal Discovery, Inc., a privately held biopharmaceutical company ( Cocrysal ) in exchange for 1,701,723 shares of Cocrysal s Convertible Series A Preferred Stock. As of March 31, 2010, we own approximately 16% of Cocrysal s outstanding stock.

We have determined that Cocrysal has insufficient resources to carry out its principal activities without additional subordinated financial support. As such, Cocrysal meets the definition of a variable interest entity ( VIE ). In order to determine the primary beneficiary of the variable interest entity ( VIE ), we evaluated the related party group to identify who had the most significant power to control Cocrysal. Members of The Frost Group, LLC (the Frost Group ) own approximately 4,422,967 shares, representing 42% of Cocrysal s voting stock on an as converted basis, including 4,152,386 held by the Frost Gamma Investments Trust (the Gamma Trust ). Dr. Frost, Mr. Rubin, and Dr. Hsiao currently serve on the Board of Directors of Cocrysal and represent 50% of its board. In addition, the Gamma Trust influenced the redesign of Cocrysal and can significantly influence the success of Cocrysal through its board representation and voting power. As such, we have determined that the Gamma Trust is the primary beneficiary within the related party group. As a result of our determination that we are not the primary beneficiary, we have accounted for our investment in Cocrysal under the equity method.

On June 10, 2009, we entered into a stock purchase agreement with Sorrento Therapeutics, Inc. ( Sorrento ), a privately held company with a technology for generating fully human monoclonal antibodies, pursuant to which we invested \$2.3 million in Sorrento. We own approximately 53,113,732 shares of Sorrento Common Stock, or approximately 24% of Sorrento s total outstanding common stock at March 31, 2010. The closing stock price for Sorrento s common stock, a thinly traded stock, as quoted on the over-the-counter markets was \$2.99 per share on March 31, 2010.

**NOTE 6 FAIR VALUE MEASUREMENTS**

We record fair value at an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. We utilize a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.



As of March 31, 2010, we held money market funds that qualify as cash equivalents and forward contracts for inventory purchases (Refer to Note 7) that are required to be measured at fair value on a recurring basis. As of March 31, 2010, we held money market funds and treasury securities, maturing May 6, 2010, that qualify as cash equivalents as well as marketable securities which were comprised of treasury securities, maturing May 6, 2010, that

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are required to be measured at fair value on a recurring basis. The \$10 million of treasury securities are recorded at amortized cost, which reflects their approximate fair value. Our other assets and liabilities carrying value approximate their fair value due to their short-term nature.

Upon the termination of an employee of Ophthalmics Technologies, Inc., or OTI, we became obligated at the former employee's sole option to acquire up to 10% of the shares issued to the employee in connection with the acquisition of OTI at a price of \$3.55 per share. In February 2009, this employee exercised his put option and we repurchased 27,154 shares of our Common Stock at \$3.55 per share for a total of \$0.1 million. In addition, an existing employee of OTI has the same provision within his employment arrangement with a potential obligation of approximately \$0.3 million. We have recorded approximately \$0.2 million and \$0.2 million in accrued expenses as of March 31, 2010 and December 31, 2009, respectively, based on the estimated fair value of the unexercised put option.

The OTI put options were valued at fair value utilizing the Black-Scholes-Merton valuation method. During the three months ended March 31, 2010 and 2009, we recorded a reversal of expense of \$15 thousand and \$17 thousand, respectively, reflecting our stock price fluctuations.

Any future fluctuation in fair value related to these instruments that is judged to be temporary, including any recoveries of previous write-downs, would be recorded in accumulated other comprehensive income or loss. If we determine that any future valuation adjustment was other-than-temporary, we would record a charge to the consolidated statement of operations as appropriate.

Our financial assets and liabilities measured at fair value on a recurring basis are as follows:

	Fair value measurements as of March 31, 2010			Total
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	
(in thousands)				
Assets:				
Money market funds	\$ 27,486	\$	\$	\$ 27,486
Treasury securities	9,999			9,999
Total assets	\$ 37,485	\$	\$	\$ 37,485
Liabilities:				
OTI put option	\$	\$ 161	\$	\$ 161
Forward contracts		82		82
Total liabilities	\$	\$ 243	\$	\$ 243

**NOTE 7 DERIVATIVE CONTRACTS**

We enter into foreign currency forward exchange contracts to cover the risk of exposure to exchange rate differences arising from inventory purchases on letters of credit. Under these forward contracts, for any rate above or below the fixed rate, we receive or pay the difference between the spot rate and the fixed rate for the given amount at the settlement date.

We record derivative financial instruments on our balance sheet at their fair value as an accrued expense and the changes in the fair value are recognized in income in other expense net when they occur, the only exception being

derivatives that qualify as hedges. To qualify the derivative instrument as a hedge, we are required to meet strict hedge effectiveness and contemporaneous documentation requirements at the initiation of the hedge and assess the hedge effectiveness on an ongoing basis over the life of the hedge. At March 31, 2010, the forward contracts did not meet the documentation requirements to be designated as hedges. Accordingly, we recognize all changes in fair values in income.

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The outstanding contracts at March 31, 2010, have been recorded at fair value, and their maturity details are as follows:

(in thousands)	Contract value	Fair value at March 31, 2010	Effect on gain (loss)
Days until maturity			
0 to 30	\$ 723	\$ 723	\$
31 to 60	662	667	5
61 to 90	575	572	(3)
91 to 120	984	995	11
121 to 180	2,347	2,309	(38)
More than 180	3,072	3,015	(57)
Total	\$ 8,363	\$ 8,281	\$ (82)

**NOTE 8 RELATED PARTY TRANSACTIONS**

Effective March 5, 2010, the Frost Group assigned two license agreements with Academia Sinica to the Company's subsidiary, OPKO Taiwan, Inc. The license agreements pertain to alpha-galactosyl ceramide analogs and their use as immunotherapies and peptide ligands in the diagnosis and treatment of cancer. In connection with the assignment of the two licenses, the Company agreed to reimburse the Frost Group for the licensing fees previously paid by the Frost Group to Academia Sinica in the amounts of \$50 thousand and \$75 thousand, respectively, as well as reimbursement of certain expenses.

Effective September 21, 2009, we entered into an agreement pursuant to which we invested \$2.5 million in Cocrysal Discovery, Inc. (Cocrysal) in exchange for 1,701,723 shares of Cocrysal's Convertible Series A Preferred Stock. A group of Investors, led by the Frost Group (the Cocrysal Investors), previously invested \$5 million in Cocrysal, and agreed to invest an additional \$5 million payable in two equal installments in September 2009 and March 2010. As a result of an amendment to the Cocrysal Investors agreements dated June 9, 2009, OPKO, rather than the Cocrysal Investors, made the first installment investment (\$2.5 million) on September 21, 2009. Refer to Note 5.

On July 20, 2009, the Company entered into a worldwide exclusive license agreement with Academia Sinica in Taipei, Taiwan, for a new technology to develop protein vaccines against influenza and other viral infections. Dr. Alice Yu, a member of our board of directors, is a Distinguished Research Fellow and Associate Director at the Genomics Research Center, Academia Sinica.

On June 16, 2009, we entered into an agreement to lease approximately 10,000 square feet of space in Hialeah, Florida to house manufacturing and service operations for our ophthalmic instrumentation business (the Hialeah Facility) from an entity controlled by Dr. Frost and Dr. Jane Hsiao. Pursuant to the terms of a lease agreement, which is effective as of February 1, 2009, gross rent is \$0.1 million per year for a one-year lease which may be extended, at our option, for one additional year. From April 2008 through January 2009, we leased 20,000 square feet at the Hialeah Facility from a third party landlord pursuant to a lease agreement which contained an option to purchase the facility. We initially elected to exercise the option to purchase the Hialeah Facility in September 2008. Prior to closing, however, we assigned the right to purchase the Hialeah Facility to an entity controlled by Drs. Frost and Hsiao and leased a smaller portion of the facility as a result of several factors, including our inability to obtain outside financing for the purchase, current business needs, the reduced operating costs for the smaller space and the minimization of risk and expense of unutilized space.

In March 2009, we paid the \$45 thousand filing fee to the Federal Trade Commission in connection with filings made by us and Dr. Frost, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR). The filings permitted Dr. Frost and his affiliates to acquire additional shares of our Common Stock upon expiration of the HSR waiting period on March 23, 2009.

In November 2007, we entered into an office lease with Frost Real Estate Holdings, LLC, an entity affiliated with Dr. Frost. The lease is for approximately 8,300 square feet of space in an office building in Miami, Florida, where the Company's principal executive offices are located. We had previously been leasing this space from Frost Real Estate Holdings on a month-to-month basis while the parties were negotiating the lease. The lease provides for payments of approximately \$18 thousand per month in the first year increasing annually to \$24 thousand per month in the fifth year, plus applicable sales tax. The rent is inclusive of operating expenses, property taxes and parking. The rent for the first year was reduced to reflect a \$30 thousand credit for the costs of tenant improvements. From January 1, 2008 through October 1, 2008, we leased an additional 1,100 square feet of general office and laboratory

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space on a ground floor annex of our corporate office building pursuant to an addendum to the Lease, which required us to pay annual rent of \$19 thousand per year for the annex space.

On September 19, 2007, we entered into an exclusive technology license agreement with Winston Laboratories, Inc. ( Winston ). Under the terms of the license agreement, Winston granted us an exclusive license to the proprietary rights of certain products in exchange for the payment of an initial licensing fee, royalties, and payments on the occurrence of certain milestones. Drs. Frost, Uppaluri and Hsiao and Mr. Rubin beneficially own approximately 30% of Winston Pharmaceuticals, Inc. and Dr. Uppaluri has served as a member of Winston s board of directors since September 2008. In connection with the license agreement, we reimbursed Winston \$0, and \$11 thousand for the three months ended March 31, 2010, and 2009, respectively, for services provided by Winston personnel to assist us with the clinical program for the product we licensed. We provided Winston notice of termination of the license agreement on February 23, 2010, and the agreement will be terminated on May 24, 2010.

As part of the mergers, we assumed a line of credit with the Frost Group from Acuity Pharmaceuticals, Inc., and amended and restated that line of credit to increase borrowing availability.

We reimburse Dr. Frost for Company-related use by Dr. Frost and our other executives of an airplane owned by a company that is beneficially owned by Dr. Frost. We reimburse Dr. Frost in an amount equal to the cost of a first class airline ticket between the travel cities for each executive, including Dr. Frost, traveling on the airplane for Company-related business. We do not reimburse Dr. Frost for personal use of the airplane by Dr. Frost or any other executive; nor do we pay for any other fixed or variable operating costs of the airplane. For the three months ended March 31, 2010 and 2009, we reimbursed Dr. Frost approximately \$18 thousand, and \$38 thousand, respectively, for Company-related travel by Dr. Frost and other OPKO executives.

**NOTE 9 COMMITMENTS AND CONTINGENCIES**

On May 6, 2008, we completed the acquisition of Vidus Ocular, Inc., or Vidus. Pursuant to a Securities Purchase Agreement with Vidus, each of its stockholders, and the holders of convertible promissory notes issued by Vidus, we acquired all of the outstanding stock and convertible debt of Vidus in exchange for (i) the issuance and delivery at closing of 658,080 shares of our common stock (the Closing Shares ); (ii) the issuance of 488,420 shares of our common stock to be held in escrow pending the occurrence of certain development milestones (the Milestone Shares ); and (iii) the issuance of options to acquire 200,000 shares of our common stock. Additionally, in the event that the stock price for our common stock at the time of receipt of approval or clearance by the U.S. Food & Drug Administration of a pre-market notification 510(k) relating to the Aquashunt is not at or above a specified price, we will be obligated to issue an additional 413,850 shares of our common stock.

We have a potential obligation of approximately \$0.3 million related to a put option held by an employee. Refer to Note 6.

We expect to incur losses from operations for the foreseeable future. We expect to incur substantial research and development expenses, including expenses related to the hiring of personnel and additional clinical trials. We expect that selling, general and administrative expenses will also increase as we expand our sales, marketing and administrative staff and add infrastructure. We intend to finance additional research and development projects, clinical trials and our future operations with a combination of private placements, payments from potential strategic research and development, licensing and/or marketing arrangements, public offerings, debt financing and revenues from future product sales, if any. There can be no assurance, however, that additional capital will be available to us on acceptable terms, or at all.

We are a party to other litigation in the ordinary course of business. We do not believe that any such other litigation will have a material adverse effect on our business, financial condition or results of operations.

**NOTE 10 SEGMENTS**

We currently manage our operations in two reportable segments, pharmaceutical and instrumentation segments. The pharmaceutical segment consists of two operating segments, our (i) pharmaceutical research and development segment which is focused on the research and development of pharmaceutical products, diagnostic tests and vaccines, and (ii) the pharmaceutical operations we acquired in Chile and Mexico through the acquisition of Pharma Genexx and Pharmacos Exakta. The instrumentation segment consists of ophthalmic instrumentation products and the activities related to the research, development, manufacture and commercialization of those products. There are







During the three months ended March 31, 2010, our two largest customers represented 17% and 10% of our total revenue, respectively. During the three months ended March 31, 2009, our three largest customers represented 20%, 18%, and 17%, respectively, of our revenue. As of March 31, 2010, one customer represented 29% of our accounts receivable balance. As of December 31, 2009, two customers represented 32% and 19%, respectively, of our accounts receivable balance.

**NOTE 11 SUBSEQUENT EVENTS**

We have reviewed all subsequent events and transactions that occurred after the date of our March 31, 2010 consolidated balance sheet date, through the time of filing this Quarterly Report on Form 10-Q on May 10, 2010.

**NOTE 12 RESTATEMENT OF FINANCIAL STATEMENTS**

The Company has restated its previously issued consolidated financial statements as of and for the year ended December 31, 2009, to reflect the Company's determination that it did not properly account for the September 28, 2009 Series D Convertible Preferred Stock (the Preferred Stock) offering. In connection with the issuance of 1,209,667 shares of Preferred Stock, we issued warrants to purchase up to an aggregate of 3,024,194 shares of our common stock at an exercise price of \$2.48 per share. The Company is correcting the classification of the Preferred Stock from a component of equity to the mezzanine section of the balance sheet.

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The restated financial statements as of December 31, 2009 and as of March 31, 2010 reflect the following changes.

(in thousands)	December 31, 2009			Balance Sheets as of March 31, 2010		
	As reported	Adjustment	Restated	As reported	Adjustment	Restated
Total Liabilities	\$ 29,703	\$	\$ 29,703	\$ 31,059	\$	\$ 31,059
Series D Preferred Stock		26,128	26,128		26,128	26,128
Shareholders' equity						
Series A Preferred Stock	10		10	10		10
Series D Preferred Stock	12	(12)		12	(12)	
Common Stock	2,538		2,538	2,552		2,552
Treasury Stock	(61)		(61)	(61)		(61)
Additional paid-in capital	393,144	(26,116)	367,028	396,338	(26,116)	370,222
Accumulated deficit	(339,229)		(339,229)	(343,976)		(343,976)
Cumulative translation adjustment	1,313		1,313	969		969
Total shareholders' equity	57,727	(26,128)	31,599	55,844	(26,128)	29,716
Total liabilities, Series D Preferred Stock and shareholders' equity	\$ 87,430	\$	\$ 87,430	\$ 86,903	\$	\$ 86,903

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**Item 4. Controls and Procedures**

The Company's management, under the supervision and with the participation of the Company's Chief Executive Officer ( CEO ) and Chief Financial Officer ( CFO ), has evaluated the effectiveness of the Company's disclosure controls and procedures as defined in Securities and Exchange Commission ( SEC ) Rule 13a-15(e) as of March 31, 2010. Based on that evaluation, management has concluded that the Company's disclosure controls and procedures are ineffective to ensure that information the Company is required to disclose in reports that it files or submits under the Securities Exchange Act is accumulated and communicated to management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure and is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

***Changes to the Company's Internal Control Over Financial Reporting***

During the preparation of our financial statements for the quarter ended September 30, 2010, we determined that a deficiency in controls relating to the accounting for a beneficial conversion feature on, and the classification of, convertible preferred stock existed as of the previous assessment date and have further concluded that such a deficiency represented a material weakness as of March 31, 2010. As a result, we concluded that the Company's internal controls over financial reporting were not effective as of March 31, 2010. The Company has implemented additional controls, including additional review procedures on its complex accounting issues. In addition, in connection with our acquisitions of Pharmacos Exakta and Pharma Genexx, we began implementing a new accounting system, as well as standards and procedures, upgrading and establishing controls over accounting systems and adding employees who are trained and experienced in the preparation of financial statements in accordance with U.S. GAAP to ensure that we have in place appropriate internal control over financial reporting at Pharma Genexx and Pharmacos Exakta.

**PART II. OTHER INFORMATION**

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**Item 6. Exhibits.**

- Exhibit 2.1<sup>(1)</sup> Merger Agreement and Plan of Reorganization, dated as of March 27, 2007, by and among Acuity Pharmaceuticals, Inc., Froptix Corporation, eXeGenics, Inc., e-Acquisition Company I-A, LLC, and e-Acquisition Company II-B, LLC.
- Exhibit 2.2<sup>(4)+</sup> Securities Purchase Agreement dated May 6, 2008, among Vidus Ocular, Inc., OPKO Instrumentation, LLC, OPKO Health, Inc., and the individual sellers and noteholders named therein.
- Exhibit 2.3\* Purchase Agreement, dated February 17, 2010, among Ignacio Levy García and José de Jesús Levy García, Inmobiliaria Chapalita, S.A. de C.V., Pharmacos Exakta, S.A. de C.V., OPKO Health, Inc., OPKO Health Mexicana S. de R.L. de C.V., and OPKO Manufacturing Facilities S. de R.L. de C.V.
- Exhibit 3.1<sup>(2)</sup> Amended and Restated Certificate of Incorporation.
- Exhibit 3.2<sup>(3)</sup> Amended and Restated By-Laws.
- Exhibit 4.1<sup>(1)</sup> Form of Common Stock Warrant.
- Exhibit 31.1 Certification by Phillip Frost, Chief Executive Officer, pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2010.
- Exhibit 31.2 Certification by Rao Uppaluri, Chief Financial Officer, pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2010.

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Exhibit 32.1 Certification by Phillip Frost, Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2010.

Exhibit 32.2 Certification by Rao Uppaluri, Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2010.

\* Filed with the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010, as originally filed on May 10, 2010.

+ Certain confidential material contained in the document has been omitted and filed separately with the Securities and Exchange Commission.

(1) Filed with the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 2, 2007, and incorporated herein by reference.

(2) Filed with the Company's Current Report on Form 8-A filed with the Securities and Exchange Commission on June 11, 2007, and incorporated herein by reference.

(3) Filed with the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 31, 2008 and incorporated herein by reference.

(4) Filed with the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 8, 2008 for the Company's three-month period ended June 30, 2008, and incorporated herein by reference.

(6) Filed with the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 12, 2008 for the Company's three-month period ended September 30, 2008, and incorporated herein by reference.

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**SIGNATURES**

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

Date: November 10, 2010

**OPKO Health, Inc.**

/s/ Adam Logal  
Adam Logal  
Executive Director of Finance,  
Chief Accounting Officer and Treasurer  
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**Exhibit Index**

**Exhibit Number Description**

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