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As filed with the Securities and Exchange Commission on June 12, 2013.

Registration No. 333-188595

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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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Amendment No. 2

to

## FORM S-1

REGISTRATION STATEMENT

Under

The Securities Act of 1933

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### ESPERION THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

<b>Delaware</b> (State or other jurisdiction of incorporation or organization)	<b>2834</b> (Primary Standard Industrial Classification Code Number)	<b>26-1870780</b> (I.R.S. Employer Identification Number)
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46701 Commerce Center Drive  
Plymouth, MI 48170  
(734) 862-4840

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

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Tim M. Mayleben  
President and Chief Executive Officer  
46701 Commerce Center Drive  
Plymouth, MI 48170  
(734) 862-4840

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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**Approximate date of commencement of proposed sale to the public:**  
**As soon as practicable after the effective date of this registration statement.**

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

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

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

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

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.

Large Accelerated Filer

Accelerated Filer

Non-Accelerated Filer   
(Do not check if a  
smaller reporting company)

Smaller Reporting Company

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### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Offering Price(2)	Amount of Registration Fee(3)
Common Stock, par value \$0.001 per share	5,175,000	\$15.00	\$77,625,000.00	\$10,589

- (1) Includes 675,000 shares that the underwriters have the option to purchase to cover over-allotments, if any.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) under the Securities Act.
- (3) Of this amount, \$9,548 was previously paid in connection with the initial filing of this Registration Statement on May 14, 2013.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED JUNE 12, 2013  
PRELIMINARY PROSPECTUS

**4,500,000 Shares**



**Common Stock**

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This is the initial public offering of shares of common stock of Esperion Therapeutics, Inc. All of the shares of common stock are being sold by Esperion Therapeutics, Inc.

Prior to this offering, there has been no public market for our common stock. It is currently estimated that the initial public offering price per share will be between \$13.00 and \$15.00. We have applied to list our common stock on the NASDAQ Global Market under the symbol "ESPR."

We are an "emerging growth company" under applicable Securities and Exchange Commission rules and will be subject to reduced public company reporting requirements.

**Investing in our common stock involves a high degree of risk. Please read "Risk Factors" beginning on page 10.**

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

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	<u>Per Share</u>	<u>Total</u>
Initial public offering price	\$	\$
Underwriting discounts and commissions	\$	\$
Proceeds to us, before expenses <sup>(1)</sup>	\$	\$

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(1) See "Underwriting" for additional disclosure regarding underwriting commissions and expenses.

We have granted the underwriters an option for a period of 30 days to purchase up to an additional 675,000 shares of common stock solely to cover over-allotments.

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Delivery of the shares is expected to be made on or about \_\_\_\_\_, 2013.

**Credit Suisse**

**Citigroup**

**JMP Securities**

**Stifel**

The date of this prospectus is \_\_\_\_\_, 2013.

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Through and including \_\_\_\_\_, 2013 (the 25<sup>th</sup> day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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You should rely only on the information contained in this prospectus or in any free writing prospectus we file with the Securities and Exchange Commission. We and the underwriters have not authorized anyone to provide you with information different from that contained in this prospectus or any free writing prospectus. We and the underwriters are offering to sell, and seeking offers to buy, common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date on the front cover of this prospectus, or other earlier date stated in this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.

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The market data and certain other statistical information used throughout this prospectus are based on independent industry publications, governmental publications, reports by market research firms or other independent sources. Some data are also based on our good faith estimates.

"Esperion Therapeutics, Inc." is our trademark. Other trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus may be referred to without the ® and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent permissible under applicable law, their rights thereto.

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our financial statements and the related notes included elsewhere in this prospectus. You should also consider, among other things, the matters described under "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," in each case appearing elsewhere in this prospectus. Unless otherwise stated, all references to "us," "our," "Esperion," "we," the "Company" and similar designations refer to Esperion Therapeutics, Inc.*

### Overview

We are a biopharmaceutical company focused on the research, development and commercialization of therapies for the treatment of patients with elevated levels of low-density lipoprotein cholesterol (LDL-C) and other cardiometabolic risk factors. ETC-1002, our lead product candidate, is a novel, first in class, orally available, once-daily small molecule therapy designed to target known lipid and carbohydrate metabolic pathways to lower levels of LDL-C and to avoid many of the side effects associated with existing LDL-C lowering therapies. To date, we have treated 275 subjects in six completed clinical trials, including three Phase 2a trials. We own the exclusive worldwide rights to ETC-1002.

Our founder, Executive Chairman and Chief Scientific Officer, Roger S. Newton, Ph.D., FAHA, co-discovered the statin marketed as Lipitor® (atorvastatin calcium), the most prescribed LDL-C lowering therapy in the world and the best-selling drug in the history of the pharmaceutical industry. We believe our management team has demonstrated expertise in understanding cholesterol biosynthesis and other related cardiometabolic pathways, the strengths and weaknesses of currently marketed therapies and the ability to recognize the potential of novel cholesterol regulating therapies.

Statins are the current standard of care for LDL-C lowering for approximately 30 million patients in the United States. However, based upon a recent academic survey, we estimate that more than 2 million U.S. adults have discontinued statin therapy because of muscle pain or weakness. We also believe that because symptoms of muscle pain or weakness occur in up to 20% of patients on statin therapy in clinical practice, the size of the statin intolerant market is poised to grow if a novel non-statin therapy becomes available.

On June 7, 2013, we reported top-line results for our Phase 2a clinical trial evaluating ETC-1002 as an LDL-C lowering agent specifically in patients with a history of intolerance to two or more statins. This clinical trial met its primary endpoint, demonstrating that ETC-1002 lowered LDL-C by an average of 32%. ETC-1002 was well tolerated and no patients treated with ETC-1002 discontinued the trial because of muscle pain or weakness. We expect to initiate a larger Phase 2b clinical trial in this targeted population by the end of 2013 and to report top-line results by the end of 2014. Our completed Phase 2a clinical trials have demonstrated significant average LDL-C reduction as high as 43% and reductions comparable to statins in levels of high sensitivity C-reactive protein, or hsCRP, a key marker of inflammation.

We also intend to advance the development of ETC-1002 as a therapy for the approximately 11 million U.S. patients currently on statin therapy but who are unable to achieve their LDL-C goals. These patients, known as residual risk patients, remain at increased risk for cardiovascular disease. We are currently evaluating the efficacy and interaction of ETC-1002 and a 10 mg dose of atorvastatin calcium in an ongoing Phase 2a clinical trial, and we expect to initiate a larger Phase 2b clinical trial in this patient population by the end of 2013 and to report top-line results by the end of 2014.

## ETC-1002

ETC-1002 is a novel, first in class, orally available, once-daily LDL-C lowering small molecule therapy with unique dual mechanisms of action that have the potential to regulate both lipid and carbohydrate metabolism. ETC-1002 works by inhibiting ATP citrate lyase (ACL) and activating 5'-adenosine monophosphate-activated protein kinase (AMPK). Its regulation of ACL and AMPK is complementary, since both enzymes are known to play significant roles in the synthesis of cholesterol and glucose in the liver. By inhibiting cholesterol synthesis in the liver, ETC-1002 causes the liver to take up LDL particles from the blood, which reduces blood LDL-C levels.

To date, we have studied ETC-1002 in six clinical trials. The results of our completed Phase 2a clinical trials are summarized below.

Patient Population	Average Reduction in LDL-C from Baseline	p-value
Elevated LDL-C and Statin Intolerant	Up to 32%	<0.0001
Elevated LDL-C	Up to 27%	<0.0001
Type 2 Diabetes and Elevated LDL-C	Up to 43%	<0.0001

We have also demonstrated significant reductions in hsCRP in our completed clinical trials. Our post hoc analyses have further indicated that ETC-1002 could potentially have a beneficial effect on blood glucose, blood pressure and excess weight. Across all of our completed clinical trials, ETC-1002 has been well-tolerated and not associated with serious side effects. There have been no serious adverse events in ETC-1002 treated patients.

### Populations of Interest

#### *Statin Intolerant Market*

We are initially pursuing the clinical development of ETC-1002 as a therapy for patients with elevated levels of LDL-C, or hypercholesterolemia, who are statin intolerant. Various studies estimate that more than 50% of patients stop taking statins within one year of initiating treatment. Not surprisingly, poor statin adherence is associated with worse cardiovascular outcomes. Although several reasons are cited for poor adherence, muscle pain or weakness is the most common side effect experienced by statin users and the most common cause for discontinuing therapy.

In addition to the 2 million U.S. adults who have discontinued statin therapy because of muscle pain or weakness, a significant proportion of patients still remain on statin therapy despite these side effects. A study published in the Journal of General Internal Medicine in August 2008 estimated that up to 20% of statin-treated patients in clinical practice complained of muscle pain.

The most prescribed therapies for elevated LDL-C levels other than statins each reported average LDL-C lowering of up to 18% in pivotal clinical trials. We believe these modest LDL-C lowering capacities are often insufficient for most hypercholesterolemic patients to reach their LDL-C goals. We believe these points underscore the need for a safe and efficacious non-statin, oral, once-daily, small molecule LDL-C lowering therapy.

#### *Residual Risk Market*

We also intend to continue the development of ETC-1002 as an add-on therapy for hypercholesterolemic patients who are unable to reach their recommended LDL-C goals despite the use of statin therapy. The severity of hypercholesterolemia in these patients, their level of residual cardiovascular disease risk and their therapeutic options all vary widely. Using data from the Centers

for Disease Control and Prevention study, "Vital Signs: Prevalence, Treatment, and Control of High Levels of Low-Density Lipoprotein Cholesterol—United States, 1999 - 2002 and 2005 - 2008," we estimate that 70% of the 11 million residual risk patients in the United States, or 7.7 million people, are within 30% of their LDL-C goal. Based upon the clinical results we have observed to date, we believe that ETC-1002, if approved, could be a preferred therapeutic alternative for patients with residual risk, physicians and payors.

### Our Strategy

Our objective is to be a leader in the discovery, development and commercialization of novel therapies for the treatment of patients with hypercholesterolemia and other cardiometabolic risk factors. The core elements of our strategy include:

- **Rapidly advance the clinical development of ETC-1002 as a novel, first in class, orally available, once-daily, small molecule therapy for hypercholesterolemic patients who are statin intolerant.** On June 7, 2013, we announced top-line efficacy and safety results from ETC-1002-006, our Phase 2 clinical trial in patients with elevated LDL-C and a history of intolerance to two or more statins. We plan to initiate a Phase 2b clinical trial in approximately 200 statin intolerant patients by the end of 2013 and plan to report its top-line results by the end of 2014.
- **Demonstrate ETC-1002's potential as an add-on therapy for residual risk patients, those who cannot achieve their LDL-C goals despite the use of statin therapy.** In the third quarter of 2013, we expect to announce top-line efficacy and safety results from ETC-1002-007, our Phase 2 clinical trial using increasing doses of ETC-1002 as an add-on to a 10 mg dose of atorvastatin calcium. We plan to initiate a Phase 2b clinical trial in approximately 200 residual risk patient by the end of 2013 and plan to report its top-line results by the end of 2014. Residual risk patients in our Phase 2b clinical trial will receive multiple dose strengths of ETC-1002 in tandem with atorvastatin calcium.
- **Develop ETC-1002 for LDL-C lowering in targeted patient populations, and develop our other product candidates to treat cardiometabolic risk factors in additional patient populations.** We may initiate additional clinical trials to explore ETC-1002 as a potential therapy for patients with multiple cardiometabolic risk factors, including elevated levels of hsCRP, blood glucose, blood pressure and excess weight.
- **Leverage the expertise of our experienced team of drug developers that are expert in the development of small molecule and biologic cholesterol regulating therapies.** Esperion is led by Dr. Roger S. Newton who is joined by an experienced group of pre-clinical and clinical drug developers with prior success in the development of lipid regulating therapies. Our key strengths lie in our understanding of the biology of cholesterol biosynthesis and other complex metabolic pathways and our ability to discover and develop novel therapies to modulate targets in these pathways.
- **Maintain flexibility in commercializing and maximizing the value of our development programs.** We may enter into strategic relationships with biotechnology or pharmaceutical companies to realize the full value of ETC-1002 or our other earlier-stage development programs.

### Risks Affecting Us

Our business is subject to numerous risks and uncertainties, including those highlighted in the section entitled "Risk Factors" immediately following this prospectus summary. These risks include, but are not limited to, the following:

- We depend almost entirely on the success of one product candidate, ETC-1002, which is still in Phase 2 clinical development. We cannot be certain that we will be able to obtain regulatory approval for, or successfully commercialize, ETC-1002.

- Positive results from ETC-1002-006, our recently completed Phase 2a clinical trial, may not necessarily be predictive of the results from ETC-1002-007, our ongoing Phase 2a clinical trial for which we expect to announce top-line efficacy and safety results in the third quarter of 2013. Similarly, positive results from Phase 1 and Phase 2 clinical trials of ETC-1002 are not necessarily predictive of the results of our planned Phase 2b and Phase 3 clinical trials of ETC-1002. If we cannot replicate the positive results from our Phase 1 and Phase 2 clinical trials of ETC-1002 in our Phase 2b and Phase 3 clinical trials, we may be unable to successfully develop, obtain regulatory approval for and commercialize ETC-1002.
- Failures or delays in the commencement or completion of our Phase 2b or pivotal Phase 3 clinical trials of ETC-1002 could result in increased costs to us and could delay, prevent or limit our ability to generate revenue and continue our business.
- We will need substantial additional capital in the future. If additional capital is not available, we will have to delay, reduce or cease operations.
- We are a development stage biopharmaceutical company with a limited operating history and have not generated any revenue from product sales. We have incurred significant operating losses since our inception, and anticipate that we will incur continued losses for the foreseeable future.
- Changes in regulatory requirements, FDA guidance or unanticipated events during our Phase 2b or Phase 3 clinical trials of ETC-1002 may occur, which may result in changes to clinical trial protocols or additional clinical trial requirements, such as the initiation or completion of a cardiovascular outcomes study, which could result in increased costs to us and could delay our development timeline.
- If we are unable to adequately protect our proprietary technology or maintain issued patents which are sufficient to protect ETC-1002, others could compete against us more directly, which would have a material adverse impact on our business, results of operations, financial condition and prospects.
- Our future success depends on our ability to retain both our founder, Executive Chairman and Chief Scientific Officer and our President and Chief Executive Officer, and to attract, retain and motivate qualified personnel.
- Our executive officers, directors, principal stockholders and their affiliates will continue to exercise significant control over our company after this offering, which will limit your ability to influence corporate matters and could delay or prevent a change in corporate control.

#### **Our Corporate Information**

We were founded in January 2008 by former executives of and investors in the original Esperion Therapeutics, Inc., a biopharmaceutical company, which was primarily focused on the research and development of therapies to regulate high-density lipoprotein cholesterol, or HDL-C. After successfully completing a Phase 2a clinical trial with its synthetic HDL therapy, the original Esperion was acquired by Pfizer Inc. in 2004. ETC-1002 was first discovered at the original Esperion and we subsequently acquired the rights to it from Pfizer in 2008. To date, we have raised approximately \$57 million to develop ETC-1002.

Our principal executive offices are located at 46701 Commerce Center Drive, Plymouth, Michigan 48170 and our telephone number is (734) 862-4840. Our website address is [www.esperion.com](http://www.esperion.com). We do not incorporate the information on or accessible through our website into this prospectus, and you should not consider any information on, or that can be accessed through, our website as part of this prospectus.



## The Offering

Common stock offered by us	4,500,000 shares
Common stock to be outstanding after this offering	14,079,305 shares (14,754,305 shares if the underwriters exercise their over-allotment option to purchase additional shares in full)
Underwriters' option to purchase additional shares	We have granted a 30-day option to the underwriters to purchase up to an aggregate of 675,000 additional shares of common stock to cover over-allotments, if any.
Use of Proceeds	We estimate that we will receive net proceeds from this offering of \$56.5 million based upon an assumed initial public offering price of \$14.00 per share, the mid-point of the estimated price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We expect to use the net proceeds from this offering to fund the clinical development of ETC-1002 through the completion of our currently anticipated Phase 2b clinical trials and end of Phase 2 meeting with the FDA, as well as for working capital and general corporate purposes, including funding the costs of operating a public company. We expect to announce top-line results from our latest currently anticipated Phase 2b clinical trial by the end of 2014 and to have our end of Phase 2 meeting with the FDA in the first quarter of 2015. See "Use of Proceeds" for a more complete description of our intended use of the net proceeds from this offering.
Risk Factors	You should carefully read "Risk Factors" in this prospectus for a discussion of factors that you should consider before deciding to invest in our common stock.
NASDAQ Global Market Symbol	"ESPR"

The number of shares of our common stock to be outstanding after this offering is based on 9,579,305 shares of our common stock outstanding as of May 31, 2013 and excludes:

- 696,924 shares of common stock issuable upon the exercise of stock options outstanding as of May 31, 2013 at a weighted-average exercise price of \$2.09 per share;
- 277,690 shares of common stock issuable upon the exercise of warrants outstanding as of May 31, 2013 at an exercise price of \$6.99 per share, which warrants prior to the closing of this offering are exercisable to purchase shares of Series A preferred stock; and
- 1,154,129 shares of common stock reserved for future issuance under our equity incentive plans as of the closing of this offering.

Unless otherwise indicated, all information in this prospectus reflects or assumes the following:

- the filing of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws, which will occur immediately prior to the closing of this offering;

- the conversion of all of our outstanding shares of preferred stock, including (i) the 17,000,000 shares of Series A preferred stock issued on April 19, 2013 and (ii) the 6,750,000 shares of Series A-1 preferred stock issued on May 29, 2013, into an aggregate of 9,210,999 shares of common stock upon the closing of this offering;
- no exercise by the underwriters of their option to purchase up to an additional 675,000 shares of common stock in this offering to cover over-allotments; and
- a 1-for-6.986 reverse split of our common stock effected on June 11, 2013.

**Summary Financial Data**

The following tables summarize the financial data for our business. You should read this summary financial data together with "Capitalization," "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes, all included elsewhere in this prospectus.

We derived the statements of operations data for the years ended December 31, 2012 and 2011 from our audited financial statements included elsewhere in this prospectus. We derived the statements of operations data for the three months ended March 31, 2013 and 2012 and for the period from inception (January 22, 2008) to March 31, 2013 from our unaudited financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of our future results, and results for the three months ended March 31, 2013 are not necessarily indicative of results to be expected for the full year ending December 31, 2013.

	Years Ended December 31,		Three Months Ended March 31,		Period From January 22, 2008 (Inception) through March 31, 2013
	2012	2011	2013	2012	
(in thousands, except share and per share data)					
<b>Statement of Operations Data:</b>					
Grant income	\$ —	\$ —	\$ —	\$ —	\$ 244
Operating expenses:					
Research and development	7,998	7,807	2,093	1,557	29,506
General and administrative	2,206	2,357	1,251	633	12,701
Acquired in-process research and development	—	—	—	—	86
Total operating expenses	10,204	10,164	3,344	2,190	42,293
Loss from operations	(10,204)	(10,164)	(3,344)	(2,190)	(42,049)
Total other income (expense)	(1,538)	(653)	(895)	(259)	(4,165)
Net loss	\$ (11,742)	\$ (10,817)	\$ (4,239)	\$ (2,449)	\$ (46,214)
<b>Per share information:</b>					
Net loss per share, basic and diluted	\$ (36.31)		\$ (12.24)		
Weighted-average shares outstanding, basic and diluted	323,382		346,478		
Pro forma net loss per share, basic and diluted (unaudited)(1)	\$ (3.13)		\$ (0.84)		
Pro forma weighted-average shares outstanding, basic and diluted (unaudited)(1)	3,755,247(2)		5,047,400(3)		

- (1) The calculations of the unaudited pro forma net loss per share, basic and diluted, assume the conversion of all of our outstanding shares of convertible preferred stock into shares of our common stock.
- (2) Excludes (i) the conversion of the convertible promissory notes that we issued in January, September and November of 2012, or the 2012 convertible promissory notes, into 16,623,092 shares of Series A preferred stock in February 2013, (ii) the issuance of 17,000,000 shares of Series A preferred stock on April 19, 2013, (iii) the conversion of the Pfizer Inc. convertible promissory

note, or the Pfizer note, into 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 and (iv) the exercise of warrants to purchase 1,940,000 shares of our Series A preferred stock.

- (3) Excludes (i) the issuance of 17,000,000 shares of Series A preferred stock on April 19, 2013, (ii) the issuance of 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 and (iii) the exercise of warrants to purchase 1,940,000 shares of our Series A preferred stock.

The table below presents a summary of our balance sheet data as of March 31, 2013:

- on an actual basis;
- on a pro forma basis after giving effect to (i) the conversion of our shares of Series A preferred stock outstanding as of March 31, 2013 into an aggregate of 5,811,344 shares of common stock upon the completion of this offering, (ii) the receipt of \$17.0 million of gross proceeds from the issuance of 17,000,000 shares of Series A preferred stock on April 19, 2013, (iii) the conversion of our shares of Series A preferred stock issued on April 19, 2013 into an aggregate of 2,433,433 shares of common stock upon completion of this offering, (iv) the conversion of the Pfizer note which had an outstanding balance, including accrued interest, of \$7.8 million as of May 29, 2013 into 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 and (v) the conversion of the shares of Series A-1 preferred stock issued on May 29, 2013 into an aggregate of 966,218 shares of common stock upon completion of this offering.
- on a pro forma as adjusted basis to give further effect to (i) our sale in this offering of 4,500,000 shares of common stock at an assumed initial public offering price of \$14.00 per share (the mid-point of the range set forth on the cover page of this prospectus), after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the filing and effectiveness of our amended and restated certificate of incorporation, which will occur immediately prior to the consummation of this offering.

	As of March 31, 2013		
	Actual	Pro Forma (in thousands)	Pro Forma As Adjusted
<b>Balance Sheet Data:</b>			
Cash and cash equivalents	\$ 3,886	\$ 20,886	\$ 77,426
Working capital (deficit)	2,436	19,602	76,142
Total assets	5,265	22,265	78,805
Total convertible short-term debt	—	—	—
Total convertible long-term debt	7,529	—	—
Convertible preferred stock warrant liability	307	307	307
Convertible preferred stock	40,598	—	—
Deficit accumulated during the development stage	(46,214)	(46,323)	(46,323)
Total stockholders' (deficit) equity	(45,549)	19,744	76,284

A \$1.00 increase (decrease) in the assumed initial public offering price of \$14.00 per share, the mid-point of the estimated price range shown on the cover page of this prospectus, would increase (decrease), on a pro forma as adjusted basis, the amount of each of cash and cash equivalents, working capital (deficit), total assets and total stockholders' (deficit) equity by approximately \$4.2 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of one million share in the number of shares offered by us would increase (decrease), on a pro forma as adjusted basis, the amount of each of cash and cash equivalents, working capital (deficit), total assets and total stockholders' (deficit) equity by approximately \$13.0 million, assuming the assumed initial public offering price remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below, as well as the other information in this prospectus, including our financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations," before deciding whether to invest in our common stock. Any of the events or developments described below could harm our business, financial condition, results of operations and growth prospects. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we do not currently deem material may also impair our business operations.*

### **Risks Related to our Business and the Clinical Development and Commercialization of ETC-1002**

***We depend almost entirely on the success of one product candidate, ETC-1002, which is still in Phase 2 clinical development. We cannot be certain that we will be able to obtain regulatory approval for, or successfully commercialize, ETC-1002.***

We currently have only one product candidate, ETC-1002, in clinical development, and our business depends almost entirely on its successful clinical development, regulatory approval and commercialization. We currently have no drug products for sale and may never be able to develop marketable drug products. ETC-1002, which is currently in Phase 2 clinical trials, will require substantial additional clinical development, testing, and regulatory approval before we are permitted to commence its commercialization. Our other product candidates are still in pre-clinical development stages. None of our product candidates have advanced into a pivotal study, and it may be years before such study is initiated, if ever. The clinical trials of our product candidates are, and the manufacturing and marketing of our product candidates will be, subject to extensive and rigorous review and regulation by numerous government authorities in the United States and in other countries where we intend to test and, if approved, market any product candidate. Before obtaining regulatory approvals for the commercial sale of any product candidate, we must demonstrate through pre-clinical testing and clinical trials that the product candidate is safe and effective for use in each target indication. This process can take many years and may include post-marketing studies and surveillance, which will require the expenditure of substantial resources beyond the proceeds we raise in this offering. Of the large number of drugs in development in the United States, only a small percentage successfully complete the FDA regulatory approval process and are commercialized. Accordingly, even if we are able to obtain the requisite financing to continue to fund our development and clinical programs, we cannot assure you that ETC-1002 or any other of our product candidates will be successfully developed or commercialized.

We are not permitted to market ETC-1002 in the United States until we receive approval of a New Drug Application, or NDA, from the FDA, or in any foreign countries until we receive the requisite approval from such countries. As a condition to submitting an NDA to the FDA for ETC-1002 regarding its ability to treat patients with hypercholesterolemia, we currently expect to complete two Phase 2b clinical trials, two pivotal Phase 3 clinical trials and one long-term safety study. We have not commenced any of these clinical trials. Obtaining approval of an NDA is a complex, lengthy, expensive and uncertain process, and the FDA may delay, limit or deny approval of ETC-1002 for many reasons, including, among others:

- we may not be able to demonstrate that ETC-1002 is safe and effective in treating hypercholesterolemia to the satisfaction of the FDA;
- the results of our clinical trials may not meet the level of statistical or clinical significance required by the FDA for marketing approval;

- the FDA may disagree with the number, design, size, conduct or implementation of our clinical trials;
- the FDA may require that we conduct additional clinical trials, such as a cardiovascular outcomes study;
- the FDA may not release its partial clinical hold on ETC-1002 to permit us to conduct a clinical trial for more than six months;
- the FDA or the applicable foreign regulatory agency may not approve the formulation, labeling or specifications of ETC-1002;
- the clinical research organization, or CRO, that we retain to conduct our clinical trials may take actions outside of our control that materially adversely impact our clinical trials;
- the FDA may find the data from pre-clinical studies and clinical trials insufficient to demonstrate that ETC-1002's clinical and other benefits outweigh its safety risks;
- the FDA may disagree with our interpretation of data from our pre-clinical studies and clinical trials;
- the FDA may not accept data generated at our clinical trial sites;
- if our NDA, if and when submitted, is reviewed by an advisory committee, the FDA may have difficulties scheduling an advisory committee meeting in a timely manner or the advisory committee may recommend against approval of our application or may recommend that the FDA require, as a condition of approval, additional pre-clinical studies or clinical trials, limitations on approved labeling or distribution and use restrictions;
- the FDA may require development of a Risk Evaluation and Mitigation Strategy, or REMS, as a condition of approval or post-approval;
- the FDA or the applicable foreign regulatory agency may not approve the manufacturing processes or facilities of third-party manufacturers with which we contract; or
- the FDA may change its approval policies or adopt new regulations.

Any of these factors, many of which are beyond our control, could jeopardize our ability to obtain regulatory approval for and successfully market ETC-1002. Moreover, because our business is almost entirely dependent upon this one product candidate, any such setback in our pursuit of regulatory approval would have a material adverse effect on our business and prospects.

***Failures or delays in the commencement or completion of our Phase 2b or pivotal Phase 3 clinical trials of ETC-1002 could result in increased costs to us and could delay, prevent or limit our ability to generate revenue and continue our business.***

We have not commenced our Phase 2b or pivotal Phase 3 clinical trials. Successful completion of such clinical trials is a prerequisite to submitting an NDA to the FDA and, consequently, the ultimate approval and commercial marketing of ETC-1002. We do not know whether our Phase 2b or pivotal Phase 3 clinical trials will begin or be completed on schedule, if at all, as the commencement and completion of clinical trials can be delayed or prevented for a number of reasons, including, among others:

- the FDA may deny permission to proceed with Phase 3 clinical trials, including by not releasing its partial clinical hold on ETC-1002 to permit us to conduct a clinical trial for more than six months, or may place a clinical trial on hold;

- delays in reaching or failing to reach agreement on acceptable terms with prospective CROs and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- inadequate quantity or quality of a product candidate or other materials necessary to conduct clinical trials;
- difficulties obtaining institutional review board, or IRB, approval to conduct a clinical trial at a prospective site or sites;
- challenges in recruiting and enrolling patients to participate in clinical trials or in a cardiovascular outcomes study, if one were to be required, including the size and nature of the patient population, the proximity of patients to clinical sites, eligibility criteria for the clinical trial, the nature of the clinical trial protocol, the availability of approved effective treatments for the relevant disease and competition from other clinical trial programs for similar indications;
- severe or unexpected drug-related side effects experienced by patients in a clinical trial, including instances of muscle pain or weakness or other side effects previously identified in our completed clinical trials;
- reports from pre-clinical or clinical testing of other cardiometabolic therapies that raise safety or efficacy concerns; and
- difficulties retaining patients who have enrolled in a clinical trial but may be prone to withdraw due to rigors of the trials, lack of efficacy, side effects, personal issues or loss of interest.

Clinical trials may also be delayed or terminated as a result of ambiguous or negative interim results. In addition, a clinical trial may be suspended or terminated by us, the FDA, the IRBs at the sites where the IRBs are overseeing a clinical trial, a data safety monitoring board, or DSMB, overseeing the clinical trial at issue or other regulatory authorities due to a number of factors, including, among others:

- failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities that reveals deficiencies or violations that require us to undertake corrective action, including the imposition of a clinical hold;
- unforeseen safety issues, including any that could be identified in our ongoing pre-clinical carcinogenicity studies, adverse side effects or lack of effectiveness;
- changes in government regulations or administrative actions;
- problems with clinical supply materials; and
- lack of adequate funding to continue the clinical trial.

***Positive results from Phase 1 and Phase 2 clinical trials of ETC-1002 are not necessarily predictive of the results of our planned Phase 2b and Phase 3 clinical trials of ETC-1002. If we cannot replicate the positive results from our Phase 1 and Phase 2 clinical trials of ETC-1002 in our Phase 2b and Phase 3 clinical trials, we may be unable to successfully develop, obtain regulatory approval for and commercialize ETC-1002.***

Positive results from ETC-1002-006, our Phase 2a clinical trial, may not necessarily be predictive of the results from ETC-1002-007, our ongoing Phase 2a clinical trial for which we expect to announce top-line efficacy and safety results in the third quarter of 2013. Similarly, even if we are able to complete our planned Phase 2b and pivotal Phase 3 clinical trials of ETC-1002 according to our current development timeline, the positive results from our Phase 1 and Phase 2 clinical trials of ETC-1002



may not be replicated in our Phase 2b or pivotal Phase 3 clinical trial results. Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in late-stage clinical trials after achieving positive results in early stage development, and we cannot be certain that we will not face similar setbacks. These setbacks have been caused by, among other things, pre-clinical findings made while clinical trials were underway or safety or efficacy observations made in clinical trials, including previously unreported adverse events. Our Phase 2b clinical trials will evaluate the safety and efficacy of ETC-1002 in statin-intolerant patients and as an add-on to existing statin treatments for patients with residual risk. We expect that our Phase 3 clinical trials will evaluate the safety and efficacy of ETC-1002 in these same patient populations. Nevertheless, the results from our Phase 2a clinical trials for ETC-1002, including ETC-1002-006 and ETC-1002-007, may not be predictive of the results we may obtain in our Phase 2b or Phase 3 clinical trials of ETC-1002. Moreover, pre-clinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that believed their product candidates performed satisfactorily in pre-clinical studies and clinical trials nonetheless failed to obtain FDA approval. If we fail to produce positive results in our Phase 2b and Phase 3 clinical trials of ETC-1002, the development timeline and regulatory approval and commercialization prospects for our leading product candidate, and, correspondingly, our business and financial prospects, would be materially adversely affected.

***We may need substantial additional capital in the future. If additional capital is not available, we will have to delay, reduce or cease operations.***

Although we believe that the net proceeds from this offering will be sufficient to fund our operations through the completion of our currently anticipated Phase 2b clinical trials and end of Phase 2 meeting with the FDA, we will likely need to raise additional capital thereafter to continue to fund the further development of ETC-1002 and our operations. We expect to announce top-line results from our latest currently anticipated Phase 2b clinical trial in the fourth quarter of 2014 and to have our end of Phase 2 meeting with the FDA in the first quarter of 2015. Our future capital requirements may be substantial and will depend on many factors including:

- the scope, size, rate of progress, results and costs of initiating and completing our Phase 2b clinical trials of ETC-1002 and our operating costs incurred as we conduct these trials and through our end of Phase 2 meeting with the FDA, for which we currently estimate that we will use substantially all of the net proceeds from this offering;
- the scope, size, rate of progress, results and costs of initiating and completing our Phase 3 clinical program of ETC-1002, which currently includes two pivotal Phase 3 clinical trials and one long-term safety study, for which we only plan on using net proceeds from this offering to the extent they are available;
- the cost, timing and outcome of our efforts to obtain marketing approval for ETC-1002 in the United States, including to fund the preparation and filing of an NDA with the FDA for ETC-1002 and to satisfy related FDA requirements;
- the number and characteristics of any additional product candidates we develop or acquire;
- the costs associated with commercializing ETC-1002 or any future product candidates if we receive marketing approval, including the cost and timing of developing sales and marketing capabilities or entering into strategic collaborations to market and sell ETC-1002 or any future product candidates;
- the cost of manufacturing ETC-1002 or any future product candidates and any products we successfully commercialize; and
- the costs associated with general corporate activities, such as the cost of filing, prosecuting and enforcing patent claims.

Changing circumstances may cause us to consume capital significantly faster than we currently anticipate. Because the outcome of any clinical trial is highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully complete the development, regulatory approval and commercialization of ETC-1002 and any future product candidates. Additional financing may not be available when we need it or may not be available on terms that are favorable to us. In addition, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. If adequate funds are unavailable to us on a timely basis, or at all, we may not be able to continue the development of ETC-1002 or any future product candidate, or to commercialize ETC-1002 or any future product candidate, if approved, unless we find a partner.

***We are a development stage biopharmaceutical company with a limited operating history and have not generated any revenue from product sales. We have incurred significant operating losses since our inception, and anticipate that we will incur continued losses for the foreseeable future.***

We are a development stage company with a limited operating history on which to base your investment decision. Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. We were incorporated in January 2008. Our operations to date have been limited primarily to organizing and staffing our company and conducting research and development activities for ETC-1002. We have never generated any revenue from product sales. We have not obtained regulatory approvals for any of our product candidates. As such, we are subject to all the risks described in this prospectus incident to the development, regulatory approval and commercialization of new pharmaceutical products and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors.

Since our inception, we have focused substantially all of our efforts and financial resources on developing ETC-1002, which is currently in Phase 2 clinical development. We have funded our operations to date through proceeds from sales of preferred stock and convertible debt and have incurred losses in each year since our inception. Our net losses were \$4.2 million for the three months ended March 31, 2013, \$11.7 million for the year ended December 31, 2012 and \$10.8 million for the year ended December 31, 2011. As of March 31, 2013, we had an accumulated deficit of \$46.2 million. Substantially all of our operating losses resulted from costs incurred in connection with our development program and from general and administrative costs associated with our operations. We expect to incur increasing levels of operating losses over the next several years and for the foreseeable future. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders' equity and working capital. We expect our research and development expenses to significantly increase in connection with our additional clinical trials of ETC-1002 and development of any other product candidates we may choose to pursue. In addition, if we obtain marketing approval for ETC-1002, we will incur significant sales, marketing and outsourced manufacturing expenses. Once we are a public company, we will incur additional costs associated with operating as a public company. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when we will become profitable, if at all. Even if we do become profitable, we may not be able to sustain or increase our profitability on a quarterly or annual basis.

***Changes in regulatory requirements, FDA guidance or unanticipated events during our Phase 2b or Phase 3 clinical trials of ETC-1002 may occur, which may result in changes to clinical trial protocols or additional clinical trial requirements, such as the initiation or completion of a cardiovascular outcomes study, which could result in increased costs to us and could delay our development timeline.***

Changes in regulatory requirements, FDA guidance or unanticipated events during our clinical trials may force us to amend clinical trial protocols or the FDA may impose additional clinical trial requirements. Amendments to our clinical trial protocols would require resubmission to the FDA and IRBs for review and approval, which may adversely impact the cost, timing or successful completion of a clinical trial. If we experience delays completing—or if we terminate—any of our Phase 2b or Phase 3 clinical trials, or if we are required to conduct additional clinical trials, such as a cardiovascular outcomes study, the commercial prospects for ETC-1002 may be harmed and our ability to generate product revenue will be delayed. If the FDA requires us to conduct a cardiovascular outcomes study, we may not be able to identify and enroll the requisite number of patients in that study. Even if we are successful in enrolling patients in a cardiovascular outcomes study, we may not ultimately be able to demonstrate that lowering LDL-C levels using ETC-1002 provides patients with an incremental lowering of cardiovascular disease risks and our failure to do so may delay or prejudice our ability to obtain FDA approval for ETC-1002. Our current development timeline for ETC-1002 does not contemplate the completion of a cardiovascular outcomes study. Any such study, if required, would be costly and time-consuming and, regardless of the outcome, would adversely affect our development timeline and financial condition.

***Even if we receive marketing approval for ETC-1002, we may still face future development and regulatory difficulties.***

Even if we receive marketing approval for ETC-1002, regulatory authorities may still impose significant restrictions on ETC-1002's indicated uses or marketing or impose ongoing requirements for potentially costly post-approval studies, such as a cardiovascular outcomes study. ETC-1002 will also be subject to ongoing FDA requirements governing the labeling, packaging, storage and promotion of the product and recordkeeping and submission of safety and other post-market information. The FDA has significant post-market authority, including, for example, the authority to require labeling changes based on new safety information and to require post-market studies or clinical trials to evaluate serious safety risks related to the use of a drug. The FDA also has the authority to require, as part of an NDA or post-approval, the submission of a REMS. Any REMS required by the FDA may lead to increased costs to assure compliance with new post-approval regulatory requirements and potential requirements or restrictions on the sale of approved products, all of which could lead to lower sales volume and revenue.

Manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current Good Manufacturing Practices and other regulations. If we or a regulatory agency discover problems with ETC-1002, such as adverse events of unanticipated severity or frequency, or problems with the facility where ETC-1002 is manufactured, a regulatory agency may impose restrictions on ETC-1002, the manufacturer or us, including requiring withdrawal of ETC-1002 from the market or suspension of manufacturing. If we, ETC-1002 or the manufacturing facilities for ETC-1002 fail to comply with applicable regulatory requirements, a regulatory agency may, among other things:

- issue warning letters or untitled letters;
- seek an injunction or impose civil or criminal penalties or monetary fines;
- suspend or withdraw marketing approval;
- suspend any ongoing clinical trials;

- refuse to approve pending applications or supplements to applications submitted by us;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products, refuse to permit the import or export of products, or request that we initiate a product recall.

***Even if we receive marketing approval for ETC-1002 in the United States, we may never receive regulatory approval to market ETC-1002 outside of the United States.***

We have not yet selected any markets outside of the United States where we intend to seek regulatory approval to market ETC-1002. In order to market any product outside of the United States, however, we must establish and comply with the numerous and varying safety, efficacy and other regulatory requirements of other countries. Approval procedures vary among countries and can involve additional product candidate testing and additional administrative review periods. The time required to obtain approvals in other countries might differ from that required to obtain FDA approval. The marketing approval processes in other countries may implicate all of the risks detailed above regarding FDA approval in the United States as well as other risks. In particular, in many countries outside of the United States, products must receive pricing and reimbursement approval before the product can be commercialized. Obtaining this approval can result in substantial delays in bringing products to market in such countries. Marketing approval in one country does not ensure marketing approval in another, but a failure or delay in obtaining marketing approval in one country may have a negative effect on the regulatory process in others. Failure to obtain marketing approval in other countries or any delay or other setback in obtaining such approval would impair our ability to market ETC-1002 in such foreign markets. Any such impairment would reduce the size of our potential market, which could have a material adverse impact on our business, results of operations and prospects.

***Even if we receive marketing approval for ETC-1002, it may not achieve broad market acceptance, which would limit the revenue that we generate from its sales.***

The commercial success of ETC-1002, if approved by the FDA or other regulatory authorities, will depend upon the awareness and acceptance of ETC-1002 among the medical community, including physicians, patients and healthcare payors. Market acceptance of ETC-1002, if approved, will depend on a number of factors, including, among others:

- ETC-1002's demonstrated ability to treat statin intolerant patients with hypercholesterolemia and, if required by any applicable regulatory authority in connection with the approval for this or any other indication, to provide patients with incremental cardiovascular disease benefits, as compared with other available therapies;
- the relative convenience and ease of administration of ETC-1002, including as compared with other treatments for patients with hypercholesterolemia;
- the prevalence and severity of any adverse side effects such as muscle pain or weakness;
- limitations or warnings contained in the labeling approved for ETC-1002 by the FDA;
- availability of alternative treatments, including a number of competitive LDL-C lowering therapies already approved or expected to be commercially launched in the near future;
- pricing and cost effectiveness;
- the effectiveness of our sales and marketing strategies;
- our ability to increase awareness of ETC-1002 through marketing efforts;

- our ability to obtain sufficient third-party coverage or reimbursement; and
- the willingness of patients to pay out-of-pocket in the absence of third-party coverage.

If ETC-1002 is approved but does not achieve an adequate level of acceptance by patients, physicians and payors, we may not generate sufficient revenue from ETC-1002 to become or remain profitable. Before granting reimbursement approval, healthcare payors may require us to demonstrate that, in addition to lowering elevated LDL-C levels, ETC-1002 also provides incremental cardiovascular disease benefits to patients. Our efforts to educate the medical community and third-party payors about the benefits of ETC-1002 may require significant resources and may never be successful.

***If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell ETC-1002, we may not be able to generate any revenue.***

We do not currently have an infrastructure for the sales, marketing and distribution of pharmaceutical products. In order to market ETC-1002, if approved by the FDA or any other regulatory body, we must build our sales, marketing, managerial, and other non-technical capabilities or make arrangements with third parties to perform these services. If we are unable to establish adequate sales, marketing and distribution capabilities, whether independently or with third parties, or if we are unable to do so on commercially reasonable terms, our business, results of operations, financial condition and prospects will be materially adversely affected.

***Even if we obtain marketing approval for ETC-1002, physicians and patients using other LDL-C lowering therapies may choose not to switch to our product.***

Physicians are often reluctant to switch their patients from existing therapies even when new and potentially more effective or convenient treatments enter the market. In addition, patients often acclimate to the brand or type of therapy that they are currently taking and do not want to switch unless their physicians recommend switching products or they are required to switch therapies due to lack of reimbursement for existing therapies. If physicians or patients are reluctant to switch from existing therapies to ETC-1002, if approved, our operating results and financial condition would be materially adversely affected.

***Guidelines and recommendations published by various organizations may adversely affect the use or commercial viability of ETC-1002, if approved.***

Government agencies issue regulations and guidelines directly applicable to us and to ETC-1002, including guidelines generally relating to therapeutically significant LDL-C levels. In addition, professional societies, practice management groups, private health or science foundations and other organizations involved in the research, treatment and prevention of various diseases from time to time publish guidelines or recommendations to the medical and patient communities. These various sorts of recommendations may relate to such matters as product usage and use of related or competing therapies. For example, organizations such as the American Heart Association have made recommendations about therapies in the cardiovascular therapeutics market. Changes to these existing recommendations or other guidelines advocating alternative therapies could result in decreased use of ETC-1002, if approved, which would adversely affect our results of operations.

***Even if approved, reimbursement policies could limit our ability to sell ETC-1002.***

Market acceptance and sales of ETC-1002 will depend on reimbursement policies and may be affected by healthcare reform measures. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels for those medications. Cost containment is a primary concern in the U.S. healthcare industry and elsewhere. Government authorities and these third-party payors have

attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. We cannot be sure that reimbursement will be available for ETC-1002 and, if reimbursement is available, the level of such reimbursement. Reimbursement may impact the demand for, or the price of, ETC-1002. If reimbursement is not available or is available only at limited levels, we may not be able to successfully commercialize ETC-1002.

In some foreign countries, particularly in Canada and European countries, the pricing of prescription pharmaceuticals is subject to strict governmental control. In these countries, pricing negotiations with governmental authorities can take six to 12 months or longer after the receipt of regulatory approval and product launch. To obtain favorable reimbursement for the indications sought or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of ETC-1002 with other available therapies. If reimbursement for ETC-1002 is unavailable in any country in which we seek reimbursement, if it is limited in scope or amount, if it is conditioned upon our completion of additional clinical trials, or if pricing is set at unsatisfactory levels, our operating results could be materially adversely affected.

***Our product development programs for candidates other than ETC-1002 may require substantial financial resources and may ultimately be unsuccessful.***

In addition to the development of ETC-1002, we may pursue development of our other two early-stage development programs. Neither of our other potential product candidates has commenced any clinical trials, and there are a number of FDA requirements that we must satisfy before we can commence clinical trials. Satisfaction of these requirements will entail substantial time, effort and financial resources. We may never satisfy these requirements. Any time, effort and financial resources we expend on our other two early-stage development programs may adversely affect our ability to continue development and commercialization of ETC-1002, and we may never commence clinical trials of such development programs despite expending significant resources in pursuit of their development. If we do commence clinical trials of our other potential product candidates, such product candidates may never be approved by the FDA.

***Recent federal legislation will increase pressure to reduce prices of pharmaceutical products paid for by Medicare, which could materially adversely affect our revenue, if any, and our results of operations.***

In the United States, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, also called the MMA, changed the way Medicare covers and pays for pharmaceutical products. The legislation expanded Medicare coverage for drug purchases by the elderly and introduced a new reimbursement methodology based on average sales prices for physician-administered drugs. In addition, this legislation provided authority for limiting the number of drugs that will be covered in any therapeutic class. As a result of this legislation and the expansion of federal coverage of drug products, we expect that there will be additional pressure to reduce costs. These cost reduction initiatives and other provisions of this legislation could decrease the scope of coverage and the price that we receive for any approved products and could seriously harm our business. While the MMA applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policies and payment limitations in setting their own reimbursement rates, and any reduction in reimbursement that results from the MMA may cause a similar reduction in payments from private payors. This legislation may pose an even greater risk to ETC-1002 than some other pharmaceutical products because a significant portion of the target patient population for ETC-1002 would likely be over 65 years of age and, therefore, many such patients will be covered by Medicare.

In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, or collectively, the PPACA, became law in the United States. The goal of the PPACA is to reduce the cost of healthcare and substantially change the way healthcare is financed by both governmental and private insurers. While we cannot predict what

impact on federal reimbursement policies this legislation will have in general or on our business specifically, the PPACA may result in downward pressure on pharmaceutical reimbursement, which could negatively affect market acceptance of ETC-1002, if approved, or any of our future products. In 2012, members of the U.S. Congress and some state legislatures sought to overturn certain provisions of the PPACA including those concerning the mandatory purchase of insurance. However, on June 28, 2012, the United States Supreme Court upheld the constitutionality of these provisions. Members of the U.S. Congress have since proposed a number of legislative initiatives, including possible repeal of the PPACA. We cannot predict the outcome or impact of current proposals or whether new proposals will be made or adopted, when they may be adopted or what impact they may have on us if they are adopted.

Finally, the availability of generic LDL-C lowering treatments may also substantially reduce the likelihood of reimbursement for branded counterparts or other competitive LDL-C lowering therapies, such as ETC-1002 if it is approved for commercial distribution. If we fail to successfully secure and maintain reimbursement coverage for our products or are significantly delayed in doing so, we will have difficulty achieving market acceptance of our products and our business will be harmed.

***Recent federal legislation and actions by state and local governments may permit reimportation of drugs from foreign countries into the United States, including foreign countries where the drugs are sold at lower prices than in the United States, which could materially adversely affect our operating results.***

We may face competition for ETC-1002, if approved, from cheaper LDL-C lowering therapies sourced from foreign countries that have placed price controls on pharmaceutical products. The MMA contains provisions that may change U.S. importation laws and expand pharmacists' and wholesalers' ability to import cheaper versions of an approved drug and competing products from Canada, where there are government price controls. These changes to U.S. importation laws will not take effect unless and until the Secretary of Health and Human Services certifies that the changes will pose no additional risk to the public's health and safety and will result in a significant reduction in the cost of products to consumers. The Secretary of Health and Human Services has so far declined to approve a reimportation plan. Proponents of drug reimportation may attempt to pass legislation that would directly allow reimportation under certain circumstances. Legislation or regulations allowing the reimportation of drugs, if enacted, could decrease the price we receive for any products that we may develop, including ETC-1002, and adversely affect our future revenues and prospects for profitability.

***The FDA and other regulatory agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses. If we are found to have improperly promoted off-label uses, we may become subject to significant liability.***

The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription products, such as ETC-1002 if approved. In particular, a product may not be promoted for uses that are not approved by the FDA or such other regulatory agencies as reflected in the product's approved labeling. If we receive marketing approval for ETC-1002 as a therapy for lowering LDL-C levels in statin intolerant patients with hypercholesterolemia, the first indication we intend to pursue, physicians may nevertheless prescribe ETC-1002 to their patients in a manner that is inconsistent with the approved label, potentially including as a therapy in addition to statins. If we are found to have promoted such off-label uses, we may become subject to significant liability. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed. If we cannot successfully manage the promotion of ETC-1002, if approved, we could become subject to significant liability, which would materially adversely affect our business and financial condition.

***Our market is subject to intense competition. If we are unable to compete effectively, our opportunity to generate revenue from the sale of ETC-1002, if approved, will be materially adversely affected.***

The LDL-C lowering therapies market is highly competitive and dynamic and dominated by the sale of statin treatments, including the cheaper generic versions of statins. We estimate that the total statin monotherapy and fixed combination market, including generic drugs, accounted for 69% of U.S. sales in the LDL-C lowering market in 2012. Our success will depend, in part, on our ability to obtain a share of the market, initially, for patients who are statin intolerant. Potential competitors in North America, Europe and elsewhere include major pharmaceutical companies, specialty pharmaceutical companies, biotechnology firms, universities and other research institutions and government agencies. Other pharmaceutical companies may develop LDL-C lowering therapies for statin intolerant patients that compete with ETC-1002, if approved, that do not infringe the claims of our patents, pending patent applications or other proprietary rights, which could materially adversely affect our business and results of operations.

Low-density lipoprotein cholesterol (LDL-C) lowering therapies currently on the market that would compete with ETC-1002 include the following:

- Statins, such as Crestor® (rosuvastatin) and Lipitor, including their cheaper generic versions;
- Cholesterol absorption inhibitors, such as Zetia® (ezetimibe), a monotherapy marketed by Merck & Co., and Welchol® (colesevelam), a bile acid sequestrant marketed by Daiichi Sankyo Inc.;
- MTP inhibitors, such as JUXTAPID® (lomitapide), marketed by Aegerion Pharmaceuticals, Inc.;
- Apo B Anti-Senses, such as KYNAMRO® (mipomersen), marketed by Genzyme Corp.;
- Combination therapies, such as Vytorin® (ezetimibe and simvastatin), marketed by Merck & Co., Inc.; and
- Other lipid-lowering monotherapies, such as Tricor® (fenofibrate) and Niaspan® (niacin extended release), and combination therapies, such as Advicor® (niacin extended release and lovastatin) and Simcor® (niacin and simvastatin), both of which are marketed by AbbVie, Inc.

Several other pharmaceutical companies have other LDL-C lowering therapies in development that may be approved for marketing in the United States or outside of the United States. Based on publicly available information, we believe the current therapies in development that would compete with ETC-1002 include:

- PCSK9 inhibitors, such as SAR236553/REGN727, a therapy in Phase 3 development being developed by Sanofi and Regeneron Pharmaceuticals, Inc., and AMG-145, a separate therapy in Phase 3 development being developed by Amgen Inc.; and
- CETP inhibitors, such as MK-0859, a therapy that has completed a Phase IIb clinical trial and is being developed by Merck, and LY2484595, a therapy that is being developed by Eli Lilly & Company.

Many of our potential competitors have substantially greater financial, technical and human resources than we do and significantly greater experience discovering and developing drug candidates, obtaining FDA and other marketing approvals of products and commercializing those products. Accordingly, our competitors may be more successful than we may be in obtaining FDA approval for drugs and achieving widespread market acceptance. Our competitors' drugs may be more effective, or more effectively marketed and sold, than ETC-1002, if approved, and may render ETC-1002 obsolete or non-competitive before we can recover the expenses of developing and commercializing it. If approved, ETC-1002 may also compete with unapproved and off-label LDL-C lowering treatments, and following the expiration of additional patents covering the LDL-C lowering market, we may also face



additional competition from the entry of new generic drugs. We anticipate that we will encounter intense and increasing competition as new drugs enter the market and advanced technologies become available. See "Business" in this prospectus for more information regarding these competitive products.

***We face potential product liability exposure, and, if claims are brought against us, we may incur substantial liability.***

The use of ETC-1002 in clinical trials and the sale of ETC-1002, if approved, exposes us to the risk of product liability claims. Product liability claims might be brought against us by patients, healthcare providers or others selling or otherwise coming into contact with ETC-1002. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, including as a result of interactions with alcohol or other drugs, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we become subject to product liability claims and cannot successfully defend ourselves against them, we could incur substantial liabilities. In addition, regardless of merit or eventual outcome, product liability claims may result in, among other things:

- withdrawal of patients from our clinical trials;
- substantial monetary awards to patients or other claimants;
- decreased demand for ETC-1002 or any future product candidates following marketing approval, if obtained;
- damage to our reputation and exposure to adverse publicity;
- increased FDA warnings on product labels;
- litigation costs;
- distraction of management's attention from our primary business;
- loss of revenue; and
- the inability to successfully commercialize ETC-1002 or any future product candidates, if approved.

We maintain product liability insurance coverage for our clinical trials with a \$2 million annual aggregate coverage limit. Nevertheless, our insurance coverage may be insufficient to reimburse us for any expenses or losses we may suffer. Moreover, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses, including if insurance coverage becomes increasingly expensive. If and when we obtain marketing approval for ETC-1002, we intend to expand our insurance coverage to include the sale of commercial products; however, we may not be able to obtain this product liability insurance on commercially reasonable terms. Large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. The cost of any product liability litigation or other proceedings, even if resolved in our favor, could be substantial, particularly in light of the size of our business and financial resources. A product liability claim or series of claims brought against us could cause our stock price to decline and, if we are unsuccessful in defending such a claim or claims and the resulting judgments exceed our insurance coverage, our financial condition, business and prospects could be materially adversely affected.

***We are subject to healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.***

Healthcare providers, physicians and others will play a primary role in the recommendation and prescription of ETC-1002, if approved. Our future arrangements with third-party payors will expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute ETC-1002, if we obtain marketing approval. Restrictions under applicable federal and state healthcare laws and regulations include the following:

- The federal healthcare anti-kickback statute prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal healthcare programs such as Medicare and Medicaid.
- The federal False Claims Act imposes criminal and civil penalties, including those from civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease, or conceal an obligation to pay money to the federal government.
- The federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program and also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information.
- The federal false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of or payment for healthcare benefits, items or services.
- The federal transparency requirements under the PPACA require manufacturers of drugs, devices, biologics, and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests.
- Analogous state laws and regulations, such as state anti-kickback and false claims laws and transparency laws, may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers, and some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring drug manufacturers to report information related to payments to physicians and other healthcare providers or marketing expenditures and drug pricing.

Ensuring that our future business arrangements with third parties comply with applicable healthcare laws and regulations could be costly. It is possible that governmental authorities will conclude that our business practices do not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations, including anticipated activities to be conducted by our sales team, were found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines and exclusion from government funded healthcare programs, such as Medicare and Medicaid, any of which could substantially disrupt our operations. If any of the physicians or other providers or entities with whom we expect to do business is found not to be in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs.

***Our internal computer systems, or those of our third-party clinical research organizations or other contractors or consultants, may fail or suffer security breaches, which could result in a material disruption of our ETC-1002 development programs.***

Despite the implementation of security measures, our internal computer systems and those of our third-party clinical research organizations and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war, and telecommunication and electrical failures. While we have not experienced any such system failure, accident, or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our programs. For example, the loss of clinical trial data for ETC-1002 could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss of or damage to our data or applications or other data or applications relating to our technology or product candidates, or inappropriate disclosure of confidential or proprietary information, we could incur liabilities and the further development of ETC-1002 could be delayed.

#### **Risks Related to our Intellectual Property**

***If we are unable to adequately protect our proprietary technology or maintain issued patents which are sufficient to protect ETC-1002, others could compete against us more directly, which would have a material adverse impact on our business, results of operations, financial condition and prospects.***

Our commercial success will depend in part on our success obtaining and maintaining issued patents and other intellectual property rights in the United States and elsewhere and protecting our proprietary technology. If we do not adequately protect our intellectual property and proprietary technology, competitors may be able to use our technologies and erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability.

As of May 31, 2013, Esperion's patent estate, including patents we own or license from third parties, on a worldwide basis, included approximately 15 issued United States patents and 6 pending United States patent applications and 6 issued patents and 25 pending patent applications in other foreign jurisdictions. Of our worldwide patents and pending applications, only a subset relates to our small molecule program which includes our lead product candidate, ETC-1002. ETC-1002 is claimed in U.S. Patent No. 7,335,799 that is scheduled to expire in December 2025, which includes 711 days of patent term adjustment, and may be eligible for a patent term extension period of up to 5 years. At least one pending United States patent application claims a method of treatment using ETC-1002. There are currently three issued patents and four pending applications in countries outside the United States that relate to ETC-1002.

A second subset of this portfolio relates to our early-stage product candidate ESP41091. ESP41091 is claimed in U.S. Patent Nos. 7,119,221 and 7,405,226. Various methods of treatment using ESP41091 are claimed in U.S. Patent Nos. 8,153,690 and 8,309,604 and in at least one other pending application in the United States. There are currently two issued patents and four pending applications in countries outside the United States that relate to ESP41091.

Our 4WF patent portfolio currently consists of 19 issued patents and pending patent applications in the United States and other foreign jurisdictions regarding apolipoprotein mixtures, dimeric oxidation-resistant apolipoprotein variants and oxidant resistant apolipoprotein A1 variants and mimetic peptides thereof.

We cannot assure you that any of our patents have, or that any of our pending patent applications will mature into issued patents that will include, claims with a scope sufficient to protect ETC-1002 or our other product candidates. Others have developed technologies that may be related or competitive to our approach, and may have filed or may file patent applications and may have received or may

receive patents that may overlap or conflict with our patent applications, either by claiming the same methods or formulations or by claiming subject matter that could dominate our patent position. The patent positions of biotechnology and pharmaceutical companies, including our patent position, involve complex legal and factual questions, and, therefore, the issuance, scope, validity and enforceability of any patent claims that we may obtain cannot be predicted with certainty. Patents, if issued, may be challenged, deemed unenforceable, invalidated, or circumvented. U.S. patents and patent applications may also be subject to interference proceedings, *ex parte* reexamination, or *inter partes* review proceedings, supplemental examination and challenges in district court. Patents may be subjected to opposition, post-grant review, or comparable proceedings lodged in various national and regional patent offices. These proceedings could result in either loss of the patent or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. In addition, such interference, re-examination, opposition, post-grant review, *inter partes* review, supplemental examination or revocation proceedings may be costly. Thus, any patents that we may own or exclusively license may not provide any protection against competitors. Furthermore, an adverse decision in an interference proceeding can result in a third-party receiving the patent right sought by us, which in turn could affect our ability to develop, market or otherwise commercialize ETC-1002.

Furthermore, the issuance of a patent, while presumed valid and enforceable, is not conclusive as to its validity or its enforceability and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors may also be able to design around our patents. Other parties may develop and obtain patent protection for more effective technologies, designs or methods. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, vendors, former employees and current employees. The laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries. If these developments were to occur, they could have a material adverse effect on our sales.

Our ability to enforce our patent rights depends on our ability to detect infringement. It is difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product. Any litigation to enforce or defend our patent rights, if any, even if we were to prevail, could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful.

In addition, proceedings to enforce or defend our patents could put our patents at risk of being invalidated, held unenforceable, or interpreted narrowly. Such proceedings could also provoke third parties to assert claims against us, including that some or all of the claims in one or more of our patents are invalid or otherwise unenforceable. If, in any proceeding, a court invalidated or found unenforceable our patents covering ETC-1002, our financial position and results of operations would be materially and adversely impacted. In addition, if a court found that valid, enforceable patents held by third parties covered ETC-1002, our financial position and results of operations would also be materially and adversely impacted.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- any of our patents, or any of our pending patent applications, if issued, will include claims having a scope sufficient to protect ETC-1002;
- any of our pending patent applications will result in issued patents;
- we will be able to successfully commercialize ETC-1002, if approved, before our relevant patents expire;

- we were the first to make the inventions covered by each of our patents and pending patent applications;
- we were the first to file patent applications for these inventions;
- others will not develop similar or alternative technologies that do not infringe our patents;
- any of our patents will be valid and enforceable;
- any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies or product candidates that are separately patentable; or
- that our commercial activities or products will not infringe upon the patents of others.

We rely upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us. It is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement. Furthermore, if the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors.

***If we are not able to adequately prevent disclosure of trade secrets and other proprietary information, the value of our technology and products could be significantly diminished.***

We rely on trade secrets to protect our proprietary technologies, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. We rely in part on confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers, contract manufacturers, vendors and other advisors to protect our trade secrets and other proprietary information. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, we cannot guarantee that we have executed these agreements with each party that may have or have had access to our trade secrets.

Moreover, because we acquired certain rights to our lead product candidate from Pfizer, we must rely on Pfizer's practices, and those of its predecessors, with regard to parties that may have had access to our trade secrets related thereto before our incorporation. Any party with whom we or they have executed such an agreement may breach that agreement and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they disclose such trade secrets, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor or other third-party, our competitive position would be harmed.

***We may infringe the intellectual property rights of others, which may prevent or delay our product development efforts and stop us from commercializing or increase the costs of commercializing ETC-1002, if approved.***

Our success will depend in part on our ability to operate without infringing the intellectual property and proprietary rights of third parties. We cannot assure you that our business, products and methods do not or will not infringe the patents or other intellectual property rights of third parties.

The pharmaceutical industry is characterized by extensive litigation regarding patents and other intellectual property rights. Other parties may allege that ETC-1002 or the use of our technologies infringes patent claims or other intellectual property rights held by them or that we are employing their proprietary technology without authorization. Patent and other types of intellectual property litigation can involve complex factual and legal questions, and their outcome is uncertain. Any claim relating to intellectual property infringement that is successfully asserted against us may require us to pay substantial damages, including treble damages and attorney's fees if we are found to be willfully infringing another party's patents, for past use of the asserted intellectual property and royalties and other consideration going forward if we are forced to take a license. In addition, if any such claim were successfully asserted against us and we could not obtain such a license, we may be forced to stop or delay developing, manufacturing, selling or otherwise commercializing ETC-1002.

Even if we are successful in these proceedings, we may incur substantial costs and divert management time and attention in pursuing these proceedings, which could have a material adverse effect on us. If we are unable to avoid infringing the patent rights of others, we may be required to seek a license, defend an infringement action or challenge the validity of the patents in court, or redesign our products. Patent litigation is costly and time consuming. We may not have sufficient resources to bring these actions to a successful conclusion. In addition, intellectual property litigation or claims could force us to do one or more of the following:

- cease developing, selling or otherwise commercializing ETC-1002;
- pay substantial damages for past use of the asserted intellectual property;
- obtain a license from the holder of the asserted intellectual property, which license may not be available on reasonable terms, if at all; and
- redesign, or rename in the case of trademark claims, ETC-1002 to avoid infringing the intellectual property rights of third parties, which may not be possible and, even if possible, could be costly and time-consuming.

Any of these risks coming to fruition could have a material adverse effect on our business, results of operations, financial condition and prospects.

***Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.***

The United States has recently enacted and is currently implementing the America Invents Act of 2011, wide-ranging patent reform legislation. The United States Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by the U.S. Congress, the federal courts, and the United States Patent and Trademark Office, or the U.S. PTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

***Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.***

The U.S. PTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

***We could become dependent on licensed intellectual property. If we were to lose our rights to licensed intellectual property, we may not be able to continue developing or commercializing ETC-1002 or our other product candidates, if approved.***

In the future, we may enter into license(s) to third-party intellectual property that are necessary or useful to our business. Such license agreement(s) will likely impose various obligations upon us, and our licensor(s) have or may have the right to terminate the license thereunder in the event of a material breach or, in some cases, at will. Future licensor(s) may allege that we have breached our license agreement with them or decide to terminate our license at will, and accordingly seek to terminate our license. If successful, this could result in our loss of the right to use the licensed intellectual property, which could materially adversely affect our ability to develop and commercialize a product candidate or product, if approved, as well as harm our competitive business position and our business prospects.

***We do not seek to protect our intellectual property rights in all jurisdictions throughout the world and we may not be able to adequately enforce our intellectual property rights even in the jurisdictions where we seek protection.***

Filing, prosecuting and defending patents on product candidates in all countries and jurisdictions throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States could be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our products and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biopharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may

be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

***We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of their former employers.***

Our employees have been previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we are not aware of any claims currently pending against us, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of the former employers of our employees. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. If we fail in defending such claims, in addition to paying money claims, we may lose valuable intellectual property rights or personnel. A loss of key personnel or their work product could hamper or prevent our ability to commercialize ETC-1002, which would materially adversely affect our commercial development efforts.

#### **Risks Related to our Dependence on Third Parties**

***We will be unable to directly control all aspects of our clinical trials due to our reliance on CROs and other third parties that assist us in conducting clinical trials.***

We will rely on CROs to conduct our Phase 2b and Phase 3 clinical trials for ETC-1002. As a result, we will have less direct control over the conduct, timing and completion of these clinical trials and the management of data developed through the clinical trials than would be the case if we were relying entirely upon our own staff. Communicating with outside parties can also be challenging, potentially leading to mistakes as well as difficulties in coordinating activities. Outside parties may:

- have staffing difficulties;
- fail to comply with contractual obligations;
- experience regulatory compliance issues;
- undergo changes in priorities or become financially distressed; or
- form relationships with other entities, some of which may be our competitors.

These factors may materially adversely affect the willingness or ability of third parties to conduct our clinical trials and may subject us to unexpected cost increases that are beyond our control.

Moreover, the FDA requires us to comply with standards, commonly referred to as Good Clinical Practices, for conducting, recording, and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of clinical trial participants are protected. Our reliance on third parties that we do not control does not relieve us of these responsibilities and requirements.

Problems with the timeliness or quality of the work of any CRO may lead us to seek to terminate our relationship with any such CRO and use an alternative service provider. Making this change may be costly and may delay our clinical trials, and contractual restrictions may make such a change difficult or impossible to effect. If we must replace any CRO that is conducting our clinical trials, our clinical trials may have to be suspended until we find another CRO that offers comparable services. The time that it takes us to find alternative organizations may cause a delay in the commercialization of ETC-1002 or may cause us to incur significant expenses to replicate data that may be lost. Although we do not believe that any CRO on which we may rely will offer services that are not available elsewhere, it may be difficult to find a replacement organization that can conduct our clinical trials in an



acceptable manner and at an acceptable cost. Any delay in or inability to complete our clinical trials could significantly compromise our ability to secure regulatory approval of ETC-1002 and preclude our ability to commercialize ETC-1002, thereby limiting or preventing our ability to generate revenue from its sales.

***We rely completely on third-party suppliers to manufacture our clinical drug supplies for ETC-1002, and we intend to rely on third parties to produce commercial supplies of ETC-1002 and pre-clinical, clinical and commercial supplies of any future product candidate.***

We do not currently have, nor do we plan to acquire, the infrastructure or capability to internally manufacture our clinical drug supply of ETC-1002, or any future product candidates, for use in the conduct of our pre-clinical studies and clinical trials, and we lack the internal resources and the capability to manufacture any product candidates on a clinical or commercial scale. The facilities used by our contract manufacturers to manufacture the active pharmaceutical ingredient and final drug for ETC-1002, or any future product candidates, must be approved by the FDA and other comparable foreign regulatory agencies pursuant to inspections that would be conducted after we submit our NDA or relevant foreign regulatory submission to the applicable regulatory agency.

We do not control the manufacturing process of, and are completely dependent on, our contract manufacturers to comply with current Good Manufacturing Practices for manufacture of both active drug substances and finished drug products. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA or applicable foreign regulatory agencies, they will not be able to secure and/or maintain regulatory approval for their manufacturing facilities. In addition, we have no direct control over our contract manufacturers' ability to maintain adequate quality control, quality assurance and qualified personnel. Furthermore, all of our contract manufacturers are engaged with other companies to supply and/or manufacture materials or products for such companies, which exposes our manufacturers to regulatory risks for the production of such materials and products. As a result, failure to satisfy the regulatory requirements for the production of those materials and products may affect the regulatory clearance of our contract manufacturers' facilities generally. If the FDA or a comparable foreign regulatory agency does not approve these facilities for the manufacture of our product candidates or if it withdraws its approval in the future, we may need to find alternative manufacturing facilities, which would adversely impact our ability to develop, obtain regulatory approval for or market our product candidates.

***If we do not establish successful collaborations, we may have to alter our development and commercialization plans for ETC-1002.***

Our drug development programs and commercialization plans for ETC-1002 will require substantial additional cash to fund expenses. We may develop and initially commercialize ETC-1002 in the United States without a partner. However, in order to pursue the broader residual risk market in the United States, we may also enter into a partnership or co-promotion arrangement with an established pharmaceutical company that has a larger sales force and we may enter into collaborative arrangements to develop and commercialize ETC-1002 outside of the United States. We will face significant competition in seeking appropriate collaborators and these collaboration agreements are complex and time-consuming to negotiate. We may not be able to negotiate collaborations on acceptable terms, or at all. If that were to occur, we may have to curtail the development or delay commercialization of ETC-1002 in certain geographies, reduce the scope of our sales or marketing activities, reduce the scope of our commercialization plans, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities outside of the United States on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms, or at all.

***If a collaborative partner terminates or fails to perform its obligations under an agreement with us, the commercialization of ETC-1002 could be delayed or terminated.***

We are not currently party to any collaborative arrangements for the commercialization of ETC-1002 or similar arrangements, although we may pursue such arrangements before any commercialization of ETC-1002 outside of the United States or to further commercialize ETC-1002 in the broader residual risk market in the United States, if approved. If we are successful in entering into collaborative arrangements for the commercialization of ETC-1002 or similar arrangements and any of our collaborative partners does not devote sufficient time and resources to a collaboration arrangement with us, we may not realize the potential commercial benefits of the arrangement, and our results of operations may be materially adversely affected. In addition, if any such future collaboration partner were to breach or terminate its arrangements with us, the commercialization of ETC-1002 could be delayed, curtailed or terminated because we may not have sufficient financial resources or capabilities to continue commercialization of ETC-1002 on our own in such locations.

Much of the potential revenue from future collaborations may consist of contingent payments, such as payments for achieving regulatory milestones or royalties payable on sales of drugs. The milestone and royalty revenue that we may receive under these collaborations will depend upon our collaborators' ability to successfully develop, introduce, market and sell new products. In addition, collaborators may decide to enter into arrangements with third parties to commercialize products developed under collaborations using our technologies, which could reduce the milestone and royalty revenue that we may receive, if any. Future collaboration partners may fail to develop or effectively commercialize products using our products or technologies because they:

- decide not to devote the necessary resources due to internal constraints, such as limited personnel with the requisite expertise, limited cash resources or specialized equipment limitations, or the belief that other drug development programs may have a higher likelihood of obtaining marketing approval or may potentially generate a greater return on investment;
- decide to pursue other technologies or develop other product candidates, either on their own or in collaboration with others, including our competitors, to treat the same diseases targeted by our own collaborative programs;
- do not have sufficient resources necessary to carry the product candidate through clinical development, marketing approval and commercialization; or
- cannot obtain the necessary marketing approvals.

Competition may negatively impact a partner's focus on and commitment to ETC-1002 and, as a result, could delay or otherwise negatively affect the commercialization of ETC-1002 outside of the United States or in the broader residual risk market in the United States. If future collaboration partners fail to develop or effectively commercialize ETC-1002 for any of these reasons, our sales of ETC-1002, if approved, may be limited, which would have a material adverse effect on our operating results and financial condition.

**Risks Related to General Business, Employee Matters and Managing Growth**

***We will need to develop and expand our company, and we may encounter difficulties in managing this development and expansion, which could disrupt our operations.***

We currently have 13 full-time employees and five part-time employees, and in connection with becoming a public company, we expect to increase our number of employees and the scope of our operations. To manage our anticipated development and expansion, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Also, our management may need to divert a

disproportionate amount of its attention away from its day-to-day activities and devote a substantial amount of time to managing these development activities. Due to our limited resources, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. This may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. The physical expansion of our operations may lead to significant costs and may divert financial resources from other projects, such as the development of ETC-1002. If our management is unable to effectively manage our expected development and expansion, our expenses may increase more than expected, our ability to generate or increase our revenue could be reduced and we may not be able to implement our business strategy. Our future financial performance and our ability to commercialize ETC-1002, if approved, and compete effectively will depend, in part, on our ability to effectively manage the future development and expansion of our company.

***Our future success depends on our ability to retain both our founder, Executive Chairman and Chief Scientific Officer and our President and Chief Executive Officer, and to attract, retain and motivate qualified personnel.***

We are highly dependent on Dr. Roger S. Newton, our founder, Executive Chairman and Chief Scientific Officer, and Tim M. Mayleben, our President and Chief Executive Officer. We have entered into employment agreements with Dr. Newton and Mr. Mayleben, but any employee may terminate his or her employment with us. Although we do not have any reason to believe that we will lose the services of either Dr. Newton or Mr. Mayleben in the foreseeable future, the loss of the services of either individual might impede the achievement of our research, development and commercialization objectives. We rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us. Recruiting and retaining qualified scientific personnel and sales and marketing personnel will also be critical to our success. We may not be able to attract and retain these personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific personnel from universities and research institutions. Failure to succeed in clinical trials may make it more challenging to recruit and retain qualified scientific personnel.

***Our company lacks experience commercializing products, which may have a material adverse effect on our business.***

We will need to transition from a company with a development focus to a company capable of supporting commercial activities. We may be unsuccessful in making such a transition. Our company has never filed an NDA and has not yet demonstrated an ability to obtain marketing approval for or commercialize a product candidate. Therefore, our clinical development and regulatory approval process may involve more inherent risk, take longer, and cost more than it would if we were a company with a more significant operating history and had experience obtaining marketing approval for and commercializing a product candidate.

***Our employees may engage in misconduct or other improper activities, including violating applicable regulatory standards and requirements or engaging in insider trading, which could significantly harm our business.***

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with the regulations of the FDA and applicable non-U.S. regulators, provide accurate information to the FDA and applicable non-U.S. regulators, comply with

healthcare fraud and abuse laws and regulations in the United States and abroad, report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of, including trading on, information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. We have adopted a code of conduct, but it is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may be ineffective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

***In order to satisfy our obligations as a public company, we may need to hire qualified accounting and financial personnel with appropriate public company experience.***

As a newly public company, we will need to establish and maintain effective disclosure and financial controls and make changes in our corporate governance practices. We may need to hire additional accounting and financial personnel with appropriate public company experience and technical accounting knowledge, and it may be difficult to recruit and maintain such personnel. Even if we are able to hire appropriate personnel, our existing operating expenses and operations will be impacted by the direct costs of their employment and the indirect consequences related to the diversion of management resources from product development efforts.

#### **Risks Related to our Financial Position and Capital Requirements**

***We have not generated any revenue from ETC-1002 and may never be profitable.***

Our ability to become profitable depends upon our ability to generate revenue. To date, we have not generated any revenue from our lead product candidate, ETC-1002, and we do not know when, or if, we will generate any revenue. We do not expect to generate significant revenue unless and until we obtain marketing approval of, and begin to sell, ETC-1002. Our ability to generate revenue depends on a number of factors, including, but not limited to, our ability to:

- initiate and successfully complete our Phase 2b clinical trials that meet their clinical endpoints;
- initiate and successfully complete our Phase 3 clinical program;
- initiate and successfully complete all safety studies required to obtain U.S. and foreign marketing approval for ETC-1002 as a treatment for patients with hypercholesterolemia;
- commercialize ETC-1002, if approved, by developing a sales force or entering into collaborations with third parties; and
- achieve market acceptance of ETC-1002 in the medical community and with third-party payors.

Absent our entering into a collaboration or partnership agreement, we expect to incur significant sales and marketing costs as we prepare to commercialize ETC-1002. Even if we initiate and successfully complete our Phase 3 clinical program of ETC-1002, which includes two pivotal Phase 3 clinical trials and one long-term safety study, which each meet their clinical endpoints and ETC-1002 is approved for commercial sale, and despite expending these costs, ETC-1002 may not be a commercially successful drug. We may not achieve profitability soon after generating product sales, if ever. If we are

unable to generate product revenue, we will not become profitable and may be unable to continue operations without continued funding.

***Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish rights.***

We may seek additional capital through a combination of private and public equity offerings, debt financings, collaborations and strategic and licensing arrangements. To the extent that we raise additional capital through the sale of common stock or securities convertible or exchangeable into common stock, your ownership interest in our company will be diluted. In addition, the terms of any such securities may include liquidation or other preferences that materially adversely affect your rights as a stockholder. Debt financing, if available, would increase our fixed payment obligations and may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaboration, strategic partnerships and licensing arrangements with third parties, we may have to relinquish valuable rights to ETC-1002, our intellectual property, future revenue streams or grant licenses on terms that are not favorable to us.

***If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.***

You will suffer immediate and substantial dilution in the net tangible book value of the common stock you purchase in this offering. Assuming an initial public offering price of \$14.00 per share, the midpoint of the price range set forth on the cover of this prospectus, purchasers of common stock in this offering will experience immediate dilution of approximately \$8.58 per share in net tangible book value of the common stock. In addition, investors purchasing common stock in this offering will contribute approximately 48.8% of the total amount invested by stockholders since inception but will only own approximately 32.0% of the shares of common stock outstanding. In the past, we issued options to acquire common stock at prices significantly below the initial public offering price. To the extent these outstanding options are ultimately exercised, investors purchasing common stock in this offering will sustain further dilution. See "Dilution" for a more detailed description of the dilution to new investors in the offering.

***Our recurring operating losses have raised substantial doubt regarding our ability to continue as a going concern.***

We have a limited operating history and have not commercialized any products or generated any revenue since our inception. We have incurred operating losses in each year since our inception. Our recurring operating losses raise substantial doubt about our ability to continue as a going concern. As a result, for the fiscal year ended December 31, 2012, our independent registered public accounting firm has issued its report on our financial statements and has expressed substantial doubt about our ability to continue as a going concern. We have no current source of revenue to sustain our present activities, and we do not expect to generate revenue until and unless the FDA or other applicable regulatory authorities approve ETC-1002 and we successfully commercialize ETC-1002. Accordingly, our ability to continue as a going concern will require us to obtain additional financing to fund our operations. Uncertainty surrounding our ability to continue as a going concern may make it more difficult for us to obtain financing for the continuation of our operations and could result in the loss of confidence by investors, suppliers and employees.

***Our ability to use our net operating loss carryforwards may be subject to limitation.***

Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, changes in our ownership may limit the amount of our net operating loss carryforwards that could be utilized

annually to offset our future taxable income, if any. This limitation would generally apply in the event of a cumulative change in ownership of our company of more than 50% within a three-year period. Any such limitation may significantly reduce our ability to utilize our net operating loss carryforwards before they expire. The closing of this offering, together with private placements and other transactions that have occurred since our inception, may trigger such an ownership change pursuant to Section 382. Any such limitation, whether as the result of this offering, prior private placements, sales of our common stock by our existing stockholders or additional sales of our common stock by us after this offering, could have a material adverse effect on our results of operations in future years. We have not completed a study to assess whether an ownership change for purposes of Section 382 has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such study.

***We have operated as a private company and have no experience attempting to comply with public company reporting and other obligations. Taking steps to comply with these requirements will increase our costs and require additional management resources, and does not ensure that we will be able to satisfy them.***

As a newly public company, we will be required to comply with applicable provisions of the Sarbanes-Oxley Act of 2002, as well as other rules and regulations promulgated by the SEC and the NASDAQ Stock Market LLC, or NASDAQ, which will result in significant initial and continuing legal, accounting, administrative and other costs and expenses. The listing requirements of The NASDAQ Global Market require that we satisfy certain corporate governance requirements relating to director independence, distributing annual and interim reports, stockholder meetings, approvals and voting, soliciting proxies, conflicts of interest and a code of conduct. Our management and other personnel will need to devote a substantial amount of time to ensure that we comply with all of these requirements.

After this offering, we will be subject to Section 404 of the Sarbanes-Oxley Act of 2002, or Section 404, and the related rules of the SEC that generally require our management and independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting. Beginning with the second annual report that we will be required to file with the SEC, Section 404 requires an annual management assessment of the effectiveness of our internal control over financial reporting. However, for so long as we remain an "emerging growth company" as defined in the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404. Once we are no longer an "emerging growth company" or, if before such date, we opt to no longer take advantage of the applicable exemption, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting. Please see the Risk Factor titled "We are an 'emerging growth company,' and as a result of the reduced disclosure and governance requirements applicable to emerging growth companies, our common stock may be less attractive to investors" in this prospectus for more information regarding our status as an "emerging growth company."

To date, we have never conducted a review of our internal control for the purpose of providing the reports required by these rules. During the course of our review and testing, we may identify deficiencies and be unable to remediate them before we must provide the required reports. Furthermore, if we have a material weakness in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We or our independent registered public accounting firm may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting, which could harm our operating results, cause investors to lose confidence in our reported financial information and cause the trading price of our stock to fall. In addition, as a public company we will be required to timely file accurate quarterly and annual reports with the SEC under the Securities Exchange Act of 1934, or the Exchange Act, as

amended. In order to report our results of operations and financial statements on an accurate and timely basis, we will depend on CROs to provide timely and accurate notice of their costs to us. Any failure to report our financial results on an accurate and timely basis could result in sanctions, lawsuits, delisting of our shares from The NASDAQ Global Market or other adverse consequences that would materially harm our business.

## **Risks Related to the Securities Markets and Investment in our Common Stock**

### ***Market volatility may affect our stock price and the value of your investment.***

Following this offering, the market price for our common stock is likely to be volatile, in part because our common stock has not been previously traded publicly. In addition, the market price of our common stock may fluctuate significantly in response to a number of factors, most of which we cannot control, including, among others:

- plans for, progress of or results from clinical or safety trials of ETC-1002;
- the results from our Phase 2a clinical trial (ETC-1002-007), for which we expect to report top-line data in the third quarter of 2013;
- the failure of the FDA to approve ETC-1002;
- announcements of new products, technologies, commercial relationships, acquisitions or other events by us or our competitors;
- the success or failure of other LDL-C lowering therapies;
- regulatory or legal developments in the United States and other countries;
- failure of ETC-1002, if approved, to achieve commercial success;
- fluctuations in stock market prices and trading volumes of similar companies;
- general market conditions and overall fluctuations in U.S. equity markets;
- variations in our quarterly operating results;
- changes in our financial guidance or securities analysts' estimates of our financial performance;
- changes in accounting principles;
- our ability to raise additional capital and the terms on which we can raise it;
- sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;
- additions or departures of key personnel;
- discussion of us or our stock price by the press and by online investor communities; and
- other risks and uncertainties described in these risk factors.

An active public market for our common stock may not develop or be sustained after this offering. We will negotiate and determine the initial public offering price with representatives of the underwriters and this price may not be indicative of prices that will prevail in the trading market. As a result, you may not be able to sell your shares of common stock at or above the initial offering price.

### ***After the completion of this offering, we may be at an increased risk of securities class action litigation.***

Historically, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biotechnology

and pharmaceutical companies have experienced significant stock price volatility in recent years. If we were to be sued, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business.

***If securities or industry analysts do not publish or cease publishing research or reports or publish misleading, inaccurate or unfavorable research about us, our business or our market, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. We do not currently have and may never obtain research coverage by securities and industry analysts. If no or few securities or industry analysts cover our company, the trading price and volume of our stock would likely be negatively impacted. If we obtain securities or industry analyst coverage and if one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, or provides more favorable relative recommendations about our competitors, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price or trading volume to decline.

***We are an "emerging growth company," and as a result of the reduced disclosure and governance requirements applicable to emerging growth companies, our common stock may be less attractive to investors.***

We are an "emerging growth company," as defined in the JOBS Act, and we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. We may take advantage of these reporting exemptions until we are no longer an "emerging growth company." We will remain an "emerging growth company" until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenue of at least \$1.0 billion, or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the prior June 30<sup>th</sup>, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

***You may not approve of the ways we use the net proceeds from this offering.***

We currently intend to use the net proceeds from this offering to fund our future clinical trials of ETC-1002 and general corporate purposes. Because of the number and variability of factors that will determine our use of the proceeds from this offering, their ultimate use may vary substantially from our current intended use. As such, our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not necessarily improve our operating results or enhance the value of our common stock.



***Our executive officers, directors, principal stockholders and their affiliates will continue to exercise significant control over our company after this offering, which will limit your ability to influence corporate matters and could delay or prevent a change in corporate control.***

Immediately following the completion of this offering, and disregarding any shares of common stock that they purchase in this offering, the existing holdings of our executive officers, directors, principal stockholders and their affiliates, including Dr. Newton, investment funds affiliated with Aisling Capital, or Aisling, investment funds affiliated with Alta Partners, or Alta, investment funds affiliated with Domain Partners, or Domain, and investment funds affiliated with Longitude Capital, or Longitude, will represent beneficial ownership, in the aggregate, of approximately 60.0% of our outstanding common stock, assuming no exercise of the underwriters' option to acquire additional common stock in this offering and assuming we issue the number of shares of common stock as set forth on the cover page of this prospectus. As a result, these stockholders, if they act together, will be able to influence our management and affairs and control the outcome of matters submitted to our stockholders for approval, including the election of directors and any sale, merger, consolidation, or sale of all or substantially all of our assets. These stockholders acquired their shares of common stock for substantially less than the price of the shares of common stock being acquired in this offering, and these stockholders may have interests, with respect to their common stock, that are different from those of investors in this offering and the concentration of voting power among these stockholders may have an adverse effect on the price of our common stock. In addition, this concentration of ownership might adversely affect the market price of our common stock by:

- delaying, deferring or preventing a change of control of us;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

Please see "Principal Stockholders" in this prospectus for more information regarding the ownership of our outstanding common stock by our executive officers, directors, principal stockholders and their affiliates.

***Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, even one that may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.***

Provisions in our certificate of incorporation and bylaws may delay or prevent an acquisition of us or a change in our management. These provisions include a classified board of directors, a prohibition on actions by written consent of our stockholders and the ability of our board of directors to issue preferred stock without stockholder approval. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders owning in excess of 15% of our outstanding voting stock to merge or combine with us. Although we believe these provisions collectively provide for an opportunity to obtain greater value for stockholders by requiring potential acquirors to negotiate with our board of directors, they would apply even if an offer rejected by our board were considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

***We do not intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.***

We have never declared or paid any cash dividend on our common stock and do not currently intend to do so in the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends in the foreseeable future. Therefore, the success of an investment in shares of our common stock will depend upon any future appreciation in their value. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which you purchased them.

***Future sales of our common stock may cause our stock price to decline.***

Sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur could significantly reduce the market price of our common stock and impair our ability to raise adequate capital through the sale of additional equity securities.

Upon completion of this offering, there will be 14,079,305 shares of our common stock outstanding. Of these, 4,500,000 shares are being sold in this offering (or 5,175,000 shares, if the underwriters exercise their option in full) and will be freely tradable immediately after this offering (except for shares purchased by affiliates) and the remaining 9,579,305 shares may be sold upon expiration of lock-up agreements six months after the date of this offering (subject in some cases to volume limitations). In addition, after issuing stock options to our non-employee directors upon the effectiveness of the registration statement of which this prospectus is a part, in accordance with our non-employee director compensation policy, we will have outstanding options to purchase 696,924 shares of common stock and 277,690 shares of common stock issuable upon exercise of outstanding warrants to purchase shares of common stock, based upon the mid-point of the price range set forth on the cover page of this prospectus. If these options or warrants are exercised, additional shares will become available for sale upon expiration of the lock-up agreements. A large portion of these shares, options and warrants are held by a small number of persons and investment funds. Moreover, after this offering, Aisling, Alta, Domain, Longitude, Pfizer, Dr. Newton and certain of our executive officers will have rights, subject to some conditions, to require us to file registration statements covering the shares of our common stock they currently hold, or to include these shares in registration statements that we may file for ourselves or other stockholders. Please see "Description of Capital Stock—Registration Rights" in this prospectus for more information regarding these registration rights.

We also intend to register all the shares of common stock that we may issue under our equity incentive plans. Effective upon the effectiveness of the registration statement of which this prospectus is a part, an aggregate of 1,154,129 shares of our common stock will be reserved for future issuance under these plans. Once we register these shares, which we plan to do shortly after the completion of this offering, they can be freely sold in the public market upon issuance, subject to the lock-up agreements referred to above. If a large number of these shares are sold in the public market, the sales could reduce the trading price of our common stock. See "Shares Eligible for Future Sale" for a more detailed description of sales that may occur in the future.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

*This prospectus, including the sections entitled "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," contains forward-looking statements that are based on our management's belief and assumptions and on information currently available to our management. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these statements relate to future events, including our clinical development plans, or our future financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements, including in relation to the clinical development of ETC-1002, to be materially different from any future results, performance or achievements, including in relation to the clinical development of ETC-1002, expressed or implied by these forward-looking statements. Forward-looking statements in this prospectus include, but are not limited to, statements about:*

- our ability to obtain regulatory approval for ETC-1002;
- the timing and outcome of our Phase 2 clinical trials of ETC-1002;
- the timing and outcome of our Phase 3 clinical program of ETC-1002, including two Phase 3 clinical trials and one long-term safety study;
- our ability to replicate positive results from a completed clinical trial in a future clinical trial;
- our ability to fund our development programs with existing capital or our ability to raise additional capital in the future;
- the potential benefits, effectiveness or safety of ETC-1002, including as compared to statins, the standard of care for LDL-C lowering therapies, other currently available therapies or therapies in development;
- our ability to respond and adhere to changes in regulatory requirements, including any requirement to conduct additional, unplanned clinical trials, such as a cardiovascular outcomes study in connection with our pursuit of ETC-1002 as an LDL-C lowering therapy in the statin intolerant or other patient populations;
- the progress, timing and amount of expenses associated with our development of ETC-1002;
- guidelines relating to LDL-C levels and cardiovascular risk that are generally accepted within the medical community, including any future changes to such guidelines;
- reimbursement policies, including any future changes to such policies or related government legislation, and their impact on our ability to sell ETC-1002, if approved;
- the accuracy of our estimates of the size and growth potential of the statin intolerant market and the rate and degree of ETC-1002's market acceptance, if it is approved;
- our ability to obtain and maintain intellectual property protection for ETC-1002 without infringing on the intellectual property rights of others;
- the loss of any of our key scientific or management personnel;
- our intention to seek to establish strategic relationships or partnerships; and
- our ability to compete with other companies that are, or may be, developing or selling products that may compete with ETC-1002, if approved.

In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue" or the negative of these terms or other similar terminology. These statements are only

predictions. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which are, in some cases, beyond our control and that could materially affect results. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under "Risk Factors" and elsewhere in this prospectus. If one or more of these risks or uncertainties occur, or if our underlying assumptions prove to be incorrect, actual events or results may vary significantly from those implied or projected by the forward-looking statements. No forward-looking statement is a guarantee of future performance. You should read this prospectus and the documents that we reference in this prospectus and have filed with the Securities and Exchange Commission as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from any future results expressed or implied by these forward-looking statements.

The forward-looking statements in this prospectus represent our views as of the date of this prospectus. We anticipate that subsequent events and developments will cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we have no current intention of doing so except to the extent required by applicable law. You should therefore not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this prospectus.

## USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of 4,500,000 shares of common stock in this offering will be approximately \$56.5 million based upon an assumed initial public offering price of \$14.00 per share, the mid-point of the price range set forth on the cover of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' over-allotment option to purchase additional shares in this offering is exercised in full, we estimate that our net proceeds will be approximately \$65.3 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$14.00 per share would increase (decrease) the net proceeds to us from this offering by approximately \$4.2 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of one million in the number of shares offered by us would increase (decrease) the net proceeds to us from this offering by approximately \$13.0 million, assuming the assumed initial public offering price remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to obtain additional capital to support our operations and continued development of ETC-1002, to establish a public market for our common stock and to facilitate our future access to the public capital markets.

We estimate that we will use the net proceeds from this offering as follows:

- approximately \$29.0 million to fund development costs associated with clinical studies and related operations of our Phase 2b program of ETC-1002 and for costs associated with our end of Phase 2 meeting with the FDA;
- approximately \$12.0 million to fund development costs associated with non-clinical studies and related activities for ETC-1002; and
- the remainder for general corporate purposes, including internal development costs, working capital, general administrative costs and the prosecution and maintenance of our intellectual property.

We do not currently have commitments for pre-clinical activities related to ESP41091 or 4WF and we do not currently expect to use any of the net proceeds from this offering for these purposes; however, to the extent available after funding the development of ETC-1002 through our end of Phase 2 meeting with the FDA and not otherwise allocated to initiate our intended Phase 3 clinical program of ETC-1002 or required for general corporate purposes, we may elect to undertake IND-enabling studies of 4WF or ESP41091, which we estimate would cost approximately \$9.0 million and \$5.0 million, respectively.

We expect to announce top-line results from our latest currently anticipated Phase 2b clinical trial in the fourth quarter of 2014 and to have our end of Phase 2 meeting with the FDA in the first quarter of 2015. Based upon our currently anticipated Phase 2 clinical trials, we believe we will have sufficient resources to initiate our intended Phase 3 clinical program of ETC-1002 in a statin intolerant population, although we will need to raise additional capital to complete it.

As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds from this offering. The amounts and timing of our actual expenditures may vary significantly from our expectations depending upon numerous factors, including the progress of our research and development efforts, the progress of our clinical trials, our operating costs and capital expenditures and the other factors described under "Risk Factors" in this prospectus. Accordingly, we will retain the discretion to allocate the net proceeds of this offering among the identified uses described above, and we reserve the right to change the allocation of the net proceeds among the uses described above.

Pending these uses, we intend to invest the net proceeds in high quality, investment grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government, or hold them as cash.

**DIVIDEND POLICY**

We have never declared or paid any dividends on our capital stock. We currently intend to retain all available funds and any future earnings, if any, to fund the development and expansion of our business and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be made at the discretion of our board of directors.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of March 31, 2013:

- on an actual basis;
- on a pro forma basis after giving effect to (i) the conversion of our shares of Series A preferred stock outstanding as of March 31, 2013 into an aggregate of 5,811,344 shares of common stock upon the completion of this offering, (ii) the issuance of 17,000,000 of our shares of Series A preferred stock on April 19, 2013 and the conversion thereof into an aggregate of 2,433,433 shares of common stock upon completion of this offering, (iii) the receipt of \$17.0 million of gross proceeds from the issuance of shares of Series A preferred stock on April 19, 2013 and (iv) the conversion of the Pfizer note, which had an outstanding balance, including accrued interest, of \$7.8 million as of May 29, 2013, into 6,750,000 shares of our Series A-1 preferred stock on May 29, 2013 and the conversion thereof into an aggregate of 966,218 shares of common stock upon completion of this offering; and
- on a pro forma as adjusted basis to give further effect to (i) our sale in this offering of \_\_\_\_\_ shares of common stock at an assumed initial public offering price of \$14.00 per share (the mid-point of the range set forth on the cover page of this prospectus), after deducting the underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the filing and effectiveness of our amended and restated certificate of incorporation, which will occur immediately prior to the consummation of this offering.

You should read the following table together with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Description of Capital Stock" and the financial statements and related notes appearing elsewhere in this prospectus.

	As of March 31, 2013		
	Actual	Pro Forma	Pro Forma As Adjusted
	(in thousands, except per share data)		
Cash and cash equivalents	\$ 3,886	\$ 20,886	\$ 77,426
Long-term debt	\$ 7,529	\$ —	\$ —
Series A preferred stock \$0.001 par value per share; 42,538,092 shares authorized and 40,598,092 shares issued and outstanding, actual; 59,538,092 shares authorized and no shares issued and outstanding, pro forma; no shares authorized and no shares issued and outstanding, pro forma as adjusted	40,598	—	—
Series A-1 preferred stock \$0.001 par value per share; 7,862,283 shares authorized and no shares issued and outstanding, actual; 7,862,283 shares authorized and no shares issued and outstanding, pro forma; no shares authorized and no shares issued and outstanding, pro forma as adjusted	—	—	—
Preferred stock \$0.001 par value per share; no shares authorized and no shares issued and outstanding, actual; no shares authorized and no shares issued and outstanding, pro forma; 5,000,000 shares authorized and no shares issued and outstanding, pro forma as adjusted	—	—	—
Common stock \$0.001 par value per share; 58,220,375 shares authorized and 346,478 shares issued and outstanding, actual; 75,220,375 shares authorized and 9,557,834 shares issued and outstanding, pro forma; and 120,000,000 shares authorized and 14,079,305 shares issued and outstanding, pro forma as adjusted	—	10	14
Additional paid-in capital	665	66,057	122,593
Accumulated deficit	(46,214)	(46,323)	(46,323)
<b>Total capitalization</b>	<b>\$ (4,951)</b>	<b>\$ 19,744</b>	<b>\$ 76,284</b>

A \$1.00 increase (decrease) in the assumed initial public offering price of \$14.00 per share, the mid-point of the estimated price range shown on the cover page of this prospectus, would increase (decrease) the amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' equity (deficit) and total capitalization, on a pro forma as adjusted basis, by approximately \$4.2 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) each of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization, on a pro forma as adjusted basis, by approximately \$13.0 million, assuming the assumed initial public offering price remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.



The actual, pro forma and pro forma as adjusted information set forth in the table excludes (i) 610,772 shares of common stock issuable upon the exercise of stock options outstanding as of March 31, 2013 with a weighted-average exercise price of \$1.87 per share, (ii) 277,690 shares of common stock issuable upon the exercise of warrants outstanding as of March 31, 2013 at an exercise price of \$6.99 per share, which warrants are exercisable to purchase shares of Series A preferred stock prior to the closing of this offering and (iii) 1,154,129 shares of common stock reserved for future issuance under our equity incentive plans as of the closing of this offering.

## DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock immediately after this offering.

The net tangible book value of our common stock as of March 31, 2013 was a deficit of \$5.0 million, or \$14.43 per share. Net tangible book value per share represents our total tangible assets less our total tangible liabilities, divided by the number of shares of common stock outstanding on March 31, 2013. The pro forma net tangible book value of our common stock as of March 31, 2013 was \$19.7 million, or approximately \$2.06 per share. Pro forma net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the number of shares of our common stock outstanding, as of March 31, 2013, after giving effect to (i) the conversion of our shares of Series A preferred stock outstanding as of March 31, 2013 into an aggregate of 5,811,344 shares of common stock upon the completion of this offering, (ii) the receipt of \$17.0 million of gross proceeds from the issuance of shares of Series A preferred stock on April 19, 2013, (iii) the conversion of our shares of Series A preferred stock issued on April 19, 2013 into an aggregate of 2,433,433 shares of common stock upon completion of this offering, (iv) the conversion of the Pfizer note, which had an outstanding balance, including accrued interest, of \$7.8 million as of May 29, 2013, into 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 and (v) the conversion of the shares of Series A-1 preferred stock issued on May 29, 2013 into an aggregate of 966,218 shares of common stock upon completion of this offering.

Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of common stock in this offering and the pro forma net tangible book value per share of our common stock immediately after the completion of this offering. After giving effect to the sale of 4,500,000 shares of our common stock in this offering, assuming an initial public offering price of \$14.00 per share, the mid-point of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of March 31, 2013 would have been \$76.2 million, or \$5.42 per share. This amount represents an immediate increase in pro forma as adjusted net tangible book value of \$3.36 per share to our existing stockholders and an immediate dilution in pro forma as adjusted net tangible book value of approximately \$8.58 per share to new investors purchasing shares of our common stock in this offering. We determine dilution by subtracting the pro forma as adjusted net tangible book value per share after the offering from the amount of cash that a new investor paid for a share of common stock.

The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		\$ 14.00
Pro forma net tangible book value per share as of March 31, 2013	\$ 2.06	
Increase per share attributable to new investors	<u>\$ 3.36</u>	
Pro forma as adjusted net tangible book value per share at March 31, 2013 after giving effect to the offering		\$ 5.42
Dilution per share to new investors		<u>\$ 8.58</u>

A \$1.00 increase (decrease) in the assumed initial public offering price of \$14.00 per share would increase (decrease) the pro forma as adjusted net tangible book value, by \$0.30 per share and the dilution to new investors by \$8.88 per share, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated expenses payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) the pro forma as adjusted net tangible book value by \$0.93 per share and the dilution to new investors by \$9.51 per share, assuming the assumed initial public offering price remains the same and after deducting underwriting discounts

and commissions and estimated expenses payable by us. If the underwriters exercise their over-allotment option in full, the pro forma as adjusted net tangible book value would be \$6.05 per share, and the dilution in pro forma net tangible book value per share to investors in this offering would be \$9.21 per share.

The following table summarizes, on a pro forma basis, as of March 31, 2013, the difference between the number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid by existing stockholders and by new investors at an assumed initial public offering price of \$14.00 per share, the mid-point of the price range set forth on the cover of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses.

	Shares purchased		Total consideration		Avg price / share
	Number	Percent	Amount	Percent	
Existing stockholders	9,557,473	68.0%	\$ 66,066,386	51.2%	\$ 6.91
New investors	4,500,000	32.0	63,000,000	48.8	14.00
Total	14,057,473	100.0%	\$ 129,066,386	100.0%	\$ 9.18

The above discussion and tables are based on (i) 6,157,822 shares of common stock issued and outstanding as of March 31, 2013, including the conversion of all then outstanding shares of preferred stock into an aggregate of 5,811,344 shares of common stock upon completion of this offering, (ii) 2,433,433 shares of common stock into which the shares of Series A preferred stock issued on April 19, 2013 will be converted upon completion of this offering and (iii) 966,218 shares of common stock into which the shares of Series A-1 preferred stock issued on May 29, 2013 will be converted upon completion of this offering, and excludes:

- 610,772 shares of common stock issuable upon the exercise of stock options outstanding as of March 31, 2013 at a weighted-average exercise price of \$1.87 per share;
- 277,690 shares of common stock issuable upon the exercise of warrants outstanding as of March 31, 2013 at an exercise price of \$6.99 per share, which warrants prior to the closing of this offering are exercisable to purchase shares of Series A preferred stock; and
- 1,154,129 shares of common stock reserved for future issuance under our equity incentive plans as of the closing of this offering.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$14.00 per share, the mid-point of the price range set forth on the cover of this prospectus, would increase (decrease) the total consideration paid by new investors by approximately \$4.2 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) the total consideration paid by new investors by approximately \$13.0 million, assuming the assumed initial public offering price of \$14.00 per share, the mid-point of the price range set forth on the cover of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated expenses payable by us.

To the extent that outstanding options are exercised, you will experience further dilution. In addition, we may choose to raise additional capital in the future due to market conditions or strategic considerations even if 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 may result in further dilution to our stockholders.

## SELECTED FINANCIAL DATA

You should read the following selected historical consolidated financial data below together with "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements, related notes and other financial information included elsewhere in this prospectus. The selected financial data in this section are not intended to replace the financial statements and are qualified in their entirety by the financial statements and related notes included elsewhere in this prospectus.

We derived the statements of operations data for the years ended December 31, 2012 and 2011 and the balance sheet data as of December 31, 2012 and 2011, from our audited financial statements included elsewhere in this prospectus. We derived the statements of operations data for the three months ended March 31, 2013 and 2012 and the balance sheet data as of March 31, 2013 and 2012 from our unaudited financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of results to be expected in any future period.

	Years Ended December 31,		Three Months Ended March 31,		Period From January 22, 2008 (Inception) through March 31, 2013
	2012	2011	2013	2012	
<b>Statement of Operations Data:</b>					
Grant income	\$ —	\$ —	\$ —	\$ —	\$ 244
Operating expenses:					
Research and development	7,998	7,807	2,093	1,557	29,506
General and administrative	2,206	2,357	1,251	633	12,701
Acquired in-process research and development	—	—	—	—	86
Total operating expenses	<u>10,204</u>	<u>10,164</u>	<u>3,344</u>	<u>2,190</u>	<u>42,293</u>
Loss from operations	(10,204)	(10,164)	(3,344)	(2,190)	(42,049)
Total other income (expense)	(1,538)	(653)	(895)	(259)	(4,165)
Net loss	<u>\$ (11,742)</u>	<u>\$ (10,817)</u>	<u>\$ (4,239)</u>	<u>\$ (2,449)</u>	<u>\$ (46,214)</u>
<b>Per share information:</b>					
Net loss per share, basic and diluted	<u>\$ (36.31)</u>		<u>\$ (12.24)</u>		
Weighted-average shares outstanding, basic and diluted	<u>323,382</u>		<u>346,478</u>		
Pro forma net loss per share, basic and diluted (unaudited)(1)	<u>\$ (3.13)</u>		<u>\$ (0.84)</u>		
Pro forma weighted-average shares outstanding, basic and diluted (unaudited)(1)	<u>3,755,247(2)</u>		<u>5,047,400(3)</u>		

- (1) The calculations of the unaudited pro forma net loss per share, basic and diluted, assume the conversion of all of our outstanding shares of convertible preferred stock into shares of our common stock.
- (2) Excludes (i) the conversion of the 2012 convertible promissory notes into 16,623,092 shares of Series A preferred stock in February 2013, (ii) the issuance of 17,000,000 shares of Series A preferred stock on April 19, 2013, (iii) the issuance of 6,750,000 shares of Series A-1 preferred

stock on May 29, 2013 and (iv) the exercise of warrants to purchase 1,940,000 shares of our Series A preferred stock.

- (3) Excludes (i) the issuance of 17,000,000 shares of Series A preferred stock on April 19, 2013, (ii) the issuance of 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 and (iii) the exercise of warrants to purchase 1,940,000 shares of our Series A preferred stock.

The table below presents a summary of our balance sheet data as of December 31, 2012 and 2011:

	<u>As of December 31,</u>		<u>As of March 31,</u>	
	<u>2012</u>	<u>2011</u>	<u>2013</u>	<u>2012</u>
	(in thousands)			
<b>Balance Sheet Data:</b>				
Cash and cash equivalents	\$ 6,512	\$ 1,571	\$ 3,886	\$ 4,879
Working capital (deficit)	(10,035)	525	2,436	(1,879)
Total assets	7,312	2,180	5,265	5,461
Total convertible short-term debt	15,241	—	—	6,000
Total convertible long-term debt	7,529	6,897	7,529	6,897
Convertible preferred stock warrant liability	265	—	307	—
Convertible preferred stock	23,975	23,975	40,598	23,975
Deficit accumulated during the development stage	(41,975)	(30,233)	(46,214)	(32,682)
Total stockholders' deficit	(41,365)	(30,032)	(45,549)	(32,464)

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes and the other financial information appearing elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in the "Risk Factors" section of this prospectus, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### Overview

#### *Corporate Overview*

We are a biopharmaceutical company focused on the research, development and commercialization of therapies for the treatment of patients with elevated levels of LDL-C and other cardiometabolic risk factors. ETC-1002, our lead product candidate, is a novel, first in class, orally available, once-daily LDL-C lowering small molecule therapy designed to target known lipid and carbohydrate metabolic pathways to lower levels of LDL-C and to avoid many of the side effects associated with existing LDL-C lowering therapies. We own the exclusive worldwide rights to ETC-1002 and our other product candidates.

We were incorporated in Delaware in January 2008 and commenced our operations in April 2008. Since our inception, we have devoted substantially all of our resources to developing ETC-1002 and our other product candidates, business planning, raising capital and providing general and administrative support for these operations. To date, we have funded our operations primarily through the issuance of preferred stock, convertible promissory notes and warrants to purchase shares of preferred stock. From inception through May 31, 2013, we raised \$56.7 million from such transactions.

We are a development stage company and do not have any products approved for sale. To date, we have not generated any revenue. We have never been profitable and, from inception to December 31, 2012, our losses from operations have been \$38.7 million. Our net losses were approximately \$11.7 million and \$10.8 million for the years ended December 31, 2012 and 2011, respectively, and \$4.2 million and \$2.5 million for the three months ended March 31, 2013 and 2012, respectively. Substantially all of our net losses resulted from costs incurred in connection with research and development programs and from general and administrative costs associated with our operations. We expect to incur significant expenses and increasing operating losses for the foreseeable future. We expect our expenses to increase in connection with our ongoing activities, including, among others:

- conducting additional clinical trials of ETC-1002 to complete its development;
- seeking regulatory approval for ETC-1002;
- commercializing ETC-1002; and
- operating as a public company.

Accordingly, we will need additional financing to support our continuing operations. We will seek to fund our operations through public or private equity or debt financings or through other sources, which may include collaborations with third parties. Adequate additional financing may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a material adverse effect on our financial condition and our ability to pursue our business strategy or continue operations. We will need to generate significant revenues to achieve profitability, and we may never do so.

*Product Overview*

ETC-1002, our lead product candidate, is a novel, first in class, orally available, once-daily LDL-C lowering small molecule therapy designed to target known lipid and carbohydrate metabolic pathways to lower levels of LDL-C and to avoid many of the side effects associated with existing LDL-C lowering therapies. We acquired the rights to ETC-1002 from Pfizer in 2008. We own the exclusive worldwide rights to ETC-1002 and we are not obligated to make any royalty or milestone payments to Pfizer. In 2011, we incurred \$4.6 million in expenses related to our Phase 1b Multiple Dose Tolerance trial (ETC-1002-004), our Phase 2a Lipid Proof-of-Concept clinical trial (ETC-1002-003) and our Phase 2a Glucose Proof-of-Concept clinical trial (ETC-1002-005). In 2012, we incurred \$5.8 million in expenses related to our Phase 2a Glucose Proof-of-Concept clinical trial and our Phase 2a clinical trials (ETC-1002-006 and ETC-1002-007). We also have two other early-stage programs in pre-clinical development. We licensed one of these candidates from The Cleveland Clinic Foundation, or CCF, and are obligated to make certain royalty and milestone payments (consisting of cash and common stock) to CCF, including a minimum annual cash payment of \$50,000 during years when a milestone payment is not met. No milestone or royalty payments will be due to any third-party in connection with the development and commercialization of our other pre-clinical product candidate.

**Financial Operations Overview**

**Revenue**

To date, we have not generated any revenue, other than grant income. In the future, we may generate revenue from the sale of ETC-1002 or our other product candidates. If we fail to complete the development of ETC-1002 or our other product candidates, our ability to generate future revenue, and our results of operations and financial position will be adversely affected.

**Research and Development Expenses**

Since our inception, we have focused our resources on our research and development activities, including conducting pre-clinical studies and clinical trials. Our research and development expenses consist primarily of costs incurred in connection with the development of ETC-1002, which include:

- expenses incurred under agreements with consultants, contract research organizations, or CROs, and investigative sites that conduct our pre-clinical and clinical trials;
- the cost of acquiring, developing and manufacturing clinical trial materials;
- employee-related expenses, including salaries, benefits, stock-based compensation and travel expenses;
- allocated expenses for rent and maintenance of facilities, insurance and other supplies; and
- costs related to compliance with regulatory requirements.

We expense research and development costs as incurred. To date, substantially all of our research and development work has been related to ETC-1002. Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations or information provided to us by our vendors. Our direct research and development expenses consist principally of external costs, such as fees paid to investigators, consultants, central laboratories and clinical research organizations, or CROs, in connection with our clinical trials. We do not allocate acquiring and manufacturing clinical trial materials, salaries, stock-based compensation, employee benefits or other indirect costs related to our

research and development function to specific programs. These indirect expenses are included in "Other" in the table below.

	Years Ended December 31,		Three Months Ended March 31,		Period From January 22, 2008 (Inception) through March 31, 2013
	2012	2011	2013	2012	
(in thousands)					
<b>Direct research and development expenses by program:</b>					
ETC-1002	\$ 5,778	\$ 4,545	\$ 1,671	\$ 879	\$ 19,734
ESP41091	2	181	—	—	183
4WF	16	913	—	10	1,741
Other	2,202	2,168	422	668	7,848
Total research and development	<u>\$ 7,998</u>	<u>\$ 7,807</u>	<u>\$ 2,093</u>	<u>\$ 1,557</u>	<u>\$ 29,506</u>

Our research and development expenses are expected to increase in the foreseeable future. Our costs associated with ETC-1002 will increase as we conduct our Phase 2b clinical trials and initiate our Phase 3 clinical trials. We cannot determine with certainty the duration and completion costs associated with the ongoing or future clinical trials of ETC-1002. Also, we cannot conclude with certainty if, or when, we will generate revenue from the commercialization and sale of ETC-1002 or our other product candidates that obtain regulatory approval, if ever. We may never succeed in obtaining regulatory approval for any of our product candidates, including ETC-1002. The duration, costs and timing associated with the development and commercialization of ETC-1002 and our other product candidates will depend on a variety of factors, including uncertainties associated with the results of our clinical trials and our ability to obtain regulatory approval. For example, if the FDA or another regulatory authority were to require us to conduct clinical trials beyond those that we currently anticipate will be required for the completion of clinical development or post-commercialization clinical trials of ETC-1002, or if we experience significant delays in enrollment in any of our clinical trials, we could be required to expend significant additional financial resources and time on the completion of clinical development or post-commercialization clinical trials of ETC-1002.

#### **General and Administrative Expenses**

General and administrative expenses primarily consist of salaries and related costs for personnel, including stock-based compensation and travel expenses, associated with our executive, accounting and finance, operational and other administrative functions. Other general and administrative expenses include facility related costs, communication expenses and professional fees for legal, patent prosecution, protection and review, consulting and accounting services. We anticipate that our general and administrative expenses will increase in the future in connection with the continued research and development and commercialization of ETC-1002, increases in our headcount related to our research and development and commercialization activities and the expansion of our information technology infrastructure. Additionally, we anticipate increased expenses related to audit, legal, regulatory and tax-related services associated with maintaining compliance with Securities and Exchange Commission requirements, NASDAQ listing requirements, stock registration and printing fees, director and officer insurance premiums and investor relations costs associated with being a public company.

#### **Interest Expense**

Interest expense consists primarily of non-cash interest costs associated with our convertible promissory notes. On April 28, 2008, we issued an 8.931% convertible promissory note to Pfizer, which had an outstanding balance, including accrued interest, of \$7.8 million as of May 29, 2013 and was converted into 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 and cancelled. Accrued interest under this note was capitalized on June 30<sup>th</sup> and December 31<sup>st</sup> of each year until the note was converted and cancelled. The aggregate amount of principal and interest outstanding was approximately



\$7.5 million and \$7.7 million as of December 31, 2012 and March 31, 2013, respectively. On January 26, 2012, September 4, 2012 and November 30, 2012, we completed convertible note financings in which we issued 10% convertible promissory notes for an aggregate principal amount of \$6.0 million, \$4.0 million and \$5.7 million, respectively, to certain of our existing shareholders. On February 12, 2013, the convertible promissory notes issued in January, September and November 2012 were converted into 16,623,092 shares of Series A preferred stock. During the first quarter of 2013, we incurred approximately \$0.5 million of interest expenses related to the amortization of debt issuance cost and debt discount associated with the September 4, 2012 and November 30, 2012 convertible promissory notes.

### ***Other Income***

Other income consists of investment income earned on cash and cash equivalents and realized gains and losses on the sale of assets held for sale.

### ***Net Operating Losses and Tax Carryforwards***

As of December 31, 2012, we had approximately \$40.5 million of federal net operating loss carryforwards to offset future taxable income, if any. These federal net operating loss carryforwards expire at various dates beginning in 2028 if not utilized and are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. If we experience a greater than 50 percent aggregate change in ownership of certain significant stockholders over a three-year period, or a Section 382 ownership change, utilization of our pre-Section 382 ownership change net operating loss carryforwards will be subject to an annual limitation under Section 382 of the Internal Revenue Code which may result in expiration of, or usage limitation on, a substantial portion of the net operating loss carryforwards before utilization. For example, if we experience a Section 382 ownership change in connection with this offering or as a result of future changes in our stock ownership, some of which are outside our control, the tax benefits related to the net operating loss carryforwards may be limited or lost. At December 31, 2012, we recorded a 100% valuation allowance against our net operating loss carryforwards.

### ***Critical Accounting Policies and Significant Judgments and Estimates***

Our discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States, or U.S. GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities in our financial statements. We evaluate our estimates and judgments on an ongoing basis, including those related to accrued expenses and stock-based compensation. We base our estimates on historical experience, known trends and events, contractual milestones and other various factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

Our significant accounting policies are described in more detail in Note 2 to our financial statements appearing elsewhere in this prospectus. We believe the following accounting policies to be most critical to understanding our results and financial operations.

### ***Accrued Clinical Development Costs***

As part of the process of preparing our financial statements, we are required to estimate our accrued expenses. We base our accrued expenses related to clinical trials on estimates of patient enrollment and related expenses at clinical investigator sites as well as estimates for the services received and efforts expended pursuant to contracts with multiple research institutions and CROs that

conduct and manage clinical trials on our behalf. We generally accrue expenses related to clinical trials based on contracted amounts applied to the level of patient enrollment and activity according to the protocol. If timelines or contracts are modified based upon changes in the clinical trial protocol or scope of work to be performed, we modify our estimates of accrued expenses accordingly on a prospective basis. If we do not identify costs that we have begun to incur or if we underestimate or overestimate the level of services performed or the costs of these services, our actual expenses could differ from our estimates. We do not anticipate the future settlement of existing accruals to differ materially from our estimates.

### **Stock-Based Compensation & Warrant Liability**

#### *Stock-Based Compensation*

We typically grant stock-based compensation to our employees on their respective date of hire and in connection with annual performance reviews. We account for all stock-based compensation payments issued to employees, consultants and directors using an option pricing model for estimating fair value. Accordingly, stock-based compensation expense is measured based on the estimated fair value of the awards on the date of grant, net of estimated forfeitures. Compensation expense is recognized for the portion that is ultimately expected to vest over the period during which the recipient renders the required services to us using the straight-line method. In accordance with authoritative guidance, the fair value of non-employee stock-based awards is re-measured as the awards vest, and the resulting value, if any, is recognized as expense during the period the related services are rendered.

#### *Significant Factors, Assumptions and Methodologies Used in Determining Fair Value*

We estimate the fair value of our stock-based awards to employees and directors using the Black-Scholes option pricing model. The Black-Scholes model requires the input of subjective assumptions, including (a) the per share fair value of our common stock, (b) the expected stock price volatility, (c) the calculation of the expected term of the award, (d) the risk free interest rate and (e) expected dividends. Due to our limited operating history and a lack of company specific historical and implied volatility data, we have based our estimate of expected volatility on the historical volatility of a group of similar companies, which are publicly-traded. When selecting these public companies on which we have based our expected stock price volatility, we selected companies with comparable characteristics to us, including enterprise value, risk profiles, position within the industry, and with historical share price information sufficient to meet the expected life of our stock-based awards. The historical volatility data was computed using the daily closing prices for the selected companies' shares during the equivalent period of the calculated expected term of our stock-based awards. We will continue to apply this process until a sufficient amount of historical information regarding the volatility of our own stock price becomes available. We have estimated the expected life of our employee stock options using the "simplified" method, whereby, the expected life equals the arithmetic average of the vesting term and the original contractual term of the option. The risk-free interest rates for periods within the expected life of the option are based on the U.S. Treasury yield curve in effect during the period the options were granted. We have never paid, and do not expect to pay dividends in the foreseeable future.

The weighted-average assumptions used to estimate the fair value of stock options using the Black-Scholes option pricing model were as follows:

	Years Ended December 31,	
	2012	2011
Risk-free interest rate	0.85%	2.50%
Dividend yield	—	—
Expected term (in years)	6.25	6.25
Expected volatility	80%	80%

We are also required to estimate forfeitures at the time of grant, and revise those estimates in subsequent periods if actual forfeitures differ from our estimates. We use historical data to estimate pre-vesting option forfeitures and record stock-based compensation expense only for those awards that are expected to vest. To the extent that actual forfeitures differ from our estimates, the difference is recorded as a cumulative adjustment in the period the estimates were revised.

Total compensation cost recorded in the statements of operations and comprehensive loss, which includes stock-based compensation expense, restricted stock issued to our founders, which were subject to vesting conditions and are fully vested, and the value of stock and options issued to non-employees for services are allocated as follows:

	Years Ended December 31,		Three Months Ended March 31,	
	2012	2011	2013	2012
	(in thousands)			
Research and development	\$ 61	\$ 57	\$ 8	\$ 11
General and administrative	19	21	47	5
Total	<u>\$ 80</u>	<u>\$ 78</u>	<u>\$ 55</u>	<u>\$ 16</u>

As of December 31, 2012, there was \$0.1 million of unrecognized compensation cost related to unvested employee stock option agreements, which is expected to be recognized over a weighted-average period of approximately 2.6 years. For stock option awards subject to graded vesting, we recognize compensation cost on a straight-line basis over the service period for the entire award. In future periods, our stock-based compensation expense is expected to increase as a result of recognizing our existing unrecognized stock-based compensation for awards that will vest and as we issue additional stock-based awards to attract and retain our employees.

#### *Fair Value Estimate*

We are required to estimate the fair value of the common stock underlying our stock-based awards when performing the fair value calculations with the Black-Scholes option-pricing model. The fair value of the common stock underlying our stock-based awards was determined on each grant date by our board of directors, with input from management. All options to purchase shares of our common stock are intended to be granted with an exercise price per share no less than the fair value per share of our common stock underlying those options on the date of grant, based on the information known to us on the date of grant. In the absence of a public trading market for our common stock, on each grant date, we develop an estimate of the fair value of our common stock in order to determine an exercise price for the option grants based in part on input from an independent third-party valuation. Our determinations of the fair value of our common stock was done using methodologies, approaches and assumptions consistent with the American Institute of Certified Public Accountants, or AICPA, Audit and Accounting Practice Aid Series: *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, or the AICPA Practice Guide. The methodologies for options granted on April 11, 2013 included a hybrid of the option pricing method to estimate our underlying equity value and the probability-weighted expected return methodology, or PWERM, that determined an estimated value under an initial public offering, or IPO, scenario. In addition, our board of directors considered various objective and subjective factors, along with input from management and the independent third-party valuation, to determine the fair value of our common stock, including: external market conditions affecting the biopharmaceutical industry, trends within the biopharmaceutical industry, the prices at which we sold shares of preferred stock, the superior rights and preferences of the preferred stock relative to our common stock at the time of each grant, the results of operations, financial position, status of our research and development efforts, our stage of development and business strategy, the lack of an active public market for our common and our preferred stock, and the likelihood of achieving a liquidity event such as an IPO.

The per share estimated fair value of common stock in the table below represents the determination by our board of directors of the fair value of our common stock as of the date of grant, taking into consideration the various objective and subjective factors described above, including the conclusions of the then most recent contemporaneous valuations of our common stock as discussed below. We computed the per share weighted-average estimated fair value for stock option grants based on the Black-Scholes option pricing model. The following table presents the grant dates and related exercise prices of stock options granted to our employees, directors and consultants from inception through April 11, 2013:

<u>Grants Made During</u>	<u>Number of shares underlying options granted</u>	<u>Exercise price per share</u>	<u>Common stock per share estimate fair value</u>	<u>Per share weighted-average fair value of options</u>
Year Ended December 31, 2008	106,055	\$ 1.05	\$ 1.05	\$ 0.75
Year Ended December 31, 2009	15,745	\$ 1.05	\$ 1.05	\$ 0.74
Year Ended December 31, 2010	101,149	\$ 1.26	\$ 1.26	\$ 1.13
Year Ended December 31, 2011				
May 19, 2011	3,578	\$ 1.54	\$ 1.54	\$ 1.09
July 13, 2011	1,431	\$ 1.54	\$ 1.54	\$ 1.09
December 1, 2011	4,293	\$ 1.54	\$ 1.54	\$ 1.39
Year Ended December 31, 2012				
July 12, 2012	68,708	\$ 1.89	\$ 1.89	\$ 1.30
Three Months Ended March 31, 2013				
January 16, 2013	383,080	\$ 2.10	\$ 2.10	\$ 1.38
February 6, 2013	17,177	\$ 2.10	\$ 2.10	\$ 1.38
April 11, 2013	108,070	\$ 3.70	\$ 3.70	\$ 2.45

Our board of directors granted options at exercise prices that increased from \$1.05 per share in 2008 up to \$3.70 per share in April 2013.

In determining the exercise prices of the options set forth in the table above granted in 2008 through April 11, 2013, our board of directors also considered the most recent contemporaneous valuations of our common stock, which were prepared as of December 31, 2008, December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012 and March 31, 2013 and based its determination of fair value for grants in 2011 and thereafter in part on the analyses summarized below.

#### *Stock option grants during the year ended December 31, 2011*

Our board of directors granted stock options during the year ended December 31, 2011, with each having an exercise price of \$1.54 per share. The exercise price was supported by an independent third-party valuation as of December 31, 2010 and included a 57.6% discount for lack of marketability. The specific facts and circumstances considered by our board of directors for the December 31, 2010 valuation included the following:

- In March 2010, we completed ETC-1002-001, our single dose Phase 1a clinical trial of ETC-1002.
- In April 2010 and November 2010, respectively, we sold an aggregate of 1,000,000 and 25,000 shares of Series A preferred stock for \$1.00 per share pursuant to the terms of the original Series A preferred stock financing we entered into in April 2008.
- Our planned sale of an aggregate of 6,700,000 shares of Series A preferred stock for \$1.00 per share, which occurred in January 2011, following our achievement of the technical milestone for this closing in December 2010 pursuant to the terms of the original Series A preferred stock financing we entered into in April 2008.

In addition to the objective and subjective factors discussed above, our board of directors also considered input from management and the valuation as of December 31, 2010. Management determined that no other significant events or other circumstances had occurred between December 31, 2010 and May 19, 2011, July 13, 2011 or December 1, 2011 that would indicate there was a change in the fair value of our common stock during those periods.

*July 12, 2012 stock option grant*

Our board of directors granted stock options on July 12, 2012, with each having an exercise price of \$1.89 per share. The exercise price was supported by an independent third-party valuation as of December 31, 2011 and included a 45% discount for lack of marketability. The specific facts and circumstances considered by our board of directors for the December 31, 2011 valuation included that, in October 2011, we completed and received data from ETC-1002-003, our Phase 2a clinical trial of ETC-1002 that began in 2010, the results of which further demonstrated the safety and efficacy of ETC-1002 in 133 treated patients.

In addition to the objective and subjective factors discussed above, our board of directors also considered input from management and the valuation as of December 31, 2011. Management determined that no significant events or other circumstances had occurred between December 31, 2011 and July 12, 2012 that would indicate there was a change in the fair value of our common stock during that period.

*January 16, 2013 and February 6, 2013 stock option grants*

Our board of directors granted stock options on January 16, 2013 and February 6, 2013, with each having an exercise price of \$2.10 per share. The exercise price was supported by an independent third-party valuation as of December 31, 2012 and included a 40% discount for lack of marketability. The specific facts and circumstances considered by our board of directors for the December 31, 2012 valuation included the following:

- In October 2012, we received data from ETC-1002-005, our Phase 2a clinical trial of ETC-1002 that began in April 2012, the results of which demonstrated safety and efficacy at higher doses with varying patient populations.
- In December 2012, board initiated preliminary discussion relating to the possibility of pursuing an initial public offering; however, no plan of action was put in place and the primary focus was to identify a new private investor to further finance the development of ETC-1002 and through our currently anticipated Phase 2b clinical trials.

In addition to the objective and subjective factors discussed above, our board of directors also considered input from management and the valuation as of December 31, 2012. Management determined that no significant events or other circumstances had occurred between December 31, 2012 and January 16, 2013 or February 6, 2013 that would indicate there was a change in the fair value of our common stock during those periods. Of the 383,080 stock options granted on January 16, 2013, 349,801 options were granted to our President and Chief Executive Officer and our Executive Chairman and Chief Scientific Officer and vest quarterly over four years beginning on the three month anniversary of the date of grant. The remaining 33,279 options granted on January 16, 2013 were made to several employees and consultants of the company and vest quarterly over four years beginning on the three month anniversary of the date of grant. The 17,177 stock options granted on February 6, 2013 were made to several company employees and vest 25% on the first anniversary of the respective vesting start date and quarterly thereafter over the following three years.

*April 11, 2013 stock option grants*

Our board of directors granted stock options on April 11, 2013, with each having an exercise price of \$3.70 per share. The exercise price was supported by an independent third-party valuation as of April 9, 2013. This independent third-party valuation reflected our February 12, 2013 issuance of 16,623,092 shares of our Series A preferred stock at \$1.00 per share upon the conversion of all of the convertible promissory notes that we issued in 2012. This independent third-party valuation also reflected our anticipated entering into of a stock purchase agreement pursuant to which, on April 11, 2013, we agreed to sell 17,000,000 shares of our Series A preferred stock at a price of \$1.00 per share, which we consummated on April 19, 2013.

During March 2013, we decided to pursue an IPO and made significant progress in preparing for the filing. This included engaging the underwriters for this offering, engaging outside counsel, holding an organizational meeting, and preparing drafts of the prospectus and registration statement for this filing. As a result, the April 9, 2013 independent third-party valuation utilized a hybrid of the option-pricing method, "OPM backsolve", and the PWERM as outlined in the AICPA practice aid. Under this method, the per share values calculated under the option-pricing method and PWERM are weighted appropriately to arrive at a final fair market value per share value of the common stock before the discount for lack of marketability is applied. The probability-weighted equity value of the common stock is based on potential future liquidity events, with an allocation of probabilities applied to each scenario, and discounted to present value. Future liquidity event scenarios included remaining private and early and late initial public offering (late including high and low pre-money enterprise values). Our board of directors and management determined the timing of the future liquidity event scenarios. The probability weightings used in the PWERM analysis took into consideration, actual and forecasted data from completed and yet to be completed clinical trials of ETC-1002 and general market conditions. In each of the scenarios we assumed high and low probability to determine value.

The table below summarizes the significant assumptions utilized for each of the event scenarios used in valuing the common stock and based upon which the fair value was determined to be \$0.53 per share:

Option Pricing Method	PWERM Scenarios			
	Early IPO	Late IPO (High)	Late IPO (Low)	
Probability weighting	50%	17.5%	5%	27.5%
Volatility	56%	NA	NA	NA
Risk-free interest rate	0.19%	NA	NA	NA
Discount for lack of marketability	25%	25%	25%	25%

The probability weighting assigned to the early and late IPO scenarios were based on the possibility we would seek to raise capital in the public markets following the announcement of top-line results from ETC-1002-006 and prior to completing ETC-1002-007. The probability weightings assigned to the respective liquidity scenarios were primarily based on consideration of the stage of our clinical development, industry clinical success rates, expected near term and long-term funding requirements, and the overall success rate of current financing in the public markets.

In addition to the factors discussed above, our board of directors also considered input from management and the valuation as of April 9, 2013. Because the April 9, 2013 valuation included assumptions for the \$17.0 million sale of preferred stock, management determined that no significant events or circumstances had occurred between April 9, 2013 and April 11, 2013 that would indicate there was a change in the fair value of our common stock during that period. Of the 108,070 stock options granted on April 11, 2013, 17,892 options were granted to a company employee and vest 25% on the first anniversary of the employee's vesting start date and quarterly thereafter over the following

three years. The remaining 90,178 options granted on April 11, 2013 were made to directors and a board observer of the company and vest monthly over 36 months from the date of grant.

The primary factors contributing to the difference between the estimated initial public offering price range of \$13.00 to \$15.00 and the fair value of our common stock of \$3.70 per share as of April 11, 2013 include:

- On June 7, 2013, we reported top-line efficacy and safety results from ETC-1002-006, our first clinical trial specifically designed to evaluate ETC-1002 in a statin intolerant population with a primary endpoint of LDL-C lowering, which is the first indication for which we currently expect to seek approval of ETC-1002. ETC-1002-006 met its primary endpoint, demonstrating that ETC-1002 lowered LDL-C by an average of 32%. ETC-1002 was well tolerated and no patients treated with ETC-1002 discontinued the trial because of muscle pain or weakness. As discussed elsewhere in this prospectus, we estimate that more than 2 million U.S. adults have discontinued statin therapy because of muscle pain or weakness. We believe that ETC-1002, if approved, has the potential to become the preferred once-daily, oral therapy for patients who are unable to tolerate statin therapy. We also believe, because symptoms of muscle pain or weakness occur in up to 20% of patients on statin therapy in clinical practice, the size of the statin intolerant market is poised to grow should an effective non-statin therapy become available. The successful completion of our first clinical trial designed specifically to evaluate ETC-1002 in a statin intolerant population with a primary endpoint of LDL-C lowering is an important milestone in our pursuit of FDA approval for ETC-1002 which we believe materially increased the per share fair value of our common stock since April 11, 2013.
- Our April 9, 2013 independent third-party valuation utilized a hybrid of the OPM backsolve and the PWERM methods as outlined in the AICPA practice aid. The probability weightings used in the PWERM analysis took into consideration, among other things, general market conditions. Since April 11, 2013, a number of development stage biopharmaceutical companies have successfully completed initial public offerings and, following their initial public offerings, trading prices of the shares of a number of these companies have increased. In addition, since April 11, 2013, the trading prices of the shares of a number of existing public biopharmaceutical companies who are developing cardiovascular therapies, and may be considered as comparable to us, have increased materially and an existing public biopharmaceutical company that is developing a cardiovascular therapy announced an acquisition at a price materially above the trading price of its shares prior to such announcement. We believe these developments, taken together, along with a general increase in broader equity markets for biotechnology stocks over this period, indicate a substantially greater likelihood of our completing an initial public offering in the near term irrespective of the results of ETC-1002-006. Accordingly, irrespective of the results of ETC-1002-006, we believe it is reasonable to adjust the following significant assumptions since our April 9, 2013 valuation:

Option Pricing Method	PWERM Scenarios				
	Early IPO	Late IPO (High)	Late IPO (Low)	No Value Common	
Probability Weighting as of April 9, 2013	50%	17.5%	5%	27.5%	0%
Probability Weighting Prior to Results of ETC-1002-006	0%	45%	20%	20%	15%

These adjustments to these probabilities imply an estimated increase of approximately \$1.47 per share in the fair value of our common stock since April 11, 2013. Further, while we disclaim any express or implied suggestion that the price of our shares of common stock following this offering will increase (or decrease) in correlation with other development stage biopharmaceutical companies or other biopharmaceutical companies developing cardiovascular

therapies, we believe these developments, solely if utilized in the exit values inputs in our April 9, 2013 independent third-party valuation, would indicate a higher price for the fair value of our common stock since April 11, 2013 irrespective of the results of ETC-1002-006.

- Similarly, the discount for lack of marketability in our April 9, 2013 independent third-party valuation was estimated at 25%. As the likelihood of our completing an initial public offering sooner, irrespective of the results of ETC-1002-006, increased since April 11, 2013, the discount for lack of marketability of shares of our common stock should decrease. Considering that shares of our common stock issued on April 11, 2013 will be subject to contractual lock-up obligations and that we have not and may not complete an initial public offering, we believe it is appropriate to reduce the discount for lack of marketability of shares of our common stock to 10%, irrespective of the results of ETC-1002-006. We believe this reduction in the discount for lack of marketability implies an estimated increase of approximately \$1.47 per share in the fair value of our common stock since April 11, 2013.
- On May 29, 2013, we entered into a stock purchase agreement pursuant to which we sold 6,750,000 shares of our Series A-1 preferred stock at a price of \$1.1560 per share, which purchase price was paid through the cancellation of all outstanding indebtedness under the Pfizer note. This conversion reflected a \$0.156 per share increase in the price of our preferred stock since our issuance of 17,000,000 shares of our senior Series A preferred stock on April 19, 2013 for \$1.00 per share. While this conversion was dilutive to the per share fair value of our common stock as April 11, 2013, the cancellation of indebtedness to Pfizer eliminated the potential for our future cash repayment of this obligation and the potential for future dilution to our stockholders upon Pfizer's election to convert this indebtedness pursuant to its terms into shares of our common stock. We believe elimination of the potential of a material future cash repayment obligation and the potential for future dilution to our stockholders upon Pfizer's election to convert this indebtedness into shares of our common stock following the completion of this offering would increase our enterprise value and thereby, we believe, increase the per share value of our common stock as compared to the fair value of our common stock on April 11, 2013.
- Based upon our currently anticipated Phase 2 clinical trials and assuming the successful completion of this public offering, we believe we will have sufficient resources to initiate our intended Phase 3 clinical program of ETC-1002 in a statin intolerant population, although we will need to raise additional capital to complete it. See "Use of Proceeds." Accordingly, an additional purpose of this offering is to facilitate our future access to the public capital markets. A reduction in the cost of capital increases a company's enterprise value. This increase in our enterprise value that results from our ability to access the public markets would, we believe, increase the per share value of our common stock as compared to the fair value of our common stock on April 11, 2013.
- The completion of a successful public offering would provide us with substantial additional cash and thereby materially increase our ability to further develop ETC-1002. These increased opportunities are reflected in the initial public offering price range but are not reflected in our April 9, 2013 valuation.

Based on the factors described above, and most notably the completion of ETC-1002-006 which demonstrated LDL-C lowering by an average of 32%, with no patients treated with ETC-1002 discontinuing the trial because of muscle pain or weakness, the probability of being able to proceed with a near term initial public offering at the pricing range provided by our investment bankers increased significantly following April 11, 2013.

We have used the factors described above solely for purposes of evaluating the per share value of our common stock for financial reporting purposes. We caution you not to use any of these factors,



including any express or implied suggestion that the price of our shares of common stock following this offering will increase (or decrease) in correlation with other development stage biopharmaceutical companies or other biopharmaceutical companies developing cardiovascular therapies, for any other purpose such as deciding whether to invest in our common stock. Before investing in our common stock, you should carefully read this entire prospectus and consider, among other things, the matters described under "Risk Factors." While we have formally initiated the public offering process as of this date, there is no assurance that we will actually proceed with the initial public offering or that we will be able to complete the initial public offering of our common stock.

#### *Preferred Stock Warrant Liability*

Our outstanding warrants to purchase shares of preferred stock have provisions by which the underlying issuance is contingently redeemable based on events outside of our control and as such are recorded as a liability in accordance with ASC 480-10. Warrants classified as derivative liabilities are recorded on our balance sheet at fair value on the date of issuance and are marked-to-market on each subsequent reporting period. Non-cash changes in the fair value at each reporting period are recognized in the statement of operations. The warrants are measured using the Monte Carlo simulation valuation model and are based, in part, upon inputs where there is little or no market data, requiring us to develop our own independent assumptions related to expected stock-price volatility, expected life and risk-free interest rate. The assumptions used in calculating the estimated fair market value at each reporting period represent our best estimate. We expect that the value of the warrants will fluctuate significantly from period to period.

#### **Emerging Growth Company Status**

Under Section 107(b) of the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, an "emerging growth company" can delay the adoption of new or revised accounting standards until such time as those standards would apply to private companies. We have irrevocably elected not to avail ourselves of this exemption and, as a result, we will adopt new or revised accounting standards at the same time as other public companies that are not emerging growth companies. There are other exemptions and reduced reporting requirements provided by the JOBS Act that we are currently evaluating. For example, as an emerging growth company, we are exempt from Sections 14A(a) and (b) of the Exchange Act which would otherwise require us to (i) submit certain executive compensation matters to stockholder advisory votes, such as "say-on-pay," "say-on-frequency" and "golden parachutes" and (ii) disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of our Chief Executive Officer's compensation to our median employee compensation. We also intend to rely on certain other exemptions, which include but are not limited to, providing an auditor's attestation report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and complying with any requirement that may be adopted by the PCAOB regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis.

We will continue to remain an "emerging growth company" until the earliest of the following: the last day of the fiscal year following the fifth anniversary of the date of the completion of this offering; the last day of the fiscal year in which our total annual gross revenues are equal to or more than \$1 billion; the date on which we have issued more than \$1 billion in nonconvertible debt during the previous three years; or the date on which we are deemed to be a large accelerated filer under the rules of the Securities and Exchange Commission.

**Results of Operations****Comparison of Three Months Ended March 31, 2013 and 2012**

The following table summarizes our results of operations for the three months ended March 31, 2013 and 2012:

	<b>Three Months Ended March 31,</b>		<b>Change</b>
	<b>2013</b>	<b>2012</b>	
	<b>(in thousands)</b>		
<b>Operating Expenses:</b>			
Research and development	\$ 2,093	\$ 1,557	\$ 536
General and administrative	1,251	633	618
<b>Loss from operations</b>	<b>(3,344)</b>	<b>(2,190)</b>	<b>(1,154)</b>
<b>Other income (expense):</b>			
Interest expense	(828)	(260)	(568)
Change in fair value of warrant liability	(42)	—	(42)
Other income (expense), net	(25)	1	(26)
<b>Net loss</b>	<b>\$ (4,239)</b>	<b>\$ (2,449)</b>	<b>\$ (1,790)</b>

**Research and development expenses**

Research and development expenses for the three months ended March 31, 2013 were \$2.1 million, compared to \$1.6 million for the three months ended March 31, 2012, an increase of \$0.5 million. The increase in research and development expenses primarily related to the further clinical development of ETC-1002, including the initiation of two Phase 2a clinical trials.

**General and administrative expenses**

General and administrative expenses for the three months ended March 31, 2013 were \$1.3 million, compared to \$0.6 million for the three months ended March 31, 2012, an increase of \$0.7 million. The increase in general and administrative expenses was primarily attributable to an increase in professional services provided to us and changes in our headcount.

**Interest expense**

Non-cash interest expense for the three months ended March 31, 2013 was \$0.8 million, compared to \$0.3 million for the three months ended March 31, 2012, a \$0.5 million increase. The increase in interest expense was primarily related to our issuance of convertible promissory notes in January, September and November 2012, which had a 10% interest rate before being converted into 16,623,092 shares of Series A preferred stock in February 2013, the amortization of debt issuance cost and debt discount associated with the September and November 2012 convertible promissory notes as well as the accrued interest on the 8.931% convertible promissory note issued to Pfizer, which had an outstanding balance of \$7,694,643 as of March 31, 2013 and was subsequently converted into 6,750,000 shares of Series A-1 preferred stock on May 29, 2013.

**Change in fair value of warrant liability**

The outstanding warrants to purchase 1,940,000 shares of our Series A preferred stock require liability classification and mark-to-market accounting at each reporting period in accordance with ASC 480-10. The fair values of the warrants were determined using the Monte Carlo simulation valuation model and resulted in the recognition of a loss of approximately \$42,000 related to the change in fair values for the three months ended March 31, 2013.

**Other income (expense), net**

Other income (expense), net for the three months ended March 31, 2013 was an expense of approximately \$25,000 compared to income of approximately \$1,000 for the three months ended March 31, 2012, a \$26,000 increase. This increase was primarily related to an impairment on our assets held for sale to adjust the carrying value to fair value.

**Comparison of Years Ended December 31, 2012 and 2011**

The following table summarizes our results of operations for the years ended December 31, 2012 and 2011:

	Years Ended December 31,		Change
	2012	2011	
	(in thousands)		
<b>Operating Expenses:</b>			
Research and development	\$ 7,998	\$ 7,807	\$ 191
General and administrative	2,206	2,357	(151)
<b>Loss from operations</b>	<b>(10,204)</b>	<b>(10,164)</b>	<b>(40)</b>
<b>Other income (expense):</b>			
Interest expense	(1,486)	(577)	(909)
Change in fair value of warrant liability	32	—	32
Other income (expense), net	(84)	(76)	(8)
<b>Net loss</b>	<b>\$ (11,742)</b>	<b>\$ (10,817)</b>	<b>\$ (925)</b>

**Research and development expenses**

Research and development expenses for the year ended December 31, 2012 were \$8.0 million, compared to \$7.8 million for the year ended December 31, 2011, an increase of \$0.2 million primarily related to the further clinical development of ETC-1002, including the initiation of two Phase 2a clinical trials, which includes the initiation and completion of our Phase 2a Glucose Proof-of-Concept clinical trial and the initiation of our Phase 2a Lipid Proof-of-Concept clinical trial.

**General and administrative expenses**

General and administrative expenses for the year ended December 31, 2012 were \$2.2 million, compared to \$2.4 million for the year ended December 31, 2011, a decrease of \$0.2 million. The decrease in general and administrative expenses was primarily attributable to a decrease in professional consulting services provided to us.

**Interest expense**

Non-cash interest expense for the year ended December 31, 2012 was \$1.5 million, compared to \$0.6 million for the year ended December 31, 2011, a \$0.9 million increase in interest expense. This increase in interest expense was primarily related to our issuance of convertible promissory notes in January, September and November 2012, which each bear interest at a rate of 10%, as well as the accrued interest on the 8.931% convertible promissory note issued to Pfizer, which had an outstanding balance of \$7,528,845 as of December 31, 2012.

Subsequently, the convertible promissory notes issued in January, September and November 2012 were converted into an aggregate of 16,623,092 shares of Series A preferred stock on February 12, 2013, and the Pfizer note was converted into 6,750,000 shares of Series A-1 preferred stock on May 29, 2013.

**Change in fair value of warrant liability**

The outstanding warrants to purchase 1,940,000 shares of our Series A preferred stock require liability classification and mark-to-market accounting at each reporting period in accordance with ASC 480-10. The fair values of the warrants were determined using the Monte Carlo simulation valuation model and resulted in the recognition of a gain of \$32,000 related to the change in fair values for the year ended December 31, 2012.

**Other income (expense), net**

Other income (expense), net for the year ended December 31, 2012 was an expense of approximately \$84,000 compared to an expense of approximately \$76,000 for the year ended December 31, 2011, an \$8,000 decrease. This decrease was primarily related to a reduction in interest income earned on our money market funds.

**Liquidity and Capital Resources**

We have funded our operations since inception through private placements of preferred stock, convertible promissory notes and warrants to purchase shares of preferred stock. To date, we have not generated any revenue, and we anticipate that we will continue to incur losses for the foreseeable future. As of March 31, 2013, our primary sources of liquidity were our cash and cash equivalents, which totaled \$3.9 million. On April 19, 2013, we issued an aggregate of 17,000,000 shares of Series A preferred stock to funds affiliated with Longitude Capital and certain existing investors, for gross proceeds of \$17.0 million. On May 29, 2013, we entered into a stock purchase agreement pursuant to which we sold 6,750,000 shares of our Series A-1 preferred stock at a price of \$1.1560 per share, which purchase price was paid through the cancellation of all outstanding indebtedness, including accrued interest, under the Pfizer note, which had an outstanding balance, including accrued interest, of \$7.8 million as of May 29, 2013. We invest our cash equivalents and short-term investments in highly liquid, interest-bearing investment-grade and government securities to preserve principal.

In its report accompanying our audited financial statements for the year ended December 31, 2012 included elsewhere in this prospectus, our independent registered public accounting firm included a "going concern" explanatory paragraph. A "going concern" opinion means, in general, that our independent registered public accounting firm has substantial doubt about our ability to continue our operations without an additional infusion of capital from external sources.

The following table summarizes the primary sources and uses of cash for the periods presented below:

	<u>Years Ended December 31,</u>		<u>Three Months Ended March 31,</u>	
	<u>2012</u>	<u>2011</u>	<u>2013</u>	<u>2012</u>
	(in thousands)			
Cash (used in) operating activities	\$ (10,809)	\$ (9,069)	\$ (2,627)	\$ (2,686)
Cash provided by (used in) investing activities	(2)	509	1	(6)
Cash provided by financing activities	15,751	6,716	—	6,000
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>\$ 4,940</b>	<b>\$ (1,844)</b>	<b>\$ (2,626)</b>	<b>\$ 3,308</b>

**Operating Activities**

We have incurred, and expect to continue to incur, significant costs in the areas of research and development, regulatory and other clinical trial costs, associated with our development of ETC-1002.

Net cash used in operating activities totaled \$10.8 million and \$9.1 million for the years ended December 31, 2012 and 2011, respectively, and \$2.6 million and \$2.7 million for the three months ended March 31, 2013 and 2012, respectively. The primary use of our cash was to fund the development of ETC-1002, adjusted for non-cash expenses, such as depreciation and amortization, interest expense, mark-to-market of our warrant liability and changes in working capital.

### ***Investing Activities***

Net cash used in investing activities of \$1,700 in the year ended December 31, 2012 consisted primarily of property and equipment purchases, partially off-set by our sale of certain assets. Net cash provided by investing activities in the year ended December 31, 2011 consisted primarily of \$0.5 million in proceeds received from maturities of short-term investments to fund our operations.

### ***Financing Activities***

Net cash provided by financing activities in the year ended December 31, 2012 consisted primarily of \$15.7 million in proceeds received in January, September and November 2012 from the sale and issuance of convertible promissory notes and, in connection with the September and November 2012 issuances, warrants to purchase shares of preferred stock. Net cash provided by financing activities in the year ended December 31, 2011 consisted primarily of \$6.7 million in proceeds received from the sale and issuance of 6,700,000 shares of our Series A preferred stock.

On April 19, 2013, we issued and sold an aggregate of 17,000,000 shares of our Series A preferred stock at a price of \$1.00 per share for gross proceeds of \$17.0 million to Dr. Newton and affiliated funds of Longitude Capital, Alta Partners, Aisling Capital, Domain Partners, Asset Management and Arboretum Ventures. Each share of Series A preferred stock issued in this financing is initially convertible into one share of our common stock. Upon the closing of the financing, Patrick Enright of Longitude Capital became a member of our board of directors.

### ***Plan of Operations and Funding Requirements***

ETC-1002 is currently in Phase 2 clinical development, and we expect to continue to incur significant expenses and increasing operating losses for the foreseeable future. We expect that the net proceeds from this offering, together with our existing cash and cash equivalents, will enable us to fund our operating expenses and capital expenditures requirements through our currently anticipated Phase 2b clinical trials of ETC-1002 and end of Phase 2 meeting with the FDA, and that we will likely need to raise additional capital to thereafter continue to fund the further development of ETC-1002 and our operations. We expect to announce top-line results from our latest currently anticipated Phase 2b clinical trial in the fourth quarter of 2014 and to have our end of Phase 2 meeting with the FDA in the first quarter of 2015. We have based these estimates on assumptions that may prove to be wrong, and we may use our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties associated with the development and commercialization of ETC-1002, and the extent to which we may enter into collaborations with pharmaceutical partners regarding the development and commercialization of ETC-1002, we are unable to estimate the amounts of increased capital outlays and operating expenses associated with completing the development and commercialization of ETC-1002. Our future funding requirements will depend on many factors, including, but not limited to:

- our ability to successfully develop and commercialize ETC-1002 and our other product candidates;
- the costs, timing and outcomes of our ongoing and planned clinical trials of ETC-1002;
- the time and cost necessary to obtain regulatory approvals for ETC-1002, if at all;

- our ability to establish a sales, marketing and distribution infrastructure to commercialize ETC-1002 in the United States and abroad or our ability to establish any future collaboration or commercialization arrangements on favorable terms, if at all;
- future costs in connection with building outsourced manufacturing capacity for ETC-1002;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims; and
- the implementation of operational and financial information technology.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances and licensing arrangements. We do not have any committed external source of funds. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with pharmaceutical partners, we may have to relinquish valuable rights to our technologies, future revenue streams or ETC-1002 or grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings or through collaborations, strategic alliances or licensing arrangements when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market ETC-1002 that we would otherwise prefer to develop and market ourselves.

### Contractual Obligations and Commitments

We lease office and laboratory space in Plymouth, MI under an operating lease agreement expiring on October 2, 2013. We have options to renew this lease for two additional five year terms.

The following table summarizes our future minimum lease obligations as of December 31, 2012:

	Total	Less than 1 Year	1-3 Years (in thousands)	3-5 Years	More than 5 Years
Operating leases	\$ 287	\$ 287	\$ —	\$ —	\$ —
Total	\$ 287	\$ 287	\$ —	\$ —	\$ —

The following table summarizes our future minimum lease obligations as of March 31, 2013:

	Total	Less than 1 Year	1-3 Years (in thousands)	3-5 Years	More than 5 Years
Operating leases	\$ 144	\$ 144	\$ —	\$ —	\$ —
Total	\$ 144	\$ 144	\$ —	\$ —	\$ —

We are also party to a license agreement pursuant to which we are obligated to make future minimum annual payments of \$50,000 in years during which milestone payments are not triggered under the agreement. In addition, we are also contractually obligated to issue up to an aggregate of 11,451 shares of common stock upon various milestones set forth in the agreement.

## **Off-Balance Sheet Arrangements**

We do not currently have, nor did we have during the periods presented, any off-balance sheet arrangements as defined by Securities and Exchange Commission rules.

## **Recently Issued Accounting Pronouncements**

In July 2012, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update (ASU) 2012-02, Testing Indefinite-Lived Intangible Assets for Impairment. The guidance allows companies, at their option, to perform a qualitative assessment of indefinite-lived assets to determine if it is more likely than not that the fair value of the asset exceeds its carrying value. If analysis of the qualitative factors results in the fair value of the indefinite-lived asset exceeding the carrying value, then performing the quantitative assessment is not required. This guidance is effective for interim and annual periods beginning after December 15, 2012. The adoption of this standard is not expected to have a material impact on our financial statements.

In June 2011, the FASB issued ASU 2011-05 which is an amendment to the accounting guidance for presentation of comprehensive income. Under the amended guidance, a company has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In either case, a company is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income and a total amount for comprehensive income. The amendment is effective for fiscal years ending, and interim periods within those years, beginning after December 15, 2012. The adoption of this update did not have a material impact on our financial statements.

In May 2011, the FASB issued ASU 2011-04 which is an amendment to the accounting guidance on fair value measurements. This accounting standard update clarifies the application of existing fair value measurement guidance and expands the disclosure of fair value measurements that are estimated using significant unobservable (Level 3) inputs. The amendments were effective on a prospective basis for annual and interim reporting periods beginning after December 15, 2011. The adoption of this standard did not have a material impact on our financial statements.

## **Quantitative and Qualitative Disclosures about Market Risk**

We had cash and cash equivalents of approximately \$6.5 million and \$1.6 million at December 31, 2012 and 2011, respectively and approximately \$3.9 million at March 31, 2013. The primary objectives of our investment activities are to preserve principal, provide liquidity and maximize income without significantly increasing risk. Our primary exposure to market risk relates to fluctuations in interest rates which are affected by changes in the general level of U.S. interest rates. Given the short-term nature of our cash equivalents, we believe that a sudden change in market interest rates would not be expected to have a material impact on our financial condition and/or results of operation. We do not have any foreign currency or other derivative financial instruments.

We do not believe that our cash, cash equivalents and available-for-sale investments have significant risk of default or illiquidity. While we believe our cash and cash equivalents do not contain excessive risk, we cannot provide absolute assurance that in the future our investments will not be subject to adverse changes in market value. In addition, we maintain significant amounts of cash and cash equivalents at one or more financial institutions that are in excess of federally insured limits.

Inflation generally affects us by increasing our cost of labor and clinical trial costs. We do not believe that inflation has had a material effect on our results of operations during the years ended December 31, 2012 and 2011 or for the three months ended March 31, 2013 and 2012.

## BUSINESS

### Overview

We are a biopharmaceutical company focused on the research, development and commercialization of therapies for the treatment of patients with elevated levels of low-density lipoprotein cholesterol (LDL-C) and other cardiometabolic risk factors. ETC-1002, our lead product candidate, is a novel, first in class, orally available, once-daily small molecule therapy designed to target known lipid and carbohydrate metabolic pathways to lower levels of LDL-C and to avoid many of the side effects associated with existing LDL-C lowering therapies. To date, we have treated 275 subjects in six completed clinical trials, including three Phase 2a clinical trials. We own the exclusive worldwide rights to ETC-1002 and our other product candidates.

Our founder, Executive Chairman and Chief Scientific Officer, Roger S. Newton, Ph.D., FAHA, co-discovered the statin marketed as Lipitor® (atorvastatin calcium), the most prescribed LDL-C lowering therapy in the world and the best-selling drug in the history of the pharmaceutical industry. We believe our management team has demonstrated expertise in understanding cholesterol biosynthesis and other related cardiometabolic pathways, the strengths and weaknesses of currently marketed therapies and the ability to recognize the potential of novel cholesterol regulating therapies.

Statins are the current standard of care for LDL-C lowering for approximately 30 million patients in the United States. However, based upon a recent academic survey, we estimate that more than 2 million U.S. adults have discontinued statin therapy because of muscle pain or weakness. We believe that ETC-1002, if approved, has the potential to become the preferred once-daily, oral therapy for patients who are unable to tolerate statin therapy. We also believe, because symptoms of muscle pain or weakness occur in up to 20% of patients on statin therapy in clinical practice, the size of the statin intolerant market is poised to grow should an effective non-statin therapy become available.

On June 7, 2013 we reported top-line data for our Phase 2a clinical trial evaluating ETC-1002 as an LDL-C lowering agent specifically in patients with a history of intolerance to two or more statins. This clinical trial met its primary endpoint, demonstrating that ETC-1002 lowered LDL-C by an average of 32%. ETC-1002 was well tolerated and no patients treated with ETC-1002 discontinued the trial because of muscle pain or weakness. We expect to initiate a larger Phase 2b clinical trial in this targeted population by the end of 2013 and to report top-line results by the end of 2014. Our completed Phase 2a clinical trials have demonstrated significant average LDL-C reductions as high as 43% and reductions comparable to statins in levels of high sensitivity C-reactive protein, or hsCRP, a key marker of inflammation. Zetia and Welchol, the most prescribed therapies for elevated LDL-C levels other than statins, have each reported LDL-C lowering of up to 18% in pivotal clinical trials while having no impact on hsCRP.

We also intend to advance the development of ETC-1002 as a therapy for patients currently on statin therapy but who are unable to achieve their LDL-C goals. These patients, known as residual risk patients, remain at increased risk for cardiovascular disease. The Centers for Disease Control and Prevention, or CDC, estimates there are approximately 11 million adults in the United States in this residual risk patient population. We are currently evaluating the efficacy and interaction of ETC-1002 and a 10 mg dose of atorvastatin calcium in an ongoing Phase 2a clinical trial, and we expect to initiate a larger Phase 2b clinical trial in this patient population by the end of 2013 and to report top-line results by the end of 2014.

Based upon its dual mechanism of action, we believe there are a number of additional specific patient populations in which ETC-1002 could have a beneficial effect. For example, the FDA recently warned of the link between the use of statins and an increased risk for the development of type 2 diabetes and worsening of glucose control. By contrast, in our Phase 2a clinical trial in patients with type 2 diabetes, ETC-1002 lowered LDL-C by an average of 43% without increasing blood glucose levels. A significant number of patients with elevated levels of LDL-C, or hypercholesterolemia, have



one or more additional cardiometabolic risk factors that are poorly controlled, including elevated levels of hsCRP, blood glucose, blood pressure and excess weight. Post hoc analyses of data from our completed clinical trials have shown that ETC-1002 could potentially have a beneficial impact on one or more of these cardiometabolic risk factors.

We were founded in January 2008 by former executives of and investors in the original Esperion Therapeutics, Inc., a biopharmaceutical company, which was primarily focused on the research and development of therapies to regulate high-density lipoprotein cholesterol, or HDL-C. After successfully completing a Phase 2a clinical trial with its synthetic HDL therapy, the original Esperion was acquired by Pfizer Inc. in 2004. ETC-1002 was first discovered at the original Esperion and we subsequently acquired the rights to it from Pfizer in 2008. To date, we have raised approximately \$57 million to develop ETC-1002.

## Our Strategy

Our objective is to be a leader in the discovery, development and commercialization of novel therapies for the treatment of patients with hypercholesterolemia and other cardiometabolic risk factors. The core elements of our strategy include:

- **Rapidly advance the clinical development of ETC-1002 as a novel, first in class, orally available, once-daily, small molecule therapy for hypercholesterolemic patients who are statin intolerant.** On June 7, 2013, we announced top-line efficacy and safety results from ETC-1002-006, our Phase 2a clinical trial in patients with elevated LDL-C and a history of intolerance to two or more statins. We plan to initiate a Phase 2b clinical trial in approximately 200 statin intolerant patients by the end of 2013 and to report top-line results by the end of 2014. This Phase 2b clinical trial will include a comparison with Zetia (ezetimibe), which we believe is currently the most prescribed non-statin LDL-C lowering therapy. Zetia's worldwide sales total more than \$2.5 billion, approximately half of which are for the treatment of statin intolerant patients. While we have not yet completed any comparative clinical trials, Zetia has reported LDL-C lowering of up to an average of 18% in two pivotal clinical trials and ETC-1002 has demonstrated LDL-C lowering up to an average of 43% in clinical trials to date. Because of its superior LDL-C lowering and an attractive safety profile, we believe that ETC-1002, if approved, has the potential to become the preferred orally available, once-daily LDL-C lowering small molecule therapy for hypercholesterolemic patients who are unable to tolerate statin therapy.
- **Demonstrate ETC-1002's potential as an add-on therapy for residual risk patients, those who cannot achieve their LDL-C goals despite the use of statin therapy.** In the third quarter of 2013, we expect to announce top-line efficacy and safety results from ETC-1002-007, our Phase 2a clinical trial using increasing doses of ETC-1002 as an add-on to atorvastatin calcium. We plan to initiate a Phase 2b clinical trial in approximately 200 residual risk patients by the end of 2013. Residual risk patients in our Phase 2b clinical trial will receive multiple dose strengths of ETC-1002 in tandem with atorvastatin calcium. Today, residual risk patients are often prescribed fixed combination statin therapies, including Vytorin (ezetimibe and simvastatin), Advicor (niacin extended release and lovastatin) and Simcor (niacin and simvastatin). The leading fixed combination therapy, Vytorin, reported worldwide sales of \$1.7 billion in 2012. As compared to new higher-cost biologic LDL-C lowering therapies currently in development, we believe that, if approved, ETC-1002's convenient once-daily, oral dosage form and expected competitive pricing will make it an attractive statin add-on therapy for residual risk patients.
- **Develop ETC-1002 for LDL-C lowering in targeted patient populations, and develop our other product candidates to treat cardiometabolic risk factors in additional patient populations.** We may initiate additional clinical trials to explore ETC-1002 as a potential therapy for patients with multiple cardiometabolic risk factors, including elevated levels of hsCRP, blood glucose, blood pressure and excess weight. In addition, we may advance the clinical development of two early-stage

product candidates to which we own the exclusive worldwide rights: ESP41091, an oral therapy for patients with multiple cardiometabolic risk factors; and 4WF, a synthetic HDL therapy to reverse the deleterious effects of atherosclerosis.

- Leverage the expertise of our experienced team of drug developers that are expert in the development of small molecule and biologic cholesterol regulating therapies.** Esperion is led by Dr. Roger S. Newton, the CEO of the original Esperion and the co-discoverer of Lipitor, which achieved NDA approval in only six years from IND filing. The original Esperion pioneered the development of apoA-I Milano, the only synthetic HDL therapy to demonstrate regression of atherosclerosis in human subjects. Dr. Newton is joined by an experienced group of pre-clinical and clinical drug developers with prior success in the development of lipid regulating therapies. Our key strengths lie in our understanding of the biology of cholesterol biosynthesis and other complex metabolic pathways and our ability to discover and develop novel therapies to modulate targets in these pathways.
- Maintain flexibility in commercializing and maximizing the value of our development programs.** We may enter into strategic relationships with biotechnology or pharmaceutical companies to realize the full value of ETC-1002 or our other earlier-stage development programs. For ETC-1002, we may enter into one or more strategic relationships to access broader geographic markets, pursue broader LDL-C lowering indications and populations or pursue indications outside of LDL-C lowering.

**Product Pipeline**

The following table summarizes the current status of our product development pipeline:

Product Candidate	Targeted Indication	Stage of Clinical Development	Development Status
ETC-1002	LDL-C lowering in statin intolerant patients	Phase 2a	<ul style="list-style-type: none"> <li>Completed Phase 2a (ETC-1002-006) and announced top-line results on June 7, 2013</li> <li>Expect to initiate Phase 2b (ETC-1002-008) in Q4 2013</li> </ul>
	LDL-C lowering in residual risk patients	Phase 2a	<ul style="list-style-type: none"> <li>Top-line data from Phase 2a (ETC-1002-007) expected Q3 2013</li> <li>Expect to initiate Phase 2b (ETC-1002-009) in Q4 2013</li> </ul>
	LDL-C lowering in additional specific patient populations	Phase 2a	<ul style="list-style-type: none"> <li>Completed first Phase 2a (ETC-1002-005) in type 2 diabetes patient population</li> </ul>
ESP41091	Type 2 diabetes and obesity	Pre-clinical	<ul style="list-style-type: none"> <li>Pre-clinical studies ongoing</li> </ul>
4WF	Low HDL	Pre-clinical	<ul style="list-style-type: none"> <li>Pre-clinical studies ongoing</li> </ul>

**ETC-1002**

ETC-1002 is a novel, first in class, orally available, once-daily LDL-C lowering small molecule therapy with unique dual mechanisms of action that have the potential to regulate both lipid and carbohydrate metabolism. ETC-1002 is differentiated from statins because it acts at an earlier step in the cholesterol biosynthetic pathway. ETC-1002 operates through two separate mechanisms of action. ETC-1002 works by inhibiting ATP citrate lyase (ACL) and activating 5'-adenosine monophosphate-activated protein kinase (AMPK). Its regulation of ACL and AMPK is complementary, since both

enzymes are known to play significant roles in the synthesis of cholesterol and glucose in the liver. By inhibiting cholesterol synthesis in the liver, ETC-1002 causes the liver to take up LDL particles from the blood, which reduces blood LDL-C levels.

Although both ETC-1002 and statins reduce LDL-C levels to a similar extent, they do so through distinct mechanisms of action that target different enzymes that are important to the cholesterol synthesis pathway. ETC-1002 has dual mechanisms of action that activate AMPK and inhibit ACL, whereas statins have a mechanism of action that directly inhibits the rate-limiting enzyme, HMG-CoA reductase. Reductions in LDL-C levels resulting from statin therapy are ultimately due to reduced cholesterol synthesis and an increase in the number of LDL receptors in the liver. By inhibiting ACL, ETC-1002 results in LDL-C lowering comparable to statins, and we believe, may be complementary and additive for further lowering of LDL-C when used in combination with statins.

Dr. Newton and his scientific team first discovered ETC-1002 at the original Esperion, and we subsequently acquired its exclusive worldwide rights from Pfizer in 2008. Initially, we intend to seek approval of ETC-1002 as a therapy for patients with elevated levels of LDL-C who are unable to tolerate statin therapy due to muscle pain or weakness. Subsequently, we expect that we will seek approval of ETC-1002 in a broader population of patients who are unable to achieve their LDL-C goals despite being on a statin regimen and therefore remain at an increased risk for cardiovascular disease.

### ***Cardiovascular Disease and Hypercholesterolemia***

Cardiovascular disease, which results in heart attacks, strokes and other cardiovascular events, represents the number one cause of death and disability in western societies. The American Heart Association estimates that approximately 800,000 deaths in the United States were caused by cardiovascular disease in 2009.

Elevated LDL-C is well-accepted as a significant risk factor for cardiovascular disease and the CDC estimates that 71 million U.S. adults have elevated levels of LDL-C. A consequence of elevated LDL-C is atherosclerosis, which is a disease that is characterized by the deposition of excess cholesterol and other lipids in the walls of arteries as plaque. The development of atherosclerotic plaques often leads to cardiovascular disease. The risk relationship between elevated LDL-C and cardiovascular disease was first defined by the Framingham Heart Study, which commenced in 1948 to define the factors that contributed to the development of cardiovascular disease. The study enrolled participants who did not have any form of cardiovascular disease and followed them over a long period of time. Elevated LDL-C and elevated blood pressure were identified early on as key risk factors for the eventual development of cardiovascular disease.

The hypothesis that lowering elevated levels of LDL-C would translate into reduced risk of cardiovascular disease was first proven in 1984 with the publication of the Lipid Research Clinics Coronary Primary Prevention Trial. In this study, treatment with cholestyramine, a bile acid sequestrant, showed a 20% reduction in LDL-C and, importantly, a 19% reduction in risk of cardiovascular disease death or nonfatal myocardial infarction, or heart attack. This was the first major clinical study to demonstrate a direct relationship between lowering LDL-C levels and reduced risk of major cardiovascular events.

The first marketed statin, lovastatin, was approved for use in the United States in 1987 based on its ability to significantly lower elevated LDL-C levels. That same year, the National Cholesterol Education Program issued its first guidelines for the diagnosis and treatment of patients with hypercholesterolemia. Over the subsequent 20 years, seven more statins were approved for use to lower elevated LDL-C levels.

In 1994, the first clinical outcomes study with a statin was published. This study demonstrated a significant reduction in risk for total mortality and major cardiovascular events. A series of additional

clinical outcomes studies with statins have each shown that lowering elevated LDL-C translated into reduced major cardiovascular events. The relationship between the extent of LDL-C lowering and reduction in cardiovascular risk appeared to be linear, which has supported a "lower is better" hypothesis. This hypothesis was tested and proven in the PROVE-IT (Pravastatin or Atorvastatin Evaluation and Infection Therapy) study where an on-treatment LDL-C level of 62 mg/dL associated with atorvastatin treatment translated into a statistically significant 16% reduction in risk of major cardiovascular events as compared with the 95 mg/dL on-treatment LDL-C level associated with pravastatin.

The direct relationship between lower LDL-C levels and reduced risk for major cardiovascular events has been consistently demonstrated for more than a decade in 14 clinical trials involving more than 90,000 patients. As a result, physicians are highly focused on lowering LDL-C levels in their patients, and we believe there is a trend towards even more aggressive LDL-C lowering. For example, in the United States, increasing attention has been placed on aggressive LDL-C management by organizations such as the National Cholesterol Education Program, or NCEP, the American Heart Association, and the American College of Cardiology. Additionally, both the Canadian Cardiovascular Society and the Joint British Societies have supported even lower LDL-C treatment targets for high-risk patients. This has led to the combination of statins with other treatments, such as Zetia.

In July 2004, the NCEP issued an update to its Adult Treatment Panel III (ATP III) clinical practice guidelines on cholesterol management, advising physicians to consider new, more intensive treatment options for people at very high risk, high risk and moderately high risk for cardiovascular disease. The LDL-C goals in these updated clinical practice guidelines, which are presented below, contemplate initiating drug therapy at lower LDL-C thresholds, expanding the number of potential patients for LDL-C lowering therapy.

#### NCEP ATP III Clinical Practice Guidelines

<u>Patient Cardiovascular Disease Risk</u>	<u>LDL-C Goal</u>
Very High Risk	< 70 mg/dL
Cardiovascular Disease and Cardiovascular Disease Risk Equivalent	< 100 mg/dL
Multiple (2+) Risk Factors	< 130 mg/dL
0-1 Risk Factor	< 160 mg/dL

We believe LDL-C treatment targets will continue to evolve. For example, in 2011, the European Society of Cardiology and the European Atherosclerosis Society published updated guidelines for the treatment of patients with lipid disorders. In patients at the highest level of risk, the goal of therapy is less than 70 mg/dL or greater than 50% lowering of LDL-C when the goal of less than 70 mg/dL cannot be reached.

**Currently Approved Therapies**

The following table illustrates common therapies used to treat hypercholesterolemia:

Class of Therapy	Labeled Indication	Average LDL-C Change from Baseline	Key Side Effects
Statins	Reduction in LDL-C	Up to 63%	<ul style="list-style-type: none"> <li>Skeletal muscle effects (e.g., myopathy and rhabdomyolysis)</li> <li>FDA recently warned that people being treated with statins may have an increased risk of raised blood sugar levels and the development of type 2 diabetes</li> </ul>
Fixed combination therapies	Reduction in LDL-C	Up to 63%	<ul style="list-style-type: none"> <li>Includes a statin as one of the underlying therapies and therefore contains the same side effects outlined above</li> </ul>
Bile acid sequestrants	Reduction in LDL-C(1)	Up to 20%	<ul style="list-style-type: none"> <li>Gastrointestinal disorders</li> </ul>
Cholesterol absorption inhibitors	Reduction in LDL-C	Up to 18%	<ul style="list-style-type: none"> <li>Limited</li> </ul>
Niacin	Reduction in LDL-C; Reduction in recurrent myocardial infarction	Up to 17%	<ul style="list-style-type: none"> <li>Flushing (i.e., warmth or redness) hepatic toxicity and skeletal muscle effects</li> </ul>
Fibrates	Reduction in triglycerides and LDL-C	Up to 21%	<ul style="list-style-type: none"> <li>Gallstones, skeletal muscle effects and liver disorders</li> </ul>

(1) Welchol, a bile acid sequestrant, is also approved for improving glycemic control in adults with type 2 diabetes.

**Other Approved Therapies for Specific Populations**

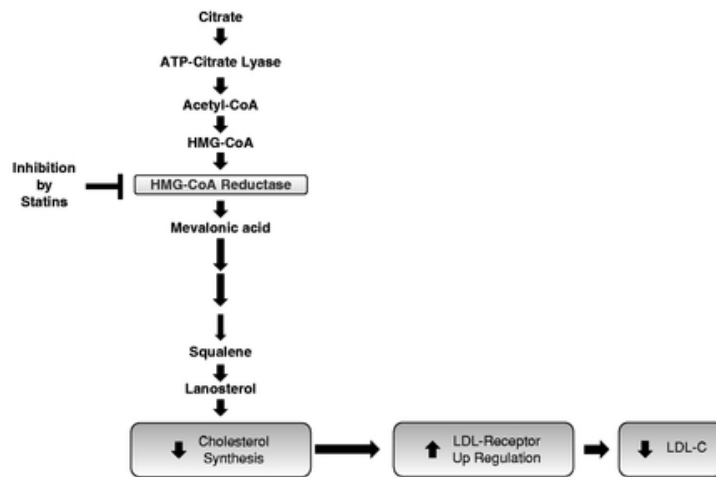
A small subpopulation of patients with extremely elevated levels of LDL-C, estimated to be approximately 300 patients in the U.S., suffer from homozygous familial hypercholesterolemia, or HoFH. HoFH is a serious and rare genetic disease and patients with HoFH lack or have dysfunctional receptors and as a result, cannot remove LDL particles and LDL-C from the blood. As a result, untreated HoFH patients typically have LDL-C levels in the range of 450 mg/dL to 1,000 mg/dL. MTP inhibitors and ApoB antisense drugs are approved therapies to treat patients with a clinical or laboratory diagnosis of HoFH. Given the serious safety concerns with these therapies, specifically hepatotoxicity, the FDA has restricted their usage to this narrow subpopulation.

**Statin Therapy**

Statins are the cornerstone of lipid treatment today and are highly effective at lowering LDL-C. This class of drugs includes atorvastatin calcium, marketed as Lipitor®, the most prescribed LDL-C drug in the world and the best-selling pharmaceutical in history. Approximately 25% of Americans over the age of 45 from 2005 to 2008 were treated for elevated LDL-C levels with a statin therapy, according to a National Health and Nutrition Examination Survey.

Statins are selective, competitive inhibitors of HMG-CoA reductase, a rate-limiting enzyme in the cholesterol biosynthesis pathway, and work primarily in liver cells. Statin inhibition of cholesterol synthesis increases the number of LDL receptors on the surface of liver cells. This increase in LDL receptors enhances uptake of LDL particles into liver cells from the circulation, thus lowering LDL-C levels.

An illustration of a statin's mechanism of action is as follows:



The benefits of statin use in lowering LDL-C levels and improving cardiovascular outcomes are well documented. Despite the effectiveness of statins and their broad market acceptance, there is a significant subset of patients who are unable to tolerate statins due to muscle pain or weakness, memory loss or increased glucose levels, or who are otherwise unable to reach their LDL-C goal on statin therapy alone. In rare but extreme cases, statins can lead to muscle breakdown, kidney failure and death. In addition, the FDA has recently warned that statins can cause hyperglycemia, an increase in blood sugar levels and create an increased risk of worsening of glycemic control and of new onset diabetes. There are approximately 37 million U.S. adults with elevated LDL-C levels who are not on an LDL-C lowering therapy. For these reasons, we believe there is a need for novel therapies to treat patients with hypercholesterolemia.

**Statin Intolerance—Initial Market Opportunity for ETC-1002**

We are initially pursuing the clinical development of ETC-1002 as a therapy for patients with hypercholesterolemia who are statin intolerant. Based upon our communications with the FDA, we define statin intolerance as the inability to tolerate at least two statins, one of which was taken at the lowest approved dose, due to skeletal muscle pain, aches, weakness or cramping, that manifested or increased during statin therapy and stopped upon the discontinuation of statin usage.

Patient adherence to statin therapy is suboptimal. Various studies estimate that more than 50% of patients stop taking statins within one year of initiating treatment. Not surprisingly, poor statin adherence is associated with worse cardiovascular outcomes. Although several reasons are cited for poor adherence, muscle pain or weakness is the most common side effect experienced by statin users and the most common cause for discontinuing therapy.

According to the USAGE survey, an approximately 10,000 patient academic study of current and former statin users published during 2012 in the Journal of Clinical Lipidology, 12% of patients on statins discontinue therapy and 62% of these patients cited side effects as the reason for discontinuation. More than 86% of patients who discontinued therapy because of side effects cited muscle pain or weakness as the reason. Based upon these data, approximately 6% of statin users, or more than 2 million adults in the United States, ceased therapy because of muscle pain or weakness and are therefore statin intolerant.

Moreover, a significant proportion of patients remain on statin therapy despite experiencing muscle-related side effects. The rate of occurrence in the clinical setting, as highlighted by the USAGE survey, is significantly higher than the up to 5% rate reported by subjects in the controlled environment of clinical trials. The USAGE survey reported that 25% of patients currently on statins have muscle-related side effects. Similarly, a study published in the Journal of General Internal Medicine in August 2008 estimated that up to 20% of statin-treated patients in clinical practice complained of muscle pain. Accordingly, we believe that in the presence of a safe and efficacious non-statin, oral, once-daily, small molecule LDL-C lowering therapy, the statin intolerant market could grow substantially.

Available data suggest there are two therapies prescribed most frequently for statin intolerant patients. Neither of these therapies is as effective at lowering LDL-C levels as statins. The following table summarizes what we believe to be the two most prescribed therapies available for statin intolerant patients in the United States along with their corresponding 2012 sales:

Approved Drug	Class of Therapy	2012 U.S. Sales			Average LDL-C Change from Baseline
		Total	Statin Intolerant Population (estimate)		
			% of Total	\$	
Zetia	Cholesterol absorption inhibitors	\$1.3 billion	50%	\$650 million	Up to 18%
Welchol	Bile acid sequestrants	\$382 million	45%	\$170 million	Up to 20%

Cholesterol absorption inhibitors and bile acid sequestrants each have a mechanism of action that is different from that of a statin, thereby providing an alternative for patients that are intolerant to statins. While these therapies generally lack the muscle pain and weakness side effect commonly associated with statins, these therapies only result in modest LDL-C reductions. We believe these modest LDL-C lowering capacities are often insufficient for most hypercholesterolemic patients to reach their LDL-C goals.

**Residual Risk Patients—Subsequent Market Opportunity for ETC-1002**

In addition to developing ETC-1002 for the treatment of statin intolerant patients, we expect to continue to develop ETC-1002 as an add-on therapy for hypercholesterolemic patients who are unable to reach their recommended LDL-C goals despite the use of statin therapy. The severity of hypercholesterolemia in these patients, their level of residual cardiovascular disease risk and their therapeutic options all vary widely.

A small portion of residual risk patients, particularly those with HoFH, have LDL-C levels in the range of 450 mg/dL to 1,000 mg/dL. At the other end of the spectrum, a small segment of residual risk patients could potentially achieve their LDL-C goal with modest changes to diet and exercise.

We believe the overwhelming majority of residual risk patients have LDL-C levels between these two extreme ranges and would benefit from additional therapeutic intervention. To avoid any increase in statin dose or, after increasing statin therapy to the patient's maximum tolerated dose, clinicians today often switch patients to fixed combination once-daily, oral small molecule therapies, such as Vytorin (ezetimibe and simvastatin), Advicor (niacin extended release and lovastatin) and Simcor (niacin simvastatin). In 2012, U.S. sales of Vytorin were \$760.0 million. A significant number of these patients also receive Zetia or Welchol in addition to their statin, to achieve their LDL-C goal. In 2012, combined U.S. sales of Zetia and Welchol were \$1.7 billion.

The CDC estimates that there are approximately 11 million residual risk patients in the United States. Using data from the Centers for Disease Control and Prevention study, "Vital Signs: Prevalence, Treatment, and Control of High Levels of Low-Density Lipoprotein Cholesterol—United States, 1999 – 2002 and 2005 – 2008," we estimate that 70% of the 11 million residual risk patients in the

United States, or 7.7 million people, are within 30% of their LDL-C goal. While there are a number of therapeutic alternatives for residual risk patients, we expect that patients, clinicians and payors will continue to first seek once-daily, oral small molecule therapies which have been the standard of the LDL-C lowering therapy market.

#### **Additional Therapies in Development—PCSK9 Inhibitors**

A number of larger biopharmaceutical companies are currently developing a new class of biologic therapies that target proprotein convertase subtilisin/kexin type 9, or PCSK9, an enzyme that binds LDL receptors. These PCSK9 inhibitors, which are still in clinical development, are injectable, fully-human antibodies that are being evaluated as potential therapies to lower LDL-C, including in patients who are statin intolerant or who have residual risk. In July 2012, Sanofi and Regeneron Pharmaceuticals, Inc. announced that they had commenced several Phase 3 clinical trials of SAR236553/REGN727, their PCSK9 inhibitor. Amgen Inc. announced that it expects to commence Phase 3 clinical trials of AMG-145, its PCSK9 inhibitor, in 2013. In monotherapy clinical trials to date, PCSK9 inhibitors have demonstrated significant reductions of LDL-C, up to 51% in monotherapy. The PCSK9 inhibitors, if approved, could be an effective therapeutic alternative for statin intolerant patients or as an add on to, statin therapy. Notwithstanding this efficacy, we believe the adoption of PCSK9 inhibitor therapy by payors, physicians, and patients will be impacted by the higher costs of biologic therapies and the inconvenience of injection therapies.



**Clinical Experience**

To date, ETC-1002 has been studied in six clinical trials across four separate patient populations: healthy volunteers; patients with elevated LDL-C levels; patients with type 2 diabetes and elevated LDL-C levels; and patients with a history of statin intolerance to two or more statins. These clinical trials consisted of three Phase 2a clinical trials and three Phase 1 clinical trials. The individual design and results of each of our completed clinical trials are discussed below.

**Completed Clinical Trials**

To date, we have completed the following clinical trials of ETC-1002:

Description	Title	Treatment Duration	Subjects	
			Total	Treated
ETC-1002-006	<b>Phase 2a Proof of Concept Clinical Trial in Patients with Hypercholesterolemia and a History of Statin Intolerance</b> Placebo-controlled, randomized, double-blind, parallel group, multicenter study to evaluate the efficacy and safety of ETC-1002 in patients with hypercholesterolemia and a history of intolerance to two or more statins	8 Weeks	56	37
ETC-1002-005	<b>Phase 2a Proof of Concept Clinical Trial in Patients with Type 2 Diabetes</b> Placebo-controlled, randomized, double-blind, parallel group, single site clinical trial to evaluate the LDL-C lowering efficacy and safety of ETC-1002 in patients with type 2 diabetes	4 Weeks	60	30
ETC-1002-004	<b>Phase 1b Multiple-Dose Tolerance Greater Than 120 mg Clinical Trial</b> Multiple ascending dose clinical trial to evaluate safety, tolerability and pharmacokinetics (PK) of ETC-1002 in doses greater than 120 mg once-daily in healthy subjects	2 Weeks	24	18
ETC-1002-003	<b>Phase 2a Proof of Concept Clinical Trial in Hypercholesterolemic Patients</b> Placebo-controlled, randomized, double-blind, parallel group, multicenter clinical trial to evaluate the LDL-C lowering efficacy and safety of ETC-1002 in patients with hypercholesterolemia and either normal or elevated triglycerides	12 Weeks	177	133
ETC-1002-002	<b>Phase 1b Multiple-Dose Tolerance Clinical Trial</b> Multiple ascending dose clinical trial to evaluate safety, tolerability, PK and pharmacodynamics (PD) of ETC-1002 in doses of up to 120 mg once-daily in healthy subjects	2 Weeks / 4 Weeks	53	39
ETC-1002-001	<b>Phase 1a Single-Dose Tolerance Clinical Trial</b> First-in-human single-dose clinical trial to evaluate safety, tolerability and PK of ETC-1002 in healthy subjects	Single Dose	18	18

Across all these completed clinical trials, ETC-1002 has been well-tolerated and not associated with serious side effects. There has been only one serious adverse event, or SAE, in subjects and patients dosed with ETC-1002, which the principal investigator for that clinical trial determined was unrelated to ETC-1002, and two SAEs were observed in patients on placebo. To date, no dose-limiting clinical toxicity has been observed in any of our completed clinical trials.

### Phase 2a Clinical Trials

#### ETC-1002-006—Phase 2a Proof of Concept Clinical Trial in Patients with Hypercholesterolemia and a History of Statin Intolerance

ETC-1002-006 was an eight week Phase 2a proof-of-concept clinical trial in 56 patients, of whom 37 were dosed with ETC-1002, across five participating clinical recruitment sites in the United States. This clinical trial was designed to evaluate the LDL-C lowering efficacy, tolerability and safety of ETC-1002 versus placebo in patients with hypercholesterolemia and a history of intolerance to two or more statins due to muscle pain or weakness. After completing a lipid-lowering therapy wash-out and two weeks of dosing with placebo, eligible patients were randomized to receive ETC-1002 or placebo in a 2:1 ratio for eight weeks. Patients were given increasing doses of ETC-1002 of 60 mg, 120 mg, 180 mg and 240 mg for two weeks each (or placebo only for the full 8 weeks). The primary endpoint of this clinical trial was LDL-C lowering from baseline to end of study. Secondary objectives included an assessment of LDL-C lowering from baseline at weeks 2, 4, 6 and 8, muscle-related adverse events, safety and tolerability, as well as ETC-1002's impact on other lipid and cardiometabolic biomarkers. While analyses of the complete efficacy and safety results from ETC-1002-006 are ongoing, the top-line results of this clinical trial are summarized as follows:

#### Phase 2a Proof of Concept Clinical Trial in Patients With Hypercholesterolemia and a History of Statin Intolerance (ETC-1002-006)

Trial Arm	Time Period	Number of Patients	Baseline LDL-C (mg/dL)	Average LDL-C Change from Baseline	p-value
Placebo	Week 2	18	184	-1.4%	—
ETC-1002 (60 mg)		34	177	-19.5%	<0.0001
Placebo	Week 4	15	184	-1.0%	—
ETC-1002 (120 mg)		30	178	-31.0%	<0.0001
Placebo	Week 6	15	184	-3.8%	—
ETC-1002 (180 mg)		31	180	-32.6%	<0.0001
Placebo	Week 8	13	180	-4.0%	—
ETC-1002 (240 mg)		26	175	-32.6%	<0.0001

- LDL-C levels after eight weeks of treatment of ETC-1002, which was the primary endpoint, were reduced by an average of 32% for patients dosed with ETC-1002, compared to an average of 3% for patients dosed with placebo (p<0.0001).
- LDL-C levels were lowered by an average of 20%, 31%, 33% and 33% by ETC-1002 versus 1%, 1%, 4% and 4% by placebo in patients completing 2, 4, 6 and 8 weeks of dosing, respectively.

- Drop-out rates and muscle related adverse events were comparable to placebo and no patients treated with ETC-1002 discontinued the trial because of muscle related adverse events.
- hsCRP, a marker of inflammation, was reduced by 42% after eight weeks of ETC-1002 therapy versus 0% on placebo (p=0.0022).
- No significant changes in HDL-C or triglyceride levels were observed.

*ETC-1002-006 Study Design.* This was a Phase 2a, multicenter, randomized, double-blind, placebo-controlled parallel group clinical trial. After completing a lipid-lowering therapy wash-out and two weeks of dosing with placebo, eligible patients were randomized to receive ETC-1002 or placebo in a 2:1 ratio for eight weeks. Patients were given increasing doses of ETC-1002 of 60 mg, 120 mg, 180 mg and 240 mg for two weeks each (or placebo only for the full 8 weeks).

*ETC-1002-006 Study Population.* 56 patients were enrolled, of whom 96% were caucasian and 50% of whom were female, and the average age of all patients was 63 years.

*ETC-1002-006 Safety and Tolerability Profile.* ETC-1002 was safe and well tolerated and not associated with any dose limiting side effects. Overall, adverse event rates were slightly lower in ETC-1002 versus placebo (70% versus 79%). Muscle related adverse event rates were slightly lower in ETC-1002 versus placebo (27% versus 32%). Discontinuation rates were slightly lower in ETC-1002 versus placebo (14% versus 16%). No patients dosed with ETC-1002 discontinued the trial because of a muscle-related side effect compared to three patients dosed with placebo. One SAE of thyroid cancer was observed in a patient with a thyroid cyst history who was dosed with ETC-1002 for 15 days. This was assessed by the investigator and determined to be unrelated to ETC-1002. One ETC-1002 patient with a history of gout since 2006 and elevated uric acid at baseline developed a gout flare on Day 36 for three days which resolved with an increase in colchicine medication, a standard medical response to gout flares. Uric acid increased slightly from 12.7 mg/dL at baseline to 13.1 mg/dL at week 7, was assessed by the investigator as moderate in intensity and not related to ETC-1002, and the patient completed the study. No patient dosed with ETC-1002 experienced substantial elevations (repeated and confirmed) in liver function tests greater than three times the upper level of normal. No patient dosed with ETC-1002 experienced substantial elevations (repeated and confirmed) of creatine kinase greater than five times the upper limit of normal. One patient dosed with placebo had a single elevation of creatine kinase greater than five times the upper limit of normal after vigorous exercise. As with prior clinical studies of ETC-1002, notable changes in group safety lab parameters were not observed with the exception of modest average increases in uric acid and homocysteine and a modest average decrease in alkaline phosphatase. Also consistent with prior clinical studies of ETC-1002, modest reductions in hemoglobin were observed, which were greater in the ETC-1002 group. There were no discontinuations due to changes in uric acid, homocysteine, hemoglobin or alkaline phosphatase.

ETC-1002-005 was a four week Phase 2a proof-of-concept clinical trial at a single site. This clinical trial was designed to evaluate the LDL-C lowering efficacy and safety of ETC-1002 in patients with type 2 diabetes. One treatment arm was placebo and the other was 80 mg of ETC-1002, once-daily for two weeks, followed by 120 mg of ETC-1002, once-daily for two additional weeks. The key results of this clinical trial are summarized as follows:

**Phase 2a Proof of Concept Clinical Trial in Type 2 Diabetic Patients (ETC-1002-005)**

<b>Trial Arm</b>	<b>Time Period</b>	<b>Number of Patients</b>	<b>Baseline LDL-C (mg/dL)</b>	<b>Average LDL-C Change from Baseline</b>	<b>p-value</b>
Placebo	Days	30	128	-6%	—
ETC-1002 (80 mg)	1 to 14	29	125	-32%	<0.0001
Placebo	Days	30	128	-4%	—
ETC-1002 (120 mg)	15 to 28	29	125	-43%	<0.0001

- LDL-C levels after four weeks of treatment of ETC-1002, which is the primary endpoint, were reduced by an average of 43% for patients on the 120 mg dose of ETC-1002 compared to an average of 4% for patients dosed with placebo (p<0.0001).
- Approximately 80% of the patients were not at their NCEP ATP III LDL-C goal of less than 100 mg/dL at the beginning of the study. Of these, 88% of the patients dosed with ETC-1002 achieved their goal by study end as compared to 4% of patients dosed with placebo (p<0.0001).
- hsCRP was reduced by 41% on the 120 mg dose of ETC-1002 versus 11% on placebo (p=0.001).
- HDL-C and triglyceride levels were unchanged in both treatment arms.
- Intensive assessment of glycemic parameters using blood sampling and 24 hour continuous glucose monitoring showed no worsening of blood glucose with ETC-1002 treatment. Treatment with ETC-1002 resulted in modest trends toward improved glycemic control and insulin resistance.
- Non-HDL-C decreased by 32% for patients dosed with ETC-1002 as compared to an increase of 1% for patients dosed with placebo (p<0.0001).
- Intensive assessment of blood pressure using 24 hour Ambulatory Blood Pressure Monitoring, or ABPM, showed no increase in blood pressure with ETC-1002 treatment. Most patients had well-controlled blood pressure at the beginning of the study. Nine patients had mildly elevated diastolic ABPM (greater than 80 mmHg) at the beginning of the study. A post hoc analysis of ABPM in the ETC-1002 arm revealed a lowering of diastolic blood pressure of 7.8 mmHg compared to 0.4 mmHg with placebo (p=0.047).

*ETC-1002-005 Study Design.* This Phase 2, randomized, double-blind, placebo-controlled, parallel group clinical trial was conducted at a single site. Patient screening occurred at least 38 days prior to randomization and included a 28 day washout of all glucose- and lipid-regulating drugs and supplements. Sixty eligible patients were randomized to receive with equal probability either ETC-1002 80 mg or placebo once-daily (1:1) for 14 days. Those patients randomized to ETC-1002 were then

titrated up to 120 mg once-daily and those patients randomized to placebo continued on placebo through the end of the clinical trial. Patients were confined to the clinical site from the morning of Day (-7) to the morning of Day (29) in order to stabilize diet and lifestyle, monitor safety continuously and complete key efficacy assessments.

*ETC-1002-005 Study Population.* Sixty patients, 98% of whom were Hispanic or Latino, 62% of whom were male, and the average age of all patients was 56 years.

*ETC-1002-005 Safety and Tolerability Profile.* No SAEs were observed in patients dosed with ETC-1002. ETC-1002 was safe, well-tolerated and associated with no dose-limiting side-effects. All subjects completed the study except for one patient treated with placebo who withdrew due to an SAE of heart attack. One patient dosed with placebo had an SAE of kidney stones but completed the clinical trial. Headache was reported by six patients dosed with ETC-1002 as compared to three patients dosed with placebo. No patient dosed with ETC-1002 reported myalgia. No patient dosed with ETC-1002 experienced substantial elevations (repeated and confirmed) in liver function tests greater than three times the upper level of normal. No patient dosed with ETC-1002 experienced substantial elevations (repeated and confirmed) of creatine kinase greater than five times the upper limit of normal. Notable changes in group safety lab parameters were not observed with the exception of modest average increases in uric acid and homocysteine and a modest average decrease in alkaline phosphatase. Reductions in hemoglobin were seen in both the ETC-1002 and placebo arms, with a slightly greater effect in ETC-1002 patients. The clinical relevance of these changes are unclear at this time.

#### **ETC-1002-003—Phase 2a Proof of Concept Clinical Trial in Hypercholesterolemic Patients**

ETC-1002-003 was a 12-week Phase 2a proof-of-concept study in 177 patients, of whom 133 were dosed with ETC-1002, across 11 participating clinical recruitment sites in the United States. This clinical trial was designed to evaluate the LDL-C lowering efficacy and safety of ETC-1002 versus placebo in patients with hypercholesterolemia (LDL-C of 130 to 220 mg/dL) and either normal (less than 150 mg/dL) or elevated triglycerides (150 to 400 mg/dL). The four arms were placebo and 40 mg, 80 mg and 120 mg doses of ETC-1002 once-daily. The key results of this clinical trial are summarized as follows:

#### **12-Week Phase 2a Proof of Concept Clinical Trial in Hypercholesterolemic Patients (ETC-1002-003)**

<b>Trial Arm</b>	<b>Number of Patients</b>	<b>Baseline LDL-C (mg/dL)</b>	<b>Average LDL-C Change from Baseline</b>	<b>p-value</b>
Placebo	42	168	-2%	—
ETC-1002 (40 mg)	42	163	-18%	<0.0001
ETC-1002 (80 mg)	44	170	-25%	<0.0001
ETC-1002 (120 mg)	42	165	-27%	<0.0001

- LDL-C levels were reduced by an average of 18%, 25% and 27% for patients dosed with ETC-1002 40, 80 and 120 mg of ETC-1002, respectively, compared to an average of 2% for patients dosed with placebo (p<0.0001). ETC-1002's lowering of LDL-C levels was maintained across a range of baseline triglycerides levels.

- ETC-1002 also lowered corresponding levels of the atherogenic biomarkers, apolipoprotein (apo) B, non-HDL-C and LDL particle number ( $p < 0.0001$ ) in a dose-dependent manner.
- Patients dosed with ETC-1002 demonstrated a trend in hsCRP reduction of 20% to 26% compared to 2% in patients dosed with placebo. In a subgroup of patients with elevated hsCRP, patients dosed with ETC-1002 demonstrated a trend in hsCRP reduction of 43% to 64% compared to a decrease of 7% for patients dosed with placebo.
- HDL-C and triglyceride levels were unchanged across all treatment arms.
- Post hoc analyses suggest that ETC-1002 may have favorable effects on other cardiometabolic risk factors, including blood pressure and insulin resistance.

*ETC-1002-003 Study Design.* This was a Phase 2a, multicenter, randomized, double-blind, placebo-controlled, parallel group clinical trial. Patient screening included a six week washout of all lipid-regulating therapies. Patients were stratified into a normal (less than 150 mg/dL) or elevated (150 to 400 mg/dL) triglyceride stratum and randomized in a 1:1:1:1 ratio to placebo or 40 mg, 80 mg or 120 mg of ETC-1002.

*ETC-1002-003 Study Population.* 177 patients were enrolled. 86% of patients were caucasian and 55% were male and the average age of all patients was 57 years.

*ETC-1002-003 Safety and Tolerability Profile.* There were no SAEs observed in patients dosed with ETC-1002. ETC-1002 was safe, well-tolerated and associated with no dose-limiting side-effects. 15% of patients withdrew from the clinical trial for various reasons, the most common being side effects. The number of patients that withdrew from each active treatment arm was comparable to the placebo arm. Myalgia was reported by two patients dosed with ETC-1002 at 40 mg; two patients dosed with ETC-1002 at 80 mg; three patients dosed with ETC-1002 at 120 mg; and in no patients dosed with placebo. Further investigation of the seven ETC-1002 patients reporting myalgia showed that a single patient receiving an 80 mg dose of ETC-1002 withdrew from the clinical trial due to this adverse event while all other patients completed the full 12 weeks of treatment. None of the individuals reporting myalgia experienced concurrent creatine kinase elevations more than two times the upper limit of normal. A single ETC-1002 patient experienced a substantial elevation (repeated and confirmed) in liver function tests more than three times the upper limit of normal. This lab abnormality of greater than four times the upper limit of normal was assessed by the investigator as not related to treatment as it coincided with a confirmed acute cytomegalovirus infection. No patient experienced (repeated and confirmed) creatine kinase greater than five times times the upper limit of normal. Notable changes in group safety lab parameters were not observed with the exception of modest average increases in uric acid and homocysteine and modest average decreases in alkaline phosphatase and hemoglobin, the clinical relevance of which is unclear at this time.

### **Phase 1 Clinical Trials**

Our completed Phase 1 clinical trials of ETC-1002 exposed subjects in one single dose tolerance test and two multiple dose tolerance tests. Our single dose tolerance test dosed subjects with up to 250 mg of ETC-1002. Our multiple dose tolerance tests dosed subjects with up to 120 mg and 220 mg of ETC-1002, respectively. We did not identify any dose-limiting side effects in either the single dose tolerance test or the multiple dose tolerance tests, and ETC-1002 was safe and well-tolerated in each clinical trial. In addition, LDL-C was lowered rapidly in the multiple dose tolerance tests, including in as early as five days, and we observed an average reduction in LDL-C levels of up to 36%.

### ETC-1002-004—Phase 1b Multiple Dose Tolerance Greater Than 120 mg Clinical Trial

ETC-1002-004 was a two-week, Phase 1b, multiple dose tolerance clinical trial in 24 subjects, of whom 18 were dosed with ETC-1002. This clinical trial was designed to evaluate the safety and tolerability of escalating, multiple oral doses of ETC-1002 above 120 mg/day. Subjects in this clinical trial received 140, 180, or 220 mg of ETC-1002 or placebo once-daily for 14 days. The key pharmacodynamic results of this clinical trial are as follows:

#### 14-Day Phase 1b Multiple-Dose Tolerance Greater Than 120mg (ETC-1002-004)

Trial Arm	Number of Subjects	Baseline LDL-C (mg/dL)	Average LDL-C Change from Baseline	p-value
Placebo	6	121	+4%	—
ETC-1002 (140 mg)	6	113	-21%	0.0012
ETC-1002 (180 mg)	6	100	-27%	0.0001
ETC-1002 (220 mg)	6	105	-36%	<0.0001

- LDL-C levels were reduced by an average of 36% for subjects dosed with 220 mg/day of ETC-1002 as compared to a 4% increase for subjects dosed with placebo (p<0.0001). ETC-1002's effect on LDL-C lowering was robust notwithstanding non-elevated baseline LDL-C levels.
- The pharmacokinetics of ETC-1002 were well-characterized and supported once-daily dosing.

*ETC-1002-004 Study Design.* This was a Phase 1 single site, randomized, double-blind (sponsor-open), placebo-controlled, ascending, multiple dose clinical trial designed with three ascending cohorts, each with eight healthy subjects. ETC-1002 was dosed once-daily for 14 days and subjects were housed at the clinical site for the duration of their treatment. Each dose group comprised of six subjects who received ETC-1002 and two subjects who received placebo.

*ETC-1002-004 Study Population.* Subjects in the clinical trial were healthy volunteers. 91.7% of the subjects were male and 83.3% were caucasian and the average age of all subjects was 35.8 years.

*ETC-1002-004 Safety and Tolerability Profile.* No SAEs were observed in the subjects dosed with ETC-1002. ETC-1002 was safe, well-tolerated and associated with no dose-limiting side-effects. Twenty-four subjects were enrolled and completed treatment in this clinical trial. No ETC-1002 subject reported myalgia or experienced substantial elevations (repeated and confirmed) in liver function tests greater than three times the upper limit of normal. No ETC-1002 subject experienced creatine kinase greater than five times the upper limit of normal. Notable changes in group safety lab parameters were not observed with the exception of a modest average increase in homocysteine, the clinical relevance of which is unclear at this time.

### ETC-1002-002—Phase 1b Multiple-Dose Tolerance Clinical Trial

ETC-1002-002 was a staged two-week and four-week Phase 1b multiple dose tolerance clinical trial in 53 subjects with 39 receiving ETC-1002 and 23 receiving placebo. The subjects were divided into four different cohorts of six subjects with each receiving 20, 60, 100 or 120 mg of ETC-1002 or placebo once-daily for 14 days. This was followed by a larger cohort that was treated for 28 days during which subjects lived outside of the clinical site for the duration of their treatment. This clinical trial

demonstrated that the pharmacokinetics of ETC-1002 were well characterized and supported once-daily dosing.

The key pharmacodynamic results of this clinical trial are summarized as follows:

**Phase 1 Multiple-Dose Tolerance Clinical Trial (ETC-1002-002)**

Trial Arm	Treatment Duration	Number of Subjects	Baseline LDL-C (mg/dL)	Average LDL-C Change from Baseline	p-value
Placebo	2 Weeks	8	114	+11%	—
ETC-1002 (20 mg)		6	124	+4%	0.2975
ETC-1002 (60 mg)		6	138	-11%	0.0035
ETC-1002 (100 mg)		6	135	-17%	0.0003
ETC-1002 (120 mg)		6	127	-15%	0.0004
Placebo	4 Weeks	6	146	-1%	—
ETC-1002 (120 mg)		15	122	-16%	0.0317

*ETC-1002-002 Study Design.* This was a single-center, randomized, double-blind (sponsor-open), placebo-controlled, ascending, multiple dose clinical trial that was conducted in 32 subjects (Cohorts 1 through 4) and in 21 subjects (Cohort 5) with mildly elevated LDL-C. Subjects in the first four cohorts were housed at the clinical site for the duration of their 14-day treatment whereas subjects in Cohort 5 were housed at the clinical site beginning two days prior to, and through two hours after, their first treatment and then again for the 24-hour period at the end of their 28-day treatment period.

*ETC-1002-002 Study Population.* Subjects in the clinical trial had baseline LDL-C levels greater than 100 mg/dL. Fifty-two of the fifty-three subjects who enrolled in this clinical trial completed treatment. One subject in Cohort 5 withdrew due to personal reasons. 90.6% of subjects enrolled into this clinical trial were male, 86.8% were caucasian and the average age of all subjects was 39 years.

*ETC-1002-002 Safety and Tolerability Profile.* No SAEs were observed in the subjects dosed with ETC-1002. ETC-1002 was safe, well-tolerated and associated with no dose-limiting side-effects. No ETC-1002 subject reported myalgia or experienced substantial elevations (repeated and confirmed) in liver function tests greater than three times the upper limit of normal. No ETC-1002 subject experienced creatine kinase greater than five times the upper limit of normal. Notable changes in group safety lab parameters were not observed.

**Overall Safety Observations**

To date, 275 patients have been treated with ETC-1002 for periods of up to 12 weeks at maximum repeated doses of 240 mg per day. ETC-1002 has been safe and well-tolerated with no dose-limiting side effects identified to date in our ongoing or completed clinical trials. No clinical safety trends have emerged to date although very modest shifts in group mean levels of hemoglobin, uric acid, alkaline phosphatase and homocysteine were identified in some of our completed clinical trials. The clinical relevance of these shifts are not readily apparent and will be monitored in our future clinical trials.



## **Ongoing and Planned Clinical Trials**

### ***Statin Intolerant Population (ETC-1002-008)***

#### *ETC-1002-008*

We expect ETC-1002-008 will be a 12-week study for the treatment of elevated LDL-C levels in patients who are statin intolerant. The purpose of this clinical trial will be to inform dosing for our pivotal Phase 3 clinical trial in a population of statin intolerant patients with hypercholesterolemia. We currently expect that ETC-1002-008 will utilize two or three doses of ETC-1002 in a parallel group design up to 12 weeks in duration, with Zetia, a common treatment for statin intolerance, as a comparator. The goal will be to demonstrate comparable tolerability with superior efficacy to Zetia for the treatment of patients with elevated LDL-C levels and intolerance to two or more statins due to muscle-related adverse events. We expect to initiate ETC-1002-008 in the fourth quarter of 2013.

### ***Residual Risk Population (ETC-1002-007 and ETC-1002-009)***

The objective of this statin add-on clinical program will be to provide two clinical trials to support Phase 3 dosing of the compound in residual risk patients. A Phase 3 clinical trial in this patient population is not currently planned and will likely commence as a supplemental indication if results from Phase 3 clinical trials for the statin intolerant indication support the filing of an NDA for that indication.

#### *ETC-1002-007*

This ongoing clinical trial is designed to test for pharmacokinetic interaction between ETC-1002 and the 10 mg dose of atorvastatin calcium. This clinical trial targeted enrollment of 52 patients. Individuals were placed on atorvastatin calcium (10 mg) for four weeks to achieve steady state levels. Patients were then randomized in a 3:1 ratio of active ETC-1002 treatment to placebo for eight weeks. During this clinical trial, patients will be dosed up to eight weeks in a forced titration schema of 60 mg, 120 mg, 180 mg and 240 mg doses for two weeks each. We will assess patients for blood levels of atorvastatin and ETC-1002, safety, tolerability and LDL-C lowering.

#### *ETC-1002-009*

We expect ETC-1002-009 will be a 12-week study for the treatment of patients on statin therapy who are at a residual risk for cardiovascular disease because of elevated LDL-C levels. Many hypercholesterolemic on statin therapy patients do not achieve NCEP ATP-III LDL-C cholesterol goals. In addition, many statin-treated patients are not able to achieve high enough doses due to side effects. We are designing ETC-1002-009 to establish a dose range for ETC-1002 in an additive manner to patients on current statin therapy. The goal will be to demonstrate that ETC-1002, when added onto statin therapy, will improve LDL-C goal achievement. We expect to initiate ETC-1002-009 in the fourth quarter of 2013.

### ***Additional Regulatory Studies***

#### *Phase 3 Clinical Trials*

If we successfully complete the Phase 2b clinical trials of ETC-1002 for which we intend to commence enrollment during 2013, we will use the results of these clinical trials to inform dosing for our pivotal Phase 3 clinical trials. We will conduct these pivotal Phase 3 clinical trials in larger patient populations to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical trial sites. Any such Phase 3 clinical trials and the additionally required long-term safety study, would be intended to establish the overall risk/benefit ratio of ETC-1002 and to provide an adequate basis for regulatory approval of ETC-1002.

*Cardiovascular Outcomes Study*

We believe it is well-accepted that every 1.6 mg/dL lowering of LDL-C through the cholesterol synthesis pathway results in a 1% lowering of cardiovascular disease risk. To date, the FDA has not required any approved therapy targeting LDL-C lowering, including non-statin therapies, to initiate or complete a cardiovascular outcomes study in connection with its approval. ETC-1002 inhibits cholesterol synthesis and lowers LDL-C through liver-specific inhibition of ACL at an earlier step in the cholesterol biosynthesis pathway that is upstream from HMG Co-A reductase, the target for statins. Because of this mechanism of action to lower LDL-C in the cholesterol synthesis pathway, we believe it is unlikely that the FDA will require us to initiate or complete a cardiovascular outcomes study as a condition to our initially seeking approval of ETC-1002 as a therapy to lower LDL-C in the narrow indication of patients who suffer from hypercholesterolemia and are unable to tolerate statin therapy. Notwithstanding our current expectations, the FDA could require us to initiate or complete a cardiovascular outcomes study as a condition to filing or approving an NDA for ETC-1002 or as a post-approval requirement. Any such study, if required, would be costly and time-consuming and, regardless of the outcome, would involve substantial costs and adversely affect our development timeline.

*Studies in Response to Partial Clinical Holds*

In 2009, the FDA determined that ETC-1002 was a potential peroxisome proliferator activated receptor, or PPAR, agonist and as a result was subject to a partial clinical hold. The FDA has issued such notices to all sponsors of PPARs or agents deemed to have PPAR-like properties. The partial clinical hold permits clinical trials of up to six months' duration for ETC-1002 and also requires us to conduct two year rat and mouse carcinogenicity studies before initiating Phase 3 clinical trials of longer than six months. Our two year rat and mouse carcinogenicity studies are scheduled for completion by April and May 2014 and draft reports will be issued six months later.

The clinical data to date appear to demonstrate the absence of PPAR mediated pharmacology (triglyceride decreases, adiponectin increases, mild ALT increases) or toxicity (weight gain, edema, creatinine kinase/creatinine increases) in humans. This is supportive of the conclusion that the weak PPAR alpha/gamma activities observed in animal models preclinically are not observed with therapeutic doses of ETC-1002 in humans. These effects will continue to be monitored in our future clinical program. Most importantly, our clinical studies have demonstrated rapid and significant LDL-C lowering consistent with the dual mechanisms of action inhibiting ATP-citrate lyase and activating hepatic AMPK.

In addition, based upon early preclinical toxicology results, the FDA has limited our ability to dose ETC-1002 above 240 mg in our clinical trials. Currently, we do not expect to dose ETC-1002 above 240 mg.

If we are unable to address FDA's concerns related to the partial clinical hold, we could be delayed in, or prevented from, obtaining marketing approval of ETC-1002. Additionally, FDA could raise these concerns as part of the NDA review process for ETC-1002, which could result in adverse limitations in any approved labeling or on distribution and use of ETC-1002, if approved.

***Pharmacology and Toxicology Studies***

Our pre-clinical studies of ETC-1002 have demonstrated favorable effects on plasma LDL-C and triglycerides, blood pressure, blood glucose and insulin levels, inflammation and weight gain in diet-induced and genetic pre-clinical models of dyslipidemia, diabetes, and obesity. In a progression model of atherosclerosis using a LDL-receptor deficient mouse model, ETC-1002 demonstrated reductions in atherosclerotic plaque content and size with beneficial changes in inflammatory markers.

***Mechanism of Action***

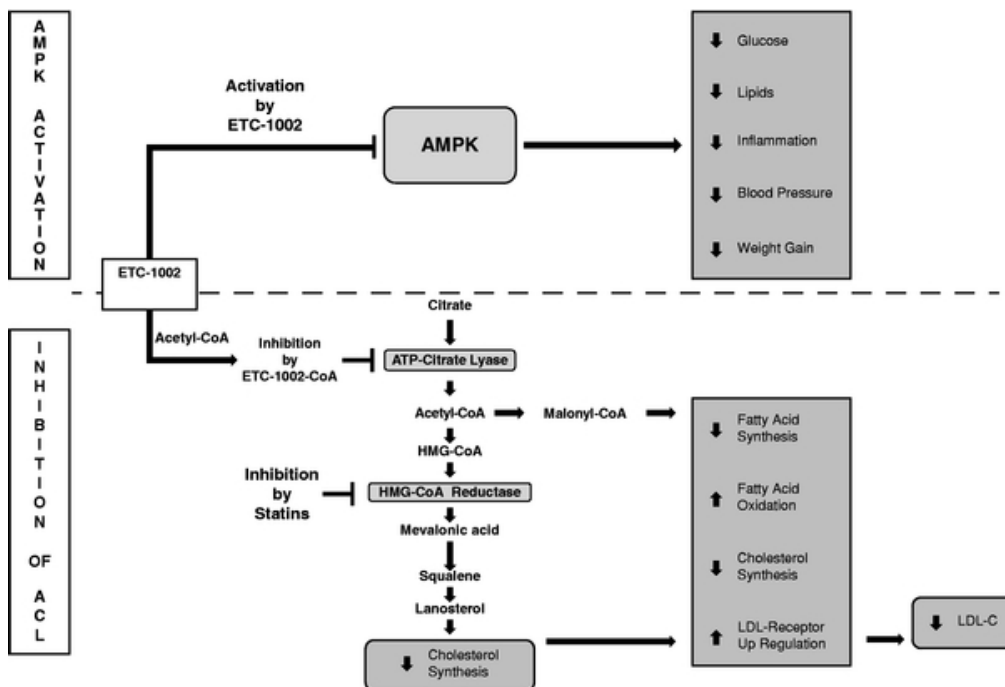
ETC-1002 is dosed orally, absorbed rapidly in the small intestine and enters the liver through cell surface receptors different from those transporters that selectively take up statins. In a small portion of

the population that has genetically impaired organic anion transporters, statins are unable to enter the liver and as a result accumulate in the blood, ultimately concentrating in the muscles. These deposits lead to muscle pain and weakness. In addition, some patients without impaired organic anion transporters still experience muscle pain and weakness due to increased levels of statin in the blood on higher doses of statins. Importantly, impaired organic anion transporters do not lead to increased levels of ETC-1002 circulating in the blood or the muscle pain or weakness associated with statins.

Once in the liver, ETC-1002 inhibits ACL and activates AMPK. Pre-clinical studies show that in the liver, ETC-1002 is converted to a derivative coenzyme, or ETC-1002-CoA, which directly inhibits ACL, a key enzyme that supplies substrate for cholesterol and fatty acid synthesis, as well as glucose production in the liver.

ETC-1002's activation of AMPK complements the effects of its ACL inhibition in the liver and contributes to the beneficial effects on other cardiometabolic risk factors including hsCRP, insulin sensitization, blood pressure and weight. While the relative contributions of ACL inhibition and AMPK activation are not yet known, this mechanism is supported by preclinical and clinical observations that have been published in peer reviewed publications and presented at scientific conferences. We are not aware of any alternative explanations regarding ETC-1002's dual mechanism of action or the preliminarily accepted conclusion in the scientific community that inhibiting ACL and activating AMPK have the potential to regulate metabolic imbalances in both the lipid and carbohydrate metabolic pathways, which do not function normally in specific patient populations with specific cardiometabolic risk factors. An illustration of ETC-1002's mechanism of action and therapeutic effects on cardiometabolic risk factors is as follows:

### ACL-Dependent Inhibition of Hepatic Cholesterol Synthesis (a statin-like mechanism) and AMPK Activation



## Early-Stage Product Candidates

### *ESP41091*

We acquired the exclusive worldwide rights to ESP40191 from Pfizer in April 2008. ESP41091, our second product candidate, is a pre-IND compound that we are exploring as a therapy for type 2 diabetes and obesity. In pre-clinical pharmacology studies, oral intervention with ESP41091 resolved hyperglycemia and reduced body weight following a four week treatment in a diet-induced obese mouse model of insulin resistance. Treatment with ESP41091 also resulted in beneficial effects on lipid metabolism and body weight in obese Zucker rats.

### *4WF*

Our management team has prior success in the identification and clinical development of synthetic HDL therapies. At the original Esperion, we licensed apoA-I Milano, a synthetic HDL therapy, and successfully completed a Phase 2a clinical trial showing regression of atherosclerosis in high-risk acute coronary syndrome patients after four weeks of therapy. In June 2011, we acquired the exclusive worldwide rights to 4WF from the Cleveland Clinic Foundation. 4WF is a next generation synthetic HDL therapy designed to preserve the function of HDL and its primary apolipoprotein, apoA-I, and to deliver oxidation-resistant synthetic HDL therapy via an injection as opposed to intravenous infusion. Moreover, recent research demonstrates that HDL becomes dysfunctional and loses its cholesterol acceptor and anti-inflammatory activity through myeloperoxidase mediated enzymatic oxidation. We believe the preferred means to improve HDL function is to increase the number and activity of HDL particles in the body through HDL therapy. We believe our initial in vitro protein screening and characterization suggest the benefits of 4WF as an optimized myeloperoxidase oxidation-resistant apoA-I mimetic.

## Sales and Marketing

Given our stage of development, we have not yet established a commercial organization or distribution capabilities, nor have we entered into any partnership or co-promotion arrangements with an established pharmaceutical company. To develop the appropriate commercial infrastructure to launch ETC-1002 in the United States, if approved, as a treatment for elevated levels of LDL-C in statin intolerant patients, we would need to invest significant financial and managerial resources. We may engage in partnering discussions with third parties from time to time. If we elect to seek approval and launch commercial sales of ETC-1002 outside of the United States or for broader patient populations in the United States, including residual risk patients who are unable to reach their LDL-C goal with a statin therapy, we may either do so on our own or by establishing alliances with one or more pharmaceutical company collaborators, depending on, among other things, the applicable indications, the related development costs and our available resources.

## Manufacturing and Supply

ETC-1002 is a small molecule drug that is synthesized with readily available raw materials using conventional chemical processes. We currently have no manufacturing facilities and limited personnel with manufacturing experience. We rely on contract manufacturers to produce both drug substances and drug products required for our clinical trials. All lots of drug substance and drug product used in clinical trials are manufactured under current good manufacturing practices. We plan to continue to rely upon contract manufacturers and, potentially, collaboration partners to manufacture commercial quantities of ETC-1002, if approved.

## Licenses

In April 2008, we entered into a license agreement with Pfizer pursuant to which we obtained a worldwide, exclusive, fully paid-up license from Pfizer to certain patent rights owned or controlled by Pfizer relating to ETC-1002, and we granted Pfizer a worldwide, exclusive, fully paid-up license to

certain patent rights owned or controlled by us relating to development programs other than ETC-1002. The license to us covers the development, manufacture and commercialization of ETC-1002. We may grant sublicenses under the license. Under the license agreement, Pfizer is restricted from making, using, developing or testing any of the compounds claimed under the same patents that claim or cover the composition of matter of ETC-1002. Neither party is entitled to any royalties, milestones or any similar development or commercialization payments under the license agreement, and the licenses granted are irrevocable and may not be terminated for any cause, including intentional breaches or breaches caused by gross negligence.

## **Intellectual Property**

We strive to protect and enhance the proprietary technologies that we believe are important to our business, including seeking and maintaining patents intended to cover our products and compositions, their methods of use and any other inventions that are important to the development of our business. We also rely on trade secrets to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection.

Our success will depend significantly on our ability to obtain and maintain patent and other proprietary protection for commercially important technology, inventions and know-how related to our business, defend and enforce our patents, preserve the confidentiality of our trade secrets and operate without infringing the valid and enforceable patents and proprietary rights of third parties. We also rely on know-how, continuing technological innovation and in-licensing opportunities to develop, strengthen and maintain the proprietary position of ETC-1002 and our other development programs.

As of May 31, 2013, our patent estate, including patents we own or license from third parties, on a worldwide basis, included approximately 15 issued United States patents and 6 pending United States patent applications and 6 issued patents and 25 pending patent applications in other foreign jurisdictions. Of our worldwide patents and pending applications, only a subset relates to our small molecule program which includes our lead product candidate, ETC-1002. ETC-1002 is claimed in U.S. Patent No. 7,335,799 that is scheduled to expire in December 2025, which includes 711 days of patent term adjustment, and may be eligible for a patent term extension period of up to 5 years. At least one pending United States patent application claims a method of treatment using ETC-1002. There are currently three issued patents and four pending applications in countries outside the United States that relate to ETC-1002.

A second subset of this portfolio relates to our early-stage product candidate ESP41091. ESP41091 is claimed in U.S. Patent Nos. 7,119,221 and 7,405,226. Various methods of treatment using ESP41091 are claimed in U.S. Patent Nos. 8,153,690 and 8,309,604 and in at least one other pending application in the United States. There are currently two issued patents and four pending applications in countries outside the United States that relate to ESP41091.

Our 4WF patent portfolio currently consists of 19 issued patents and pending patent applications in the United States and other foreign jurisdictions regarding apolipoprotein mixtures, dimeric oxidation-resistant apolipoprotein variants and oxidant resistant apolipoprotein A1 variants and mimetic peptides thereof.

We hold an exclusive, worldwide, fully paid-up license from Pfizer to some of these patents and patent applications. This license is described above.

In addition, only a subset of our worldwide patents and pending patent applications relates to our third drug candidate Apolipoprotein A1-4WF. Apolipoprotein A1-4WF is claimed in United States Patent No. 8,143,224B2. United States Patent No. 8,143,224 is set to expire on July 12, 2030. In addition, various methods of treatment using Apolipoprotein A1-4WF are claimed in United States Patent Application Publication No. 2012/0264677. There are approximately 15 pending patent applications in countries outside the United States that relate to Apolipoprotein A1-4WF and its use in various methods of treatment.

The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the date of filing the non-provisional application. In the United States, a patent's term may be lengthened by patent term adjustment, which compensates a patentee for administrative delays by the U.S. Patent and Trademark Office in granting a patent, or may be shortened if a patent is terminally disclaimed over an earlier-filed patent. In addition, in certain instances, a patent term can be extended to recapture a portion of the term effectively lost as a result of the FDA regulatory review period. However, the restoration period cannot be longer than five years and the total patent term including the restoration period must not exceed 14 years following FDA approval. The duration of foreign patents varies in accordance with provisions of applicable local law, but typically is also twenty years from the earliest effective filing date. Our issued patents will expire on dates ranging from 2021 to 2030. However, the actual protection afforded by a patent varies on a claim by claim basis for each applicable product, from country to country and depends upon many factors, including the type of patent, the scope of its coverage, the availability of regulatory related extensions, the availability of legal remedies in a particular country and the validity and enforceability of the patent.

Furthermore, the patent positions of biotechnology and pharmaceutical products and processes like those we intend to develop and commercialize are generally uncertain and involve complex legal and factual questions. No consistent policy regarding the breadth of claims allowed in such patents has emerged to date in the U.S. The patent situation outside the U.S. is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the U.S. and other countries can diminish our ability to protect our inventions, and enforce our intellectual property rights and more generally, could affect the value of intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents.

The biotechnology and pharmaceutical industries are characterized by extensive litigation regarding patents and other intellectual property rights. Our ability to maintain and solidify our proprietary position for our drugs and technology will depend on our success in obtaining effective claims and enforcing those claims once granted. We do not know whether any of the patent applications that we may file or license from third parties will result in the issuance of any patents. The issued patents that we own or may receive in the future, may be challenged, invalidated or circumvented, and the rights granted under any issued patents may not provide us with proprietary protection or competitive advantages against competitors with similar technology. Furthermore, our competitors may be able to independently develop and commercialize similar drugs or duplicate our technology, business model or strategy without infringing our patents. Because of the extensive time required for clinical development and regulatory review of a drug we may develop, it is possible that, before any of our drugs can be commercialized, any related patent may expire or remain in force for only a short period following commercialization, thereby reducing any advantage of any such patent.

As a result of the America Invents Act of 2011, the United States transitioned to a first-inventor-to-file system in March 2013, under which, assuming the other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent. This will require us to minimize the time from invention to the filing of a patent application.

We may rely, in some circumstances, on trade secrets and unpatented know-how to protect our technology. However, trade secrets can be difficult to protect. We seek to protect our proprietary technology and processes, in part, by entering into confidentiality agreements with our consultants, scientific advisors and contractors and invention assignment agreements with our employees. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached and we may not have adequate remedies for any breach. In addition, our trade secrets may otherwise become known or be independently discovered by competitors. To the extent that our consultants, contractors or collaborators use intellectual property owned by others in

their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. For more information, please see "Risk Factors—Risks Related to our Intellectual Property."

Our commercial success will also depend in part on not infringing the proprietary rights of third parties. It is uncertain whether the issuance of any third-party patent would require us to alter our development or commercial strategies, or our drugs or processes, obtain licenses or cease certain activities. Our breach of any license agreements or failure to obtain a license to proprietary rights that we may require to develop or commercialize our future drugs may have a material adverse impact on us. If third parties prepare and file patent applications in the U.S. that also claim technology to which we have rights, we may have to participate in interference proceedings in the U.S. Patent and Trademark Office, or USPTO, to determine priority of invention.

In addition, substantial scientific and commercial research has been conducted for many years in the areas in which we have focused our development efforts, which has resulted in third parties having a number of issued patents and pending patent applications. Patent applications in the U.S. and elsewhere are published only after eighteen months from the priority date. The publication of discoveries in the scientific or patent literature frequently occurs substantially later than the date on which the underlying discoveries were made. Therefore, patent applications relating to drugs similar to ETC-1002 and any future drugs, discoveries or technologies we might develop may have already been filed by others without our knowledge.

## **Competition**

Our industry is highly competitive and subject to rapid and significant technological change. Our potential competitors include large pharmaceutical and biotechnology companies, specialty pharmaceutical and generic drug companies, academic institutions, government agencies and research institutions. Key competitive factors affecting the commercial success of our product candidates are likely to be efficacy, safety and tolerability profile, reliability, convenience of dosing, price and reimbursement.

The market for cholesterol regulating therapies is especially large and competitive. The product candidates we are currently developing, if approved, will face intense competition, either as monotherapies or as combination therapies.

Many of our existing or potential competitors have substantially greater financial, technical and human resources than we do and significantly greater experience in the discovery and development of product candidates, obtaining FDA and other regulatory approvals of products and the commercialization of those products. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a small number of our competitors. Accordingly, our competitors may be more successful than we may be in obtaining FDA approval for drugs and achieving widespread market acceptance. Our competitors' drugs may be more effective, or more effectively marketed and sold, than any drug we may commercialize and may render our product candidates obsolete or non-competitive before we can recover the expenses of developing and commercializing any of our product candidates. Our competitors may also obtain FDA or other regulatory approval for their products more rapidly than we may obtain approval for ours. We anticipate that we will face intense and increasing competition as new drugs enter the market and advanced technologies become available. Finally, the development of new treatment methods for the diseases we are targeting could render our drugs non-competitive or obsolete. See "Risk Factors—Risks Related to our Business and the Clinical Development and Commercialization of ETC-1002—Our market is subject to intense competition. If we are unable to compete effectively, our opportunity to generate revenue from the sale of ETC-1002, if approved, will be materially adversely affected," and elsewhere in this prospectus for more information regarding competitors and competitive products.

## Regulatory Matters

### *Government Regulation and Product Approval*

Government authorities in the United States at the federal, state and local level, and other countries, extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, marketing, export and import of products such as those we are developing. Our product candidates, including ETC-1002, must be approved by the FDA through the new drug application, or NDA, process before they may legally be marketed in the United States.

### *United States Drug Development Process*

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or FDCA, and implementing regulations. The process of obtaining regulatory approvals and compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process, or after approval, may subject an applicant to administrative or judicial sanctions. These sanctions could include the FDA's refusal to approve pending applications, withdrawal of an approval, a clinical hold, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties. The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of non-clinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices regulations;
- submission to the FDA of an IND, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials according to Good Clinical Practices, or GCP, to establish the safety and efficacy of the proposed drug for its intended use;
- submission to the FDA of an NDA for a new drug;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with cGMP; and
- FDA review and approval of the NDA.

The testing and approval process requires substantial time, effort and financial resources and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all.

Once a pharmaceutical product candidate is identified for development, it enters the non-clinical, also referred to as pre-clinical, testing stage. Non-clinical tests include laboratory evaluations of product chemistry, toxicity, formulation and stability, as well as animal studies. An IND sponsor must submit the results of the non-clinical tests, together with manufacturing information, analytical data and any available clinical data or literature, to the FDA as part of the IND. The sponsor must also include a protocol detailing, among other things, the objectives of the initial clinical trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated if the initial clinical trial lends itself to an efficacy evaluation. Some non-clinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA places the clinical trial on a clinical hold within that 30-day time period. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Clinical holds also may be imposed by the FDA at any time before or during clinical trials due to safety concerns or non-compliance, and may be imposed on all drug products within a certain class of drugs. The FDA



also can impose partial clinical holds, for example prohibiting the initiation of clinical trials of a certain duration or for a certain dose.

All clinical trials must be conducted under the supervision of one or more qualified investigators in accordance with GCP regulations. These regulations include the requirement that all research subjects provide informed consent. Further, an institutional review board, or IRB, must review and approve the plan for any clinical trial before it commences at any institution. An IRB considers, among other things, whether the risks to individuals participating in the clinical trial are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the information regarding the clinical trial and the consent form that must be provided to each clinical trial subject or his or her legal representative and must monitor the clinical trial until completed.

Each new clinical protocol and any amendments to the protocol must be submitted to the IND for FDA review, and to the IRBs for approval. Protocols detail, among other things, the objectives of the clinical trial, dosing procedures, subject selection and exclusion criteria, and the parameters to be used to monitor subject safety.

Human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- *Phase 1.* The product is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. In the case of some products for severe or life-threatening diseases, especially when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing may be conducted in patients.
- *Phase 2.* Involves clinical trials in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage and schedule.
- *Phase 3.* Clinical trials are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical trial sites. These clinical trials are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for product labeling.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and safety reports must be submitted to the FDA and the investigators for serious and unexpected adverse events. Phase 1, Phase 2 and Phase 3 testing may not be completed successfully within any specified period, if at all. The FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients.

Concurrent with clinical trials, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the product and finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality and purity of the final product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the product candidate does not undergo unacceptable deterioration over its shelf life.

#### ***U.S. Review and Approval Processes***

The results of product development, non-clinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests conducted on the drug proposed labeling and other relevant information, are submitted to the FDA as part of an NDA for a new drug, requesting approval

to market the product. The submission of an NDA is subject to the payment of a substantial user fee; a waiver of such fee may be obtained under certain limited circumstances. For example, the agency will waive the application fee for the first human drug application that a small business or its affiliate submits for review.

In addition, under the Pediatric Research Equity Act of 2003, or PREA, an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers.

The FDA reviews all NDAs submitted to ensure that they are sufficiently complete for substantive review before it accepts them for filing. The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be re-submitted with the additional information. The re-submitted application also is subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant to assure and preserve the product's identity, strength, quality and purity. Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. The FDA may refer the NDA to an advisory committee for review, evaluation and recommendation as to whether the application should be approved and under what conditions. An advisory committee is a panel of experts who provide advice and recommendations when requested by the FDA on matters of importance that come before the agency. The FDA is not bound by the recommendation of an advisory committee.

The approval process is lengthy and difficult and the FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical data or other data and information. Even if such data and information are submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data obtained from clinical trials are not always conclusive and the FDA may interpret data differently than we interpret the same data. The FDA will issue a complete response letter if the agency decides not to approve the NDA in its present form. The complete response letter usually describes all of the specific deficiencies that the FDA identified in the NDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical trials. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a complete response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, or withdraw the application or request an opportunity for a hearing.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. In addition, the FDA may require Phase 4 testing which involves clinical trials designed to further assess a drug's safety and effectiveness after NDA approval and may require testing and surveillance programs to monitor the safety of approved products that have been commercialized.

#### ***Patent Term Restoration and Marketing Exclusivity***

Depending upon the timing, duration and specifics of FDA approval of the use of our product candidates, some of our U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Act. The Hatch-Waxman Act permits a patent restoration term of up to five years as

compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an NDA plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, we intend to apply for restorations of patent term for some of our currently owned or licensed patents to add patent life beyond their current expiration dates, depending on the expected length of the clinical trials and other factors involved in the filing of the relevant NDA, however there can be no assurance that any such extension will be granted to us.

Market exclusivity provisions under the FDCA can also delay the submission or the approval of certain applications. The FDCA provides a five-year period of non-patent marketing exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an abbreviated new drug application, or ANDA, or a 505(b)(2) NDA submitted by another company for another version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement. The FDCA also provides three years of marketing exclusivity for an NDA, 505(b)(2) NDA or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example new indications, dosages or strengths of an existing drug. This three-year exclusivity covers only the conditions of use associated with the new clinical investigations and does not prohibit the FDA from approving ANDAs for drugs containing the original active agent. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA. However, an applicant submitting a full NDA would be required to conduct or obtain a right of reference to all of the non-clinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and effectiveness.

Pediatric exclusivity is another type of exclusivity in the United States. Pediatric exclusivity, if granted, provides an additional six months to an existing exclusivity or statutory delay in approval resulting from a patent certification. This six-month exclusivity, which runs from the end of other exclusivity protection or patent delay, may be granted based on the voluntary completion of a pediatric clinical trial in accordance with an FDA-issued "Written Request" for such a clinical trial.

### ***Post-Approval Requirements***

Any drugs for which we receive FDA approval are subject to continuing regulation by the FDA, including, among other things, record-keeping requirements, reporting of adverse experiences with the product, providing the FDA with updated safety and efficacy information, product sampling and distribution requirements, complying with certain electronic records and signature requirements and complying with FDA promotion and advertising requirements. The FDA strictly regulates labeling, advertising, promotion and other types of information on products that are placed on the market. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label. Further, manufacturers of drugs must continue to comply with cGMP requirements, which are extensive and require considerable time, resources and ongoing investment to ensure compliance. In addition, changes to the manufacturing process generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

Drug manufacturers and other entities involved in the manufacturing and distribution of approved drugs are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. The cGMP requirements apply to all stages of the manufacturing process, including the production, processing, sterilization, packaging, labeling, storage and shipment of the drug. Manufacturers must establish validated systems to ensure that products meet specifications and regulatory standards, and test each product batch or lot prior to its release. We rely, and expect to continue to rely, on third parties for the production of clinical quantities of our product candidates. Future FDA and state inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution or may require substantial resources to correct.

The FDA may withdraw a product approval if compliance with regulatory requirements is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. Further, the failure to maintain compliance with regulatory requirements may result in administrative or judicial actions, such as fines, warning letters, holds on clinical trials, product recalls or seizures, product detention or refusal to permit the import or export of products, refusal to approve pending applications or supplements, restrictions on marketing or manufacturing, injunctions or civil or criminal penalties.

From time to time, legislation is drafted, introduced and passed in Congress that could significantly change the statutory provisions governing the approval, manufacturing and marketing of products regulated by the FDA. In addition to new legislation, the FDA regulations and policies are often revised or reinterpreted by the agency in ways that may significantly affect our business and our product candidates. It is impossible to predict whether further legislative or FDA regulation or policy changes will be enacted or implemented and what the impact of such changes, if any, may be.

### ***Foreign Regulation***

In addition to regulations in the United States, we will be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our product candidates to the extent we choose to sell any products outside of the United States. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country. As in the United States, post-approval regulatory requirements, such as those regarding product manufacture, marketing, or distribution would apply to any product that is approved outside the United States.

### **Employees**

As of May 31, 2013, we had 13 full-time employees and five part-time employees. Two of our employees have Ph.D. degrees. Nine of our employees are engaged in research and development activities. None of our employees is represented by labor unions or covered by collective bargaining agreements. We consider our relationship with our employees to be good.

### **Facilities**

We lease our facility, which is located at 46701 Commerce Center Drive, Plymouth, Michigan and consists of approximately 2,083 square feet of office and 4,867 square feet of laboratory space. Our lease expires October 2, 2013, and we have an option to extend it through October 2018 and then again through October 2023. We believe our facility is sufficient to meet our needs until the expiration of our lease.

### **Legal Proceedings**

We are not currently a party to any material legal proceedings.

**MANAGEMENT****Directors and Executive Officers**

The following table presents our directors and executive officers and their respective ages and positions as of June 6, 2013:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Roger S. Newton, Ph.D., FAHA	63	Executive Chairman, Chief Scientific Officer and Director
Patrick G. Enright(2)(3)	51	Director
Dov A. Goldstein, M.D.(1)(2)(3)	45	Director
Daniel Janney(1)	47	Director
Louis G. Lange, M.D., Ph.D.(1)(2)	65	Director
Nicole Vitullo(1)(3)	56	Director
Tim M. Mayleben	52	President, Chief Executive Officer and Director
Noah L. Rosenberg, M.D.	46	Chief Medical Officer
Troy A. Ignelzi	45	Vice President—Business Development

- (1) Member of the Compensation Committee.
- (2) Member of the Audit Committee.
- (3) Member of the Nominating and Corporate Governance Committee.

**Directors**

*Roger S. Newton, Ph.D., FAHA* has served as our Executive Chairman and Chief Scientific Officer since December 2012 and is a fellow of the American Heart Association. He was previously our President and Chief Executive Officer from our founding in 2008 to December 2012. Prior to joining our company, he was Senior Vice President, Pfizer Global R&D from 2004 to 2008. He was a Co-founder, President & CEO of the original Esperion from July 1998 until its acquisition by Pfizer in 2004. Prior to founding the original Esperion, Dr. Newton was Chairman of the Atherosclerosis Drug Discovery Team at Warner Lambert from 1981 to 1998. Dr. Newton is a director of a number of companies including Juventas Therapeutics, Inc. and Rubicon Genomics, Inc. He is also a member of the Technology Advisory Boards of Arboretum Ventures and Metagenics, Inc. Dr. Newton has a Ph.D. in nutrition from the University of California, Davis, a Master of Science degree in nutritional biochemistry from the University of Connecticut, and a Bachelor of Science degree in biology from Lafayette College. Dr. Newton's qualifications to sit on our board include his extensive leadership, executive, managerial, business and pharmaceutical company experience, along with his more than 30 years of industry experience in the development and commercialization of pharmaceutical products.

*Patrick G. Enright* became a member of our board of directors in connection with Longitude Capital's purchase of 12,000,000 shares of Series A preferred stock in April 2013. He is a founder of Longitude Capital Management Co., LLC, a venture capital firm focused on investments in biotechnology and has served as its Managing Director since 2007. From 2002 through 2006, Mr. Enright was a Managing Director of Pequot Ventures where he co-led the life sciences investment practice. Prior to Pequot, he was a Managing Member responsible for the Delta Opportunity Fund, where he invested in privately-held and publicly-traded biotechnology companies. He was previously Chief Financial Officer and Senior Vice President of Business Development at Valentis, Inc. (now Urogen Pharmaceuticals, Inc.) and Senior Vice President of Finance and Business Development at Boehringer Mannheim Pharmaceuticals (now F. Hoffmann-La Roche, Ltd.). Mr. Enright is a director of a number of privately-held companies, as well as Concept Therapeutics, Inc. (NASDAQ: CORT) and Jazz Pharmaceuticals plc (NASDAQ: JAZZ). Previously, Mr. Enright served on the boards of

Threshold Pharmaceuticals, Inc. (NASDAQ: THLD), Sequenom, Inc. (NASDAQ: SQNM), Valentis, Inc. (NASDAQ: VLTS), Codexis, Inc. (NASDAQ: CDXS) and MAP Pharmaceuticals, Inc. (NASDAQ: MAPP). Mr. Enright received his M.B.A. from the Wharton School of Business at the University of Pennsylvania and his B.S. in Biological Sciences from Stanford University. We believe Mr. Enright's extensive knowledge of finance and experience in the biotechnology industry qualifies him to serve as a member of our board of directors.

*Dov A. Goldstein, M.D.* has served as a member of our board of directors since April 2008. He has been a partner at Aisling Capital, a private investment firm, since 2008. From 2006 to 2008, he was a Principal at Aisling Capital. From 2000 to 2005, Dr. Goldstein was Chief Financial Officer of Vicuron Pharmaceuticals, Inc. before its acquisition by Pfizer Inc. From 1998 to 2000, Dr. Goldstein was Director of Venture Analysis at HealthCare Ventures, a privately held investment fund. Dr. Goldstein is a director of a number of companies including ADMA Biologics, Inc. and Cempra Pharmaceuticals, Inc. (NASDAQ: CEMP). He holds a B.S. in biology from Stanford University, an M.D. from the Yale School of Medicine and an M.B.A. from the Columbia Business School. We believe Dr. Goldstein's experience with financial accounting matters for complex organizations, his prior oversight of the financial reporting process of public companies and his experience working with life sciences companies qualifies him to serve as a member of our board of directors.

*Daniel Janney* has served as a member of our board of directors since November 2012. Mr. Janney is a managing director at Alta Partners, a life sciences venture capital firm, which he joined in 1996. Prior to joining Alta, from 1993 to 1996, he was a Vice President in Montgomery Securities' healthcare and biotechnology investment banking group, focusing on life sciences companies. Mr. Janney is a director of a number of companies including Alba Therapeutics Corporation, DiscoverRx Corporation, Lithera, Inc., ProLacta Bioscience, Inc. and ViroBay, Inc. He holds a Bachelor of Arts in History from Georgetown University and an M.B.A. from the Anderson School at the University of California, Los Angeles. We believe Mr. Janney's experience working with and serving on the boards of directors of life sciences companies and his experience working in the venture capital industry qualifies him to serve on our board of directors.

*Louis G. Lange, M.D., Ph.D.* has served as a member of our board of directors since February 2010. Dr. Lange is currently a partner with Asset Management Company, a venture capital firm that he joined in June 2009. Since June 2009, Dr. Lange has also served as a Senior Advisor of Gilead Sciences, Inc. (NYSE: GILD). From April 2009 to June 2009, Dr. Lange served as Executive Vice President, Cardiovascular Therapeutics, of Gilead Sciences, Inc. He was a founder of CV Therapeutics, Inc. and served as its Chairman and Chief Executive Officer from August 1992 until the acquisition of the company by Gilead Sciences, Inc. in April 2009. Dr. Lange holds an M.D. from Harvard Medical School and a Ph.D. in biological chemistry from Harvard University. Dr. Lange's significant operational and business experience with life science companies qualify him to serve as a member of our board of directors.

*Tim M. Mayleben* has served as our President and Chief Executive Officer since December 2012 and as a member of our board of directors since February 2010. Prior to joining Esperion, from December 2009 to December 2012, Mr. Mayleben was President and CEO and a director of Aastrom Biosciences, Inc. (NASDAQ: ASTM). He is also an advisor to, investor in, and member of the board of directors of several life science companies, including Intelliject Corporation, Lycera Corporation and DeNovo Sciences, through his advisory and investment firms, ElMa Advisors and Esperance BioVentures. Previously, from 2007 to 2008, Mr. Mayleben served as President, COO and a director of NightHawk Radiology Holdings, Inc. Prior to joining Nighthawk, Mr. Mayleben was the Chief Operating Officer of the original Esperion, until its acquisition by Pfizer in 2004. Mr. Mayleben earned an M.B.A., with distinction, from the J.L. Kellogg Graduate School of Management at Northwestern University, and a Bachelor of Business Administration degree from the University of Michigan, Ross

School of Business. Mr. Mayleben's years of experience in the life sciences industry, including over a decade of experience as an executive officer of several life sciences companies, qualifies him to sit on our board.

*Nicole Vitullo* has served as a member of our board of directors since April 2008. Ms. Vitullo joined Domain Associates, LLC, a venture capital firm with an exclusive focus on life sciences, in 1999 and became a Partner in 2004. From 1992 to 1999, Ms. Vitullo was Senior Vice President at Rothschild Asset Management, Inc. Ms. Vitullo is a director of a number of companies including Celator Pharmaceuticals, Inc., Achillion Pharmaceuticals, Inc. (NASDAQ: ACHN), Durata Therapeutics, Inc. (NASDAQ: DRTX), Marinus Pharmaceuticals, Inc. and VentiRx Pharmaceuticals, Inc. Ms. Vitullo received a B.A. and an M.B.A from the University of Rochester. We believe Ms. Vitullo's experience working with and serving on the boards of directors of life sciences companies and her experience working in the venture capital industry qualifies her to serve on our board of directors.

#### **Executive Officers**

*Noah L. Rosenberg, M.D.* has served as our Chief Medical Officer since February 2012. From 2010 to 2012, Dr. Rosenberg worked in a series of positions at Forest Laboratories and prior to leaving, Dr. Rosenberg served as the Executive Director and Head of Forest Laboratories' Cardiovascular/Metabolism franchise. From 2007 to 2010, Dr. Rosenberg served as a Senior Medical Director at Sanofi. From 2005 to 2007, Dr. Rosenberg served as a Medical Director at Sanofi. From 2000 to 2005, Dr. Rosenberg served as a Medical Director at Pfizer Inc. Dr. Rosenberg earned an M.D. from Drexel University and a B.A. in Natural Sciences from The Johns Hopkins University.

*Troy A. Ignelzi* has served as our Vice President—Business Development since January 2010. Prior to joining Esperion, from 2007 to 2010, Mr. Ignelzi served as Vice President—Business Development and Strategic Planning of Insys Therapeutics, Inc. Prior to his employment with Insys, Mr. Ignelzi worked as a sales and marketing professional in the neuroscience division with Eli Lilly and Company. Mr. Ignelzi received a B.S. from Ferris State University.

#### **Composition of our Board of Directors**

Our board of directors currently consists of six members, all of whom were elected pursuant to the board composition provisions of a voting agreement, which will terminate immediately prior to the closing of this offering. Upon the termination of these provisions, there will be no further contractual obligations regarding the election of our directors. Our nominating and corporate governance committee and board of directors may therefore consider a broad range of factors relating to the qualifications and background of nominees, which may include diversity and is not limited to race, gender or national origin. We have no formal policy regarding board diversity. Our nominating and corporate governance committee's and board of directors' priority in selecting board members is identification of persons who will further the interests of our stockholders through his or her established record of professional accomplishment, the ability to contribute positively to the collaborative culture among board members, knowledge of our business, understanding of the competitive landscape and professional and personal experiences and expertise relevant to our growth strategy. Our directors hold office until their successors have been elected and qualified or until the earlier of their resignation or removal.

Our amended and restated certificate of incorporation and amended and restated bylaws that will become effective upon the completion of this offering also provide that our directors may be removed only for cause by the affirmative vote of the holders of at least 75% of the votes that all our stockholders would be entitled to cast in an annual election of directors, and that any vacancy on our board of directors, including a vacancy resulting from an enlargement of our board of directors, may be filled only by vote of a majority of our directors then in office.

*Director Independence.* Our board of directors has determined that all members of the board of directors, except Dr. Newton and Mr. Mayleben, are independent, as determined in accordance with the rules of the NASDAQ Stock Market. In making such independence determination, the board of directors considered the relationships that each such non-employee director has with us and all other facts and circumstances that the board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director. In considering the independence of the directors listed above, our board of directors considered the association of our directors with the holders of more than 5% of our common stock. Upon the closing of this offering, we expect that the composition and functioning of our board of directors and each of our committees will comply with all applicable requirements of the NASDAQ Stock Market and the rules and regulations of the SEC. There are no family relationships among any of our directors or executive officers.

*Staggered board.* In accordance with the terms of our amended and restated certificate of incorporation and amended and restated bylaws that will become effective upon the completion of this offering, our board of directors will be divided into three classes, class I, class II and class III, with each class serving staggered three-year terms. Upon the expiration of the term of a class of directors, directors in that class will be eligible to be elected for a new three-year term at the annual meeting of stockholders in the year in which their term expires.

- Our Class I directors will be Messrs. Janney and Mayleben;
- Our Class II directors will be Dr. Lange and Ms. Vitullo; and
- Our Class III directors will be Mr. Enright and Drs. Goldstein and Newton.

Our amended and restated certificate of incorporation and amended and restated bylaws that will become effective upon the completion of this offering provide that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class shall consist of one third of the board of directors.

The division of our board of directors into three classes with staggered three-year terms may delay or prevent stockholder efforts to effect a change of our management or a change in control.

### **Board Leadership Structure and Board's Role in Risk Oversight**

The positions of our Executive Chairman of the board and Chief Executive Officer are presently separated at Esperion. Separating these positions allows our Chief Executive Officer to focus on our day-to-day business, while allowing the Executive Chairman of the board to lead the board of directors in its fundamental role of providing advice to and independent oversight of management. Our board of directors recognizes the time, effort and energy that the Chief Executive Officer must devote to his position in the current business environment, as well as the commitment required to serve as our Executive Chairman, particularly as the board of directors' oversight responsibilities continue to grow. Our board of directors also believes that this structure ensures a greater role for the independent directors in the oversight of our company and active participation of the independent directors in setting agendas and establishing priorities and procedures for the work of our board of directors. Our board of directors believes its administration of its risk oversight function has not affected its leadership structure. Although our amended and restated bylaws that will be in effect upon the completion of this offering will not require our Executive Chairman and Chief Executive Officer positions to be separate, our board of directors believes that having separate positions is the appropriate leadership structure for us at this time and demonstrates our commitment to good corporate governance.

Our board of directors oversees the management of risks inherent in the operation of our business and the implementation of our business strategies. Our board of directors performs this oversight role by using several different levels of review. In connection with its reviews of the operations and



corporate functions of our company, our board of directors addresses the primary risks associated with those operations and corporate functions. In addition, our board of directors reviews the risks associated with our company's business strategies periodically throughout the year as part of its consideration of undertaking any such business strategies.

Each of our board committees also oversees the management of our company's risk that falls within the committee's areas of responsibility. In performing this function, each committee has full access to management, as well as the ability to engage advisors. Our controller reports to the audit committee and is responsible for identifying, evaluating and implementing risk management controls and methodologies to address any identified risks. In connection with its risk management role, our audit committee meets privately with representatives from our independent registered public accounting firm and our controller. The audit committee oversees the operation of our risk management program, including the identification of the primary risks associated with our business and periodic updates to such risks, and reports to our board of directors regarding these activities.

## **Board Committees**

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee, each of which operates pursuant to a separate charter adopted by our board of directors. We expect that the composition and functioning of all of our committees will comply with all applicable requirements of the Sarbanes-Oxley Act of 2002, the NASDAQ Stock Market and Securities and Exchange Commission rules and regulations.

### *Audit committee*

Mr. Enright and Drs. Goldstein and Lange currently serve on the audit committee, which is chaired by Mr. Enright. Our board of directors has determined that each member of the audit committee is "independent" for audit committee purposes as that term is defined in the applicable rules of the Securities and Exchange Commission and the NASDAQ Stock Market. Our board of directors has designated Mr. Enright as an "audit committee financial expert," as defined under the applicable rules of the Securities and Exchange Commission. The audit committee's responsibilities include:

- appointing, approving the compensation of, and assessing the independence of our independent registered public accounting firm;
- approving auditing and permissible non-audit services, and the terms of such services, to be provided by our independent registered public accounting firm;
- reviewing the internal audit plan with our independent registered public accounting firm and members of management responsible for preparing our financial statements;
- reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly financial statements and related disclosures as well as critical accounting policies and practices used by us;
- reviewing the adequacy of our internal control over financial reporting;
- establishing policies and procedures for the receipt and retention of accounting-related complaints and concerns;
- recommending, based upon the audit committee's review and discussions with management and our independent registered public accounting firm, whether our audited financial statements shall be included in our Annual Report on Form 10-K;

- monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to our financial statements and accounting matters;
- preparing the audit committee report required by SEC rules to be included in our annual proxy statement;
- reviewing all related party transactions for potential conflict of interest situations and approving all such transactions; and
- reviewing quarterly earnings releases.

*Compensation committee*

Dr. Goldstein, Mr. Janney, Dr. Lange and Ms. Vitullo currently serve on the compensation committee, which is chaired by Ms. Vitullo. Our board of directors has determined that each member of the compensation committee is "independent" as that term is defined in the applicable NASDAQ Stock Market rules. The compensation committee's responsibilities include:

- annually reviewing and approving corporate goals and objectives relevant to the compensation of our Chief Executive Officer;
- evaluating the performance of our Chief Executive Officer in light of such corporate goals and objectives and determining the compensation of our Chief Executive Officer;
- reviewing and approving the compensation of our other executive officers;
- reviewing and establishing our overall management compensation, philosophy and policy;
- overseeing and administering our compensation and similar plans;
- evaluating and assessing potential and current compensation advisors in accordance with the independence standards identified in the applicable NASDAQ Stock Market rules;
- retaining and approving the compensation of any compensation advisors;
- reviewing and approving our policies and procedures for the grant of equity-based awards;
- reviewing and making recommendations to the board of directors with respect to director compensation;
- preparing the compensation committee report required by SEC rules to be included in our annual proxy statement;
- reviewing and discussing with management the compensation discussion and analysis to be included in our annual proxy statement or Annual Report on Form 10-K; and
- reviewing and discussing with the board of directors corporate succession plans for the Chief Executive Officer and other key officers.

*Nominating and corporate governance committee*

Mr. Enright, Dr. Goldstein and Ms. Vitullo currently serve on the nominating and corporate governance committee, which is chaired by Dr. Goldstein. Our board of directors has determined that each member of the nominating and corporate governance committee is "independent" as that term is defined in the applicable NASDAQ Stock Market rules. The nominating and corporate governance committee's responsibilities include:

- developing and recommending to the board of directors criteria for board and committee membership;

- establishing procedures for identifying and evaluating board of director candidates, including nominees recommended by stockholders;
- identifying individuals qualified to become members of the board of directors;
- recommending to the board of directors the persons to be nominated for election as directors and to each of the board's committees;
- developing and recommending to the board of directors a set of corporate governance guidelines; and
- overseeing the evaluation of the board of directors and management.

Our board of directors may establish other committees from time to time.

#### **Compensation Committee Interlocks and Insider Participation**

None of the members of our compensation committee has at any time during the prior three years been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

#### **Corporate Governance**

Prior to the completion of this offering, we will adopt a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Following the completion of this offering, a current copy of the code will be posted on the Corporate Governance section of our website, which is located at [www.esperion.com](http://www.esperion.com). If we make any substantive amendments to, or grant any waivers from, the code of business conduct and ethics for any officer or director, we will disclose the nature of such amendment or waiver on our website or in a Current Report on Form 8-K.

## EXECUTIVE OFFICER AND DIRECTOR COMPENSATION

### Executive Compensation Overview

Our primary objective with respect to executive compensation is to attract and retain individuals who possess knowledge, experience and skills that we believe are important to our business of developing and commercializing novel therapeutics for patients with elevated levels of LDL-C.

Specifically, our compensation programs are designed to:

- attract and retain individuals with superior ability and managerial experience;
- align executive officers' incentives with our corporate strategies, business objectives and the long-term interests of our stockholders; and
- increase the incentive to achieve key strategic performance measures by linking incentive award opportunities to the achievement of performance objectives and by providing a portion of total compensation for executive officers in the form of ownership in the company.

Our compensation committee oversees our compensation and benefit plans and policies, administers our equity incentive plans and reviews and approves annually all compensation decisions relating to all of our executive officers. The compensation committee considers recommendations from our Chief Executive Officer regarding the compensation of the other executive officers identified in the Summary Compensation Table below, who we refer to as the Named Executive Officers, other than himself. Historically, the compensation committee has not retained any independent compensation consultants to help it in making compensation-related decisions.

Following the completion of this offering, our compensation committee will continue to be primarily responsible for developing and implementing our compensation policies and establishing and approving the compensation for all of our executive officers. In the future, our compensation committee may review the compensation packages offered by other similar companies based on survey data and may choose to retain the services of independent compensation consultants from time to time, as it sees fit, in connection with the establishment of cash and equity compensation and related policies. While market data and reports from independent consultants provide useful starting points for compensation decisions, our compensation committee may also take into account factors such as level of responsibility, prior experience, individual performance and internal pay equity in arriving at final compensation decisions.

### Executive Compensation Components

Our executive compensation consists of base salary, cash incentive bonuses, equity incentive compensation and broad-based benefits programs. Each of the elements of our executive compensation is discussed in more detail below, including a description of the particular element and how it fits into our overall executive compensation program.

Although we have not adopted any formal guidelines for allocating total compensation between long-term and short-term compensation, cash compensation and non-cash compensation, or among different forms of non-cash compensation, we intend to implement and maintain compensation plans that tie a substantial portion of our executives' overall compensation to the achievement of corporate goals and value-creating milestones, such as the clinical development of ETC-1002 and the establishment and maintenance of key strategic relationships.

Section 162(m) of the Code places a limit of \$1 million on the amount of compensation that public companies may deduct in any one year with respect to certain of its Named Executive Officers. Certain performance-based compensation approved by stockholders is not subject to this deduction limit. In addition, as a newly public company, some of our compensation arrangements are not subject to the

deduction limit during a transition period. Our compensation committee's strategy in this regard is to be cost and tax efficient. Therefore, whenever possible, the compensation committee intends to structure compensation programs to qualify compensation as performance-based under Section 162(m) of the Code, while maintaining the flexibility in the future to approve arrangements that it deems to be in our best interests and the best interests of our stockholders, even if such arrangements do not always qualify for full tax deductibility.

## **Annual Cash Compensation**

### *Base Salary*

Base salaries for our Named Executive Officers are intended to be competitive with those received by other individuals in similar positions at the companies with which we compete for talent. Base salaries are originally established at the time the executive is hired based on individual experience, skills and expected contributions, our compensation committee's understanding of what executives in similar positions at other peer companies were being paid at such time and are also the result of negotiations with certain executives during the hiring process. The base salaries of our Named Executive Officers are reviewed annually and may be adjusted to reflect market conditions and our executives' performance during the prior year as well as the financial position of the company, or if there is a change in the scope of the officer's responsibilities. We believe that a competitive base salary is a necessary element of any compensation program that is designed to attract and retain talented and experienced executives. We also believe that attractive base salaries can motivate and reward executives for their overall performance.

### *Cash Incentive Bonuses*

Our compensation committee has the authority to award annual performance-based cash bonuses to our executive officers.

Upon the completion of this offering, our Senior Executive Cash Incentive Bonus Plan which was approved by the board of directors on June 5, 2013, will become effective and the Named Executive Officers will be eligible to receive annual cash incentive bonuses thereunder. For a further discussion of the Senior Executive Cash Incentive Bonus Plan, see "Senior Executive Cash Incentive Bonus Plan" below.

## **Equity Incentive Compensation**

Equity incentive grants to our Named Executive Officers are currently made at the discretion of our board of directors under our 2008 Incentive Stock Option and Restricted Stock Plan, or the 2008 Plan, and such awards are typically made at the time of hiring and in connection with annual performance reviews during January, if at all. Under the 2008 Plan, the board of directors may grant equity incentive awards in the form of stock options or restricted stock awards.

Each of our Named Executive Officers received an equity incentive award upon his commencement of employment with us. The amount of these initial equity grants was based on the following qualitative factors that are not weighted by our board: the executive's proposed level of responsibility, the competitive market for the executive's position and the executive's potential contribution to the advancement of our clinical and business development programs.

Upon the closing of this offering, equity incentive awards will be granted to our Named Executive Officers under our 2013 Stock Option and Incentive Plan, or the 2013 Plan. For a further discussion of the 2008 Plan and 2013 Plan, see "Equity Compensation Plans and Other Benefit Plans" below.

**Benefits Programs**

In addition to the primary elements of compensation (base salary, cash incentive bonuses and equity incentive compensation) described above, the Named Executive Officers also participate in broad-based employee benefits programs available to all of our employees, including health insurance, life and disability insurance, dental insurance and our 401(k) plan.

**Compensation Tables****Summary Compensation Table—2012**

The following table presents information regarding the total compensation awarded to, earned by, and paid to each individual who served as our chief executive officer at any time during the last completed fiscal year and the two most highly-compensated executive officers (other than the chief executive officer) who were serving as executive officers at the end of the last completed fiscal year for services rendered in all capacities to us for the year ended December 31, 2012. These individuals are our Named Executive Officers for 2012.

Name and principal position	Year	Salary (\$)	Bonus (\$)	Option awards (\$)(4)	Non-equity incentive plan compensation (\$)	All other compensation (\$)	Total (\$)
Roger S. Newton, Ph.D., FAHA, Executive Chairman and Chief Scientific Officer	2012	369,766	—	—	—	—	369,766
Tim M. Mayleben, President and Chief Executive Officer	2012	25,000(1)	—	—	—	—	25,000
Noah L. Rosenberg, M.D., Chief Medical Officer	2012	303,276(2)	15,000(3)	89,562	—	—	318,276
Troy A. Ignelzi, Vice President—Business Development	2012	200,813	—	21,440	—	—	222,253

- (1) Mr. Mayleben joined the Company as our President and Chief Executive Officer effective December 10, 2012. The amount reflected in this column is based upon an annualized salary of \$400,000.
- (2) Dr. Rosenberg joined the Company as our Chief Medical Officer effective February 6, 2012. The amount reflected in this column is based upon an annualized salary of \$335,000.
- (3) Amount includes \$15,000 awarded to Dr. Rosenberg as a signing bonus.
- (4) Amounts represent the aggregate grant date fair value of option awards granted to our Named Executive Officers in 2012 computed in accordance with FASB ASC Topic 718. The assumptions used in the valuation of these awards are consistent with the valuation methodologies specified in the notes to our financial statements and discussions in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. The amounts above reflect the Company's aggregate accounting expense for these awards and do not necessarily correspond to the actual value that will be recognized by the Named Executive Officers.

**Narrative Disclosure to the Summary Compensation Table***Employment arrangements with our named executive officers*

We have entered into an employment agreement or offer letter with each of the named executive officers in connection with his employment with us. These employment agreements and offer letter provide for "at will" employment.

*Tim M. Mayleben.* On December 3, 2012, we entered into an employment agreement with Mr. Mayleben for the position of President and Chief Executive Officer which was effective as of

December 10, 2012. Pursuant to the terms of Mr. Mayleben's employment agreement, we agreed to grant him an option to purchase 273,660 shares of our common stock, which option was subsequently granted on January 16, 2013. On May 23, 2013, we amended this option to permit its early exercise, provided that any shares issued upon exercise will remain subject to the original vesting terms. Mr. Mayleben currently receives a base salary of \$400,000, which is subject to review and adjustment in accordance with company policy. Beginning with the year ending December 31, 2013, Mr. Mayleben is also eligible for an annual discretionary bonus of up to 40% of his base salary, payable at the discretion of the board of directors. The amount of such bonus will be determined annually based upon individual and/or company achievement of certain measurable goals established by the board of directors and Mr. Mayleben. Mr. Mayleben is eligible to participate in employee benefit plans generally available to our executive employees, subject to the terms of those plans.

*Troy A. Ignelzi.* On January 4, 2010, we entered into an offer letter with Mr. Ignelzi for the position of Executive Director of Finance and Business Development. Mr. Ignelzi currently receives a base salary of \$205,000. Mr. Ignelzi is also eligible for an annual performance bonus of up to 25% of his base salary, based on the company's performance and is eligible to participate in our employee benefit plans, subject to the terms of those plans.

*Roger S. Newton, Ph.D., FAHA.* On December 4, 2012, we entered into an employment agreement with Dr. Newton for the position of Executive Chairman and Chief Scientific Officer which was effective December 10, 2012. Pursuant to the terms of Dr. Newton's employment agreement, we agreed to grant him an option to purchase 76,141 shares of our common stock, which option was subsequently granted on January 16, 2013. On May 23, 2013, we amended this option to permit its early exercise, provided that any shares issued upon exercise will remain subject to the original vesting terms. Dr. Newton currently receives a base salary of \$375,000, which is subject to review and adjustment in accordance with company policy. Beginning with the year ending December 31, 2013, Dr. Newton is also eligible for an annual discretionary bonus of up to 40% of his base salary, payable at the discretion of the board of directors. The amount of such bonus will be determined annually based upon individual and/or company achievement of certain measurable goals established by the board of directors and Dr. Newton. Dr. Newton is eligible to participate in employee benefit plans generally available to our executive employees, subject to the terms of those plans.

*Noah L. Rosenberg, M.D.* On January 13, 2012, we entered into an employment agreement with Dr. Rosenberg for the position of Chief Medical Officer. Dr. Rosenberg currently receives a base salary of \$335,000, which is subject to review and adjustment at the discretion of the company. Dr. Rosenberg is also eligible for an annual discretionary bonus of up to 35% of his base salary, payable at the discretion of the compensation committee based on its assessment of the performance of Esperion and Dr. Rosenberg against goals established by the Chief Executive Officer and the compensation committee. Dr. Rosenberg is eligible to participate in employee benefit plans generally available to our full-time employees, subject to the terms of those plans.

The employment agreements with Mr. Mayleben and Drs. Newton and Rosenberg provide for certain payments and benefits in the event of an involuntary termination of employment. In addition, each of Mr. Mayleben and Drs. Newton and Rosenberg are entitled to accelerated vesting of certain outstanding and unvested equity awards held by them in certain circumstances. The information below describes certain compensation and equity acceleration that may become payable as a result of certain events. These payments and benefits are in addition to benefits available generally to salaried employees, including distributions under our 401(k) plan, accrued benefits under our health and welfare plans and arrangements, and vacation pay or other accrued benefits under our medical and dental insurance plans, that are not generally described. Outstanding equity awards for the Named Executive Officers as of December 31, 2012 are set forth under "Outstanding Equity Awards at Fiscal Year-End Table—2012."

*Involuntary Termination of Employment*

Pursuant to their employment agreements, Mr. Mayleben and Drs. Newton and Rosenberg are each eligible to receive certain payments and benefits in the event his employment is terminated by us without "cause" (as defined in the employment agreements) or in the event he terminates his employment with "good reason" (as defined in their employment agreements).

Each of Mr. Mayleben and Dr. Newton is eligible to receive one year of base salary continuation in the event of a termination by the company without cause or by the Named Executive Officer for good reason, provided that he resigns from the board of directors and timely executes and allows to become effective a release agreement. Dr. Rosenberg is eligible to receive the following payments and benefits, provided he enters into, does not revoke and complies with the terms of a separation agreement in a form acceptable to the company, which shall include a release in favor of the company, and resigns from any and all positions he holds with the company:

- base salary continuation for six months following termination;
- continuation of group health plan benefits to the extent authorized and consistent with COBRA, with the cost of the regular premium shared in the same relative proportion by Dr. Rosenberg and the company as in effect on the date of termination until the earlier of six months after the date of termination and the date he becomes eligible for health benefits through another employer or otherwise becomes ineligible for COBRA;
- a pro-rated bonus for the year of termination, provided the Chief Executive Officer and the compensation committee assess Dr. Rosenberg's performance and that of Esperion through the date of termination and determine that he is entitled to a pro-rated bonus; and
- accelerated vesting of the unvested portion of an option to purchase 14,314 shares of the company's common stock granted to Dr. Rosenberg in connection with his hire.

*Change in Control*

Under the employment agreements with Mr. Mayleben and Dr. Newton, we agreed to make certain equity awards to each of them in the form of options to purchase our common stock. Pursuant to their employment agreements and the award agreements governing such stock options, in the event of a "change in control" of the company (as defined in the employment agreements), any such unvested stock options will be accelerated such that 50% of the shares underlying such options which would otherwise be unvested at the time of the change in control will become vested upon the change in control and, if, during the 12 month period following the change in control, either Mr. Mayleben or Dr. Newton's employment is terminated by the company without cause or either Mr. Mayleben or Dr. Newton terminates his employment with the company for good reason, 100% of the unvested portion of such option will immediately become vested.

*Definitions*

For purposes of each of the employment agreements with Mr. Mayleben and Dr. Newton, "cause" means the Named Executive Officer's:

- conviction (including a guilty or no contest plea) on a felony indictment or for any misdemeanor involving moral turpitude that adversely affects the company;
- participation in a fraud or act of dishonesty against the Company;
- material breach of the Named Executive Officer's duties to the company that has not been cured to the reasonable satisfaction of the board of directors within 30 days following written notice to



the Named Executive Officer (provided that no such notice and cure period will be required if such breach is not subject to cure);

- intentional and material damage to company property; or
- material breach of the employment agreement or other written agreement of the company or written policy of the company.

For purposes of the employment agreement with Dr. Rosenberg, "cause" means his:

- conduct in connection with his service to the company that is fraudulent, unlawful, or grossly negligent;
- material breach of his material responsibilities to the company or his willful failure to comply with reasonable and lawful directives of the Chief Executive Officer or written policies of the Company;
- breach of his representations, warranties, covenants and/or obligations under the employment agreement;
- material misconduct which seriously discredits or damages the company; and/or
- non-performance or unsatisfactory performance of his material duties or responsibilities to the company after written notice to him and a reasonable opportunity to cure that shall not exceed 30 days.

For purposes of each of the employment agreements with Mr. Mayleben and Dr. Newton, "change in control" means:

- a sale of substantially all of the assets of the company;
- a merger or consolidation in which the company is not the surviving corporation (other than a merger or consolidation in which stockholders immediately before the merger or consolidation have, immediately after the merger or consolidation, a majority of the voting power of the surviving corporation);
- a reverse merger in which the company is the surviving corporation but the shares of the company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise (other than a reverse merger in which stockholders immediately before the merger have, immediately after the merger, a majority of the voting power of the surviving corporation); or
- any transaction or series of related transactions in which in excess of 50% of the company's voting power is transferred, other than an initial offering of the company's stock to the public registered under the Securities Act of 1933, as amended, or the sale by the company of stock in transactions the primary purpose of which is to raise capital for the company's operations and activities.

For purposes of the employment agreement with Mr. Mayleben, "good reason" means any one of the following events that occurs after the commencement of his employment with the company, in each case without Mr. Mayleben's consent:

- a material reduction in his duties, responsibility or authority or any decrease in his base salary of more than 20%;
- any change in his position as President and Chief Executive Officer of the company or any change in his obligation to report to the board of directors as set forth in the employment agreement;

- any requirement that he relocate to a work site more than 50 miles from the company's location in Plymouth Township, Michigan; or
- any material breach by the company of its obligations under the employment agreement.

For purposes of the employment agreement with Dr. Newton, "good reason" means any one of the following events that occurs after the commencement of his employment with the company, in each case without Dr. Newton's consent:

- a material reduction in his duties, responsibility or authority or any decrease in his base salary of more than 20%, which in any event shall not include a transition to less than a full-time position;
- any requirement that he relocate to a work site more than 50 miles from the company's location in Plymouth Township, Michigan;
- any material breach by the company of its obligations under the employment agreement; or
- the board of directors requests or requires Dr. Newton to perform any illegal act or any act that is inconsistent with accepted standards of ethical and professional behavior.

For purposes of the employment agreement with Dr. Rosenberg, "good reason" means that Dr. Rosenberg has (i) reasonably determined that a good reason condition has occurred, (ii) notified the company in writing of the first occurrence of the good reason condition within 60 days of the first occurrence of such condition, (iii) cooperated in good faith with the company's efforts for a period of not less than 30 days following such notice to remedy the condition, (iv) notwithstanding such efforts, the good reason condition continues to exist and (v) terminated his employment within 60 days after the end of the 30 day cure period, following the occurrence of any one of the following actions by the company without Dr. Rosenberg's express prior written consent:

- a material diminution in his responsibilities, authority and function; or
- a reduction in base salary; provided, however, that good reason shall not be deemed to have occurred in the event of a reduction in base salary that is pursuant to a salary reduction program affecting substantially all senior level employees of the company that does not adversely affect Dr. Rosenberg to a greater extent than other similarly situated employees.

**Outstanding Equity Awards at Fiscal Year-End Table—2012**

The following table summarizes, for each of the Named Executive Officers, the number of shares of common stock underlying outstanding stock options held as of December 31, 2012.

Name	Grant date	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Option exercise price (\$)	Option expiration date
Roger S. Newton, Ph.D., FAHA	—	—	—	—	—
Tim M. Mayleben	6/1/2008(1)	11,416	3,030	1.05	6/1/2018
	4/2/2010(2)	9,567	4,350	1.26	4/2/2020
Noah L. Rosenberg, M.D.	7/12/2012(3)	—	68,708	1.89	7/12/2022
Troy A. Ignelzi	4/2/2010(4)	20,040	1,431	1.26	4/2/2020
	5/19/2011(2)	939	1,208	1.54	5/19/2021

- (1) At the grant date, the option vested over a four-year period on a monthly basis. Pursuant to an amendment to the option agreement on April 2, 2010, the remaining unvested shares vest over a four-year period quarterly, subject to continued service as a member of the Board of Directors.
- (2) The option vests over a four-year period vesting quarterly, subject to continued employment through such date.
- (3) The option vests over a four-year period with twenty-five percent of the common stock options vesting on the one-year anniversary of the vesting commencement date and 1/48<sup>th</sup> vesting in equal installments on the monthly anniversary thereafter, subject to continued employment through such date.
- (4) The option vests over a four-year period with twenty-five percent of the common stock options vesting on the one-year anniversary of the vesting commencement date and the remainder vesting in equal installments on the quarterly anniversary thereafter, subject to continued employment through such date.

**Director Compensation**

The following table presents the total compensation for each person who served as a non-employee member of our board of directors during 2012. Other than as set forth in the table and described more fully below, we did not pay any compensation, make any equity awards or non-equity awards to, or pay any other compensation to any of the non-employee members of our board of directors in 2012. Mr. Mayleben, who is also our President and Chief Executive Officer, and Dr. Newton, who is our Executive Chairman and Chief Scientific Officer, receive no compensation for service as a director, and, consequently, are not included in this table. The compensation received by Mr. Mayleben and Dr. Newton as employees of the Company during 2012 is presented in "Summary Compensation Table—2012."

In 2012, we did not maintain any standard fee arrangements for the non-employee members of our board of directors for their service as a director. Going forward, our board of directors has determined that, after the closing of this offering, our non-employee directors will be entitled to receive the following annual retainer fees for their service as directors:

- for service as a director, an annual retainer of \$30,000;

- for service as the chair of a committee, \$12,000 for audit committee chair, \$10,000 for compensation committee chair and \$6,000 for nominating and corporate governance committee chair; and
- for service as a member of a committee other than as its chair, \$6,000 for audit committee, \$5,000 for compensation committee and \$3,000 for nominating and corporate governance committee.

Any new director will be entitled to an option award with respect to 20,000 shares of common stock upon joining our board of directors, which will vest monthly over three years, subject to the director's continued service on our board. In addition, for each year of service after December 31, 2013, each non-employee director will be entitled to an option award with respect to 4,000 shares of common stock, vesting on the earlier of the one-year anniversary of the grant date and our next annual meeting of stockholders, subject to the director's continued service on our board.

In April 2013, each non-employee director at the time was granted an option to purchase 21,471 shares of common stock with an exercise price equal to the then fair market value, which options vest monthly over three years, subject to continued service on our board. Subsequently, in connection with Mr. Enright joining the board, he was granted an option to purchase 21,471 shares of common stock, effective as of the effective date of the registration statement of which this prospectus is a part, which award will vest monthly over the 36 months, subject to Mr. Enright's continued service on our board, and has an exercise price equal to the public offering price.

#### **Director Compensation Table—2012**

Director name	Fees earned or paid in cash (\$)	Option awards (\$)	All other compensation (\$)	Total (\$)
Dov A. Goldstein, M.D.	—	—	—	—
Daniel Janney	—	—	—	—
Louis G. Lange, M.D., Ph.D.	—	2,882(1)	—	2,882
Nicole Vitullo	—	—	—	—

- (1) Amount represents the fair value of the awards on the date of grant computed in accordance with FASB ASC Topic 718. The assumptions used in the valuation of these awards are consistent with the valuation methodologies specified in the notes to our financial statements included elsewhere in this prospectus.

#### **Compensation Risk Assessment**

In establishing and reviewing our compensation philosophy and programs, we consider whether such programs encourage unnecessary or excessive risk taking. We believe that our executive compensation program does not encourage excessive or unnecessary risk taking. This is primarily due to the fact that our compensation programs are designed to encourage our executive officers and other employees to remain focused on both short-term and long-term strategic goals. As a result, we do not believe that our compensation programs are reasonably likely to have a material adverse effect on us.

#### **Equity Compensation Plans and Other Benefit Plans**

The two equity incentive plans described in this section are the 2008 Plan and the 2013 Plan. Prior to this offering, we have granted awards to eligible participants under the 2008 Plan. Following the closing of this offering, we expect to grant awards to eligible participants only under the 2013 Plan. In

addition, our Senior Executive Cash Incentive Bonus Plan, which will be used following completion of this offering, is described below.

#### *2008 Plan*

The 2008 Plan was approved by our board of directors and our stockholders on April 24, 2008 and was most recently amended on March 25, 2013. Under the 2008 Plan, 830,231 shares of common stock have been reserved for issuance in the form of stock options and restricted stock. The shares issuable pursuant to awards granted under the 2008 Plan are authorized but unissued shares.

The 2008 Plan is administered by our board of directors, which has full power to select the employees, directors and service providers of the participating companies to whom awards will be granted and to determine the specific terms and conditions of each award, subject to the provisions of the 2008 Plan.

The option exercise price of each option granted under the 2008 Plan is determined by our board of directors and may not be less than the fair market value of a share of common stock on the date of grant. The term of each option is fixed by the board of directors and may not exceed ten years from the date of grant. The board of directors determines at what time or times each option may be exercised when granting the option.

The 2008 Plan provides that, upon a change in control or sale transaction of the Company, the board of directors may take any one or a combination of the following actions with respect to outstanding options: (i) require that options be substituted with new awards of the successor entity, on substantially identical terms; (ii) provide for a cash payment equal to the in-the-money value of the options; (iii) allow net or "cashless" option exercises; or (iv) provide that all options not exercised within a specified period will terminate upon the closing of the transaction.

Our board of directors may amend the 2008 Plan but no such action may adversely affect the rights of an award holder without such holder's consent. Approval by our stockholders of amendments to the 2008 Plan must be obtained if required by law.

As of May 31, 2013, options to purchase 696,924 shares of common stock and 20,875 shares of restricted stock were outstanding under the 2008 Plan. Our board of directors has determined not to make any further awards under the 2008 Plan following the closing of this offering.

#### *2013 Plan*

On June 5, 2013, our board of directors adopted and thereafter our stockholders approved our 2013 Plan, which will replace the 2008 Plan. Our 2013 Plan provides us flexibility to use various equity-based incentive and other awards as compensation tools to motivate our workforce. These tools include stock options, stock appreciation rights, restricted stock, restricted stock units, unrestricted stock, performance share awards and cash-based awards. The 2013 Plan will become effective immediately prior to the closing of this offering.

We have initially reserved 1,100,000 shares of common stock for the issuance of awards under the 2013 Plan. The 2013 Plan provides that the number of shares reserved and available for issuance will automatically increase each January 1, beginning on January 1, 2014, by 2.5% of the outstanding number of shares of our common stock on the immediately preceding December 31 or such lesser number of shares as determined by our compensation committee. This number is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization.

The shares issuable pursuant to awards granted under the 2013 Plan will be authorized but unissued shares or shares that we reacquire. The shares of common stock underlying any awards from the 2013 Plan and the 2008 Plan that are forfeited, cancelled, held back upon exercise or settlement of

an award to satisfy the exercise price or tax withholding, reacquired by us prior to vesting, satisfied without any issuance of common stock, expire or are otherwise terminated (other than by exercise) under the 2013 Plan will be added back to the shares available for issuance under the 2013 Plan.

Under the 2013 Plan, stock options or stock appreciation rights with respect to no more than 1,100,000 shares may be granted to any one individual in any one calendar year and the maximum aggregate number of shares that may be issued in the form of incentive stock options shall not exceed the initial number of shares reserved and available for issuance under the 2013 Plan cumulatively increased on January 1, 2014 and on each January 1 thereafter by 2.5% of the outstanding number of shares of our common stock on the immediately preceding December 31 or such lesser number of shares as determined by our compensation committee.

The 2013 Plan will be administered by the compensation committee of the board of directors. The compensation committee has full power to select, from among the individuals eligible for awards, the individuals to whom awards will be granted, to make any combination of awards to participants, and to determine the specific terms and conditions of each award, subject to the provisions of the 2013 Plan. Employees, non-employee directors and other key persons (including consultants) are eligible to receive awards under the 2013 Plan.

The 2013 Plan permits the granting of both options to purchase common stock intended to qualify as incentive stock options under Section 422 of the Code and options that do not so qualify. The exercise price of each stock option will be determined by our compensation committee but may not be less than 100% of the fair market value of our common stock on the date of grant or, in the case of an incentive stock option granted to a 10% owner, less than 110% of the fair market value of our common stock on the date of grant. The term of each stock option will be fixed by the compensation committee and may not exceed ten years from the date of grant (or five years in the case of an incentive stock option granted to a 10% owner). The compensation committee will determine at what time or times each option may be exercised.

The compensation committee may award stock appreciation rights subject to such conditions and restrictions as it may determine. Stock appreciation rights entitle the recipient to shares of common stock, or cash, equal to the value of the appreciation in our stock price over the exercise price. The exercise price of each stock appreciation right may not be less than 100% of the fair market value of the common stock on the date of grant.

The compensation committee may award restricted stock or restricted stock units to participants subject to such conditions and restrictions as it may determine. These conditions and restrictions may include the achievement of certain performance goals and/or continued employment or service with us through a specified vesting period. The compensation committee may also grant cash-based awards to participants subject to such conditions and restrictions as it may determine. Our compensation committee may also grant shares of common stock that are free from any restrictions under the 2013 Plan. Unrestricted stock may be granted to participants in recognition of past services or for other valid consideration and may be issued in lieu of cash compensation due to such participant.

The compensation committee may grant performance share awards to participants that entitle the recipient to receive share awards of common stock upon the achievement of certain performance goals and such other conditions as our compensation committee shall determine.

The compensation committee may grant cash bonuses under the 2013 Plan to participants, subject to the achievement of certain performance goals.

The compensation committee may grant performance-based awards to participants in the form of restricted stock, restricted stock units, performance shares or cash-based awards upon the achievement of certain performance goals and such other conditions as the compensation committee shall determine. The compensation committee may grant such performance-based awards under the 2013

Plan that are intended to qualify as "performance-based compensation" under Section 162(m) of the Code. Those awards would only vest or become payable upon the attainment of performance goals that are established by our compensation committee and related to one or more performance criteria. The performance criteria that could be used with respect to any such awards include: total shareholder return, earnings before interest, taxes, depreciation and amortization, net income (loss) (either before or after interest, taxes, depreciation and/or amortization), changes in the market price of our common stock, economic value-added, sales or revenue, development, clinical or regulatory milestones, acquisitions or strategic transactions, operating income (loss), cash flow (including, but not limited to, operating cash flow and free cash flow), return on capital, assets, equity, or investment, return on sales, gross or net profit levels, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, earnings (loss) per share of stock, sales or market shares and number of customers, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group. From and after the time that we become subject to Section 162(m) of the Code, the maximum award that is intended to qualify as "performance-based compensation" under Section 162(m) of the Code that may be made to any one employee during any one calendar year period is 1,100,000 shares with respect to a stock-based award and \$2.0 million with respect to a cash-based award.

The 2013 Plan provides that upon the effectiveness of a "sale event," as defined in the 2013 Plan, all options and stock appreciation rights that are not exercisable immediately prior to the effective time of the sale event shall become fully exercisable as of the effective time of the sale event, all other awards with time-based vesting, conditions or restrictions, shall become fully vested and nonforfeitable as of the effective time of the sale event and all awards with conditions and restrictions relating to the attainment of performance goals may become vested and nonforfeitable in the discretion of the compensation committee and all awards granted under the 2013 Plan shall terminate. In addition, in connection with the termination of the 2013 Plan upon a sale event, we may make or provide for a cash payment to participants holding options and stock appreciation rights equal to the difference between the per share cash consideration payable to stockholders in the sale event and the exercise price of the options or stock appreciation rights.

Our board of directors may amend or discontinue the 2013 Plan and our compensation committee may amend or cancel outstanding awards for purposes of satisfying changes in law or any other lawful purpose, including option repricing, but no such action may adversely affect rights under an award without the holder's consent. Certain amendments to the 2013 Plan may require the approval of our stockholders.

No awards may be granted under the 2013 Plan after the date that is ten years from the date of stockholder approval of the 2013 Plan. Our board of directors has approved the issuance under the 2013 Plan of non-qualified stock options to acquire an aggregate of 37,215 shares of common stock on the effective date of the registration statement of which this prospectus is a part. These stock options will have an exercise price equal to the public offering price. No other awards under the 2013 Plan have been made prior to the date hereof.

#### *Senior Executive Cash Incentive Bonus Plan*

On June 5, 2013, our board of directors adopted the Senior Executive Cash Incentive Bonus Plan, or the Bonus Plan, which will become effective upon completion of this offering. The Bonus Plan provides for cash bonus payments based upon the attainment of performance targets established by our compensation committee. The payment targets will be related to corporate, financial and operational measures or objectives, or Corporate Performance Goals, as well as individual performance objectives.

Our compensation committee may select Corporate Performance Goals from among the following: cash flow (including, but not limited to, operating cash flow and free cash flow); sales or revenue;

corporate revenue; earnings before interest, taxes, depreciation and amortization; net income (loss) (either before or after interest, taxes, depreciation and/or amortization); changes in the market price of our common stock; economic value-added; development, clinical or regulatory milestones; acquisitions or strategic transactions; operating income (loss); return on capital, assets, equity, or investment; stockholder returns; return on sales; gross or net profit levels; productivity; expense efficiency; margins; operating efficiency; customer satisfaction; working capital; earnings (loss) per share of our common stock; bookings, new bookings or renewals; sales or market shares; number of customers; number of new customers or customer references; operating income and/or net annual recurring revenue, any of which may be measured in absolute terms, as compared to any incremental increase, in terms of growth, as compared to results of a peer group, against the market as a whole, compared to applicable market indices and/or measured on a pre-tax or post-tax basis.

Each executive officer who is selected to participate in the Bonus Plan will have a target bonus opportunity set for each performance period. The bonus formulas will be adopted in each performance period by the compensation committee and communicated to each executive. The Corporate Performance Goals will be measured at the end of each performance period after our financial reports have been published or such other appropriate time as the compensation committee determines. If the Corporate Performance Goals and individual performance objectives are met, payments will be made as soon as practicable following the end of each performance period. Subject to the rights contained in any agreement between the executive officer and the company, an executive officer must be employed by the company on the bonus payment date to be eligible to receive a bonus payment. The Bonus Plan also permits the compensation committee to approve additional bonuses to executive officers in its sole discretion.

#### *401(k) Plan*

We maintain a tax-qualified retirement plan that provides eligible employees in the United States with an opportunity to save for retirement on a tax-advantaged basis. We may provide matching and discretionary contributions. All participants' interests in their contributions are 100% vested when contributed. Any employer contributions vest over a five-year period. Pre-tax contributions are allocated to each participant's individual account and are then invested in selected investment alternatives according to the participants' directions. The retirement plan is intended to qualify under Sections 401(a) and 501(a) of the Code.

#### *Other Compensation*

We currently maintain broad-based benefits that are provided to all employees, including health insurance, life and disability insurance and dental insurance.



## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than compensation arrangements, we describe below transactions and series of similar transactions since January 1, 2010, to which we were a party or will be a party, in which:

- the amounts involved exceeded or will exceed \$120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest.

Compensation arrangements for our directors and Named Executive Officers are described elsewhere in this prospectus.

### Sales and Purchases of Securities

#### *2010 and 2011 Series A Financing*

On April 28, 2008, we entered into a stock purchase agreement with Dr. Newton and affiliated funds of Alta Partners, Aisling Capital, Domain Partners and Arboretum Ventures pursuant to which we agreed to issue and sell, in a series of closings, an aggregate of 23,975,000 shares of our Series A preferred stock in exchange for cash and cancellation of certain indebtedness at a price of \$1.00 per share. Several of the closings were contingent on the occurrence of pre-specified clinical or development milestones. On January 27, 2010, following the commencement of Phase 1 clinical trials of ETC-1002, the applicable second tranche milestone, we issued and sold an aggregate of 6,000,000 shares of Series A preferred stock to these purchasers for gross proceeds of \$6,000,000. On April 7, 2010, Louis G. Lange, M.D., an affiliated fund of Dr. Lange and the Wm. Thomas Lockard, Trustee Alix Marduel, Trustee Lockard/Marduel Revocable Trust became parties to the stock purchase agreement. On April 7, 2010, we issued and sold an aggregate of 1,000,000 shares of Series A preferred stock to these purchasers for gross proceeds of \$1,000,000. On January 28, 2011, following the commencement of Phase 2a clinical trials of ETC-1002, the applicable third tranche milestone, we issued and sold an aggregate of 6,700,000 shares of Series A preferred stock to these purchasers for gross proceeds of \$6,700,000.

#### *January 2012 Convertible Note Financing*

On January 26, 2012, we entered into a convertible note financing in which we issued 10% convertible promissory notes for an aggregate principal amount of \$6.0 million to certain investors affiliated with Alta Partners, Aisling Capital, Domain Partners, Arboretum Ventures, Asset Management Company and Dr. Newton, which were convertible, under certain circumstances, into shares of Series A preferred stock.

On February 12, 2013, these convertible promissory notes were converted, in accordance with their terms and at their respective conversion prices, into shares of Series A preferred stock, and following such conversion, the notes were cancelled.

#### *September and November 2012 Convertible Note Financing*

On September 4, 2012, we entered into a convertible note financing in which we issued 10% convertible promissory notes for an aggregate principal amount of \$4.0 million to certain investors affiliated with Alta Partners, Aisling Capital, Domain Partners, Arboretum Ventures, Asset Management Company and Dr. Newton, which were convertible, under certain circumstances, into shares of Series A preferred stock. On September 4, 2012, we also issued warrants to purchase shares of our preferred stock to the foregoing investors for an aggregate purchase price of \$4,000. On November 30, 2012, we entered into a convertible note financing in which we issued additional 10% convertible promissory notes for an aggregate principal amount of \$5.7 million to certain investors

affiliated with Alta Partners, Aisling Capital, Domain Partners, Arboretum Ventures, Asset Management Company and Dr. Newton, which were convertible, under certain circumstances, into shares of Series A preferred stock. On November 30, 2012, we also issued additional warrants to purchase shares of our preferred stock to the foregoing investors for an aggregate purchase price of \$5,700.

#### ***February and April 2013 Series A Issuances***

On February 12, 2013, the convertible promissory notes issued in January, September and November 2012 were converted, in accordance with their respective terms and at their respective conversion prices, into shares of Series A preferred stock, and the warrants issued in September and November 2012 became exercisable for shares of Series A preferred stock.

In April 2013, we entered into a stock purchase agreement with Dr. Newton and affiliated funds of Longitude Capital, Alta Partners, Aisling Capital, Domain Partners, Asset Management Company and Arboretum Ventures, pursuant to which we issued an aggregate of 17,000,000 shares of our Series A preferred stock at a price of \$1.00 per share to these purchasers for gross proceeds of \$17.0 million. Upon the closing under the stock purchase agreement, Patrick Enright of Longitude Capital became a member of our board of directors. Each share of Series A preferred stock is convertible into 0.143 shares of our common stock.

#### ***May 2013 Series A-1 Issuance***

On April 28, 2008, we issued a 8.931% convertible promissory note to Pfizer in the original principal amount of \$5.0 million in connection with our acquisition of the exclusive worldwide rights to ETC-1002 from Pfizer. Pursuant to the terms of the convertible promissory note, accrued interest under the note was capitalized on June 30th and December 31st of each year. The aggregate amount of principal and interest outstanding was approximately \$7.5 million and \$7.7 million as of December 31, 2012 and March 31, 2013, respectively. On May 29, 2013, we entered into a stock purchase agreement with Pfizer pursuant to which we sold 6,750,000 shares of our Series A-1 preferred stock to Pfizer at a price of \$1.1560 per share, which purchase price was paid through the cancellation of all outstanding indebtedness, including accrued interest, under the Pfizer convertible promissory note. Outstanding indebtedness, including accrued interest, was \$7.8 million as of the date of conversion. Upon completion of the conversion of the Pfizer convertible promissory note into 6,750,000 shares of Series A-1 preferred stock, the note was cancelled and Pfizer became the owner of more than 5% of our capital stock.

#### **Indemnification Agreements**

We have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer.

#### **Policies for Approval of Related Person Transactions**

Our board of directors reviews and approves transactions with directors, officers, and holders of 5% or more of our voting securities and their affiliates, each, a related person. Prior to this offering, prior to our board of directors' consideration of a transaction with a related person, the material facts as to the related person's relationship or interest in the transaction were disclosed to our board of directors, and the transaction was not approved by our board of directors unless a majority of the

directors who were not interested in the transaction approved the transaction. Our current policy with respect to approval of related person transactions is not set forth in writing.

We have adopted a related person transaction policy that will be effective upon the effectiveness of the registration statement of which this prospectus forms a part. Pursuant to this policy, our audit committee shall review the material facts of all related person transactions. The audit committee shall take into account, among other factors that it deems appropriate, whether the related person transaction is on terms no less favorable to us than terms generally available in a transaction with an unrelated third-party under the same or similar circumstances and the extent of the related person's interest in the related person transaction.

**PRINCIPAL STOCKHOLDERS**

The following table sets forth certain information known to us regarding beneficial ownership of our capital stock as of May 31, 2013, as adjusted to reflect the sale of common stock offered by us in this offering, for:

- each person known by us to be the beneficial owner of more than 5% of our capital stock;
- our named executive officers;
- each of our other directors; and
- all executive officers and directors as a group.

To the extent that the underwriters sell more than 4,500,000 shares in this offering, the underwriters have the option to purchase up to an additional 675,000 shares at the initial public offering price less the underwriting discount.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons and entities named in the table below have sole voting and investment power with respect to all common stock shown as beneficially owned by them.

The table lists applicable percentage ownership based on 9,579,305 shares of common stock outstanding as of May 31, 2013 and also lists applicable percentage ownership based on 14,079,305 shares of common stock assumed to be outstanding after the closing of the offering. We have assumed that no shares of our common stock are purchased by our directors or executive officers or by the beneficial owners of more than 5% of our capital stock pursuant to the directed share program or otherwise in the offering. Options to purchase shares of common stock and warrants that are exercisable for preferred stock and convertible into shares of common stock, in each case, that are exercisable within 60 days of May 31, 2013 are deemed to be beneficially owned by the persons holding these options or warrants for the purpose of computing percentage ownership of that person, but are not treated as outstanding for the purpose of computing any other person's ownership percentage.

Name and address of beneficial owner(1)	Shares beneficially owned prior to offering		Shares beneficially owned after the offering	
	Number	Percent	Number	Percent
<b>5% Stockholders</b>				
Alta Partners VIII, L.P.(2)	1,887,712	19.6%	1,887,712	13.3%
Aisling Capital II, L.P.(3)	1,887,712	19.6	1,887,712	13.3
Entities affiliated with Domain Partners VII, L.P.(4)	1,909,180	19.8	1,909,180	13.5
Entities affiliated with Arboretum Ventures II, L.P.(5)	582,966	6.1	582,966	4.1
Entities affiliated with Longitude Capital Partners, LLC(6)	1,717,720	17.9	1,717,720	12.2
Pfizer Inc.(7)	966,218	10.1	966,218	6.9
<b>Named Executive Officers</b>				
Tim M. Mayleben(8)	298,889	3.0	298,889	2.1
Troy A. Ignelzi(9)	24,825	*	24,825	*
Roger S. Newton, Ph.D., FAHA(10)	698,129	7.2	698,129	4.9
Noah L. Rosenberg, M.D.(11)	24,333	*	24,333	*
<b>Other Directors</b>				
Patrick Enright(12)	1,717,720	17.9	1,717,720	12.2
Dov A. Goldstein, M.D.(13)	1,909,183	19.7	1,909,183	13.5
Daniel Janney(14)	1,909,183	19.7	1,909,183	13.5
Louis G. Lange, M.D., Ph.D.(15)	249,921	2.6	249,921	1.8
Nicole Vitullo(16)	1,909,180	19.8	1,909,180	13.5
<b>All directors and executive officers as a group (9 persons)</b>	<b>8,741,363</b>	<b>84.3</b>	<b>8,741,363</b>	<b>59.9</b>

\* Represents beneficial ownership of less than one percent.

- (1) Unless otherwise indicated, the address for each beneficial owner is c/o Esperion Therapeutics, Inc., 46701 Commerce Center Drive, Plymouth, MI 48170.
- (2) The address for Alta Partners VIII, L.P. is One Embarcadero Center, 37<sup>th</sup> Floor, San Francisco, CA 94111. Consists of (a) 1,816,475 shares of common stock issuable upon conversion of shares of Series A preferred stock and (b) 71,237 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock. These shares are held of record by Alta Partners VIII, L.P. Alta Partners Management VIII, LLC is the general partner of Alta Partners VIII, L.P. Guy Nohra, Daniel Janney and Farah Champsi are managing directors of Alta Partners Management VIII, LLC and exercise shared voting and investment powers with respect to the shares owned by Alta Partners VIII, L.P. Each of the reporting persons disclaims beneficial ownership of such shares, except to the extent of their proportionate pecuniary interest therein, if any. Mr. Janney is a member of our board of directors.
- (3) The address for Aisling Capital II, L.P. is 888 7th Avenue, 30th Floor, New York, New York, 10106. Consists of (a) 1,816,475 shares of common stock issuable upon conversion of shares of Series A preferred stock and (b) 71,237 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock. These shares are directly held by Aisling Capital II, LP, or Aisling, and are deemed to be beneficially owned by Aisling Capital Partners, LP, or Aisling GP, as general partner of Aisling, Aisling Capital Partners, LLC, or Aisling Partners, as general partner of Aisling GP, and each of the individual managing members of Aisling Partners. In addition, Dov A. Goldstein, M.D. and five other persons on the investment committee of Aisling share the power to vote or dispose of these shares and therefore each member may be deemed to have voting and investment power with respect to such shares. Each of the members disclaims beneficial ownership of such shares except to the extent of their pecuniary interest therein, if any. Dr. Goldstein is a member of our board of directors.
- (4) The address for Domain Partners VII, L.P. is One Palmer Square, Suite 515, Princeton, New Jersey, 08542. Consists of (a) 21,471 shares of restricted stock issued under the 2008 Plan upon exercise of an early exercise stock option originally issued to Nicole Vitullo and subsequently transferred to Domain Associates, L.L.C., of which, 19,682 shares remain subject to vesting within 60 days of May 31, 2013, (b) 1,786,012 shares of common stock issuable upon conversion of shares of Series A preferred stock held by Domain Partners VII, L.P., (c) 30,462 shares of common stock issuable upon conversion of shares of Series A preferred stock held by DP VII Associates, L.P., (d) 70,042 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock held by Domain Partners VII, L.P. and (e) 1,193 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock held by DP VII Associates, L.P. James C. Blair, Brian H. Dovey, Jesse I. Treu, Kathleen K. Schoemaker, Brian K. Halak and Nicole Vitullo, the managing members of One Palmer Square Associates VII, L.L.C., the general partner of Domain Partners VII, L.P. and DP VII Associates, L.P., share the power to vote or dispose of these shares and therefore each of the foregoing managing members may be deemed to have voting and investment power with respect to such shares. Each of the foregoing managing members disclaims beneficial ownership of such shares except to the extent of their pecuniary interest therein, if any. Ms. Vitullo is a member of our board of directors.
- (5) The address for Arboretum Ventures II, L.P. is 303 Detroit Street, Suite 301, Ann Arbor, Michigan 48104. Consists of (a) 454,486 shares of common stock issuable upon conversion of shares of Series A preferred stock held by Arboretum Ventures II, L.P., (b) 106,483 shares of common stock issuable upon conversion of shares of Series A preferred stock held by Arboretum

Ventures IIA, L.P., (c) 17,822 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock held by Arboretum Ventures II, L.P. and (d) 4,175 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock held by Arboretum Ventures IIA, L.P. Arboretum Investment Manager II, LLC ("AIM II") serves as the general partner of Arboretum Ventures II, L.P. and serves as the sole manager of Arboretum Investment Manager II, LLC, which serves as the general partner of Arboretum Ventures IIA, L.P. Jan Garfinkle and Timothy Petersen are the managing members of AIM II and share the power to vote or dispose of these shares and therefore each of the foregoing managing members may be deemed to have voting and investment power with respect to such shares. Each of the foregoing managing members disclaims beneficial ownership of such shares except to the extent of their pecuniary interest therein, if any.

- (6) The address for Longitude Capital Partners, LLC ("Longitude Capital") is 800 El Camino Real, Suite 220, Menlo Park, CA 94025. Consists of (a) 1,683,967 shares of common stock issuable upon conversion of shares of Series A preferred stock held by Longitude Venture Partners, L.P. ("LVP") and (b) 33,753 shares of common stock issuable upon conversion of shares of Series A preferred stock held by Longitude Capital Associates, L.P. ("LCA"). Longitude Capital, as general partner of each of LVP and LCA, has the power to vote and dispose of securities held by each of them and may be deemed to have beneficial ownership of the shares owned by LVP and LCA. Patrick G. Enright ("Enright") and Juliet Tammenoms Bakker ("Bakker") are each managing members of Longitude Capital, and share the decision making power of Longitude Capital and may be deemed to have beneficial ownership of such shares owned by LVP and LCA. Each of Longitude Capital, Enright and Bakker disclaims beneficial ownership of all shares, except to the extent of their pecuniary interest therein. Mr. Enright is a member of our board of directors.
- (7) The address for Pfizer is 235 East 42<sup>nd</sup> Street, New York, NY 10018. Consists of 966,218 shares of common stock issuable upon conversion of shares of Series A-1 preferred stock held by Pfizer.
- (8) Consists of 298,889 shares of common stock which Mr. Mayleben has the right to acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.
- (9) Consists of 24,825 shares of common stock which Mr. Ignelzi has the right to acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.
- (10) Consists of (a) 286,286 shares of common stock, (b) 301,051 shares of common stock issuable upon conversion of shares of Series A preferred stock, (c) 34,651 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock and (d) 76,141 shares of common stock which Dr. Newton has the right to acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.
- (11) Consists of 24,333 shares of common stock which Dr. Rosenberg has the right to acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.
- (12) Mr. Enright is a managing member of Longitude Capital which holds an aggregate of 1,717,720 shares of our common stock as disclosed in footnote 6 to this table. Mr. Enright disclaims beneficial ownership of the shares held by the Longitude Capital entities, except to the extent of his pecuniary interest therein.
- (13) Dr. Goldstein is on the investment committee of Aisling, which holds an aggregate of 1,887,712 shares of our common stock as disclosed in footnote 3 to this table, including common stock issuable upon the exercise of warrants exercisable within 60 days of May 31, 2013. Dr. Goldstein disclaims beneficial ownership of the shares held by Aisling, except to the extent of his pecuniary interest therein. Includes 21,471 shares of common stock which Dr. Goldstein has the right to

acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.

- (14) Mr. Janney is a managing director of Alta Partners Management VIII, LLC, which is the general partner of Alta Partners VIII, L.P., which holds an aggregate of 1,887,712 shares of our common stock as disclosed in footnote 2 to this table, including common stock issuable upon the exercise of warrants exercisable within 60 days of May 31, 2013. Mr. Janney has a passive economic interest in the general partner of Alta Partners VIII, L.P. Mr. Janney disclaims beneficial ownership of the shares held by Alta Partners VIII, L.P., except to the extent of his pecuniary interest therein. Includes 21,471 shares of common stock which Mr. Janney has the right to acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.
- (15) Dr. Lange is a managing member of Asset Management Ventures Fund GP LLC, which is the general partner of Asset Management Company Venture Fund, L.P., which holds 186,989 shares of common stock issuable upon conversion of shares of Series A preferred stock and 7,333 shares of common stock issuable upon conversion of shares of Series A preferred stock, which are issuable upon exercise of warrants to purchase Series A preferred stock. Dr. Lange disclaims beneficial ownership of the shares held by of Asset Management Company Venture Fund, L.P., except to the extent of his pecuniary interest therein. Includes 41,285 shares of common stock which Dr. Lange has the right to acquire upon the exercise of outstanding options, exercisable currently or within 60 days of May 31, 2013.
- (16) Ms. Vitullo is a managing member of One Palmer Square Associates VII, L.L.C., the general partner of Domain Partners VII, L.P. and DP VII Associates, L.P., which hold an aggregate of 1,909,180 shares of our common stock as disclosed in footnote 4 to this table, including common stock issuable upon the exercise of warrants exercisable within 60 days of May 31, 2013. Ms. Vitullo disclaims beneficial ownership of the shares held by Domain Partners VII, L.P. and DP VII Associates, L.P., except to the extent of her pecuniary interest therein.

## DESCRIPTION OF CAPITAL STOCK

*The following descriptions are summaries of the material terms of our amended and restated certificate of incorporation and amended and restated bylaws, which will become effective upon consummation of this offering. The descriptions of the common stock and preferred stock give effect to changes to our capital structure that will occur immediately prior to the closing of this offering. We refer in this section to our amended and restated certificate of incorporation as our certificate of incorporation, and we refer to our amended and restated bylaws as our bylaws.*

### General

Upon completion of this offering, our authorized capital stock will consist of 120,000,000 shares of common stock, par value \$0.001 per share, and 5,000,000 shares of preferred stock, par value \$0.001 per share, all of which shares of preferred stock will be undesignated.

As of May 31, 2013, 9,579,305 shares of our common stock were outstanding and held by 23 stockholders of record. This amount assumes the conversion of all outstanding shares of our preferred stock and declared but unpaid dividends thereon into common stock, which will occur immediately prior to the closing of this offering. In addition, as of May 31, 2013, we had outstanding options to purchase 696,924 shares of our common stock under our 2008 Incentive Stock Option and Restricted Stock Plan, at a weighted-average exercise price of \$2.09 per share, 599,607 of which were exercisable. These options that were exercisable as of May 31, 2013 include options to purchase 418,507 shares of restricted stock that remain subject to vesting upon the exercise of early exercise stock options.

### Common Stock

The holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of the stockholders. The holders of our common stock do not have any cumulative voting rights. Holders of our common stock are entitled to receive ratably any dividends declared by the board of directors out of funds legally available for that purpose, subject to any preferential dividend rights of any outstanding preferred stock. Our common stock has no preemptive rights, conversion rights or other subscription rights or redemption or sinking fund provisions.

In the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in all assets remaining after payment of all debts and other liabilities and any liquidation preference of any outstanding preferred stock. The shares to be issued by us in this offering will be, when issued and paid for, validly issued, fully paid and non-assessable.

### Preferred Stock

Immediately prior to the consummation of this offering, all outstanding shares of our preferred stock will be converted into shares of our common stock. Immediately prior to the consummation of this offering, our amended and restated certificate of incorporation will be amended and restated to delete all references to such shares of preferred stock. Upon the consummation of this offering, our board of directors will have the authority, without further action by our stockholders, to issue up to 5,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting, or the designation of, such series, any or all of which may be more favorable than the rights of our common stock. The issuance of our preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon our liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change in control of our company or other corporate action. Immediately after consummation of this offering, no shares of preferred stock will be outstanding, and we have no present plan to issue any shares of preferred stock.



## **Warrants**

As of May 31, 2013, we had outstanding warrants to purchase 1,940,000 shares of Series A preferred stock. Upon the consummation of this offering, these warrants will become exercisable for 277,690 shares of common stock.

## **Registration Rights**

Upon the completion of this offering, the holders of 9,182,371 shares of our common stock, including shares issuable upon the conversion of preferred stock or their permitted transferees, are entitled to rights with respect to the registration of these securities under the Securities Act. These rights are provided under the terms of (i) an investor rights agreement between us and the holders of our common stock and Series A preferred stock and (ii) a registration rights and securityholder agreement between us and Pfizer. Each of the investor rights agreement and registration rights and securityholder agreement include demand registration rights, short-form registration rights and piggyback registration rights. All fees, costs and expenses of underwritten registrations under these agreements will be borne by us and all selling expenses, including underwriting discounts and selling commissions, will be borne by the holders of the shares being registered.

### **Demand Registration Rights**

Upon the completion of this offering, the holders of 9,182,371 shares of our common stock, including shares issuable upon the conversion of preferred stock or their permitted transferees, are entitled to demand registration rights. Under the terms of the investor rights agreement and registration rights and securityholder agreement, we will be required, upon the written request of holders of a majority of these securities, to use our best efforts to file a registration statement and use reasonable, diligent efforts to affect the registration of all or a portion of these shares for public resale. We are required to effect only two registrations pursuant to this provision of the investor rights agreement and registration rights and securityholder agreement. A demand for registration may not be made until 180 days after the completion of this offering.

### **Short Form Registration Rights**

Upon the completion of this offering, the holders of 9,182,371 shares of our common stock, including shares issuable upon the conversion of preferred stock or their permitted transferees, are also entitled to short form registration rights. Pursuant to the investor rights agreement, if we are eligible to file a registration statement on Form S-3, upon the written request of any of these holders to sell registrable securities at an aggregate price of at least \$1,000,000, we will be required to use our best efforts to affect a registration of such shares. Pursuant to the registration rights and securityholder agreement, if we are eligible to file a registration statement on Form S-3, upon the written request of any of these holders to sell registrable securities at an aggregate price of at least \$2,000,000, we will be required to use our best efforts to affect a registration of such shares. We are required to effect only two registrations in any twelve month period pursuant to this provision of the investor rights agreement and registration rights and securityholder agreement.

### **Piggyback Registration Rights**

Upon the completion of this offering, the holders of 9,182,371 shares of our common stock, including shares issuable upon the conversion of preferred stock or their permitted transferees, are entitled to piggyback registration rights. If we register any of our securities either for our own account or for the account of other security holders, the holders of these shares are entitled to include their shares in the registration. Subject to certain exceptions contained in the investor rights agreement and the registration rights and securityholder agreement, we and the underwriters may limit the number of shares included in the underwritten offering if the underwriters determine in good faith that marketing factors require a limitation of the number of shares to be underwritten.

### ***Indemnification***

Our investor rights agreement and registration rights and securityholder agreement each contain customary cross-indemnification provisions, under which we are obligated to indemnify holders of registrable securities in the event of material misstatements or omissions in the registration statement attributable to us, and they are obligated to indemnify us for material misstatements or omissions attributable to them.

### ***Expiration of Registration Rights***

The registration rights granted under the investor rights agreement and the registration rights and securityholder agreement will terminate upon the earlier of (i) the third anniversary of the completion of this offering or (ii) with respect to an individual stockholder, at such time as such stockholder holds less than 1% of our outstanding common stock.

### ***Anti-Takeover Effects of our Certificate of Incorporation and Bylaws and Delaware Law***

Our certificate of incorporation and bylaws include a number of provisions that may have the effect of delaying, deferring or preventing another party from acquiring control of us and encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include the items described below.

### ***Board Composition and Filling Vacancies***

Our certificate of incorporation provides for the division of our board of directors into three classes serving staggered three-year terms, with one class being elected each year. Our certificate of incorporation also provides that directors may be removed only for cause and then only by the affirmative vote of the holders of 75% or more of the shares then entitled to vote at an election of directors. Furthermore, any vacancy on our board of directors, however occurring, including a vacancy resulting from an increase in the size of our board, may only be filled by the affirmative vote of a majority of our directors then in office even if less than a quorum. The classification of directors, together with the limitations on removal of directors and treatment of vacancies, has the effect of making it more difficult for stockholders to change the composition of our board of directors.

### ***No Written Consent of Stockholders***

Our certificate of incorporation provides that all stockholder actions are required to be taken by a vote of the stockholders at an annual or special meeting, and that stockholders may not take any action by written consent in lieu of a meeting. This limit may lengthen the amount of time required to take stockholder actions and would prevent the amendment of our bylaws or removal of directors by our stockholders without holding a meeting of stockholders.

### ***Meetings of Stockholders***

Our certificate of incorporation and bylaws provide that only a majority of the members of our board of directors then in office may call special meetings of stockholders and only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders. Our bylaws limit the business that may be conducted at an annual meeting of stockholders to those matters properly brought before the meeting.

### ***Advance Notice Requirements***

Our bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of stockholder proposals must be timely given

in writing to our corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the annual meeting for the preceding year. Our bylaws specify the requirements as to form and content of all stockholders' notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting.

#### ***Amendment to Certificate of Incorporation and Bylaws***

Any amendment of our certificate of incorporation must first be approved by a majority of our board of directors, and if required by law or our certificate of incorporation, must thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment and a majority of the outstanding shares of each class entitled to vote thereon as a class, except that the amendment of the provisions relating to stockholder action, board composition, limitation of liability and the amendment of our certificate of incorporation must be approved by not less than 75% of the outstanding shares entitled to vote on the amendment, and not less than 75% of the outstanding shares of each class entitled to vote thereon as a class. Our bylaws may be amended by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws; and may also be amended by the affirmative vote of at least 75% of the outstanding shares entitled to vote on the amendment, or, if our board of directors recommends that the stockholders approve the amendment, by the affirmative vote of the majority of the outstanding shares entitled to vote on the amendment, in each case voting together as a single class.

#### ***Undesignated Preferred Stock***

Our certificate of incorporation provides for 5,000,000 authorized shares of preferred stock. The existence of authorized but unissued shares of preferred stock may enable our board of directors to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, our board of directors were to determine that a takeover proposal is not in the best interests of our stockholders, our board of directors could cause shares of preferred stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group. In this regard, our certificate of incorporation grants our board of directors broad power to establish the rights and preferences of authorized and unissued shares of preferred stock. The issuance of shares of preferred stock could decrease the amount of earnings and assets available for distribution to holders of shares of common stock. The issuance may also adversely affect the rights and powers, including voting rights, of these holders and may have the effect of delaying, deterring or preventing a change in control of us.

#### ***Section 203 of the Delaware General Corporation Law***

Upon completion of this offering, we will be subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a three-year period following the time that this stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- before the stockholder became interested, our board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances, but not the outstanding voting stock owned by the interested stockholder; or
- at or after the time the stockholder became interested, the business combination was approved by our board of directors and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, lease, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

### **Exchange Listing**

We have applied to list our common stock on the NASDAQ Global Market under the trading symbol "ESPR."

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock will be Computershare Trust Company, N.A. The transfer agent and registrar's address is 250 Royall Street, Canton, Massachusetts 02021.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our shares. Future sales of our common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.

Based on the number of shares outstanding as of May 31, 2013, upon the completion of this offering, 14,079,305 shares of our common stock will be outstanding, assuming no exercise of the underwriters' over-allotment option to purchase additional shares and no exercise of outstanding options or warrants. Of the outstanding shares, all of the shares sold in this offering will be freely tradable, except that any shares held by our affiliates, as that term is defined in Rule 144 under the Securities Act, may only be sold in compliance with the limitations described below.

### Rule 144

In general, a person who has beneficially owned restricted stock for at least six months would be entitled to sell their securities provided that (i) such person is not deemed to have been one of our affiliates at the time of, or at any time during the 90 days preceding, a sale and (ii) we are subject to the Securities Exchange Act of 1934, as amended, periodic reporting requirements for at least 90 days before the sale. Persons who have beneficially owned restricted shares for at least six months but who are our affiliates at the time of, or any time during the 90 days preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- 1% of the number of shares then outstanding, which will equal approximately 140,793 shares immediately after this offering assuming no exercise of the underwriters' over-allotment option to purchase additional shares, based on the number of shares outstanding as of May 31, 2013; or
- the average weekly trading volume of our common stock on the NASDAQ Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale;

provided, in each case, that we are subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale. Such sales both by affiliates and by non-affiliates must also comply with the applicable current public information provisions of Rule 144 and such sales by affiliates must also comply with the manner of sale and notice provisions of Rule 144.

### Rule 701

Rule 701 under the Securities Act, as in effect on the date of this prospectus, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, executive officers or directors who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and under "Underwriting" included elsewhere in this prospectus and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

### **Lock-Up Agreements**

All of our directors, executive officers and stockholders, who collectively hold all of our shares of common stock, have signed a lock-up agreement in favor of the underwriters which prevents them from selling any of our common stock or any securities convertible into or exercisable or exchangeable for common stock for a period of not less than 180 days from the date of this prospectus without the prior written consent of the representatives subject to certain exceptions set forth in "Underwriting". Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc., on behalf of the underwriters, may in their joint discretion and at any time release some or all of the shares subject to lock-up agreements prior to the expiration of the 180-day period. When determining whether or not to release shares from the lock-up agreements, Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc. will consider, among other factors, the stockholder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time.

### **Registration Rights**

Upon completion of this offering, the holders of 9,182,371 shares of common stock or their transferees will be entitled to various rights with respect to registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See "Description of Capital Stock—Registration Rights" for additional information.

### **Stock Option Plans**

We intend to file one or more registration statements on Form S-8 under the Securities Act to register our shares issued or reserved for issuance under our stock option plans. The first such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the Securities and Exchange Commission. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above. As of May 31, 2013, we estimate that such registration statement on Form S-8 will cover approximately 1,851,053 shares.

## MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the material U.S. federal income tax considerations relating to the acquisition, ownership and disposition of our common stock issued pursuant to this offering. This summary deals only with our common stock held as a capital asset by a stockholder, and does not discuss the U.S. federal income tax considerations applicable to a stockholder that is subject to special treatment under U.S. federal income tax laws, including: a dealer in securities or currencies; a financial institution; a regulated investment company; a real estate investment trust; a tax-exempt organization; an insurance company; a person holding our common stock as part of a hedging, integrated, conversion or straddle transaction or a person deemed to sell our common stock under the constructive sale provisions of the Code; a trader in securities that has elected the mark-to-market method of accounting; an entity that is treated as a partnership for U.S. federal income tax purposes; a person that received our common stock in connection with services provided to the company or any of its affiliates; a U.S. person whose "functional currency" is not the U.S. dollar; a "controlled foreign corporation;" a "passive foreign investment company;" or a U.S. expatriate.

This summary is based upon provisions of the Code, and applicable regulations, rulings and judicial decisions in effect as of the date hereof. Those authorities may be changed, perhaps with retroactive effect, or may be subject to differing interpretations, so as to result in U.S. federal income tax consequences different from those discussed below. No assurance can be given that the Internal Revenue Service, or IRS, would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. We have not sought and will not seek an advance ruling from the IRS regarding any matter discussed herein. This summary does not address all aspects of U.S. federal income tax, does not deal with all tax considerations that may be relevant to stockholders in light of their personal circumstances and does not address any state, local, foreign, gift, estate or alternative minimum tax considerations.

For purposes of this discussion, a "U.S. holder" is a beneficial holder of our common stock that is: an individual citizen or resident of the United States for U.S. federal income tax purposes; a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia; an estate the income of which is subject to U.S. federal income taxation regardless of its source; or a trust if it (1) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

For purposes of this discussion, a "non-U.S. holder" is a beneficial holder of our common stock (other than a partnership or any other entity or arrangement that is treated as a partnership for U.S. federal income tax purposes) that is not a U.S. holder.

If a partnership (or an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. A partner of a partnership holding our common stock is urged to consult its own tax advisors.

**Holders of our common stock are urged to consult their own tax advisors concerning the tax considerations related to the acquisition, ownership and disposition of our common stock in light of their particular circumstances, as well as any tax considerations arising under the laws of any other jurisdiction, including any state, local and foreign income and other tax laws.**

### U.S. Holders

The following discussion is a summary of certain U.S. federal income tax considerations relevant to a U.S. holder of our common stock.

### **Distributions**

Distributions with respect to our common stock, if any, will generally be includible in the gross income of a U.S. holder as ordinary dividend income to the extent paid out of current and accumulated earnings and profits, as determined for U.S. federal income tax purposes. Any portion of a distribution in excess of current or accumulated earnings and profits would be treated as a return of the holder's adjusted tax basis in our common stock (to the extent thereof) and as such would not be taxable to a U.S. holder. To the extent that such distribution exceeds the U.S. holder's adjusted tax basis in our common stock, such excess will be taxable as capital gain from the sale or exchange of the common stock. If certain requirements are met (including certain holding period requirements), any dividends paid to a holder of our common stock who is a U.S. individual will generally be subject to U.S. federal income tax at favorable capital gain rates applicable to the individual.

Distributions constituting dividends for U.S. federal income tax purposes that are paid to U.S. holders that are corporations may qualify for the 70% dividends received deduction, or DRD, which is generally available to corporate stockholders that own less than 20% of the voting power or value of the outstanding stock of the distributing corporation. A U.S. holder that is a corporation holding 20% or more of the distributing corporation (by vote and value) may be eligible for an 80% DRD with respect to any such dividends. No assurance can be given that we will have sufficient earnings and profits (as determined for U.S. federal income tax purposes) to cause any distributions to be treated as dividends eligible for a DRD. In addition, a DRD is available only if certain other requirements are satisfied, and a DRD may be subject to limitations in certain circumstances, which are not discussed herein.

### ***Sale, Exchange, Redemption or Certain Other Taxable Dispositions of our Common Stock***

A U.S. holder of our common stock will generally recognize gain or loss on the taxable sale, exchange, redemption (provided the redemption is treated as a sale or exchange), or other taxable disposition of such stock in an amount equal to the difference between such U.S. holder's amount realized on the sale and such U.S. holder's adjusted basis in our common stock sold. A U.S. holder's amount realized should equal the amount of cash and the fair market value of any property received in consideration for our common stock sold. The gain or loss will be capital gain or loss, and will be long-term capital gain or loss if the U.S. holder held our common stock for more than one year at the time of disposition. Capital loss can generally only be used to offset capital gain (individuals may also offset excess capital losses against up to \$3,000 of ordinary income per tax year). In general, long-term capital gain recognized by an individual U.S. holder is subject to U.S. federal income tax at favorable capital gain rates applicable to the individual. Any gain recognized by a U.S. holder on a disposition of our common stock will generally be short-term capital gain and will be taxed at ordinary income rates if the U.S. holder held our common stock for one year or less at the time of disposition.

### ***Medicare Tax on Net Investment Income***

An additional 3.8% Medicare tax will be imposed on certain net investment income of certain U.S. holders that are individuals, estates and trusts that do not fall into a special class of trusts that is exempt from such tax to the extent that such person's "modified adjusted gross income" (in the case of an individual) or "adjusted gross income" (in the case of an estate or trust) exceeds a threshold amount. Net investment income generally includes dividends and net gains from the disposition of our common stock. U.S. holders that are individuals, estates or trusts should consult their tax advisors regarding the effect, if any, of the Medicare tax on their ownership and disposition of our common stock.



## **Information Reporting and Backup Withholding Tax**

When required, we or our paying agent will report to our U.S. holders and the IRS the amounts paid on or with respect to our common stock during each calendar year, and the amount of any tax withheld from such payments. Under U.S. federal income tax law, dividends and proceeds from the sale of our common stock may, under certain circumstances, be subject to "backup" withholding at the then applicable rate. Backup withholding generally applies to a U.S. holder if the holder (i) fails to furnish to us or our paying agent a correct social security number or other taxpayer identification number, or TIN, or fails to furnish a certification of exempt status, (ii) has been notified by the IRS that it is subject to backup withholding as a result of the failure to properly report payments of interest or dividends or (iii) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is a U.S. person that is not subject to backup withholding. A U.S. holder may be eligible for an exemption from backup withholding by providing a properly completed IRS Form W-9 to us or the applicable paying agent. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is supplied to the IRS. Certain U.S. persons are exempt from backup withholding, including corporations.

### **Non-U.S. Holders**

The following is a summary of certain U.S. federal tax considerations applicable to a non-U.S. holder of our common stock.

### **Distributions**

Distributions treated as dividends for U.S. federal income tax purposes, if any, that are paid to a non-U.S. holder with respect to shares of our common stock will be subject to U.S. federal withholding tax at a 30% rate (or a lower rate prescribed by an applicable tax treaty) unless the dividends are subject to net income tax because they are effectively connected with the non-U.S. holder's conduct of a trade or business in the United States, as described in the following sentence. If a non-U.S. holder is engaged in a trade or business in the United States and dividends with respect to our common stock are effectively connected with the conduct of such trade or business and, if required by an applicable income tax treaty, are attributable to a U.S. permanent establishment or fixed base, then the non-U.S. holder will be subject to U.S. federal income tax on such dividends on a net income basis in the same manner as if received by a U.S. holder (although the dividends will be exempt from the 30% U.S. federal withholding tax, provided certain certification requirements are satisfied). Any such effectively connected income received by a foreign corporation may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate (or a lower rate prescribed by an applicable tax treaty). To claim the exemption from withholding with respect to any such effectively connected income, the non-U.S. holder must generally furnish to us or our paying agent a properly executed IRS Form W-8ECI (or applicable successor form).

A non-U.S. holder who wishes to claim the benefit of an exemption or reduced rate of U.S. federal withholding tax under an applicable tax treaty must furnish to us or our paying agent a valid IRS Form W-8BEN (or applicable successor form) certifying such non-U.S. holder's qualification for the exemption or reduced rate. If a non-U.S. holder is eligible for an exemption or a reduced rate of U.S. federal withholding tax pursuant to an applicable tax treaty, it may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS.

A non-U.S. holder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of the distribution does not exceed the non-U.S. holder's adjusted basis in our common stock. Instead, the excess portion of the distribution will reduce such non-U.S. holder's adjusted basis in our common stock. A non-U.S. holder will generally only be subject

to tax on a distribution that exceeds both our current and accumulated earnings and profits and such non-U.S. holder's adjusted basis in our common stock if the non-U.S. holder otherwise would be subject to tax on gain from the sale or disposition of our common stock, as described below. If we are not able to determine whether or not a distribution will exceed current and accumulated earnings and profits at the time the distribution is made, we may withhold tax on the entire amount of any distribution at the same rate as we would withhold on a dividend. However, a non-U.S. holder may obtain a refund of amounts that we withhold to the extent that the distribution in fact exceeded our current and accumulated earnings and profits.

#### ***Sale, Exchange, Redemption or Certain Other Taxable Dispositions of our Common Stock***

Non-U.S. holders may recognize gain upon the sale, exchange, redemption (provided the redemption is treated as a sale or exchange) or other taxable disposition of our common stock. Such gain generally will not be subject to U.S. federal income tax unless: (i) the gain is effectively connected with the conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment or a fixed base), by a non-U.S. holder; (ii) the non-U.S. holder is a non-resident alien individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or (iii) we are or have been a "U.S. real property holding corporation" for U.S. federal income tax purposes. We believe that we are not and we do not anticipate becoming a "U.S. real property holding corporation" for U.S. federal income tax purposes.

If a non-U.S. holder is an individual described in clause (i) of the preceding paragraph, the non-U.S. holder will generally be subject to tax on the net gain from a disposition of our common stock at regular graduated U.S. federal income tax rates. If the non-U.S. holder is an individual described in clause (ii) of the preceding paragraph, the non-U.S. holder will generally be subject to a flat 30% tax on the net gain from a disposition of our common stock, which may be offset by U.S. source capital losses even though the non-U.S. holder is not considered a resident of the United States. If a non-U.S. holder is a foreign corporation that falls under clause (i) of the preceding paragraph, it will be subject to tax on its net gain on a disposition of our common stock in the same manner as if it were a U.S. holder and, in addition, the non-U.S. holder may be subject to the branch profits tax at a rate equal to 30% of its effectively connected earnings and profits (or a lower rate prescribed by an applicable tax treaty). If a non-U.S. holder is eligible for the benefits of a tax treaty between the United States and its country of residence, any gain on a disposition of our common stock will be subject to U.S. federal income tax in the manner specified by such treaty. To claim the benefit of an applicable tax treaty, a non-U.S. holder must properly submit an IRS Form W-8BEN (or suitable successor or substitute form).

#### ***Information Reporting and Backup Withholding Tax***

When required, we or our paying agent will report to our non-U.S. holders of our common stock and the IRS the amounts paid on or with respect to our common stock during each calendar year, and the amount of any tax withheld. These information reporting requirements apply even if no withholding was required because the distributions were effectively connected with the non-U.S. holder's conduct of a United States trade or business, or withholding was reduced or eliminated by an applicable tax treaty. This information also may be made available under a specific treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established. Information reporting with respect to proceeds of a sale or other disposition and backup withholding with respect to distributions or sale proceeds, however, generally will not apply to a non-U.S. holder of our common stock provided the non-U.S. holder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as by providing a valid IRS Form W-8BEN or IRS Form W-8ECI, or certain other requirements are met. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person (as

defined by the Code) that is not an exempt recipient. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability provided the required information is provided to the IRS.

### **New Medicare Tax Legislation**

Foreign estates and trusts may be subject to the Medicare tax described above under "Material U.S. Federal Income Tax Considerations—U.S. Holders—Medicare Tax on Net Investment Income." Any non-U.S. holder that is a foreign estate or trust should consult its tax advisor regarding the applicability of the Medicare contribution tax to any of its income or gains in respect of our common stock.

### **Foreign Account Tax Compliance Act**

Under the Foreign Account Tax Compliance Act, or FATCA, a 30% withholding tax will apply to dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a foreign financial institution (as specifically defined for purposes of these rules) unless the foreign financial institution either qualifies for an exemption or enters into an agreement with the U.S. Treasury to, among other things, undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. In addition, FATCA imposes a 30% withholding tax on the same types of payments to a foreign non-financial entity unless the entity qualifies for an exemption, certifies that it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. Such payments would include U.S.-source dividends and the gross proceeds from the sale or other disposition of stock that can produce U.S.-source dividends. Withholding obligations under FATCA will generally apply to payments of dividends made on or after January 1, 2014, and payments of gross proceeds made on or after January 1, 2017.

Holders of our common stock should consult their tax advisors regarding the possible impact of FATCA on their investment in our common stock, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of the 30% withholding tax under FATCA.

**UNDERWRITING**

Under the terms and subject to the conditions contained in an underwriting agreement dated \_\_\_\_\_, 2013, we have agreed to sell to the underwriters named below, for whom Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc. are acting as representatives the following respective numbers of shares of common stock:

<u>Underwriter</u>	<u>Number of Shares</u>
Credit Suisse Securities (USA) LLC	
Citigroup Global Markets Inc.	
JMP Securities LLC	
Stifel, Nicolaus & Company, Incorporated	
<b>Total</b>	<b><u>4,500,000</u></b>

The underwriting agreement provides that the underwriters are obligated to purchase all the shares of common stock in the offering if any are purchased, other than those shares covered by the over-allotment option described below. The underwriting agreement also provides that if an underwriter defaults the purchase commitments of non-defaulting underwriters may be increased or the offering may be terminated.

We have granted to the underwriters a 30-day option to purchase on a pro rata basis up to 675,000 additional shares at the initial public offering price less the underwriting discounts and commissions. The option may be exercised only to cover any over-allotments of common stock.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel including the validity of the shares, and subject to other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The offering of the shares by the underwriters is also subject to the underwriters' right to reject any order in whole or in part.

The underwriters propose to offer the shares of common stock initially at the public offering price on the cover page of this prospectus and to selling group members at that price less a selling concession of up to \$ \_\_\_\_\_ per share. After the initial public offering the representatives may change the public offering price and selling concession.

The following table summarizes the compensation we will pay:

	<u>Per Share</u>		<u>Total</u>	
	<u>Without Over-allotment</u>	<u>With Over-allotment</u>	<u>Without Over-allotment</u>	<u>With Over-allotment</u>
Underwriting discounts and commissions paid by us	\$	\$	\$	\$

We estimate that our out of pocket expenses for this offering (not including any underwriting discounts and commissions) will be approximately \$2,050,000.

We have agreed to reimburse the underwriters for expenses of up to \$50,000 related to clearance of this offering with the Financial Industry Regulatory Authority, Inc. (FINRA).

The underwriters have informed us that they do not expect sales to accounts over which the underwriters have discretionary authority to exceed 5% of the shares of common stock being offered.

We have agreed that we will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, or file with the Securities and Exchange Commission a registration statement under the

Securities Act of 1933, as amended (the "Securities Act") relating to, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, without the prior written consent of Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc. for a period of 180 days after the date of this prospectus except issuances pursuant to the conversion or exchange of convertible or exchangeable securities outstanding on the date hereof or the exercise of warrants or options outstanding on the date hereof, grants of employee stock options pursuant to our existing plans or issuances pursuant to the exercise of such employee stock options.

Our officers, directors and all of our existing securityholders have agreed that they will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock, enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of our common stock, whether any of these transactions are to be settled by delivery of our common stock or other securities, in cash or otherwise, or publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc. for a period of 180 days after the date of this prospectus. The restrictions described in this paragraph do not apply to:

- the sale of shares to the underwriters;
- transfers of shares as a bona fide gift, transfers of shares or other of our securities to a trust or limited family partnership for the benefit of the lock-up signatory or members of the lock-up signatory's immediate family, or transfers of shares by will or intestate succession to the legal representative, heir, beneficiary or a member of the immediate family of the lock-up signatory in a transaction not involving a disposition for value; provided that (i) each transferee agrees to be bound in writing by the restrictions described above and (ii) no filing or public announcement under the Exchange Act shall be required or voluntarily made in connection with such event, other than a filing on a Securities and Exchange Commission Form 5 ("Form 5") made after the expiration of the lock-up period;
- the exercise, including by "net" exercise, of any options or warrants to acquire shares or the conversion of any convertible security into shares, provided that (i) each transferee agrees to be bound in writing by the restrictions described above and (ii) no filing or public announcement under the Exchange Act shall be required or voluntarily made in connection with such event, other than a filing on a Form 5 made after the expiration of the lock-up period;
- transfers or distributions of shares to members, limited partners, stockholders or affiliates of, or any investment fund or other entity that controls or manages the lock-up signatory, provided that (i) each transferee agrees to be bound in writing by the restrictions described above and (ii) no filing or public announcement under the Exchange Act shall be required or voluntarily made in connection with such event, other than a filing on a Form 5 made after the expiration of the lock-up period;
- transfers or distributions in connection with a merger or sale of us;
- the entering into by the lock-up signatory of a written trading plan pursuant to Rule 10b5-1 of the Exchange Act during the lock-up period, provided that no sales of the lock-up signatory's shares shall be made pursuant to such plan prior to the expiration of the lock-up period; or
- shares purchased by the lock-up signatory in this offering.

At our request, the underwriters have reserved for sale, at the initial public offering price, up to 4% of the shares offered by this prospectus for sale to some of our directors, officers, employees and other individuals associated with us and members of their families through a directed share program. If these persons purchase reserved shares, this will reduce the number of shares available for sale to the general public. The transfer restrictions contained in the lock-up agreements with the underwriters referred to above do not apply to any shares purchased in the directed share program, and participants in the directed share program who are not officers, directors, employees or current stockholders of our company will not be required to enter into a lock-up agreement with the underwriters relating to the shares so purchased. Any reserved shares that are not purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.

We have agreed to indemnify the several underwriters against liabilities under the Securities Act, or contribute to payments that the underwriters may be required to make in that respect.

We have applied to list our common stock on The NASDAQ Global Market under the symbol "ESPR".

Prior to the offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In determining the initial public offering price, we and the representatives expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the underwriters;
- our prospects and the history and prospects for the industry in which we compete;
- an assessment of our management;
- our prospects for future earnings;
- the recent market prices of, and demand for, publicly-traded common stock of generally comparable companies;
- the general condition of the securities markets at the time of the offering; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our common stock, or that shares of our common stock will trade in the public market at or above the initial public offering price.

In connection with the offering the underwriters may engage in stabilizing transactions, over-allotment transactions, syndicate covering transactions, penalty bids and passive market making in accordance with Regulation M under the Exchange Act.

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.
- Over-allotment transactions involve sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, creating a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriters is not greater than the number of shares that they may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriters may close out any covered short position by either exercising their over-allotment option and/or purchasing shares in the open market.

- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. If the underwriters sell more shares than could be covered by the over-allotment option, a naked short position, the position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
- Penalty bids permit the representatives to reclaim a selling concession from a syndicate member when the common stock originally sold by the syndicate member is purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.
- In passive market making, market makers in the common stock who are underwriters or prospective underwriters may, subject to limitations, make bids for or purchases of our common stock until the time, if any, at which a stabilizing bid is made.

These stabilizing transactions, over-allotment transactions, syndicate covering transactions, penalty bids and passive market making may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of the common stock. As a result the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on The NASDAQ Global Market or otherwise and, if commenced, may be discontinued at any time.

A prospectus in electronic format may be made available on the web sites maintained by one or more of the underwriters, or selling group members, if any, participating in this offering and one or more of the underwriters participating in this offering may distribute prospectuses electronically. The representatives may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the underwriters and selling group members that will make internet distributions on the same basis as other allocations.

#### **Other Relationships**

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future. The underwriters are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities.

#### **Selling Restrictions**

##### ***Notice to Prospective Investors in the European Economic Area***

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), each underwriter represents and agrees that with effect from and including the date on which the Prospectus Directive is implemented in that

Relevant Member State, it has not made and will not make an offer of shares which are the subject of the offering contemplated by this prospectus to the public in that Relevant Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives for any such offer; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression Prospectus Directive means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

***Notice to Prospective Investors in the United Kingdom***

Each of the underwriters severally represents, warrants and agrees as follows:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 ("FSMA") received by it in connection with the issue or sale of the shares in circumstances in which Section 21 of the FSMA does not apply to us; and
- (b) it has complied with, and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.



## LEGAL MATTERS

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Goodwin Procter LLP, Boston, Massachusetts. Certain legal matters will be passed upon for the underwriters by Davis Polk & Wardwell LLP, Menlo Park, California.

## EXPERTS

The financial statements of Esperion Therapeutics, Inc. at December 31, 2012 and 2011, and for each of the two years in the period ended December 31, 2012 and the period from January 22, 2008 (Inception) to December 31, 2012, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 1 to the financial statements) appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm, as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 (File Number 333-188595) under the Securities Act with respect to the common stock we are offering by this prospectus. This prospectus does not contain all of the information included in the registration statement. For further information pertaining to us and our common stock, you should refer to the registration statement and to its exhibits. Whenever we make reference in this prospectus to any of our contracts, agreements or other documents, the references are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contract, agreement or other document.

Upon the closing of the offering, we will be subject to the informational requirements of the Securities Exchange Act of 1934 and will file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at [www.sec.gov](http://www.sec.gov). You may also read and copy any document we file with the SEC at its public reference facility at 100 F Street, N.E., Room 1580, Washington, D.C. 20549.

You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

**Esperion Therapeutics, Inc.  
(A Development Stage Company)**

**Index to the Financial Statements**

**Years Ended December 31, 2012 and 2011, Period From  
January 22, 2008 (Inception) to December 31, 2012,  
the Three Months Ended March 31, 2013 and March 31, 2012 (unaudited)  
and Period From January 22, 2008 (Inception) to March 31, 2013 (unaudited)**

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## Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders  
Esperion Therapeutics, Inc.

We have audited the accompanying balance sheets of Esperion Therapeutics, Inc. (a development stage company) (the Company) as of December 31, 2012 and 2011, and the related statements of operations, convertible preferred stock and stockholders' deficit, and cash flows for each of the two years in the period ended December 31, 2012, and for the period from January 22, 2008 (Inception) to December 31, 2012. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Esperion Therapeutics, Inc. at December 31, 2012 and 2011, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2012, and for the period from January 22, 2008 (Inception) through December 31, 2012, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming Esperion Therapeutics, Inc. will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has recurring losses from operations, a net equity deficiency and a need for additional financing to maintain sufficient liquidity that raise substantial doubt about its ability to continue as a going concern. Management's plans for these matters are also described in Note 1. The accompanying financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Ernst & Young LLP

Milwaukee, Wisconsin  
April 12, 2013

except for Note 1(A) and Note 18, as to which the date is April 19, 2013, and for Note 1(B), as to which the date is June 11, 2013

**Esperion Therapeutics, Inc.**  
**(A Development Stage Company)**

**Balance Sheets**

	December 31,		March 31,	Pro forma
	2012	2011	2013	March 31,
			(unaudited)	2013
				(unaudited)
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 6,511,521	\$ 1,571,084	\$ 3,886,216	\$ 20,886,216
Prepaid clinical development costs	367,216	—	443,769	443,769
Deferred offering costs	—	—	623,029	623,029
Other prepaid and current assets	150,325	92,846	87,961	87,961
Assets held for sale	109,344	200,116	82,344	82,344
Total current assets	<u>7,138,406</u>	<u>1,864,046</u>	<u>5,123,319</u>	<u>22,123,319</u>
Property and equipment, net	120,210	251,527	87,932	87,932
Intangible assets	53,825	53,825	53,825	53,825
Other long-term assets	—	10,352	—	—
Total assets	<u>\$ 7,312,441</u>	<u>\$ 2,179,750</u>	<u>\$ 5,265,076</u>	<u>\$ 22,265,076</u>
<b>Liabilities, convertible preferred stock and stockholders' deficit</b>				
Current liabilities:				
Short term borrowings with related parties, net of debt discount	\$ 15,241,007	\$ —	\$ —	\$ —
Accrued interest	738,192	—	165,798	—
Accounts payable	476,277	691,180	926,819	926,819
Accrued clinical development costs	242,171	204,875	627,759	627,759
Warrant liabilities	265,323	—	307,281	307,281
Other accrued liabilities	210,329	443,173	659,390	659,390
Total current liabilities	<u>17,173,299</u>	<u>1,339,228</u>	<u>2,687,047</u>	<u>2,521,249</u>
Long-term debt	7,528,845	6,897,328	7,528,845	—
Total liabilities	<u>24,702,144</u>	<u>8,236,556</u>	<u>10,215,892</u>	<u>2,521,249</u>
Commitments and contingencies (Note 7)				
<b>Convertible preferred stock:</b>				
Series A preferred stock par value \$0.001; 42,538,092 shares authorized as of March 31, 2013 (unaudited) and 34,785,000 shares authorized as of December 31, 2012 and 2011, 40,598,092 shares issued and outstanding at March 31, 2013 (unaudited) and 23,975,000 shares issued and outstanding at December 31, 2012 and 2011, aggregate liquidation preference of \$40,598,092 at March 31, 2013 (unaudited) and \$23,975,000 at December 31, 2012 and 2011	23,975,000	23,975,000	40,598,092	—
<b>Stockholders' deficit:</b>				
Common stock, \$0.001 par value; 58,220,375 shares authorized as of March 31, 2013 (unaudited and pro forma) and 50,000,000 shares authorized as of December 31, 2012 and 2011, respectively; 346,478 shares issued and outstanding at March 31, 2013 (unaudited) and December 31, 2012 and 307,742 shares issued and outstanding at December 31, 2011; 75,220,375 shares authorized and 9,557,834 shares issued and outstanding at March 31, 2013 (pro forma)	346	308	346	9,557
Additional paid-in capital	609,976	201,175	664,948	66,056,829
Deficit accumulated during the development stage	(41,975,025)	(30,233,289)	(46,214,202)	(46,322,559)
Total stockholders' deficit	<u>(41,364,703)</u>	<u>(30,031,806)</u>	<u>(45,548,908)</u>	<u>19,743,827</u>
Total liabilities, convertible preferred stock and stockholders' deficit	<u>\$ 7,312,441</u>	<u>\$ 2,179,750</u>	<u>\$ 5,265,076</u>	<u>\$ 22,265,076</u>

*See accompanying notes to the financial statements.*

**Esperion Therapeutics, Inc.**  
**(A Development Stage Company)**

**Statements of Operations**

	Years Ended December 31,		Period From January 22, 2008 (Inception) to December 31,	Three Months Ended March 31,		Period From January 22, 2008 (Inception) to March 31,
	2012	2011	2012	2013	2012	2013
	(unaudited)	(unaudited)	(unaudited)	(unaudited)	(unaudited)	(unaudited)
<b>Grant income</b>	\$ —	\$ —	\$ 244,479	\$ —	\$ —	\$ 244,479
<b>Operating expenses:</b>						
Research and development	7,998,128	7,807,702	27,413,861	2,092,593	1,557,211	29,506,454
General and administrative	2,205,632	2,356,669	11,449,696	1,251,419	632,372	12,701,115
Acquired in-process research and development	—	—	85,612	—	—	85,612
Total operating expenses	<u>10,203,760</u>	<u>10,164,371</u>	<u>38,949,169</u>	<u>3,344,012</u>	<u>2,189,583</u>	<u>42,293,181</u>
<b>Loss from operations</b>	<u>(10,203,760)</u>	<u>(10,164,371)</u>	<u>(38,704,690)</u>	<u>(3,344,012)</u>	<u>(2,189,583)</u>	<u>(42,048,702)</u>
Interest expense	(1,486,696)	(577,157)	(3,384,116)	(828,223)	(260,428)	(4,212,339)
Change in fair value of warrant liability	32,367	—	32,367	(41,958)	—	(9,591)
Other income (expense), net	(83,647)	(75,813)	81,414	(24,984)	1,059	56,430
<b>Net loss</b>	<u>\$ (11,741,736)</u>	<u>\$ (10,817,341)</u>	<u>\$ (41,975,025)</u>	<u>\$ (4,239,177)</u>	<u>\$ (2,448,952)</u>	<u>\$ (46,214,202)</u>
Net loss per common share (basic and diluted)	<u>\$ (36.31)</u>	<u>\$ (36.22)</u>		<u>\$ (12.24)</u>	<u>\$ (7.96)</u>	
Weighted-average shares outstanding (basic and diluted)	<u>323,382</u>	<u>298,689</u>		<u>346,478</u>	<u>307,742</u>	
Pro Forma net loss per share applicable to common stockholders—basic and diluted (unaudited)	<u>\$ (3.13)</u>			<u>\$ (0.84)</u>		
Weighted-average number of common shares used in pro forma net loss per share applicable to common stockholders—basic and diluted (unaudited)	<u>3,755,247</u>			<u>5,047,400</u>		

*See accompanying notes to the financial statements.*

**Esperion Therapeutics, Inc.**  
**(A Development Stage Company)**

**Statements of Convertible Preferred Stock and Stockholders' Deficit**

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deficit Accumulated During the Development Stage	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
Balance at January 22, 2008 (inception)		\$ —		\$ —	\$ —	\$ —	\$ —
Issuance of Series A preferred stock on April 24, 2008	10,000,000	10,000,000					
Issuance of Series A preferred stock on April 24, 2008 in exchange for convertible note	250,000	250,000					
Issuance of common stock, on April 24, 2008 at \$0.0001 per share			286,286	286	(86)		200
Exercise of employee stock options on June 30, 2009			3,578	4	3,746		3,750
Issuance of Series A preferred stock on January 27, 2010	6,000,000	6,000,000					
Issuance of Series A preferred stock on April 7, 2010	1,000,000	1,000,000					
Issuance of Series A preferred stock on November 23, 2010	25,000	25,000					
Stock-based compensation					98,796		98,796
Net loss						(19,415,948)	(19,415,948)
<b>Balance at December 31, 2010</b>	<b>17,275,000</b>	<b>17,275,000</b>	<b>289,864</b>	<b>290</b>	<b>102,456</b>	<b>(19,415,948)</b>	<b>(19,313,202)</b>
Issuance of Series A preferred stock on January 28, 2011	6,700,000	6,700,000					
Exercise of employee stock options on May 20, 2011			11,931	12	12,555		12,567
Exercise of employee stock options on August 12, 2011			3,085	3	3,316		3,319
Issuance of common stock on December 7, 2011 in consideration for a license agreement			2,862	3	4,397		4,400
Stock-based compensation					78,451		78,451
Net loss						(10,817,341)	(10,817,341)
<b>Balance at December 31, 2011</b>	<b>23,975,000</b>	<b>23,975,000</b>	<b>307,742</b>	<b>308</b>	<b>201,175</b>	<b>(30,233,289)</b>	<b>(30,031,806)</b>
Exercise of employee stock options on April 30, 2012			16,192	16	17,346		17,362
Exercise of employee stock options on September 24, 2012			14,314	14	14,986		15,000
Exercise of employee stock options on November 6, 2012			1,073	1	1,125		1,126
Exercise of employee stock options on November 23, 2012			7,157	7	7,493		7,500
Beneficial conversion feature from issuance of convertible notes					287,990		287,990
Stock-based compensation					79,861		79,861
Net loss						(11,741,736)	(11,741,736)
<b>Balance December 31, 2012</b>	<b>23,975,000</b>	<b>23,975,000</b>	<b>346,478</b>	<b>346</b>	<b>609,976</b>	<b>(41,975,025)</b>	<b>(41,364,703)</b>
Issuance of Series A preferred stock on February 12, 2013 in exchange for convertible promissory notes (unaudited)	16,623,092	16,623,092					
Stock-based compensation (unaudited)					54,972		54,972
Net loss (unaudited)						(4,239,177)	(4,239,177)
<b>Balance March 31, 2013 (unaudited)</b>	<b>40,598,092</b>	<b>\$ 40,598,092</b>	<b>346,478</b>	<b>\$ 346</b>	<b>\$ 664,948</b>	<b>\$ (46,214,202)</b>	<b>\$ (45,548,908)</b>

*See accompanying notes to the financial statements.*

**Esperion Therapeutics, Inc.**  
**(A Development Stage Company)**

**Statements of Cash Flows**

	<u>Years Ended December 31,</u>		<u>Period From</u>	<u>Three Months Ended</u>		<u>Period From</u>
	<u>2012</u>	<u>2011</u>	<u>January 22,</u> <u>2008</u> <u>(Inception)</u> <u>to December 31,</u> <u>2012</u>	<u>March 31,</u>	<u>2012</u>	<u>January 22,</u> <u>2008</u> <u>(Inception)</u> <u>to March 31,</u> <u>2013</u>
				<u>(unaudited)</u>	<u>(unaudited)</u>	<u>(unaudited)</u>
<b>Operating activities</b>						
Net loss	\$ (11,741,736)	\$ (10,817,341)	\$ (41,975,025)	\$ (4,239,177)	\$ (2,448,952)	\$ (46,214,202)
Adjustments to reconcile net loss to net cash used in operating activities:						
Depreciation expense	139,433	178,471	1,377,171	32,278	36,861	1,409,449
Amortization of debt discount and beneficial conversion feature	116,988	—	116,988	458,993	—	575,981
Amortization of debt issuance costs	15,378	—	15,378	18,533	1,861	33,911
Change in fair value of warrant liability	(32,367)	—	(32,367)	41,958	—	9,591
Noncash interest expense on convertible notes	1,369,709	577,065	3,267,037	350,698	260,428	3,617,735
Write-off of acquired in-process research and development	—	—	85,612	—	—	85,612
Stock-based compensation expense	79,861	78,451	257,108	54,972	16,142	312,080
Common stock issued in license agreement	—	4,400	4,400	—	—	4,400
Loss related to assets held for sale	86,887	108,308	295,701	27,000	—	322,701
Gain on sale of assets	(2,549)	—	(18,459)	(1,265)	(1,949)	(19,724)
Change in assets and liabilities:						
Prepays and other assets	(429,720)	168,277	(536,770)	(655,751)	(3,092)	(1,192,521)
Accounts payable	(214,903)	619,238	476,277	450,542	(429,650)	926,819
Other accrued liabilities	(195,548)	14,406	452,497	834,649	(117,154)	1,287,146
Net cash used in operating activities	(10,808,567)	(9,068,725)	(36,214,452)	(2,626,570)	(2,685,505)	(38,841,022)
<b>Investing activities</b>						
Purchases of short-term investments	—	—	(31,569,166)	—	—	(31,569,166)
Proceeds from maturities of short-term investments	—	500,350	31,515,350	—	—	31,515,350
Unrealized loss on short-term investments	—	—	11	—	—	11
Cash obtained in stock acquisition	—	—	2,500,000	—	—	2,500,000
Proceeds from sale of assets	5,100	42,312	751,199	1,265	4,500	752,464
Purchase of property and equipment	(6,783)	(33,635)	(267,559)	—	(10,668)	(267,559)
Other investing	—	—	50,615	—	—	50,615
Net cash (used in) provided by investing activities	(1,683)	509,027	2,980,450	1,265	(6,168)	2,981,715
<b>Financing activities</b>						
Proceeds from issuance of common stock	40,987	15,886	60,823	—	—	60,823
Proceeds from issuance of preferred stock	—	6,700,000	23,975,000	—	—	23,975,000
Proceeds from warrant issuance	297,690	—	297,690	—	—	297,690
Proceeds from debt issuance with related parties	15,412,010	—	15,412,010	—	6,000,000	15,412,010
Net cash provided by financing activities	15,750,687	6,715,886	39,745,523	—	6,000,000	39,745,523
Net increase (decrease) in cash and cash equivalents	4,940,437	(1,843,812)	6,511,521	(2,625,305)	3,308,327	3,886,216
Cash and cash equivalents at beginning of period	1,571,084	3,414,896	—	6,511,521	1,571,084	—
Cash and cash equivalents at end of period	\$ 6,511,521	\$ 1,571,084	\$ 6,511,521	\$ 3,886,216	\$ 4,879,411	\$ 3,886,216
<b>Supplemental disclosure of cash flow information:</b>						
Conversion of convertible promissory notes, including accrued interest of \$923,092 into preferred stock	\$ —	\$ —	\$ —	\$ 16,623,092	\$ —	\$ 16,623,092

*See accompanying notes to the financial statements.*

**Esperion Therapeutics, Inc.**  
**(A Development Stage Company)**

**Notes to Financial Statements**

**(Information as of March 31, 2013 and thereafter and for  
the three months ended March 31, 2013 and 2012 and the period from  
January 22, 2008 (Inception) to March 31, 2013 is unaudited)**

**1(A). The Company and Basis of Presentation**

The Company is a biopharmaceutical company focused on the research, development and commercialization of therapies for the treatment of patients with elevated levels of low-density lipoprotein cholesterol and other cardiometabolic risk factors. ETC-1002, the Company's lead product candidate, is a novel, first in class, orally available, once-daily small molecule therapy designed to target known lipid and carbohydrate metabolic pathways to reduce levels of LDL-C and to avoid the side effects associated with existing LDL-C lowering therapies. The Company owns the exclusive worldwide rights to ETC-1002 and its other product candidates.

HDL Therapeutics, Inc. (HDL) was incorporated in the state of Delaware on January 22, 2008. On April 28, 2008, HDL acquired all of the capital stock of Esperion Therapeutics, Inc. (Esperion), a wholly owned subsidiary of Pfizer Inc. (see Note 3). On May 5, 2008, Esperion was merged with and into HDL and the Company assumed the name Esperion Therapeutics, Inc. (the Company). Its facilities are located in Plymouth, Michigan.

The Company's primary activities since incorporation have been recruiting personnel, conducting research and development activities, conducting pre-clinical and clinical testing, performing business and financial planning, and raising capital. Accordingly, the Company is considered to be in the development stage.

The Company is subject to the risks associated with a development stage entity, which include: the need to research, develop, and clinically test potentially therapeutic products; obtain regulatory approval for its products and commercialize them, if approved; expand its management and scientific staff; and finance its operations with an ultimate goal of achieving profitable operations.

The Company has sustained operating losses since inception and expects such losses to continue over the foreseeable future. Management plans to continue to finance operations with a combination of public and private equity issuances, debt arrangements, collaborations and strategic and licensing arrangements. If adequate funds are not available, the Company may not be able to continue the development of its current or future product candidates, or to commercialize its current or future product candidates, if approved.

**Going Concern**

The Company has relied on its ability to obtain funding for operations through private equity and debt financings. Management expects to incur significant expenses, increasing operating losses, and negative cash flows for the foreseeable future. The Company expects its expenses to increase in connection with conducting additional clinical trials of its lead product candidate, seeking regulatory approval for its lead product candidate and commercializing its lead product candidate, if approved. The Company may never achieve profitability and, as such, will need to raise additional cash. Accordingly, it will seek to fund its operations through public or private equity or debt financings or other sources. The Company plans to issue additional securities to finance its operating and capital requirements. While the Company expects to obtain additional financing, there is no assurance the Company will be successful in obtaining the funding necessary for future operations. Based on the Company's operating plan, existing working capital at December 31, 2012 was not sufficient to sustain



**Esperion Therapeutics, Inc.**  
**(A Development Stage Company)**

**Notes to Financial Statements (Continued)**

**(Information as of March 31, 2013 and thereafter and for  
the three months ended March 31, 2013 and 2012 and the period from  
January 22, 2008 (Inception) to March 31, 2013 is unaudited)**

**1(A). The Company and Basis of Presentation (Continued)**

operations through December 31, 2013 without additional sources of cash. On April 19, 2013, the Company issued an aggregate of 17,000,000 shares of Series A preferred stock to funds affiliated with Longitude Capital and certain existing investors, for an aggregate purchase price of \$17.0 million. The financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments that might result from the outcome of this uncertainty.

**1(B). Reverse Stock Split**

On June 11, 2013, the Company effectuated a 1-for-6.986 reverse stock split of its outstanding common stock, which was approved by the Company's board of directors on June 5, 2013. The reverse stock split resulted in an adjustment to the Series A preferred stock and Series A-1 preferred stock conversion prices to reflect a proportional decrease in the number of shares of common stock to be issued upon conversion. The accompanying financial statements and notes to the financial statements give retroactive effect to the reverse stock split for all periods presented. The shares of common stock retained a par value of \$0.001 per share. Accordingly, the stockholders' deficit reflects the reverse stock split by reclassifying from "common stock" to "Additional paid-in capital" in an amount equal to the par value of the decreased shares resulting from the reverse stock split.

**2. Summary of Significant Accounting Policies**

**Use of Estimates**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, expenses and related disclosures. Actual results could differ from those estimates.

The Company utilizes significant estimates and assumptions in determining the fair value of its Common Stock. The Company utilized valuation methodologies in accordance with the framework of the 2004 American Institute of Certified Public Accountants Technical Practice Aid, *Valuation of Privately-Held Company Equity Securities Issued as Compensation*, to estimate the fair value of its Common Stock. Each valuation methodology includes estimates and assumptions that require the Company's judgment. These estimates and assumptions include a number of objective and subjective factors, including external market conditions affecting the biotechnology industry sector, the prices at which the Company sold shares of its Preferred Stock, the superior rights and preferences of securities senior to its Common Stock at the time and the likelihood of achieving a liquidity event, such as an initial public offering or sale. Significant changes to the key assumptions used in the valuations could result in different fair values of Common Stock at each valuation date.

**Unaudited Interim Financial Information**

The accompanying interim balance sheet as of March 31, 2013, statements of operations and cash flows for the three months ended March 31, 2013 and 2012 and for the period from January 22, 2008 (Inception) to March 31, 2013 and the statement of convertible preferred stock and stockholder's

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**Notes to Financial Statements (Continued)**

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**2. Summary of Significant Accounting Policies (Continued)**

deficit for the three months ended March 31, 2013 are unaudited. The interim unaudited financial statements have been prepared in accordance with GAAP on the same basis as the annual audited financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments necessary for a fair statement of the Company's financial position as of March 31, 2013 and the results of its operations and cash flows for the three months ended March 31, 2013 and 2012 and for the period from January 22, 2008 (Inception) to March 31, 2013. The financial data and other information disclosed in these Notes to the financial statements related to the three month periods ended March 31, 2013 and 2012 and for the period from January 22, 2008 (Inception) to March 31, 2013 are unaudited. The results for the three months ended March 31, 2013 are not necessarily indicative of results to be expected for a full fiscal year, any other interim periods or any future year or period.

**Unaudited Pro Forma Presentation**

The unaudited pro forma balance sheet information as of March 31, 2013 assumes (i) the conversion of all outstanding shares of convertible preferred stock as of March 31, 2013 into 5,811,344 shares of common stock occurring immediately prior to the closing of the Company's proposed initial public offering, (ii) the issuance of 17,000,000 shares of convertible Series A preferred stock on April 19, 2013 and the conversion thereof into 2,433,433 shares of common stock occurring immediately prior to the closing of the Company's proposed initial public offering, and (iii) the issuance of 6,750,000 shares of Series A-1 preferred stock on May 29, 2013 through the cancellation of all indebtedness outstanding under a convertible note issued to Pfizer and the conversion thereof into 966,218 shares of common stock occurring immediately prior to the closing of the Company's proposed initial public offering. Pro forma cash and cash equivalents, total current assets and total assets include \$17,000,000 of gross proceeds as a result of the Series A preferred stock issuance on April 19, 2013.

**Cash and Cash Equivalents**

The Company invests its excess cash in bank deposits, money market accounts, and short-term investments. The Company considers all highly liquid investments with an original maturity of 90 days or less at the time of purchase to be cash equivalents.

**Concentration of Credit Risk**

Cash, cash equivalents, and marketable securities consist of financial instruments that potentially subject the Company to concentrations of credit risk. The Company has established guidelines for investment of its excess cash and believes the guidelines maintain safety and liquidity through diversification of counterparties and maturities.

**Segment Information**

The Company views its operations and manages its business in one operating segment, which is the business of researching, developing and commercializing therapies for the treatment of patients with elevated levels of low-density lipoprotein cholesterol and other cardiometabolic risk factors.

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**2. Summary of Significant Accounting Policies (Continued)**

**Fair Value of Financial Instruments**

The Company's financial instruments consist principally of cash and cash equivalents, other current assets, accounts payable and accrued liabilities that approximate their carrying value at December 31, 2012 and 2011.

**Property and Equipment, Net**

Property and equipment are recorded at cost, less accumulated depreciation (see Note 9). Depreciation is provided using the straight-line method over the estimated useful lives of the respective assets, generally three to ten years. Leasehold improvements are amortized over the lesser of the lease term or the estimated useful lives of the related assets.

**Impairment of Long-Lived Assets**

The Company reviews long-lived assets, including property and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value. Excluding impairment losses recorded on assets held for sale, no other impairment losses have been recorded through December 31, 2012.

**Research and Development**

Research and development expenses consist of costs incurred to further the Company's research and development activities and include salaries and related benefits, costs associated with pre-clinical studies and trials, non-clinical activities (such as toxicology studies), regulatory activities, manufacturing activities to support clinical activities, research-related overhead expenses, and fees paid to external service providers that conduct certain research and development, clinical, and manufacturing activities on behalf of the Company. Research and development costs are expensed as incurred.

**In-Process Research and Development**

In April 2008, the Company acquired certain tangible research and development assets and intellectual property from Pfizer Inc. (Pfizer) (see Note 3). As the acquired in-process research and development had not reached technological feasibility and had no alternative future uses in connection with this asset and intellectual property acquisition and the related purchase price allocation, the Company expensed \$85,612 as in-process research and development costs in 2008.

**Accrued Clinical Development Costs**

Outside research costs are a component of research and development expense. These expenses include fees paid to contract research organizations and other service providers that conduct certain clinical and product development activities on behalf of the Company. Depending upon the timing of

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**2. Summary of Significant Accounting Policies (Continued)**

payments to the service providers, the Company recognizes prepaid expenses or accrued expenses related to these costs. These accrued or prepaid expenses are based on management's estimates of the work performed under service agreements, milestones achieved and experience with similar contracts. The Company monitors each of these factors and adjusts estimates accordingly.

**Income Taxes**

The Company utilizes the liability method of accounting for income taxes as required by Accounting Standards Codification (ASC) 740, *Income Taxes*. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and the tax basis of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company has incurred operating losses since inception. Accordingly, it is not more likely than not that the Company will realize deferred tax assets and as such, it has recorded a full valuation allowance.

**Warrants to Purchase Preferred Stock**

The Company accounts for its warrants issued in connection with its various financing transactions based upon the characteristics and provisions of the instrument. Warrants classified as derivative liabilities are recorded on the Company's balance sheet at their fair value on the date of issuance and are marked-to-market on each subsequent reporting period, with the fair value changes recognized in the statement of operations. The warrants are measured using the Monte Carlo valuation model and are based, in part, upon inputs where there is little or no market data, requiring the Company to develop its own independent assumptions. The Company will continue to adjust the liability for changes in the fair value of these warrants until the earlier of the exercise of the warrants, the expiration of the warrants, or until such time as the warrants are no longer determined to be derivative instruments.

**Stock-Based Compensation**

The Company accounts for stock-based compensation in accordance with the provisions of ASC 718, *Compensation—Stock Compensation*. Accordingly, compensation costs related to equity instruments granted are recognized over the requisite service periods of the awards on a straight-line basis at the grant-date fair value calculated using a Black-Scholes option pricing model. Additionally, under the provisions of ASC 718, the Company is required to include an estimate of the number of awards that will be forfeited in calculating compensation costs. Any changes to the estimated forfeiture rates are accounted for prospectively. Stock-based compensation arrangements with non-employees are recognized at the grant-date fair value and then re-measured at each reporting period. Expense is recognized during the period the related services are rendered.

**Recent Accounting Pronouncements**

In July 2012, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2012-02, *Testing Indefinite-Lived Intangible Assets for Impairment*. The guidance allows companies, at their option, to perform a qualitative assessment of indefinite-lived assets to determine if

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**2. Summary of Significant Accounting Policies (Continued)**

it is more likely than not that the fair value of the asset exceeds its carrying value. If analysis of the qualitative factors results in the fair value of the indefinite-lived asset exceeding the carrying value, then performing the quantitative assessment is not required. This guidance will be effective for interim and annual periods beginning after December 15, 2012. The adoption of this standard is not expected to have a material impact on the Company's financial statements.

In June 2011, the FASB issued ASU 2011-05 which is an amendment to the accounting guidance for presentation of comprehensive income. Under the amended guidance, a company has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In either choice, a company is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income and a total amount for comprehensive income. The amendment is effective for public companies with fiscal years ending, and interim periods within those years, beginning after December 15, 2011. The adoption of this update did not have a material impact on the Company's financial statements.

In May 2011, the FASB issued ASU 2011-04 which is an amendment to the accounting guidance on fair value measurements. This accounting standard update clarifies the application of existing fair value measurement guidance and expands the disclosures for fair value measurements that are estimated using significant unobservable (Level 3) inputs. The amendments were effective on a prospective basis for annual and interim reporting periods beginning after December 15, 2011. The adoption of this standard did not have a material impact on the Company's financial statements.

**3. Stock Acquisition**

On April 28, 2008, HDL acquired all of the capital stock of Esperion from Pfizer in exchange for a non-subordinated convertible promissory note in the original principal amount of \$5,000,000 (see Note 5).

The Company allocated the purchase price of the Esperion acquisition in accordance with the provisions of Statement of Financial Accounting Standards (SFAS) No. 141, *Business Combinations*, related to the purchase of a group of assets. SFAS No. 141 provides that the cost of a group of assets acquired in a transaction other than a business combination shall be allocated to the individual assets acquired based on their relative fair values and shall not give rise to goodwill.

In accordance with the provisions of SFAS No. 141, this transaction did not meet the criteria of a business combination, and all identifiable intangible assets, including in-process research and development, were assigned a portion of the purchase price based on their relative fair values. To this end, an independent valuation of the tangible assets acquired was used to determine the fair value of the identifiable tangible assets. The Company determined the value assigned to in-process research and development and intangible assets. The fair value of assets acquired exceeded the transaction consideration and therefore, under SFAS No. 141, the excess of fair value of assets received over consideration paid was allocated on a relative fair market value basis to in-process research and development, tangible and intangible assets.

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**3. Stock Acquisition (Continued)**

The Company allocated total cost of the Esperion acquisition as follows:

Cash	\$ 2,500,000
Property and equipment	1,317,005
Intangible assets	50,000
In-process research and development	85,612
Assets held for sale	1,047,383
Total	<u>\$ 5,000,000</u>

The income approach was used to estimate the fair value of the acquired in-process research and development based on projected cash flows through 2014 and a 35 percent discount rate. Material cash inflows were projected to begin in 2014. The replacement cost method was used to estimate the fair value of the tangible assets.

**4. Assets Held For Sale**

Assets held for sale consist of equipment that was acquired as part of the Esperion acquisition (see Note 3) and is not intended for use by the Company in normal operations.

During 2010, the Company entered into agreements to sell substantially all of the assets classified as held for sale which occurred in 2010 and continued through 2011. The 2010 sale included \$182,188 of the assets held for sale sold in exchange for a promissory note that bore interest of 10 percent per annum and provided for monthly installment payments based on a five-year amortization schedule, with a balloon payment for the remaining principal due on December 31, 2011. The Company had a first priority security interest in all of the assets sold in the event of nonpayment by the note holder.

During 2011, the note holder defaulted on the note and the Company received the collateralized assets back. The fair market value of the assets was less than the outstanding principal balance of the note and the Company therefore adjusted the carrying value of the assets to reflect their fair value and recorded an expense of \$108,308 on the default of the note which is included in other expense in the accompanying statement of operations.

During the year ended December 31, 2012, the Company determined that the carrying value of the assets classified as held for sale would not be fully recoverable and an impairment loss of \$86,887 was recognized in other expense to write the remaining assets down to the estimated fair value. The fair value of the assets held for sale was based on recent market sales data for similar equipment less the related costs to sell. During the three months ended March 31, 2013, the Company recognized an impairment loss of \$27,000 based on recent purchase offers. The Company recognized \$187,393 and \$214,393 of impairment expense related to the assets held for sale in the period from Inception through December 31, 2012 and the period from Inception through March 31, 2013, respectively.

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**5. Debt**

The following is a reconciliation of the Company's various debt instruments:

	December 31, 2012	December 31, 2011	March 31, 2013 (unaudited)
Short term convertible notes issued January 2012	\$ 6,000,000	\$ —	\$ —
Short term convertible notes issued September 2012	4,000,000	—	—
Short term convertible notes issued November 2012	5,700,000	—	—
Discount on short term convertible notes	(458,993)	—	—
Total short term convertible notes, net of debt discount	15,241,007	—	—
Long term debt	5,000,000	5,000,000	5,000,000
Accumulated paid-in-kind interest	2,528,845	1,897,328	2,528,845
Total long-term debt	7,528,845	6,897,328	7,528,845
Total debt	<u>\$ 22,769,852</u>	<u>\$ 6,897,328</u>	<u>\$ 7,528,845</u>

**Short-Term Convertible Notes**

On January 26, 2012, the Company entered into a convertible note financing in which it issued 10% convertible promissory notes that matured in January 2013 for an aggregate principal amount of \$6,000,000 to certain existing investors. The convertible promissory notes allow for the unpaid principal and interest to be converted at the lowest price paid for a new class of preferred stock in a future equity financing in which the Company received at least \$10,000,000 in proceeds, not including the conversion of any of the convertible promissory notes.

On September 4, 2012, the Company entered into a convertible note financing pursuant to which certain existing investors agreed to loan the Company up to an additional \$9,700,000. On September 4, 2012, the Company issued 10% convertible promissory notes that mature on September 4, 2013 for an aggregate principal amount of \$4,000,000. On November 30, 2012, the Company issued additional 10% convertible promissory notes that mature on September 4, 2013 for an aggregate principal amount of \$5,700,000. In connection with the September convertible note financing, the Company and the holders of the January 2012 convertible promissory notes agreed to extend the maturity date of the January 2012 notes to September 4, 2013. On February 12, 2013, the foregoing convertible promissory notes were converted into 16,623,092 shares of Series A preferred stock, in accordance with their terms and at their conversion price of \$1.00 per share, and following such conversion, the notes were cancelled (see Note 18). In connection with the issuance of the September 4, 2012 and the November 30, 2012 10% convertible promissory notes, the Company issued warrants to purchase shares of Series A preferred stock for an aggregate price of \$9,700. The estimated fair value of the warrants at issuance

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**5. Debt (Continued)**

was \$297,690. The proceeds from the sale of the preferred stock and warrants was allocated with \$9,412,010 to the 10% convertible promissory notes and \$297,690 to warrants. This resulted in a discount on the 10% convertible promissory notes which will be amortized into interest expense, using the effective interest method, over the life of the 10% convertible promissory notes (see Note 6). The Company recorded \$58,494 of interest expense for the accretion of this discount during the year ended December 31, 2012 and the period from Inception through December 31, 2012. As a result of the conversion of the convertible promissory notes into shares of Series A preferred stock on February 12, 2013, the Company recorded the remaining \$229,496 of interest expense for the accretion of this discount during the three months ended March 31, 2013.

The holders of the September convertible promissory notes received the benefit of a deemed conversion price of the September convertible promissory notes that were below the estimated fair value of the Series A convertible preferred stock at the time of their issuance. The fair value of this beneficial conversion feature was estimated to be \$287,990. The fair value of this beneficial conversion feature was recorded to debt discount and amortized to interest expense using the effective interest method over the term of the convertible promissory notes. The Company recorded \$58,494 of interest expense related to the beneficial conversion feature during the year ended December 31, 2012. As a result of the conversion of the convertible promissory notes into shares of Series A preferred stock on February 12, 2013, the Company recorded the remaining \$229,496 of interest expense for the accretion of the beneficial conversion feature during the three months ended March 31, 2013.

If the short-term convertible promissory notes and Pfizer note were to convert to Series A and Series A-1 preferred stock and subsequently convert to common stock at the prevailing price of preferred stock, \$1.00 per share, at December 31, 2012, such instruments would result in the issuance of 23,967,037 shares of common stock.

**Pfizer Note**

On April 28, 2008, HDL acquired all of the capital stock of Esperion from Pfizer in exchange for a non-subordinated convertible note in the original principal amount of \$5,000,000. This convertible promissory note matures on April 28, 2018. The note bears interest at 8.931 percent annually, payable semiannually on June 30 and December 31 by adding such unpaid interest to the principal of the note, which shall thereafter accrue interest. During the years ended December 31, 2012 and 2011, and the period from Inception through December 31, 2012, the Company accrued interest related to the note of \$631,517, \$577,065, and \$2,528,845, respectively. During the three months ended March 31, 2013 and 2012, and the period from Inception through March 31, 2013, the Company accrued interest related to the note of \$165,798, \$153,578, and \$2,694,643, respectively.

The note may be converted at any time after April 28, 2010, into Series A-1 preferred stock at the prevailing purchase price of a preferred stock share at time of conversion if converted prior to an initial public offering and into common stock at the ten-day average closing price of the Company's common stock on the applicable securities exchange if converted after an initial public offering. During the three months ended March 31, 2013, the Company notified Pfizer of its intent to file a registration



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**5. Debt (Continued)**

statement for an initial public offering. Pursuant to the sections of the convertible note agreement, Pfizer may not convert the convertible note during the period commencing on the notification date until 180 days following the effective date of the Registration Statement.

**6. Warrants**

On September 4, 2012 and November 30, 2012, the Company issued warrants to purchase shares of the Company's Series A preferred stock to the purchasers of the foregoing convertible promissory notes for an aggregate purchase price of \$9,700. If a Qualified Financing occurs, defined as a sale of a new class of preferred stock in a single transaction or a series of transactions in which the Company received at least \$10,000,000 of proceeds excluding any note conversion, the warrants are exercisable into the number of shares of the new class of preferred stock with value equal to 20 percent of the principal of the convertible promissory notes issued in September and November 2012, or 1,940,000 preferred shares. If a Qualified Financing does not occur before the maturity date of the notes, then the warrants are exercisable into the Company's Series A preferred stock, par value \$0.001 equal to 20 percent of the principal amount of the convertible promissory notes issued in September and November 2012 divided by the Series A original issuance price of \$1.00 adjusted for stock splits, stock dividends, combinations, and recapitalizations. No such adjustment transactions occurred as of December 31, 2012. Based on the preceding provisions, the warrants are recorded as current liabilities of the Company at the estimated fair value at the date of issuance, with changes in estimated fair value recorded as income or expense in the Company's statements of operations in each subsequent period. The warrants expire five years from a Qualified Financing, if one occurs, or upon the maturity of the notes.

The assumptions used in calculating the estimated fair market value at each reporting period represent the Company's best estimate, however, do involve inherent uncertainties. As a result, if factors or assumptions change the warrant liability, the estimated fair value could be materially different. The estimated fair value of the warrants was determined using the Monte Carlo valuation model which totaled \$297,690 and was comprised of \$141,779 and \$155,911 as of and for the September and November 2012 financing, respectively, and was recorded as a discount on the related convertible promissory notes and amortized as interest expense over the term of the convertible promissory notes. Inherent in the Monte Carlo valuation model are assumptions related to expected stock-price volatility, expected life and risk-free interest rate. The Company estimates the volatility of its stock based on public company peer group historical volatility that is in line with the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon bond on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates to remain at zero.

The Monte Carlo model is used to appropriately value the potential future exercise price based on various exit scenarios. This requires Level 3 inputs which are based on the Company's estimates of the probability and timing of potential future financings.

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**Notes to Financial Statements (Continued)**

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**6. Warrants (Continued)**

If the warrants were exercised at December 31, 2012 and the resulting Series A preferred stock was converted into common stock, this would result in the issuance of 277,690 shares of common stock.

**7. Commitments and Contingencies**

The Company leases its facility under an operating lease that expires in October 2013 (see Note 17). The Company has an option to extend the lease term through October 2018, at which time the Company has an additional option to extend the lease term through October 2023. The Company's facility lease provides for a fixed monthly rent for the term of the lease and also provides for certain rent adjustments to be paid as determined by the landlord.

The total rent expense for the years ended December 31, 2012 and 2011, and for the period from Inception to December 31, 2012, was approximately \$335,000, \$323,000, and \$1,286,400, respectively. The total rent expense for the three months ended March 31, 2013 and 2012, and for the period from Inception to March 31, 2013, was approximately \$86,000, \$86,000, and \$1,372,400, respectively. Future minimum payments as of December 31, 2012, under the facility lease are presented in the table below:

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Operating lease	\$ 287,000	\$ 287,000	\$ —	\$ —	\$ —
Total	<u>\$ 287,000</u>	<u>\$ 287,000</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

The Company also holds a license agreement in which it is obligated to make future minimum annual payments of \$50,000 in years where there is not a milestone payment required under the terms of the agreement (see Note 15). Further, the Company is contractually obligated to issue an aggregate of 11,451 shares of common stock upon meeting various future milestones set forth in the agreement.

**8. Fair Value Measurements**

The Company follows accounting guidance that emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Fair value is defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." Fair value measurements are defined on a three level hierarchy:

- Level 1 inputs: Quoted prices for identical assets or liabilities in active markets;
- Level 2 inputs: Observable inputs other than Level 1 prices, such as quoted market prices for similar assets or liabilities or other inputs that are observable or can be corroborated by market data; and
- Level 3 inputs: Unobservable inputs that are supported by little or no market activity and require the reporting entity to develop assumptions that market participants would use when pricing the asset or liability.

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**Notes to Financial Statements (Continued)**

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**8. Fair Value Measurements (Continued)**

The following table presents the Company's financial assets and liabilities that have been measured at fair value on a recurring basis:

<u>Description</u>	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<b>March 31, 2013 (unaudited)</b>				
Assets:				
Money market fund	\$ 3,800,010	\$ 3,800,010	\$ —	\$ —
Total assets at fair value	<u>\$ 3,800,010</u>	<u>\$ 3,800,010</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Warrants	\$ 307,281	\$ —	\$ —	\$ 307,281
Total liabilities at fair value	<u>\$ 307,281</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 307,281</u>
<b>December 31, 2012</b>				
Assets:				
Money market fund	\$ 6,357,542	\$ 6,357,542	\$ —	\$ —
Total assets at fair value	<u>\$ 6,357,542</u>	<u>\$ 6,357,542</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Warrants	\$ 265,323	\$ —	\$ —	\$ 265,323
Total liabilities at fair value	<u>\$ 265,323</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 265,323</u>
<b>December 31, 2011</b>				
Assets:				
Money market fund	\$ 1,417,130	\$ 1,417,130	\$ —	\$ —
Total assets at fair value	<u>\$ 1,417,130</u>	<u>\$ 1,417,130</u>	<u>\$ —</u>	<u>\$ —</u>

There were no transfers between Levels 1, 2 or 3 during 2012, 2011 or the three months ended March 31, 2013 or March 31, 2012.

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**8. Fair Value Measurements (Continued)**

The following table summarizes the changes in the fair value of the Company's Level 3 warrant liabilities for the year ended December 31, 2012 and for the three months ended March 31, 2013:

	December 31, 2012
Level 3 Liabilities:	
As of January 1, 2012	\$ —
Issuance of warrants	297,690
Change in fair value	(32,367)
As of December 31, 2012	<u>\$ 265,323</u>
Change in fair value (unaudited)	41,958
As of March 31, 2013 (unaudited)	<u>\$ 307,281</u>

**Fair Value Measurements on a Nonrecurring Basis**

In addition to items that are measured at fair value on a recurring basis, the Company also measures assets held for sale at the lower of its carrying amount or fair value on a nonrecurring basis. As discussed in Note 4, the Company recorded an impairment charge related to assets held for sale during the year ended December 31, 2012. The fair value of assets held for sale was estimated using a market approach, considering the estimated fair value for other comparable equipment which are Level 3 inputs.

**9. Property and Equipment**

Property and equipment consist of the following:

	December 31,		March 31,
	2012	2011	2013 (unaudited)
Lab equipment	\$ 1,057,276	\$ 1,062,635	\$ 1,057,276
Computer equipment	99,412	101,672	99,412
Software	96,668	96,668	96,668
Furniture and fixtures	11,309	6,662	11,309
Leasehold improvements	21,381	21,381	21,381
Subtotal	<u>1,286,046</u>	<u>1,289,018</u>	<u>1,286,046</u>
Less accumulated depreciation and amortization	<u>1,165,836</u>	<u>1,037,491</u>	<u>1,198,114</u>
Property and equipment, net	<u>\$ 120,210</u>	<u>\$ 251,527</u>	<u>\$ 87,932</u>

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**9. Property and Equipment (Continued)**

Depreciation expense was \$139,433, \$178,471 and \$1,377,171 for the years ended December 31, 2012 and 2011, and the period from Inception through December 31, 2012, respectively. Depreciation expense was \$32,278, \$36,861 and \$1,409,449 for the three months ended March 31, 2013 and 2012, and the period from Inception through March 31, 2013, respectively.

**10. Other Accrued Liabilities**

Other accrued liabilities consist of the following:

	<u>December 31,</u>		<u>March 31,</u>
	<u>2012</u>	<u>2011</u>	<u>2013</u>
			<u>(unaudited)</u>
Accrued professional fees	\$ 136,907	\$ 28,500	336,100
Accrued franchise and property taxes	12,697	3,220	2,757
Accrued employee-related costs	60,725	408,453	305,918
Accrued other	—	3,000	14,615
<b>Total other accrued liabilities</b>	<b>\$ 210,329</b>	<b>\$ 443,173</b>	<b>\$ 659,390</b>

**11. Convertible Preferred Stock and Stockholders' Deficit**

On January 22, 2008, HDL was incorporated in the state of Delaware with 1,000 shares of authorized common stock. In April 2008, the Board of Directors approved an amended and restated certificate of incorporation. The amendment increased HDL's authorized number of shares of common stock to a total of 44,025,145 and authorized two new series of preferred stock designated as Series A and Series A-1 preferred stock consisting of 33,250,000 shares of Series A preferred stock and 6,475,145 shares of Series A-1 preferred stock. In April 2008, HDL sold 286,286 shares of common stock and 10,000,000 shares of Series A preferred stock in a private offering (the Initial Financing), raising net proceeds of \$200 and \$10,000,000, respectively. In the Initial Financing, the Company converted an outstanding promissory note in the principal amount of \$250,000 from an officer of the Company into 250,000 shares of Series A preferred stock.

As a result of commencing Phase 1 clinical trials in December 2009, the Company issued 6,000,000 additional shares of Series A preferred stock, raising net proceeds of \$6,000,000 in January 2010 (Second Tranche Shares in the Initial Financing agreement).

In April 2010, the Company issued an additional 1,000,000 shares of Series A preferred stock to an officer and new investors for \$1,000,000 in net proceeds. In connection with this sale, the Initial Financing agreement was amended to allow for the additional issuance of shares. The Company also amended its certificate of incorporation to increase its number of authorized shares to 45,025,145 shares of common stock and 40,725,145 shares of preferred stock, including 34,250,000 shares of Series A preferred stock and 6,475,145 shares of Series A-1 preferred stock.

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**11. Convertible Preferred Stock and Stockholders' Deficit (Continued)**

In November 2010, the Company issued an additional 25,000 shares of Series A preferred stock to an officer of the Company in exchange for \$25,000.

As a result of commencing Phase 2a clinical trials in December 2010, the Company issued 6,700,000 shares of Series A preferred stock, raising net proceeds of \$6,700,000 in January 2011 (Third Tranche Shares in the Initial Financing agreement). The Company also amended its certificate of incorporation to increase the number of authorized shares to 50,000,000 shares of common stock and 41,682,329 shares of preferred stock, including 34,785,000 shares of Series A preferred stock and 6,897,329 shares of Series A-1 preferred stock.

In September 2012, the Company amended its certificate of incorporation to increase the number of authorized preferred shares to 42,647,283, including 34,785,000 shares of Series A preferred stock and 7,862,283 shares of Series A-1 preferred stock.

As of December 31, 2012, the Company did not have sufficient preferred and common shares authorized under its certificate of incorporation to permit the conversion of the outstanding convertible promissory notes issued during 2012. Pursuant to the terms of the note purchase agreements, in the event any or all of the notes were to be converted, the purchasers and the Company agreed to take all action necessary to amend the certificate of incorporation to increase the number of authorized shares of Series A preferred stock and common stock to permit such conversion. The Company subsequently amended its certificate of incorporation to increase the number of shares of Series A preferred stock authorized to 41,636,970 and number of shares of common stock authorized to 56,519,253 in connection with the conversion of the notes on February 12, 2013 into 16,623,092 shares of Series A preferred stock. On March 25, 2013 and April 10, 2013, the Company amended its certificate of incorporation to increase the number of shares of Series A preferred stock authorized to 42,538,092 and 59,538,092, respectively, and the number of shares of common stock authorized to 58,220,375 and 75,220,375, respectively (see Note 18).

**Convertible Preferred Stock**

As of December 31, 2012 and 2011, the Company had authorized a total of 42,647,283 and 41,682,329 shares of preferred stock, respectively, designated in various series. The preferred stock designated as Series A and Series A-1 is summarized as follows:

	<u>December 31, 2012</u>		
	<u>Shares Designated</u>	<u>Liquidation Preference Per Share</u>	<u>Shares Issued and Outstanding</u>
Series A	34,785,000	\$ 1.00	23,975,000
Series A-1	7,862,283	—	—
	<u>42,647,283</u>	<u>\$ 1.00</u>	<u>23,975,000</u>

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**11. Convertible Preferred Stock and Stockholders' Deficit (Continued)**

	December 31, 2011		
	Shares Designated	Liquidation Preference Per Share	Shares Issued and Outstanding
Series A	34,785,000	\$ 1.00	23,975,000
Series A-1	6,897,329	—	—
	<u>41,682,329</u>	<u>\$ 1.00</u>	<u>23,975,000</u>

	March 31, 2013		
	Shares Designated	(unaudited) Liquidation Preference Per Share	Shares Issued and Outstanding
Series A	42,538,092	\$ 1.00	40,598,092
Series A-1	7,862,283	—	—
	<u>50,400,375</u>	<u>\$ 1.00</u>	<u>40,598,092</u>

**Voting**

The holders of preferred stock have various rights and preferences. Each share of Series A and Series A-1 preferred stock has certain voting rights equal to the number of shares of common stock into which it is convertible and votes together as one class with the common stock.

A separate vote of a majority of the Series A preferred stock, equal to the number of shares of common stock into which it is convertible, is required for certain activities, including certain issuances of common stock; for any redemption, repurchase, dividend, or other distribution with respect to the common stock; any agreement by the Company or its stockholders regarding certain mergers or consolidations of the Company; a sale of all or substantially all of the assets of the Company; or any redemption, repurchase, dividend, or other distribution with respect to any shares of preferred stock.

As the Series A preferred stock could be redeemed in a "deemed liquidation" in the event of a change of control and the redemption features are considered to be outside the control of the Company, all shares of Series A preferred stock have been presented outside of permanent equity in accordance with ASC 480.

**Liquidation**

In the event of any liquidation, dissolution, or winding-up of the Company, including a merger, acquisition, or sale of assets where the holders of the Company's common stock and preferred stock own less than 50% of the resulting voting power of the surviving entity, the holders of Series A preferred stock shall be entitled to receive prior and in preference to any distribution of the assets of the Company to the holders of Series A-1 preferred stock and common stock, an amount equal to \$1.00 for each share of Series A preferred stock held, plus any declared but unpaid dividends. After payment of the full liquidation preference to holders of Series A preferred stock, but prior to any

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**11. Convertible Preferred Stock and Stockholders' Deficit (Continued)**

distribution or payment to holders of common stock, the holders of Series A-1 preferred shall be entitled to receive a distribution equal to the original issue price of a share of Series A-1 preferred stock plus any declared but unpaid dividends. After payment of the full liquidation preference(s) to the Series A and Series A-1 stockholders, the remaining assets legally available for distribution shall be distributed ratably to the holders of common stock and preferred stock on an as if converted to common stock basis.

**Dividends**

Holders of Series A and Series A-1 preferred stock, in preference to the holders of common stock, are entitled to receive cash dividends at the rate of eight percent of the respective original issue price per annum on each outstanding preferred share on a pari passu basis. Such dividends are payable only when, as and if declared by the Board of Directors and are non-cumulative. There have been no dividends declared, accrued or paid during the period from Inception through December 31, 2012 or the three months ended March 31, 2013.

**Conversion**

Any share of Series A or Series A-1 preferred stock may be converted at the option of the holder at any time into shares of common stock at the Series A preferred conversion price or the Series A-1 preferred conversion price then in effect.

Each share of Series A and Series A-1 preferred stock shall automatically be converted into shares of common stock based upon the then-effective Series A preferred conversion price and the Series A-1 preferred conversion price, respectively, upon the affirmative election of the holders of at least 60% of the outstanding shares of the Series A preferred stock and Series A-1 preferred stock voting as a single class.

Each share of Series A preferred stock shall automatically convert into shares of common stock based upon the effective Series A preferred conversion price upon (i) the affirmative election of the holders of at least two-thirds of the outstanding shares of the Series A preferred stock; (ii) the Company's sale of its common stock in a firmly underwritten public offering in which the per share price is at least three times the Series A original issue price adjusted for stock splits, dividends, recapitalizations, and the like, and which would result in gross proceeds to the Company of at least \$40 million (prior to deducting underwriting discounts and commissions); or (iii) the affirmative election of at least a majority of the outstanding shares of the Series A preferred stock following the closing of a firmly underwritten public offering that covers the offer and sale of common stock for the Company that does not meet the three times original issue price or gross proceeds requirements above. Upon an automatic conversion, any declared and unpaid dividends shall be paid to the holders of Series A preferred stock.

Each share of Series A-1 preferred stock shall automatically convert into shares of common stock based upon the effective Series A-1 preferred conversion price upon the Company's sale of its common stock in a firmly underwritten public offering which results in gross proceeds to the Company of at



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**11. Convertible Preferred Stock and Stockholders' Deficit (Continued)**

least \$25 million (prior to underwriting discounts and commissions). Upon an automatic conversion, any declared and unpaid dividends shall be paid to the holders of Series A-1 preferred stock.

The Series A preferred conversion rate and Series A-1 preferred conversion rate is the \$1.00 Series A original issue price, divided by the Series A preferred conversion price, initially set at \$6.986, or 0.143 common shares. The Series A preferred conversion price can be adjusted in connection with certain dilutive events; however, there have been no such adjustments to date.

The Company has convertible debt, convertible Preferred Stock and warrants, all of which are convertible into Series A and Series A-1 preferred stock. Additionally, the Company has stock options outstanding. The following table presents the number of common shares which could be issuable upon the conversion of convertible instruments or exercise of options at December 31, 2012 and March 31, 2013:

	<u>December 31, 2012</u>	<u>March 31, 2013</u> (unaudited)
Convertible preferred stock	3,431,865	5,811,347
Warrants for preferred stock	277,690	277,690
Common shares under option	211,500	610,772
Convertible debt	3,430,723	1,101,437
Total shares issuable upon conversion or exercise	<u>7,351,778</u>	<u>7,801,246</u>

**12. Stock Compensation**

In April 2008, the Company adopted the 2008 Incentive Stock Option and Restricted Stock Plan (the 2008 Plan), administered by the Board of Directors or a committee appointed by the Board of Directors. The 2008 Plan provides for the granting of stock options and restricted stock to employees and nonemployees of the Company. Options granted under the 2008 Plan may either be incentive stock options (ISOs), restricted stock awards (RSAs) or nonqualified stock options (NQSOs). Stock options and restricted stock grants may be granted to employees, directors and consultants.

Stock awards under the 2008 Plan may be granted for up to ten years from the adoption of the 2008 Plan at prices no less than 100 percent of the fair value of the shares on the date of the grant as determined by (i) the closing price of the Company's common stock on any national exchange, (ii) the National Association of Securities Dealers Inc. Automated Quotation System (NASDAQ), if so authorized for quotation as a NASDAQ security, or (iii) by reasonable application of a reasonable valuation method. The valuation methods utilized by the Company are consistent with the AICPA Technical Practice Aid.

The vesting of options granted or restricted awards given will be determined individually with each option grant. Generally, 25 percent of the granted amount will vest upon the first anniversary of the option grant with the remainder vesting ratably on the first day of each calendar quarter for the following three years. Stock options have a 10 year life and expire if not exercised within that period, or if not exercised within 90 days of cessation of employment with the Company.

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**12. Stock Compensation (Continued)**

As of December 31, 2012 and 2011 and the three months ended March 31, 2013 and March 31, 2012, under the 2008 Plan, 658,381, 310,632, 772,896 and 310,632 shares of common stock, respectively, have been reserved and approved for issuance, subject to adjustment for a stock split or any future stock dividend or other similar change in the Company's common stock or capital structure.

Activity under the Company's stock option plan is set forth below:

	Number of Options	Weighted-Average Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at April 24, 2008 (plan inception)	—	—		
Granted	106,055	\$ 1.05		
Forfeited or expired	(10,736)	\$ 1.05		
Outstanding at December 31, 2008	95,319	\$ 1.05	8.4	\$ —
Granted	15,745	\$ 1.05		
Exercised	(3,578)	\$ 1.05		\$ —
Outstanding at December 31, 2009	107,486	\$ 1.05	8.0	\$ 22,528
Granted	101,149	\$ 1.26		
Forfeited or expired	(3,993)	\$ 1.15		
Outstanding at December 31, 2010	204,642	\$ 1.15	7.6	\$ 79,153
Granted	9,302	\$ 1.54		
Forfeited or expired	(1,566)	\$ 1.14		
Exercised	(15,016)	\$ 1.06		\$ 7,197
Outstanding at December 31, 2011	197,362	\$ 1.18	6.6	\$ 140,274
Granted	68,708	\$ 1.89		
Forfeited or expired	(15,834)	\$ 1.18		
Exercised	(38,736)	\$ 1.06		\$ 26,425
Outstanding at December 31, 2012	211,500	\$ 1.43	7.5	\$ 141,389
Granted (unaudited)	400,256	\$ 2.10		
Forfeited or expired (unaudited)	(984)	\$ 1.54		
Outstanding at March 31, 2013 (unaudited)	610,772	\$ 1.87	8.9	\$ 140,839

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**12. Stock Compensation (Continued)**

The following table summarizes information about the Company's stock option plan as of March 31, 2013 and December 31, 2012:

	Number of Options	Weighted-Average Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Vested and expected to vest at December 31, 2012	211,500	\$ 1.43	7.5	\$ 141,389
Exercisable at December 31, 2012	111,639	\$ 1.19	6.6	\$ 101,101
Vested and expected to vest at March 31, 2013 (unaudited)	580,356	\$ 1.81	8.9	\$ 139,875
Exercisable at March 31, 2013 (unaudited)	154,052	\$ 1.38	7.1	\$ 110,648

The following table shows the weighted-average assumptions used to compute the share-based compensation costs for the stock options granted to employees and non-employees during the period from Inception to December 31, 2012, using the Black-Scholes option pricing model:

	Year ended December 31,		Period From January 22, 2008 (Inception) Through December 31, 2010	Three Months Ended March 31, 2013 (unaudited)
	2012	2011		
Risk-free interest rate	0.85%	2.50%	2.50%	1.02%
Dividend yield	—	—	—	—
Weighted-average expected life of options (years)	6.25	6.25	6.25	6.25
Volatility	80%	80%	80%	74%

The risk-free interest rate assumption was based on the United States Treasury's rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. The assumed dividend yield was based on the Company's expectation of not paying dividends in the foreseeable future. The weighted-average expected life of the options was calculated using the simplified method as prescribed by the Securities and Exchange Commission (SEC) Staff Accounting Bulletin No. 107 (SAB No. 107). This decision was based on the lack of relevant historical data due to the Company's limited historical experience. In addition, due to the Company's limited historical data, the estimated volatility also reflects the application of SAB No. 107, incorporating the historical volatility of comparable companies whose share prices are publicly available.

The weighted-average grant-date fair values of stock options granted during the years ended December 31, 2012 and 2011, and the period from Inception through December 31, 2012 were \$1.33, \$1.12 and \$0.91, respectively. During the years ended December 31, 2012 and December 31, 2011, and the period from Inception through December 31, 2012, the Company recognized stock-based compensation expense of \$79,861, \$78,451 and \$257,108, respectively.

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**12. Stock Compensation (Continued)**

The weighted-average grant-date fair values of stock options granted during the three months ended March 31, 2013 and the period from Inception through March 31, 2013 were \$1.40 and \$1.19, respectively. During the three months ended March 31, 2013 and March 31, 2012, and the period from Inception through March 31, 2013, the Company recognized stock-based compensation expense of \$54,972, \$16,142 and \$312,080, respectively.

As of December 31, 2012 and 2011 and March 31, 2013 and March 31, 2012, there was approximately \$94,018, \$24,357, \$588,415 and \$51,924, respectively, of total unrecognized compensation cost related to the unvested share-based compensation arrangements granted under the Company's equity incentive plan. The remaining unrecognized compensation cost will be recognized over a weighted-average period of approximately 2.6 and 3.6 years as of December 31, 2012 and March 31, 2013, respectively.

**13. Employee Benefit Plan**

During 2008, the Company adopted the Esperion Therapeutics, Inc. 401(k) Plan (the 401(k) Plan), which qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the 401(k) Plan, participating employees may defer a portion of their pretax earnings. The Company may, at its sole discretion, contribute for the benefit of eligible employees. There have been no Company contributions to the 401(k) Plan during 2012, 2011 or from Inception through December 31, 2012.

**14. Income Taxes**

There is no provision for income taxes because the Company has incurred operating losses since inception. At March 31, 2013, the Company has concluded that it is more likely than not that the Company may not realize the benefit of its deferred tax assets due to its history of losses. Accordingly, the net deferred tax assets have been fully reserved.

As of December 31, 2012 and 2011, the Company had deferred tax assets of approximately \$14,351,000 and \$10,386,000, respectively. Realization of the deferred assets is dependent upon future taxable income, if any, the amount and timing of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance.

As of December 31, 2012 and 2011, the Company had federal net operating loss carryforwards of approximately \$40,465,000 and \$29,206,000, respectively. The federal net operating loss and tax credit carryforwards will expire at various dates beginning in 2028, if not utilized.

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**14. Income Taxes (Continued)**

A reconciliation of the U.S. statutory income tax rate to the Company's effective tax rate is as follows:

	<u>December 31,</u>	
	<u>2012</u>	<u>2011</u>
Federal income tax (benefit) at statutory rate	(34.0)%	(34.0)%
State income tax benefit, net of federal benefit	—%	(0.7)%
Permanent items	0.4%	(0.1)%
Other	(0.2)%	3.2%
Change in valuation allowance	33.8%	31.6%
Effective income tax rate	<u>0.0%</u>	<u>0.0%</u>

If the Company experiences a greater than 50 percentage point aggregate change in ownership of certain significant stockholders over a three-year period, a Section 382 ownership change, utilization of the net operating loss carryforwards and credits will be subject to an annual limitation under Section 382 of the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses before utilization.

The Company's reserves related to taxes are based on a determination of whether and how much of a tax benefit taken by the Company in its tax filings or positions is more likely than not to be realized following resolution of any potential contingencies present related to the tax benefit. The Company recognized no material adjustment for unrecognized income tax benefits. Through December 31, 2012, the Company had no unrecognized tax benefits or related interest and penalties accrued.

Significant components of the Company's deferred tax assets are summarized in the table below:

	<u>December 31,</u>	
	<u>2012</u>	<u>2011</u>
Deferred tax assets:		
Federal and state operating loss carryforwards	\$ 14,207,000	\$ 10,351,000
Temporary differences	144,000	36,000
Total deferred tax assets	<u>14,351,000</u>	<u>10,386,000</u>
Valuation allowance	<u>(14,351,000)</u>	<u>(10,386,000)</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

**15. License Agreement**

In December 2011, the Company entered into a license agreement for certain U.S. and foreign patents and patent applications regarding new high-density lipoprotein therapies to treat cardiovascular disease in exchange for 2,862 shares of common stock, plus an issue fee of \$50,000. The license agreement will expire in 2028, which is the date of the last to expire of the licensed patents. The Company recorded the common stock, which was valued at its fair value of \$4,400, and the issue fee within general and administrative expenses in the statements of operations.

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**15. License Agreement (Continued)**

The license agreement provides for a minimum annual payment of \$50,000 for any years in which a milestone is not achieved, fully creditable against any earned royalties per calendar year.

Milestone achievement payments are due within 30 days of the milestone achievement. No milestones have been achieved to date under the license agreement. Additionally, the agreement provides for the Company to reimburse the patent holder for certain patent costs during the term of the agreement. The Company recognized expenses associated with this license agreement of \$50,000, \$54,400 and \$104,400 during the years ended December 31, 2012 and 2011 and the period from Inception through December 31, 2012, respectively, in general and administrative expenses.

**16. Net Loss Per Common Share**

Basic net loss per share is calculated by dividing net loss by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. Diluted net loss per share is computed by dividing net loss by the weighted-average number of common share equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, convertible preferred stock, convertible debt, warrants for preferred stock and stock options are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive. Interest expense for convertible debt that is dilutive is added back to net income in the calculation of diluted net loss per share.

The shares outstanding at the end of the respective periods presented below were excluded from the calculation of diluted net loss per share due to their anti-dilutive effect:

	December 31,		Period from January 22, 2008 (Inception) Through	
	2012	2011	December 31, 2012	March 31, 2013 (unaudited)
Common shares under option	211,500	197,362	211,500	610,772
Convertible preferred stock	23,975,000	23,975,000	23,975,000	40,598,092
Warrants for preferred stock	1,940,000	—	1,940,000	1,940,000
Convertible debt	23,967,037	6,897,328	23,967,037	7,694,643
<b>Total potential dilutive shares</b>	<b>50,093,537</b>	<b>31,069,690</b>	<b>50,093,537</b>	<b>50,843,507</b>

**17. Related-Party Transactions**

During 2008, a nonemployee officer of the Company was granted 14,446 stock options under the 2008 Plan in exchange for consulting services rendered. The exercise price of the options was \$1.05 per

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**17. Related-Party Transactions (Continued)**

share. Originally, the options vested ratably over 48 calendar months. Effective January 1, 2010, the nonemployee became a member of the Board of Directors, and the remaining unvested options were modified to vest ratably over each subsequent calendar quarter. The Company recognized approximately \$2,000 and \$6,000 of expense related to the vesting of these stock options for the years ended December 31, 2012 and 2011, respectively, and \$12,000 for the period from Inception through December 31, 2012. None of the options have been exercised as of December 31, 2012. The modification did not result in a material change to the fair value of the award.

During 2012 and 2011, an officer of the Company was a non-voting member of the Board of Directors of the not-for-profit entity, Ann Arbor SPARK, that owned the facility leased by the Company (see Note 7). In November 2012, the lease was assigned to the Michigan Land Bank Track Authority and as of December 31, 2012 was no longer considered a related party transaction to the Company.

**18. Subsequent Events**

Subsequent events have been evaluated through the date these financial statements were filed within the registration statement on Form S-1 with the Securities & Exchange Commission.

**April 2013 Series A Preferred Stock Issuance**

On April 19, 2013, the Company issued and sold an aggregate of 17,000,000 shares of Series A preferred stock at a price of \$1.00 per share for gross proceeds of \$17.0 million to funds affiliated with Longitude Capital and certain existing investors. Each share of Series A preferred stock issued in this financing is initially convertible into 0.143 shares of common stock. Upon the closing of the financing, Patrick Enright of Longitude Capital became a member of the board of directors.

**Pfizer Promissory Note Conversion (unaudited)**

On May 29, 2013 the Company entered into a stock purchase agreement with Pfizer Inc. and sold 6,750,000 shares of Series A-1 preferred stock at a price of \$1.1560 per share. The purchase price was paid through the cancellation of all outstanding indebtedness, including accrued interest, under the Pfizer convertible promissory note, which had an outstanding balance, including accrued interest, of \$7,803,000 as of May 29, 2013.

*4,500,000 Shares*



*Common Stock*

**Credit Suisse**

**JMP Securities**

**Citigroup**

**Stifel**

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**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the fees and expenses, other than underwriting discounts and commissions, payable in connection with the registration of the common stock hereunder. All amounts are estimates except the SEC registration fee.

SEC registration fee	\$ 10,589
FINRA filing fee	\$ 12,143
NASDAQ listing fee	\$ 125,000
Blue Sky fees and expenses	\$ 15,000
Printing and engraving expenses	\$ 100,000
Legal fees and expenses	\$ 1,200,000
Accounting fees and expenses	\$ 485,000
Transfer agent and registrar fees and expenses	\$ 2,500
Miscellaneous	\$ 99,768
Total	<u>\$ 2,050,000</u>

**Item 14. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the "DGCL") authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made a party by reason of the fact that they have served or are currently serving as a director or officer to a corporation. The indemnity may cover expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorneys' fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as a director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145.

We have adopted provisions in our certificate of incorporation and bylaws to be in effect at the completion of this offering that limit or eliminate the personal liability of our directors to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended. Consequently, a director will not be personally liable to us or our stockholders for monetary damages or breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any unlawful payments related to dividends or unlawful stock purchases, redemptions or other distributions; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

In addition, our bylaws provide that:

- we will indemnify our directors, officers and, in the discretion of our board of directors, certain employees to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended; and
- we will advance reasonable expenses, including attorneys' fees, to our directors and, in the discretion of our board of directors, to our officers and certain employees, in connection with legal proceedings relating to their service for or on behalf of us, subject to limited exceptions.

We have entered into indemnification agreements with each of our directors and intend to enter into such agreements with certain of our executive officers. These agreements provide that we will indemnify each of our directors, certain of our executive officers and, at times, their affiliates to the fullest extent permitted by Delaware law. We will advance expenses, including attorneys' fees (but excluding judgments, fines and settlement amounts), to each indemnified director, executive officer or affiliate in connection with any proceeding in which indemnification is available and we will indemnify our directors and officers for any action or proceeding arising out of that person's services as a director or officer brought on behalf of the Company and/or in furtherance of our rights. Additionally, each of our directors may have certain rights to indemnification, advancement of expenses and/or insurance provided by their affiliates, which indemnification relates to and might apply to the same proceedings arising out of such director's services as a director referenced herein. Nonetheless, we have agreed in the indemnification agreements that the Company's obligations to those same directors are primary and any obligation of the affiliates of those directors to advance expenses or to provide indemnification for the expenses or liabilities incurred by those directors are secondary.

We also maintain general liability insurance which covers certain liabilities of our directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act.

The underwriting agreement filed as Exhibit 1.1 to this registration statement provides for indemnification of us and our directors and officers by the underwriters against certain liabilities under the Securities Act and the Exchange Act.

**Item 15. Recent Sales of Unregistered Securities.**

The following list sets forth information as to all securities we have sold since March 31, 2010, which were not registered under the Securities Act.

1. On April 7, 2010, we issued and sold an aggregate of 1,000,000 shares of our Series A preferred stock to four accredited investors at a per share purchase price of \$1.00 for aggregate gross consideration of \$1,000,000. Each share of Series A preferred stock will convert into 0.143 shares of our common stock upon completion of this offering.
2. On November 23, 2010, we issued and sold an aggregate of 25,000 shares of our Series A preferred stock to Roger S. Newton, Ph.D., FAHA, at a per share purchase price of \$1.00 for aggregate gross consideration of \$25,000. Each share of Series A preferred stock will convert into 0.143 shares of our common stock upon completion of this offering.
3. On January 28, 2011, we issued and sold an aggregate of 6,700,000 shares of our Series A preferred stock to seven accredited investors at a per share purchase price of \$1.00 for aggregate gross consideration of \$6,700,000. Each share of Series A preferred stock will convert into 0.143 shares of our common stock upon completion of this offering.
4. On December 7, 2011, we issued an aggregate of 2,862 shares of our common stock to The Cleveland Clinic Foundation as consideration under an Exclusive License Agreement, dated as

- of December 7, 2011, pursuant to which we licensed certain intellectual property from The Cleveland Clinic Foundation related to our 4WF development program.
5. On January 26, 2012, in connection with a convertible note financing, we issued convertible promissory notes to eight accredited investors for an aggregate principal amount of \$6.0 million. The convertible promissory notes accrued interest at a rate equal to 10% per year and initially had a maturity date of January 26, 2013. On February 12, 2013, these convertible promissory notes were converted, in accordance with their terms and at their respective conversion prices, into shares of Series A preferred stock, and following such conversion, these convertible promissory notes were cancelled.
  6. Between September 4, 2012 and November 30, 2012, in connection with a convertible note financing, we issued, in a series of closings, convertible promissory notes to eight accredited investors for an aggregate principal amount of \$9.7 million. The convertible promissory notes accrued interest at a rate equal to 10% per year and had a maturity date of September 4, 2013. On February 12, 2013, these convertible promissory notes were converted, in accordance with their terms and at their respective conversion prices, into shares of Series A preferred stock, and following such conversion, these convertible promissory notes were cancelled.
  7. Between September 4, 2012 and November 30, 2012, in connection with a convertible note financing, we issued to eight accredited investors, in a series of closings, warrants to purchase approximately 1,940,000 shares of our Series A preferred stock at an exercise price of \$1.00 per share for an aggregate purchase price of \$9,700. Upon the completion of this offering, the warrants will become exercisable for 277,690 shares of our common stock at an exercise price of \$6.99.
  8. On April 19, 2013, in connection with a preferred stock financing, we issued 17,000,000 shares of our Series A preferred stock to ten accredited investors at a per share purchase price of \$1.00 for aggregate gross consideration of \$17.0 million. Each share of Series A preferred stock will convert into 0.143 shares of our common stock upon completion of this offering.
  9. On April 28, 2008, we issued a convertible promissory note to an accredited investor in the original principal amount of \$5.0 million. The convertible promissory note accrued interest at a rate of 8.931% per year and had a maturity date of April 28, 2018. Accrued interest under the note was capitalized on June 30th and December 31st of each year. On May 29, 2013, we entered into a stock purchase agreement pursuant to which we issued 6,750,000 shares of our Series A-1 preferred stock to the noteholder at a price of \$1.1560 per share, which purchase price was paid through the cancellation of all outstanding indebtedness, including accrued interest, under the convertible promissory note. Each share of Series A-1 preferred stock will convert into 0.143 shares of our common stock upon completion of this offering.
  10. Since April 1, 2010, we have granted stock options to purchase an aggregate of 687,485 shares of our common stock with exercise prices ranging from \$1.26 to \$3.70 per share to our employees, consultants and directors pursuant to our 2008 Plan. Of these, options covering an aggregate of 22,377 shares were cancelled or forfeited without being exercised.
  11. Since April 1, 2010, we sold an aggregate of 78,442 shares of common stock to employees, directors and consultants for cash consideration in the aggregate amount of \$136,923 upon the exercise of stock options.

We deemed the offers, sales and issuances of the securities described in paragraphs (1) through (9) above to be exempt from registration under the Securities Act, in reliance on Section 4(2) of the Securities Act, including Regulation D and Rule 506 promulgated thereunder, regarding transactions by an issuer not involving a public offering. All purchasers of securities in transactions exempt from registration pursuant to Regulation D represented to us that they were accredited investors and were

acquiring the shares for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof and that they could bear the risks of the investment and could hold the securities for an indefinite period of time. The purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

We deemed the grants and exercises of stock options described in paragraphs (10) and (11) as exempt pursuant to Section 4(2) of the Securities Act or to be exempt from registration under the Securities Act in reliance on Rule 701 of the Securities Act as offers and sales of securities under compensatory benefit plans and contracts relating to compensation in compliance with Rule 701. Each of the recipients of securities in any transaction exempt from registration either received or had adequate access, through employment, business or other relationships, to information about us.

All certificates representing the securities issued in the transactions described in this Item 15 included appropriate legends setting forth that the securities had not been offered or sold pursuant to a registration statement and describing the applicable restrictions on transfer of the securities. There were no underwriters employed in connection with any of the transactions set forth in this Item 15.

**Item 16. Exhibits and Financial Statement Schedules.**

(a) Exhibits:

The exhibits to the registration statement are listed in the Exhibit Index to this registration statement and are incorporated herein by reference.

(b) Financial Statements Schedules:

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

**Item 17. Undertakings.**

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Act, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

- (a) The Registrant will provide to the underwriter at the closing as specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.
- (b) For purposes of determining any liability under the Securities Act of 1933, as amended, the information omitted from a form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933, as amended, shall be deemed to be part of this registration statement as of the time it was declared effective.
- (c) For the purpose of determining any liability under the Securities Act of 1933, as amended, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 2 to Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Plymouth, Michigan on June 12, 2013.

**ESPERION THERAPEUTICS, INC.**

By: /s/ TIM M. MAYLEBEN

Tim M. Mayleben  
*President, Chief Executive Officer and Director*

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 2 to Registration Statement has been signed by the following person in the capacities and on the date indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ TIM M. MAYLEBEN</u> Tim M. Mayleben	President, Chief Executive Officer and Director ( <i>Principal Executive Officer and Principal Financial Officer</i> )	June 12, 2013
<u>/s/ RICHARD B. BARTRAM</u> Richard B. Bartram	Controller ( <i>Principal Accounting Officer</i> )	June 12, 2013
*		
<u>Patrick Enright</u>	Director	June 12, 2013
*		
<u>Dov A. Goldstein, M.D.</u>	Director	June 12, 2013
*		
<u>Daniel Janney</u>	Director	June 12, 2013
*		
<u>Louis G. Lange, M.D., Ph.D.</u>	Director	June 12, 2013
*		
<u>Roger S. Newton, Ph.D., FAHA</u>	Chief Scientific Officer, Director and Executive Chairman	June 12, 2013
*		
<u>Nicole Vitullo</u>	Director	June 12, 2013
*By: <u>/s/ RICHARD B. BARTRAM</u> Richard B. Bartram Attorney-in-fact		

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Exhibit Index</b>
1.1	Form of Underwriting Agreement
3.1	Amended and Restated Certificate of Incorporation of the Registrant and the amendments thereto, as currently in effect
3.2	Form of Amended and Restated Certificate of Incorporation of the Registrant (to be effective upon completion of this offering)
3.3**	Amended and Restated Bylaws of the Registrant, as currently in effect
3.4**	Form of Amended and Restated Bylaws of the Registrant (to be effective upon completion of this offering)
4.1	Specimen Common Stock Certificate
4.2**	Form of Warrant to Purchase Preferred Stock dated September 4, 2012
4.3**	Investor Rights Agreement by and between the Registrant and certain of its stockholders dated April 28, 2008
4.4**	Amendment No. 1 to Investor Rights Agreement by and between the Registrant and certain of its stockholders dated April 11, 2013
4.5**	Registration Rights and Securityholder Agreement by and between the Registrant and Pfizer Inc. dated April 28, 2008
5.1	Opinion of Goodwin Procter LLP
10.1#**	2008 Incentive Stock Option and Restricted Stock Plan and forms of agreements thereunder
10.2#	2013 Stock Option and Incentive Plan and forms of agreements thereunder
10.3#**	Employment Agreement by and between the Registrant and Dr. Roger S. Newton dated December 4, 2012
10.4#**	Employment Agreement by and between the Registrant and Tim M. Mayleben dated December 3, 2012
10.5#**	Employment Agreement by and between the Registrant and Noah Rosenberg, M.D. dated January 13, 2012
10.6#**	Letter Agreement by and between the Registrant and Troy Ignelzi dated January 4, 2010
10.7†**	License Agreement between Pfizer Inc. and the Registrant dated April 28, 2008 and amended on November 17, 2010
10.8**	Form of Indemnification Agreement, to be entered into between the Registrant and its officers
10.9**	Form of Indemnification Agreement, to be entered into between the Registrant and its directors
10.10**	Lease by and between the Registrant and Michigan Life Science and Innovation Center LLC dated October 2, 2008 and amended on November 15, 2011
10.11#**	Senior Executive Cash Incentive Bonus Plan
21.1**	Subsidiaries of the Registrant
23.1	Consent of Ernst & Young LLP
23.2	Consent of Goodwin Procter LLP (included in Exhibit 5.1)
24.1**	Power of Attorney

\* To be included by amendment.

\*\* Previously filed.

† Application has been made to the Securities and Exchange Commission for confidential treatment of certain provisions. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

# Indicates a management contract or any compensatory plan, contract or arrangement.



[•] Shares

## Esperion Therapeutics, Inc.

## Common Stock

UNDERWRITING AGREEMENT

[•], 2013

CREDIT SUISSE SECURITIES (USA) LLC,  
CITIGROUP GLOBAL MARKETS INC.,

As Representatives of the Several Underwriters,

c/o Credit Suisse Securities (USA) LLC,  
Eleven Madison Avenue,  
New York, N.Y. 10010-3629

c/o Citigroup Global Markets Inc.,  
388 Greenwich Street,  
New York, N.Y. 10013

Dear Sirs:

1. *Introductory.* Esperion Therapeutics, Inc., a Delaware corporation (the “**Company**”), agrees with the several Underwriters named in Schedule A hereto (the “**Underwriters**”), for whom Credit Suisse Securities (USA) LCC and Citigroup Global Markets Inc. are acting as representatives (the “**Representatives**”), to issue and sell to the several Underwriters [•] shares (the “**Firm Securities**”) of its common stock, \$0.001 par value per share (the “**Securities**”) and also proposes to issue and sell to the Underwriters, at the option of the Underwriters, an aggregate of not more than [•] additional shares (the “**Optional Securities**”) of its Securities as set forth below. The Firm Securities and the Optional Securities are herein collectively called the “**Offered Securities**”. As part of the offering contemplated by this Agreement, Credit Suisse Securities (USA) LLC (the “**Designated Underwriter**”) has agreed to reserve out of the Firm Securities purchased by it under this Agreement, up to [•] shares, for sale to the Company’s directors, officers, employees and other parties associated with the Company (collectively, “**Participants**”), as set forth in the Final Prospectus (as defined herein) under the heading “Underwriting” (the “**Directed Share Program**”). The Firm Securities to be sold by the Designated Underwriter pursuant to the Directed Share Program (the “**Directed Shares**”) will be sold by the Designated Underwriter pursuant to this Agreement at the public offering price. Any Directed Shares not subscribed for by the end of the business day on which this Agreement is executed will be offered to the public by the Underwriters as set forth in the Final Prospectus.

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms.* The Company has filed with the Commission a registration statement on Form S-1 (No. 333-188595) covering the registration of the Offered Securities under the Act, including a related preliminary prospectus or prospectuses. At any particular time, this initial registration statement, in the form then on file with the Commission, including all information contained in the registration statement (if any) pursuant to

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Rule 462(b) and then deemed to be a part of the initial registration statement, and all 430A Information and all 430C Information, that in any case has not then been superseded or modified, shall be referred to as the “**Initial Registration Statement**”. The Company may also have filed, or may file with the Commission, a Rule 462(b) registration statement covering the registration of Offered Securities. At any particular time, this Rule 462(b) registration statement, in the form then on file with the Commission, including the contents of the Initial Registration Statement incorporated by reference therein and including all 430A Information and all 430C Information, that in any case has not then been superseded or modified, shall be referred to as the “**Additional Registration Statement**”.

As of the time of execution and delivery of this Agreement, the Initial Registration Statement has been declared effective under the Act and is not proposed to be amended. Any Additional Registration Statement has or will become effective upon filing with the Commission pursuant to Rule 462(b) and is not proposed to be amended. The Offered Securities all have been or will be duly registered under the Act pursuant to the Initial Registration Statement and, if applicable, the Additional Registration Statement.

For purposes of this Agreement:

“**430A Information**”, with respect to any registration statement, means information included in a prospectus and retroactively deemed to be a part of such registration statement pursuant to Rule 430A(b).

“**430C Information**”, with respect to any registration statement, means information included in a prospectus then deemed to be a part of such registration statement pursuant to Rule 430C.

“**Act**” means the Securities Act of 1933, as amended.

“**Applicable Time**” means [•]:00 [a/p]m (New York time) on the date of this Agreement.

“**Closing Date**” has the meaning defined in Section 3 hereof.

“**Commission**” means the Securities and Exchange Commission.

“**Effective Time**” with respect to the Initial Registration Statement or, if filed prior to the execution and delivery of this Agreement, the Additional Registration Statement means the date and time as of which such Registration Statement was declared effective by the Commission or has become effective upon filing pursuant to Rule 462(c). If an Additional Registration Statement has not been filed prior to the execution and delivery of this Agreement but the Company has advised the Representatives that it proposes to file one, “**Effective Time**” with respect to such Additional Registration Statement means the date and time as of which such Registration Statement is filed and becomes effective pursuant to Rule 462(b).



“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Final Prospectus**” means the Statutory Prospectus that discloses the public offering price, other 430A Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

“**General Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule B to this Agreement.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

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“**Limited Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

The Initial Registration Statement and the Additional Registration Statement are referred to collectively as the “**Registration Statements**” and individually as a “**Registration Statement**”. A “**Registration Statement**” with reference to a particular time means the Initial Registration Statement and any Additional Registration Statement as of such time. A “**Registration Statement**” without reference to a time means such Registration Statement as of its Effective Time. For purposes of the foregoing definitions, 430A Information with respect to a Registration Statement shall be considered to be included in such Registration Statement as of the time specified in Rule 430A.

“**Rules and Regulations**” means the rules and regulations of the Commission.

“**Securities Laws**” means, collectively, the Sarbanes-Oxley Act of 2002 (“**Sarbanes-Oxley**”), the Act, the Exchange Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of “issuers” (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the NASDAQ Global Market (“**Exchange Rules**”).

“**Statutory Prospectus**” with reference to a particular time means the prospectus included in a Registration Statement immediately prior to that time, including any 430A Information or 430C Information with respect to such Registration Statement. For purposes of the foregoing definition, 430A Information shall be considered to be included in the Statutory Prospectus as of the actual time that form of prospectus is filed with the Commission pursuant to Rule 424(b) or Rule 462(c) and not retroactively.

“**Testing-the-Waters Communication**” means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Act.

“**Written Testing-the-Waters Communication**” means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Act.

Unless otherwise specified, a reference to a “rule” is to the indicated rule under the Act.

(b) *Compliance with Securities Act Requirements.* (i) (A) At their respective Effective Times, (B) on the date of this Agreement and (C) on each Closing Date, each of the Initial Registration Statement and the Additional Registration Statement (if any) conformed and will conform in all material respects to the requirements of the Act and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) on its date, at the time of filing of the Final Prospectus pursuant to Rule 424(b) or (if no such filing is required) at the Effective Time of the Additional Registration Statement in which the Final Prospectus is included, and on each Closing Date, the Final Prospectus will conform in all material respects to the requirements of the Act and the Rules and Regulations and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (iii) on the date of this Agreement, at their respective Effective Times or issue dates and on each Closing Date, each Registration Statement, the Final Prospectus, any Statutory Prospectus, any prospectus wrapper and any Issuer Free Writing Prospectus complied or comply, and such documents and any further amendments or supplements thereto will comply, with any applicable laws or regulations of foreign jurisdictions in which the Final Prospectus, any Statutory Prospectus, any prospectus wrapper or any Issuer Free Writing Prospectus, as amended or supplemented, if applicable, are distributed in connection with the Directed Share Program. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

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(c) *Ineligible Issuer Status.* (i) At the time of the initial filing of the Initial Registration Statement and (ii) at the date of this Agreement, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, including (x) the Company or any subsidiary of the Company in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (y) the Company in the preceding three years not having been the subject of a bankruptcy petition or insolvency or similar proceeding, not having had a registration statement be the subject of a proceeding under Section 8 of the Act and not being the subject of a proceeding under Section 8A of the Act in connection with the offering of the Offered Securities, all as described in Rule 405.

(d) *Emerging Growth Company Status.* From the time of the initial confidential submission of the Initial Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Act (an “Emerging Growth Company”).

(e) *General Disclosure Package.* As of the Applicable Time, none of (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time, the preliminary prospectus, dated [•], 2013 (which is the most recent Statutory Prospectus distributed to investors generally) and the other information, if any, stated in Schedule B to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the “**General Disclosure Package**”), (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package or (iii) any individual Written Testing-the-Waters Communication, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(f) *Issuer Free Writing Prospectuses.* Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Representatives as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (i) the Company has promptly notified or will promptly notify the Representatives and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. This subsection (f) does not apply to statements in or omissions from any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

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(g) *Testing-the-Waters Communication.* The Company (a) has not alone engaged in communications with potential investors in reliance on Section 5(d) of the Act other than Testing-the-Waters Communications with entities that are qualified institutional buyers within the meaning of Rule 144A under the Act or institutions that are accredited investors within the meaning of Rule 501 under the Act and (b) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communication. The Company reconfirms that the Representatives have been authorized to act on its behalf in communicating with potential investors in reliance on Section 5(d) of the Act. The Company has not distributed any Written Testing-the-Waters Communication.

(h) *Good Standing of the Company.* The Company has been duly incorporated and is existing and in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package and the Final Prospectus; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, result in a material adverse effect on the condition (financial or otherwise), results of operations, business, properties or prospects of the Company (“**Material Adverse Effect**”).

(i) *Subsidiaries.* The Company does not have any subsidiaries.

(j) *Offered Securities.* The Offered Securities and all other outstanding shares of capital stock of the Company have been duly authorized; the authorized equity capitalization of the Company is as set forth in the General Disclosure Package; all outstanding shares of capital stock of the Company are, and, when the Offered Securities have been delivered and paid for in accordance with this Agreement on each Closing Date, such Offered Securities will have been, validly issued, fully paid and nonassessable, will be consistent with the information in the General Disclosure Package and conform in all material respects to the description of such Offered Securities contained in the Final Prospectus; the stockholders of the Company have no preemptive rights with respect to the Securities that have not been duly waived or satisfied; and none of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder.

(k) *No Finder’s Fee.* Except as disclosed in the General Disclosure Package and the Final Prospectus, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with this offering.

(l) *Registration Rights.* Except as disclosed in the General Disclosure Package and the Final Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act (collectively, “**registration rights**”), and any person to whom the Company has granted registration rights has agreed not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5(l) hereof.

(m) *Listing.* The Offered Securities have been approved for listing on the NASDAQ Global Market, subject to notice of issuance.

(n) *Absence of Further Requirements.* No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required for the consummation of the transactions contemplated by this Agreement in connection with the

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offering, issuance and sale of the Offered Securities by the Company, except such as have been obtained, or made and such as may be required under state securities laws.

(o) *Title to Property.* Except as disclosed in the General Disclosure Package and the Final Prospectus, the Company has good and marketable title to all real properties and all other properties and assets owned by it, in each case free from liens, charges, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by it and, except as disclosed in the General Disclosure Package and the Final Prospectus, the Company holds any leased real or personal property under valid and enforceable leases with no terms or provisions that would materially interfere with the use made or to be made thereof by it.

(p) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution, delivery and performance of this Agreement, and the issuance and sale of the Offered Securities will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, (i) the charter or by-laws of the Company, (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its properties, or (iii) any agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the properties of the Company is subject, except, in the case of each of clauses (ii) and (iii), where such breach, violation or default would not, individually or in the aggregate, have a Material Adverse Effect; a “**Debt Repayment Triggering Event**” means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company.

(q) *Absence of Existing Defaults and Conflicts.* The Company is not in violation of its charter or by-laws or in default (or with the giving of notice or lapse of time would be in default) under any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other

agreement or instrument to which it is a party or by which it is bound or to which any of its properties is subject, except such defaults that would not, individually or in the aggregate, result in a Material Adverse Effect.

(r) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(s) *Possession of Licenses and Permits.* The Company possesses, and is in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits, including, without limitation, from the U.S. Food and Drug Administration (“FDA”) and equivalent foreign regulatory authorities (“Licenses”) necessary or material to the conduct of the business now conducted or proposed in the General Disclosure Package to be conducted by it and has not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company, would individually or in the aggregate have a Material Adverse Effect.

(t) *Absence of Labor Dispute.* No labor dispute with the employees of the Company exists or, to the knowledge of the Company, is imminent that could have a Material Adverse Effect.

(u) *Intellectual Property.* Except as disclosed in the General Disclosure Package and the Final Prospectus, (i) the Company owns, possesses or can acquire on reasonable terms sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets, inventions, technology, know-how and other intellectual property and similar rights, including registrations and applications for registration thereof (collectively, “**Intellectual Property Rights**”) necessary or material to the conduct of the business now conducted or proposed in the General Disclosure Package

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to be conducted by it, and (ii) the expected expiration of any such Intellectual Property Rights would not, individually or in the aggregate, have a Material Adverse Effect. Except as disclosed in the General Disclosure Package and the Final Prospectus (i) there are no rights of third parties to any of the Intellectual Property Rights owned or purported to be owned by the Company; (ii) to the Company’s knowledge, there is no material infringement, misappropriation, breach, default or other violation, or the occurrence of any event that with notice or the passage of time would constitute any of the foregoing, by any third party of any of the Intellectual Property Rights of the Company; (iii) there is no pending or to the Company’s knowledge, threatened action, suit, proceeding or claim by any third party challenging the Company’s rights in or to, or the violation of any of the terms of, any of its Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (iv) there is no pending or to the Company’s knowledge, threatened action, suit, proceeding or claim by any third party challenging the validity, enforceability or scope of any Intellectual Property Rights of the Company, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (v) there is no pending or to the Company’s knowledge, threatened action, suit, proceeding or claim by any third party that the Company infringes, misappropriates or otherwise violates or conflicts with any Intellectual Property Rights or other proprietary rights of any third party and the Company is unaware of any other fact which would form a reasonable basis for any such claim; and (vi) none of the Intellectual Property Rights used or held for use by the Company in its businesses has been obtained or is being used or held for use by the Company in violation of any contractual obligation binding on the Company or in violation of any rights of any third party, except in each case covered by clauses (i) — (vi) such as would not, if determined adversely to the Company, individually or in the aggregate, have a Material Adverse Effect.]

(v) *Environmental Laws.* Except as disclosed in the General Disclosure Package and the Final Prospectus, the Company is not in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “**environmental laws**”), does not own or operate any real property contaminated with any substance that is subject to any environmental laws, is not liable for any off-site disposal or contamination pursuant to any environmental laws, and is not subject to any pending claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(w) *Accurate Disclosure.* The statements in the General Disclosure Package and the Final Prospectus under the headings “Material U.S. Federal Income Tax Considerations” and “Description of Capital Stock,” insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or proceedings and present the information required to be shown.

(x) *Absence of Manipulation.* The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(y) *Statistical and Market-Related Data.* Any third-party statistical and market-related data included in a Registration Statement, a Statutory Prospectus, the General Disclosure Package or any Written Testing-the-Waters Communication is based on or derived from sources that the Company believes to be reliable and accurate.

(z) *Internal Controls and Compliance with the Sarbanes-Oxley Act.* Except as set forth in the General Disclosure Package and the Final Prospectus, the Company keeps accurate books and records

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and maintains a system of internal controls (collectively, “**Internal Controls**”) that are sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. General Accepted Accounting Principles (“GAAP”) and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Internal Controls are, or upon consummation of the offering of the Offered Securities will be, overseen by the Audit Committee (the “**Audit Committee**”) of the Company’s Board of Directors (the “**Board**”) in accordance with Exchange Rules. The Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 135 days the Company has no current reason to expect to publicly disclose or report to the Audit Committee or the Board, a significant deficiency, material weakness, change in Internal Controls or fraud involving management or other employees who have a significant role in Internal Controls (each, an “**Internal Control Event**”), any violation of, or failure to comply with, the Securities Laws, or any matter which, if determined adversely, would have a Material Adverse Effect.

(aa) *Absence of Accounting Issues.* A member of the Audit Committee has confirmed to the Chief Executive Officer or the Principal Accounting Officer of the Company that, except as set forth in the General Disclosure Package and the Final Prospectus, the Audit Committee is not reviewing or investigating, and neither the Company’s independent auditors nor its internal auditors have recommended that the Audit Committee review or investigate, (i) adding to, deleting, changing the application of, or changing the Company’s disclosure with respect to, any of the Company’s material accounting policies; (ii) any matter which could result in a restatement of the Company’s financial statements for any annual or interim period during the current or prior three fiscal years; or (iii) any Internal Control Event.

(bb) *Litigation.* Except as disclosed in the General Disclosure Package and the Final Prospectus, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company or any of its properties that, if determined adversely to the Company, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Offered Securities; and, except as disclosed in the General Disclosure Package and the Final Prospectus, to the Company's knowledge, no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are threatened or contemplated.

(cc) *Financial Statements.* The financial statements included in each Registration Statement and the General Disclosure Package present fairly the financial position of the Company as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with GAAP applied on a consistent basis.

(dd) *No Material Adverse Change in Business.* Except as disclosed in the General Disclosure Package and the Final Prospectus, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company, taken as a whole that is material and adverse, (ii) except as disclosed in or contemplated by the General Disclosure Package and the Final Prospectus, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (iii) except as disclosed in or contemplated by the General Disclosure Package and the Final Prospectus, there has been no material adverse change in the

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capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company.

(ee) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

(ff) *Ratings.* No "nationally recognized statistical rating organization" as such term is defined in Rule 3(a)(62) under the Exchange Act (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(c)(ii) hereof.

(gg) *Taxes.* The Company has filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or has requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and has paid all taxes required to be paid thereon (except for cases in which the failure to file or pay would not have a Material Adverse Effect, or, except as currently being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company), and no tax deficiency has been determined adversely to the Company which has had (nor does the Company have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company and which could reasonably be expected to have) a Material Adverse Effect.

(hh) *Insurance.* The Company is insured by insurers with appropriately rated claims paying abilities against such losses and risks and in such amounts as are prudent and customary for the businesses in which it is engaged; all policies of insurance insuring the Company or its business, assets, employees, officers and directors are in full force and effect; the Company is in compliance with the terms of such policies and instruments in all material respects; and there are no claims by the Company under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; the Company has not been refused any insurance coverage sought or applied for; and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except as set forth in or contemplated in the General Disclosure Package and the Final Prospectus; and the Company will obtain directors' and officers' insurance in such amounts as is customary for issuers of similar size and development stage which are conducting an initial public offering.

(ii) *Anti-Corruption.* Neither the Company nor any of its affiliates, nor any director, officer, or employee, nor, to the Company's knowledge, any agent or representative of the Company or of any of its affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company and its affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

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(jj) *Anti-Money Laundering.* The operations of the Company are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(kk) *Economic Sanctions.* (i) Neither the Company nor any director, officer, or employee thereof, nor, to the Company's knowledge, any agent, affiliate or representative of the Company, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is:

- (A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), nor
- (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan and Syria).

- (ii) The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:
  - (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or
  - (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).
- (iii) For the past five years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(l) *Regulatory Matters.* The Company has operated and currently operates its business in compliance with all applicable rules, regulations and policies of the FDA, except where the failure to so operate or be in compliance would not have a Material Adverse Effect. Any clinical trials and human studies conducted by the Company and, to the knowledge of the Company, any clinical trials and human studies conducted on behalf of the Company or in which the Company has participated were and, if still pending, are being conducted in accordance with standard medical and scientific research procedures and any applicable rules, regulations and policies of the jurisdiction in which such trials and studies are being conducted, except where the failure to be so conducted would not have a Material Adverse Effect.

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(mm) *Absence of Unlawful Influence.* The Company has not offered or sold, or caused the Underwriters to offer or sell, any Offered Securities to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about the Company or its products.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Company agrees to sell to the several Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$[-] per share, the respective number of shares of Firm Securities set forth opposite the names of the Underwriters in Schedule A hereto.

The Company will deliver the Firm Securities to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price by the Underwriters in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of the Company at the office of Davis Polk & Wardwell LLP, 1600 El Camino Real, Menlo Park, California 94025, at [-] A.M., New York time, on [-], 2013, or at such other time not later than seven full business days thereafter as the Representatives and the Company determine, such time being herein referred to as the "**First Closing Date**". For purposes of Rule 15c6-1 under the Exchange Act, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Offered Securities sold pursuant to the offering. The Firm Securities so to be delivered or evidence of their issuance will be made available for checking at the above office of Davis Polk & Wardwell LLP at a reasonable time in advance of the First Closing Date.

In addition, upon written notice from the Representatives given to the Company from time to time not more than 30 days subsequent to the date of the Final Prospectus, the Underwriters may purchase all or less than all of the Optional Securities at the purchase price per Security to be paid for the Firm Securities less an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Securities but not payable on the Optional Securities. The Company agrees to sell to the Underwriters the number of shares of Optional Securities specified in such notice and the Underwriters agree, severally and not jointly, to purchase such Optional Securities. Such Optional Securities shall be purchased for the account of each Underwriter in the same proportion as the number of shares of Firm Securities set forth opposite such Underwriter's name bears to the total number of shares of Firm Securities (subject to adjustment by the Representatives to eliminate fractions) and may be purchased by the Underwriters only for the purpose of covering over-allotments made in connection with the sale of the Firm Securities. No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time for not more than 30 days subsequent to the date of the Final Prospectus and to the extent not previously exercised may be surrendered and terminated at any time upon notice by the Representatives to the Company.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an "**Optional Closing Date**", which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a "**Closing Date**"), shall be determined by the Representatives but, unless the Optional Closing Date is the First Closing Date or as otherwise mutually agreed between the Company and the Representatives, shall be not later than five full business days after written notice of election to purchase Optional Securities is given. The Company will deliver the Optional Securities being purchased on each Optional Closing Date to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price therefor in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of the Company, at the above office of Davis Polk & Wardwell LLP. The Optional Securities being purchased on each Optional Closing Date or evidence of their issuance will be made

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available for checking at the above office of Davis Polk & Wardwell LLP at a reasonable time in advance of such Optional Closing Date.

4. *Offering by Underwriters.* It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company.* The Company agrees with the several Underwriters that:

(a) *Additional Filings.* Unless filed pursuant to Rule 462(c) as part of the Additional Registration Statement in accordance with the next sentence, the Company will file the Final Prospectus, in a form approved by the Representatives, with the Commission pursuant to and in accordance with subparagraph (1) (or, if applicable and if consented to by the Representatives, subparagraph (4)) of Rule 424(b) not later than the earlier of (A) the second business day following the execution and delivery of this Agreement or (B) the fifteenth business day after the Effective Time of the Initial Registration Statement. The Company will advise the Representatives promptly of any such filing pursuant to Rule 424(b) and provide satisfactory evidence to the Representatives of such timely filing. If an Additional Registration Statement is necessary to register a portion of the Offered Securities under the Act but the Effective Time thereof has not occurred as of the execution and delivery of this Agreement, the Company will file the Additional Registration Statement or, if filed, will file a post-effective amendment thereto with the Commission pursuant to and in accordance with Rule 462(b) on or prior to 10:00 P.M., New York time, on the date of this Agreement or, if earlier, on or prior to the time the Final Prospectus is finalized and distributed to any Underwriter, or will make such filing at such later date as shall have been consented to by the Representatives.

(b) *Filing of Amendments; Response to Commission Requests.* The Company will promptly advise the Representatives of any proposal to amend or supplement at any time the Initial Registration Statement, any Additional Registration Statement or any Statutory Prospectus and will not effect such amendment or supplementation without the Representatives' consent; and the Company will also advise the Representatives promptly of (i) the effectiveness of any Additional Registration Statement (if its Effective Time is subsequent to the execution and delivery of this Agreement), (ii) any amendment or supplementation of a Registration Statement or any Statutory Prospectus, (iii) any request by the Commission or its staff for any amendment to any Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iv) the institution by the Commission of any stop order proceedings in respect of a Registration Statement or the threatening of any proceeding for that purpose, and (v) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its reasonable best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof. If, at any time prior to the filing of the Final Prospectus pursuant to Rule 424(b), any event occurs as a result of which the General Disclosure Package would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made at such time not misleading, the Company will (x) promptly notify the Representatives so that any use of the General Disclosure Package may cease until it is amended or supplemented; (y) amend or supplement the General Disclosure Package to correct such statement or omission; and (z) supply any amendment or supplement to the Representatives in such quantities as the Representatives may reasonably request.

(c) *Continued Compliance with Securities Laws.* If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which

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they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify the Representatives of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representatives, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representatives' consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Testing-the-Waters Communication.* If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such statement or omission.

(e) *Rule 158.* As soon as practicable, but not later than the Availability Date (as defined below), the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the Effective Time of the Initial Registration Statement (or, if later, the Effective Time of the Additional Registration Statement) which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act. For the purpose of the preceding sentence, "**Availability Date**" means the day after the end of the fourth fiscal quarter following the fiscal quarter that includes such Effective Time on which the Company is required to file its Form 10-Q for such fiscal quarter except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "**Availability Date**" means the day after the end of such fourth fiscal quarter on which the Company is required to file its Form 10-K.

(f) *Furnishing of Prospectuses.* The Company will furnish to the Representatives copies of each Registration Statement, each related Statutory Prospectus, and, so long as a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act, the Final Prospectus and all amendments and supplements to such documents, in each case in such quantities as the Representatives request. The Final Prospectus shall be so furnished on or prior to 3:00 P.M., New York time, on the second business day following the execution and delivery of this Agreement. All other documents shall be so furnished as soon as available. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(g) *Blue Sky Qualifications.* The Company will arrange for the qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives designate and will continue such qualifications in effect so long as required for the distribution; provided that the Company will not be required to qualify as a foreign corporation in any jurisdiction in which it is not so qualified or file a general consent to service of process in any such jurisdiction or take any action that would subject it to taxation in any such jurisdiction where it is not then so subject.

(h) *Reporting Requirements.* During the period of five years hereafter, the Company will furnish to the Representatives and, upon request, to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and the Company will furnish to the Representatives (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders, and (ii) from time to time, such other information concerning the Company as the Representatives may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is filing reports with the

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Commission on its Electronic Data Gathering, Analysis and Retrieval system (or any successor system), it is not required to furnish such reports or statements to the Underwriters.

(i) *Payment of Expenses.* The Company will pay all expenses incident to the performance of its obligations under this Agreement, including but not limited to any filing fees and other expenses (including reasonable fees and disbursements of counsel to the Underwriters) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives designate and the preparation and printing of memoranda relating thereto in an amount not to exceed \$15,000, costs and expenses related to the review by FINRA of the Offered Securities (including filing fees and the fees and expenses of counsel for the Underwriters relating to such review) in an amount not to exceed \$50,000, costs and expenses relating to investor presentations or any "road show" in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company (including one half of the cost of any aircraft chartered in connection with any roadshow), fees and expenses incident to listing the Offered Securities on the NASDAQ Global Market, fees and expenses in connection with the registration of the Offered Securities under the Exchange Act, and expenses incurred in distributing preliminary prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the Underwriters and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors.

(j) *Use of Proceeds.* The Company will use the net proceeds received by it in connection with this offering in the manner described in the "Use of Proceeds" section of the General Disclosure Package and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any Underwriter or affiliate of any Underwriter.

(k) *Absence of Manipulation.* The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(l) *Restriction on Sale of Securities.* For the period specified below (the “**Lock-Up Period**”), the Company will not, directly or indirectly, take any of the following actions with respect to its Securities or any securities convertible into or exchangeable or exercisable for any of its Securities (“**Lock-Up Securities**”): (i) offer, sell, issue, contract to sell, pledge or otherwise dispose of Lock-Up Securities, (ii) offer, sell, issue, contract to sell, contract to purchase or grant any option, right or warrant to purchase Lock-Up Securities, (iii) enter into any swap, hedge or any other agreement that transfers, in whole or in part, the economic consequences of ownership of Lock-Up Securities, (iv) establish or increase a put equivalent position or liquidate or decrease a call equivalent position in Lock-Up Securities within the meaning of Section 16 of the Exchange Act or (v) file with the Commission a registration statement under the Act relating to Lock-Up Securities (other than registration statements on Form S-8 relating to Lock-Up Securities granted or to be granted pursuant to the terms of a plan disclosed in the General Disclosure Package), or publicly disclose the intention to take any such action, without the prior written consent of the Representatives, except for (A) grants of employee stock options or other equity-based awards pursuant to the terms of a plan disclosed in the General Disclosure Package, (B) issuances of Lock-Up Securities pursuant to the exercise of such options or other equity-based awards, (C) issuances of Lock-Up Securities pursuant to the exercise of warrants outstanding on the date hereof as disclosed in the General Disclosure Package, (D) the issuance of the Offered Securities and (E) issuances of Lock-Up Securities or securities exercisable for, convertible into or exchangeable for Lock-Up Securities in connection with any acquisition, collaboration, licensing or other joint venture or strategic transaction or any debt financing transaction involving the Company; provided that in the case of clause (E), that such issuances shall not be greater than 10% of the Offered Securities and the recipients of such Lock-Up Securities agree to be bound by a lockup

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letter in the form executed by directors, officers and shareholders pursuant to Section 7(h) hereof. The Lock-Up Period will commence on the date hereof and continue for 180 days after the date hereof or such earlier date that the Representatives consent to in writing.

(m) *Agreement to Announce Lock-Up Waiver.* If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a lock-up letter described in Section 7(h) hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit B hereto through a major news service or in a registration statement publicly filed with the Securities and Exchange Commission in connection with a secondary offering at least two business days before the effective date of the release or waiver.

(n) *Emerging Growth Company Status.* The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Offered Securities within the meaning of the Act and (ii) completion of the Lock-Up Period (as defined in Section 5(k) hereof).

(o) *Transfer Restrictions.* In connection with the Directed Share Program, the Company will ensure that the Directed Shares will be restricted to the extent required by the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) or the FINRA rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of the effectiveness of the Registration Statement. The Designated Underwriter will notify the Company as to which Participants will need to be so restricted. The Company will direct the transfer agent to place stop transfer restrictions upon such securities for such period of time.

(p) *Payment of Expenses Related to Directed Share Program.* The Company will pay all fees and disbursements of counsel (including non-U.S. counsel) incurred by the Underwriters in connection with the Directed Share Program and stamp duties, similar taxes or duties or other taxes, if any, incurred by the underwriters in connection with the Directed Share Program.

(q) *Compliance with Foreign Laws.* The company will comply with all applicable securities and other applicable laws, rules and regulations in each foreign jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program.

6. *Free Writing Prospectuses.* The Company represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representatives is hereinafter referred to as a “**Permitted Free Writing Prospectus**.” The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping. The Company represents that it has satisfied and agrees that it will satisfy the conditions in Rule 433 to avoid a requirement to file with the Commission any electronic road show.

7. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing Date and the Optional Securities to be purchased on each Optional Closing Date will be subject to the accuracy of the representations and warranties of the Company herein (as though made on such Closing Date), to the accuracy of the statements of Company officers

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made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) *Accountants' Comfort Letter.* The Representatives shall have received letters, dated, respectively, the date hereof and each Closing Date, of Ernst & Young LLP confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and substantially in the form of Schedule C hereto (except that, in any letter dated a Closing Date, the specified date referred to in Schedule C hereto shall be a date no more than three days prior to such Closing Date).

(b) *Effectiveness of Registration Statement.* If the Effective Time of the Additional Registration Statement (if any) is not prior to the execution and delivery of this Agreement, such Effective Time shall have occurred not later than 10:00 P.M., New York time, on the date of this Agreement or, if earlier, the time the Final Prospectus is finalized and distributed to any Underwriter, or shall have occurred at such later time as shall have been consented to by the Representatives. The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. Prior to such Closing Date, no stop order suspending the effectiveness of a Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or the Representatives, shall be contemplated by the Commission.

(c) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the

Company which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Company by any “nationally recognized statistical rating organization” (as defined in Section 3(a)(62) under the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representatives, impractical to market or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the NASDAQ Stock Market, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment, or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(d) *Opinion of Counsel for Company.* The Representatives shall have received an opinion, dated such Closing Date, of Goodwin Procter LLP, counsel for the Company, in form and substance agreed upon between the parties.

(e) *Opinion of Intellectual Property Counsel for Company.* The Representatives shall have received an opinion, dated such Closing Date, of Brinks Hofer Gilson & Lione, intellectual property

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counsel for the Company with respect to the Company’s lead product candidate, ETC-1002, in form and substance agreed upon between the parties.

(f) *Opinion of Counsel for Underwriters.* The Representatives shall have received from Davis Polk & Wardwell LLP, counsel for the Underwriters, such opinion or opinions, dated such Closing Date, with respect to such matters as the Representatives may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(g) *Officer’s Certificate.* The Representatives shall have received a certificate, dated such Closing Date, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of any Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge, are contemplated by the Commission; the Additional Registration Statement (if any) satisfying the requirements of subparagraphs (1) and (3) of Rule 462(b) was timely filed pursuant to Rule 462(b), including payment of the applicable filing fee in accordance with Rule 111(a) or (b) of Regulation S-T of the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company except as set forth in the General Disclosure Package and the Final Prospectus or as described in such certificate.

(h) *Lock-up Agreements.* On or prior to the date hereof, the Representatives shall have received lock-up agreements in the form set forth on Exhibit A hereto from each executive officer, director, stockholder and other equityholder of the Company.

The Company will furnish the Representatives with such conformed copies of such opinions, certificates, letters and documents as the Representatives reasonably request. The Representatives may in their sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of an Optional Closing Date or otherwise.

8. *Indemnification and Contribution.* (a) *Indemnification of Underwriters.* The Company will indemnify and hold harmless each Underwriter, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Indemnified Party**”), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives

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specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below. The Company agrees to indemnify and hold harmless the Designated Underwriter and its affiliates and each person, if any, who controls the Designated Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (the “**Designated Entities**”), from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Directed Share Program arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) arising out of or based upon the failure of any Participant to pay for and accept delivery of Directed Shares that the Participant agreed to purchase; or (iii) arising out of, related to or in connection with the Directed Share Program, other than losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the willful misconduct or gross negligence of the Designated Entities.

(b) *Indemnification of Company.* Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers who signs a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Underwriter Indemnified Party**”), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part



of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Final Prospectus furnished on behalf of each Underwriter: the concession figure appearing in the [fifth] paragraph, the [seventh] paragraph, the [eighth] paragraph and the information contained in the [fourteenth] paragraph under the caption "Underwriting."

(c) *Actions against Parties; Notification.* Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not,

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except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. Notwithstanding anything contained herein to the contrary, if indemnity may be sought pursuant to the last paragraph in Section 8 (a) hereof in respect of such action or proceeding, then in addition to such separate firm for the indemnified parties, the indemnifying party shall be liable for the reasonable fees and expenses of not more than one separate firm (in addition to any local counsel) for the Designated Underwriter for the defense of any losses, claims, damages and liabilities arising out of the Directed Share Program, and all persons, if any, who control the Designated Underwriter within the meaning of either Section 15 of the Act of Section 20 of the Exchange Act. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (x) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (y) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) *Contribution.* If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the underwriting discount or commission applicable to

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the Securities purchased by such Underwriter hereunder exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8(d).

9. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First or any Optional Closing Date and the aggregate number of shares of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, the Representatives may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate number of shares of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to the Representatives and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 10 (provided that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as

to the Firm Securities or any Optional Securities purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

10. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 9 hereof or due to the failure to satisfy any condition under Section 7(c) (iii), (iv), (vi) or (viii) hereof, the Company will reimburse the Underwriters for all out-of-pocket expenses (including reasonably documented fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities, and the respective obligations of the Company and the Underwriters pursuant to Section 8 hereof shall remain in effect. In addition, if any Offered Securities have been purchased hereunder, the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect.

11. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed, delivered or telegraphed and confirmed to the Representatives, c/o Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, N.Y. 10010-3629, Attention: LCD-IBD and Citigroup Global Markets Inc., 388 Greenwich Street, New York, NY 10012, Attention: General Counsel, or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 46701 Commerce Center Drive, Plymouth, MI 48170, Attention: [-]; provided, however, that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

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12. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

13. *Representation of Underwriters.* The Representatives will act for the several Underwriters in connection with this financing, and any action under this Agreement taken by the Representatives will be binding upon all the Underwriters.

14. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

15. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) *No Other Relationship.* The Representatives have been retained solely to act as underwriters in connection with the sale of Offered Securities and that no fiduciary, advisory or agency relationship between the Company and the Representatives has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Representatives have advised or are advising the Company on other matters;

(b) *Arms' Length Negotiations.* The price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms-length negotiations with the Representatives and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose.* The Company has been advised that the Representatives and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Representatives have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver.* The Company waives, to the fullest extent permitted by law, any claims it may have against the Representatives for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Representatives shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

**16. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

17. *Waiver of Jury Trial.* The Company hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

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If the foregoing is in accordance with the Representatives' understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

ESPERION THERAPEUTICS, INC.

By

\_\_\_\_\_  
Name:  
Title:

The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

Acting on behalf of themselves and as the Representatives of the several Underwriters

By CREDIT SUISSE SECURITIES (USA) LLC

By: \_\_\_\_\_  
Name:  
Title:

By CITIGROUP GLOBAL MARKETS INC.

By: \_\_\_\_\_  
Name:  
Title:

[Signature page to Underwriting Agreement]

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**SCHEDULE A**

<b>Underwriter</b>	<b>Number of Firm Securities</b>
Credit Suisse Securities (USA) LLC	[·]
Citigroup Global Markets Inc.	[·]
Stifel, Nicolaus & Company, Incorporated	[·]
JMP Securities LLC	[·]
<b>Total</b>	<b>[·]</b>

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**SCHEDULE B**

**1. General Use Free Writing Prospectuses (included in the General Disclosure Package)**

“General Use Issuer Free Writing Prospectus” includes each of the following documents:

- [·]

**2. Other Information Included in the General Disclosure Package**

The following information is also included in the General Disclosure Package:

- The initial price to the public of the Offered Securities.

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**SCHEDULE C**

**Form of Comfort Letter**

[Form of EY comfort letter]

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**Exhibit A**

**Form of Lock-Up Agreement**

, 2013

Esperion Therapeutics, Inc.  
46701 Commerce Center Drive  
Plymouth, MI 48170

CREDIT SUISSE SECURITIES (USA) LLC,  
CITIGROUP GLOBAL MARKETS INC.,

As Representatives of the Several Underwriters,

c/o Credit Suisse Securities (USA) LLC,  
Eleven Madison Avenue,

c/o Citigroup Global Markets Inc.,  
388 Greenwich Street,  
New York, N.Y. 10013

Dear Sirs:

As an inducement to the underwriters to execute the Underwriting Agreement (the “**Underwriting Agreement**”), pursuant to which an offering will be made that is intended to result in the establishment of a public market for the common stock, \$0.001 par value per share (the “**Securities**”) of Esperion Therapeutics, Inc., a Delaware corporation, and any successor (by merger or otherwise) thereto, (the “**Company**”), the undersigned hereby agrees that during the period specified in the following paragraph (the “**Lock-Up Period**”), the undersigned will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any Securities or securities convertible into or exchangeable or exercisable for any Securities, enter into a transaction which would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Securities, whether any such aforementioned transaction is to be settled by delivery of the Securities or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of Credit Suisse Securities (USA) LLC (“**Credit Suisse**”) and Citigroup Global Markets Inc. (together with Credit Suisse, the “**Representatives**”). In addition, the undersigned agrees that, without the prior written consent of the Representatives, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any Securities or any security convertible into or exercisable or exchangeable for the Securities.

The initial Lock-Up Period will commence on the date of this letter agreement (this “**Lock-Up Agreement**”) and continue and include the date that is 180 days after the public offering date set forth on the final prospectus used to sell the Securities (the “**Public Offering Date**”) pursuant to the Underwriting Agreement, to which you are or expect to become parties.

Any Securities received upon exercise of options granted to the undersigned will also be subject to this Lock-Up Agreement.

Notwithstanding anything herein to the contrary, the restrictions contained in this Lock-Up Agreement shall not apply to any of the following: (i) transfers of Securities as a bona fide gift or gifts, (ii) transfers of Securities or other securities of the Company to a trust or limited family partnership for the direct

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or indirect benefit of the undersigned or the immediate family of the undersigned, (iii) transfers of Securities or other securities of the Company by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or a member of the immediate family of the undersigned in a transaction not involving a disposition for value, (iv) the exercise, including by “net” exercise, of any options or warrants to acquire Securities or the conversion of any convertible security into Securities, (v) transfers or distributions of Securities to members, limited partners, stockholders or affiliates of, or any investment fund or other entity that controls or manages, the undersigned, provided that the transfer or distribution shall not involve a disposition for value, (vi) transfers or distributions in connection with a merger or sale of the Company, regardless of how such a transaction is structured (it being further understood that this agreement shall not restrict the undersigned from entering into any agreement or arrangement in connection therewith, including an agreement to vote in favor of, or tender Securities or other securities of the Company in, any such transaction or taking any other action in connection with any such transaction), (vii) the entering into by the undersigned of a written trading plan pursuant to Rule 10b5-1 of the Securities and Exchange Act of 1934 (the “**Exchange Act**”) during the Lock-Up Period, provided that no sales of the undersigned’s Securities shall be made pursuant to such Plan prior to the expiration of the Lock-Up Period or (viii) Securities purchased by the undersigned in the offering to which the Underwriting Agreement relates; provided further that, with respect to clauses (i), (ii), (iii), (iv) and (v), (a) each transferee or distributee agrees to be bound in writing by the terms of this Lock-Up Agreement, and (b) no filing or public announcement by any party (donor, donee, transferor, transferee, distributor or distributee) under the Exchange Act shall be required or shall be voluntarily made in connection with such transfer, exercise, conversion or distribution (other than a filing on a Form 5 made after the expiration of the Lock-Up Period).

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Securities if such transfer would constitute a violation or breach of this Lock-Up Agreement.

If the undersigned is an officer or director of the Company, the undersigned further agrees that the foregoing restrictions in this Lock-Up Agreement shall be equally applicable to any issuer-directed Securities the undersigned may purchase in the above-referenced offering.

If the undersigned is an officer or director of the Company, (i) the Representatives agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of Securities, the Representatives will notify the Company of the impending release or waiver, and (ii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service or in a registration statement publicly filed with the Securities and Exchange Commission in connection with a secondary offering at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives hereunder to any such officer or director shall only be effective two business days after the date of such publication. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this Lock-Up Agreement to the extent and for the duration that such terms remain in effect at the time of the transfer.

This Lock-Up Agreement shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. This Lock-Up Agreement shall lapse and become null and void (i) on December 31, 2013 if the Public Offering Date shall not have occurred on or before such date or (ii) upon written notice from an authorized officer of the Company to the Representatives, executed or delivered prior to the signing of the Underwriting Agreement, that the Company has determined not to proceed with the public offering of the Securities. **This agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

[Signature page follows]

Very truly yours,

**IF AN INDIVIDUAL:**

By: \_\_\_\_\_  
(duly authorized signature)

**IF AN ENTITY:**

\_\_\_\_\_  
(please print complete name of entity)

Name: \_\_\_\_\_

By: \_\_\_\_\_

(please print full name)

(duly authorized signature)

Name:

\_\_\_\_\_  
(please print full name)

Address:

Address:

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**Exhibit B**

**Form of Press Release**

Esperion Therapeutics, Inc.  
[Date]

Esperion Therapeutics, Inc. (the “Company”) announced today that Credit Suisse Securities (USA) LLC and Citigroup Global Markets Inc., the lead book-running managers in the Company’s recent public sale of \_\_\_\_\_ shares of the Company’s common stock, are [waiving] [releasing] a lock-up restriction with respect to shares of the Company’s common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on \_\_\_\_\_, 20\_\_\_\_, and the shares may be sold on or after such date.

**This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.**

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*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
 Delivered 03:23 PM 01/22/2008  
 FILED 03:23 PM 01/22/2008  
 SRV 080069053 - 4493349 FILE

**CERTIFICATE OF INCORPORATION  
 OF  
 HDL THERAPEUTICS, INC.**

FIRST: The name of the corporation is HDL Therapeutics, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent. The name of its registered agent at such address is National Registered Agents, Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code.

FOURTH: The total number of shares of capital stock which the Corporation has authority to issue is 1,000 shares of common stock, \$0.0001 par value per share. The designation and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof are as follows: none.

FIFTH: The name and mailing address of the incorporator are as follows: Marie T. Zacny, 2290 First National Building, Detroit, Michigan 48226.

SIXTH: To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this Article shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

I, THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 22nd day of January, 2008.

/s/ Marie T. Zacny

\_\_\_\_\_  
 Marie T. Zacny, Incorporator

*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
 Delivered 03:21 PM 04/24/2008  
 FILED 03:13 PM 04/24/2008  
 SRV 080468597 - 4493349 FILE

**AMENDED AND RESTATED  
 CERTIFICATE OF INCORPORATION  
 OF  
 HDL THERAPEUTICS, INC.**

The undersigned, a natural person, for the purpose of organizing a corporation to conduct the business and promote the purposes hereinafter stated, under the provisions and subject to the requirements of the laws of the State of Delaware hereby certifies that:

**ONE:** The date of filing of the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware was January 22, 2008.

**TWO:** The Certificate of Incorporation, as amended, of the corporation is hereby amended and restated as follows:

**I.**

The name of this corporation is HDL Therapeutics, Inc. (the "**Company**").

**II.**

The address of the registered office of the Company in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, 19904, and the name of the registered agent of the Company in the State of Delaware at such address is National Registered Agents, Inc.

**III.**

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("**DGCL**").

**IV.**

**A.** The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is eighty three million seven hundred fifty thousand two hundred ninety (83,750,290) shares, forty four million twenty five thousand one hundred forty five (44,025,145) shares of which shall be Common Stock (the "**Common Stock**") and thirty nine million seven hundred twenty five thousand one hundred forty five (39,725,145) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

**B.** Thirty three million two hundred fifty thousand (33,250,000) of the authorized shares of Preferred Stock are hereby designated “Series A Preferred Stock” (the “*Series A Preferred*”) and six million four hundred seventy five thousand one hundred forty five

(6,475,145) shares of which shall be Series A-1 Preferred Stock (the “*Series A-1 Preferred*” and together with the Series A Preferred, the “*Series Preferred*”).

**C.** The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

**1. DIVIDEND RIGHTS.**

**(a)** Holders of Series Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when, as and if declared by the Board of Directors (the “*Board*”), but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of each respective Original Issue Price (as defined below) per annum on each outstanding share of Series Preferred on a pari passu basis (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). Such dividends shall be payable only when, as and if declared by the Board and shall be non-cumulative.

**(b)** The “Series A Original Issue Price” of the Series A Preferred shall be one dollar (\$1.00) (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). The “Series A-1 Original Issue Price” of the Series A-1 Preferred shall be the Note Conversion Price. The “Note Conversion Price” shall be the price per share at which that certain Convertible Promissory Note issued by the Company to Pfizer, Inc. dated on or about April 24, 2008 are converted to shares of Series A-1 Preferred. As used herein, the term “Original Issue Price” shall refer to the Series A Original Issue Price and/or Series A-1 Original Issue Price, as applicable.

**(c)** So long as any shares of Series Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1(a) above on the Series Preferred shall have been paid or declared and set apart, except for:

**(i)** acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares from employees, officers or directors of, or consultants or advisors to, the Company at cost (or the lesser of cost or fair market value) upon termination of services to the Company;

**(ii)** acquisitions of Common Stock in exercise of the Company’s right of first refusal to repurchase such shares; or

**(iii)** distributions to holders of Common Stock in accordance with Sections 3 and 4 below.

**(d)** In the event dividends are paid on any share of Common Stock, including, without limitation, in-kind and stock dividends, the Company shall pay an additional dividend on all outstanding shares of Series A Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

**(e)** The provisions of Sections 1(c) and 1(d) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(f) hereof are applicable, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Series Preferred as may be required by this Certificate of Incorporation.

**2. VOTING RIGHTS.**

**(a) General Rights.** Each holder of shares of the Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series Preferred could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders’ meeting in accordance with the bylaws of the Company; provided, however, that except as required by law, the holders of Series A-1 Preferred shall not be entitled to notice of or eligible to vote at any meeting of the stockholders of the Company or to vote upon any matter other than as set forth in Section 5(k)(i) of this Certificate of Incorporation. Except as otherwise provided herein or as required by law, the Series A Preferred shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

**(b) Separate Vote of Series A Preferred.** For so long as any shares of Series A Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority of the outstanding Series A Preferred, voting together as a single class on an as-converted basis, shall be necessary for effecting or validating the following actions (whether by merger, reclassification or otherwise):

**(i)** Any alteration or change to the rights, preferences or privileges of the Series A Preferred;

**(ii)** Any increase or decrease in the authorized number of shares of Preferred Stock or Common Stock;

**(iii)** Any authorization, designation or issuance, whether by merger, reclassification of the outstanding shares of securities of the Company, amendment or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series A Preferred;

**(iv)** Any increase beyond 2,300,000 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) in the number of shares of Common Stock available for issuance under the Company’s existing equity plan or other equity incentive plan, *except for* any increase approved by the Company pursuant to Section 7.3 of that certain Series A Preferred Stock Purchase Agreement by and between the Company and the Purchasers named therein, dated on or about the date hereof (the “*Purchase Agreement*”).

(v) Any redemption, repurchase or other acquisition with respect to any outstanding shares of the Company's Common Stock or rights to acquire Common Stock (except with respect to Common Stock, stock repurchased upon termination of an employee or consultant pursuant to the Company's equity incentive plan or a restricted stock purchase agreement);

(vi) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4 hereof);

(vii) Any amendment or waiver of any provision of the Company's Certificate of Incorporation or Bylaws in a manner adverse to the Series A Preferred;

(viii) Any action that directly or indirectly results in payment or declaration of dividends or making any other distribution on any shares of Common Stock or Preferred Stock now or hereafter outstanding other than dividends required pursuant to Section 1(d) hereof;

(ix) Any voluntary dissolution or liquidation of the Company;

(x) Any indebtedness, borrowings, loans, or guarantees (other than payables in the ordinary course of business) in excess of an aggregate of one million dollars (\$1,000,000);

(xi) Any agreement by the Company regarding the sale, license, or transfer of rights to any material intellectual property, other than agreements to jointly develop, promote or market products or licenses in the ordinary course of the Company's business;

(xii) Any expenditures in excess of two hundred fifty thousand dollars (\$250,000) not provided for in the annual budget approved by the Board;

(xiii) Any increase in the authorized number of members of the Company's Board;

(xiv) Any action that would result in the taxation of the holders of the Series A Preferred under Section 305 of the Internal Revenue Code.

**(c) Election of Board of Directors.**

(i) The holders of Series A Preferred voting as a single class on an as-converted basis shall be entitled to elect three (3) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "**Preferred Directors**"), and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(ii) The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office

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such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) The holders of Common Stock and Series A Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iv) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled.

**3. LIQUIDATION RIGHTS.**

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any Common Stock and/or any other junior equity security, the holders of Series A Preferred, shall be entitled to be paid out of the assets of the Company legally available for distribution for each share of Series A Preferred held by them, an amount per share of Series A Preferred equal to the applicable Original Issue Price (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A Preferred after the filing date hereof) plus all declared and unpaid dividends on the Series A Preferred. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Series A Preferred as set forth in Section 3(a) above, upon a Liquidation Event, before any distribution or payment shall be made to the holders of any Common Stock and/or any other junior equity security, the holders of Series A-1 Preferred, shall be entitled to be paid out of the assets of the Company legally available for distribution for each share of Series A-1 Preferred held by them, an amount per share of Series A-1 Preferred equal to the applicable Original Issue Price (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A-1 Preferred after the filing date hereof) plus all declared and unpaid dividends on the Series A-1 Preferred. If, upon any such Liquidation Event, the assets of the Company shall be insufficient to make payment in full to all holders of Series A-1 Preferred of the liquidation preference set forth in this Section 3(b), then such assets (or consideration) shall be distributed among the holders of Series A-1 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(c) After the payment of the full liquidation preference of the Series A Preferred and Series A-1 Preferred as set forth in Section 3(a) and Section 3(b) above, the remaining assets of the Company legally available for distribution in such Liquidation Event (or the consideration received by the Company or its stockholders in such Acquisition or Asset

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Transfer), if any, shall be distributed ratably to the holders of the Common Stock and Series A Preferred on a pari passu basis and an as-if-converted to Common Stock basis.

**4. ASSET TRANSFER OR ACQUISITION RIGHTS.**



(a) In the event of an Acquisition or Asset Transfer (each as hereinafter defined), then each holder of Series Preferred shall be entitled to receive, for each share of Series Preferred then held, out of the proceeds of such Acquisition or Asset Transfer, the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidation Event pursuant to Section 3(a) and 3(b) above, unless the holders of a majority of the Series Preferred, voting together as a single class on an as-converted basis, elect to waive treatment of such Acquisition or Asset Transfer as a Liquidation Event.

(b) For the purposes of this Section 4: (i) "Acquisition" shall mean a merger with or into or consolidation with any other corporation, limited liability company or other entity (other than a wholly owned subsidiary of the Company) or any other transaction or series of related transactions in which in excess of fifty percent (50%) of the Company's voting power is transferred, provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) "Asset Transfer" shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets or intellectual property of the Company in a single transaction or series of related transactions.

(c) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value shall be equal to the value of such property in accordance with the terms of such Acquisition or Asset Transfer, provided if no such value is so established, such value shall instead be deemed its fair market value as determined in good faith by the Board on the date such determination is made.

## 5. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "**Conversion Rights**"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series Preferred Conversion Rate" then in effect (determined as provided in Section 5(b)) by the number of shares of Series Preferred being converted.

(b) **Series A Preferred Conversion Rate and Series A-1 Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "**Series A Preferred Conversion Rate**") shall be the quotient obtained by dividing

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the Series A Original Issue Price by the "Series A Preferred Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series A-1 Preferred (the "**Series A-1 Preferred Conversion Rate**") shall be the quotient obtained by dividing the Series A-1 Original Issue Price by the "Series A-1 Preferred Conversion Price," calculated as provided in Section 5(c).

(c) **Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price.** The conversion price for the Series A Preferred shall initially be one dollar (\$1.00) (the "**Series A Preferred Conversion Price**"). Such initial Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted. The conversion price for the Series A-1 Preferred shall initially be the Series A-1 Original Issue Price (the "**Series A-1 Preferred Conversion Price**"). Such initial Series A-1 Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A-1 Preferred Conversion Price herein shall mean the Series A-1 Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of each respective Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time on or after the date that the first share of Series A Preferred, in respect of the Series A Preferred, or Series A-1 Preferred, in respect of the Series A-1 Preferred, is issued (each date, respectively, the "**Original Issue Date**") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series Preferred, each of the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series Preferred, the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price in effect immediately before the combination shall be proportionately

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increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time on or after the Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Preferred Stock, each of the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price shall be adjusted by multiplying the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price, respectively, then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time on or after the Original Issue Date the Common Stock issuable upon the conversion of the Series A Preferred and Series A-1 Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer treated as a Liquidation Event in accordance with Section 4 or a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5), in any such event each holder of Series A Preferred and Series A-1 Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock

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into which such shares of Series A Preferred and Series A-1 Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred and Series A-1 Preferred, respectively) shall be applicable after that event and be as nearly equivalent as practicable.

(h) **Sale of Shares Below Series Preferred Conversion Price.**

(i) If at any time or from time to time on or after the Original Issue Date the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f) or 5(g) above, for an Effective Price (as defined below) less than the then effective Series A Preferred Conversion Price (a “*Qualifying Dilutive Issuance*”), then and in each such case, the then existing Series A Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing Series A Preferred Conversion Price and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding plus (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date. The number of shares of Common Stock deemed outstanding as of a given date shall include the number of shares of Common Stock which are issuable upon the exercise or conversion of any other rights, options and convertible securities outstanding on the day immediately preceding the given date.

(ii) No adjustment shall be made to the Series A Preferred Conversion Price in an amount less than one cent per share. Any adjustment required by this Section 5(h) shall be rounded to the nearest one cent (\$0.01) per share. Any adjustment otherwise

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required by this Section 5(h) that is not required to be made due to the preceding two sentences shall be included in any subsequent adjustment to the Series A Preferred Conversion Price.

(iii) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the “*Aggregate Consideration*”) shall be defined as: (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property established in any “arms-length” transaction resulting in such consideration or, if no such value is so established, as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 5(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities convertible into Additional Shares of Common Stock (such convertible stock or securities being herein referred to as “*Convertible Securities*”) or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities or rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities (such rights or options, the “*Rights or Options*”) and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such Rights or Options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such Rights or Options or Convertible Securities plus:

(A) in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such Rights or Options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by

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reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such Rights or Options or Convertible Securities.

(D) No further adjustment of the Series A Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such Rights or Options or the conversion of any such Convertible Securities. If any such Rights or Options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, each of the Series A Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the respective Series A Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such Rights or Options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Series A Preferred.

(v) For the purpose of making any adjustment to the Series A Preferred Conversion Price required under this Section 5(h), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Series Preferred;

(B) up to 2,300,000 shares, plus up to an additional 1,200,000 shares pursuant to Section 7.3 of the Purchase Agreement, of Common Stock issued or issuable pursuant to options, warrants or other Common Stock purchase rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; *provided, however*, that such amounts shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, option or warrants ("*Unexercised Options*") as a result of the termination of such Unexercised Options or (ii) reacquired by the Company from employees, directors or consultants

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at cost (or the lesser of cost or fair market value) pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company;

(C) shares of Common Stock issued pursuant to the exercise of Convertible Securities outstanding as of the Original Issue Date;

(D) shares of Common Stock or Convertible Securities issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board;

(E) shares of Common Stock or Convertible Securities issued to third-party service providers to the Company in exchange for or as partial consideration for services rendered to the Company as approved by the Board;

(F) any Common Stock or Convertible Securities issued in connection with strategic transactions involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that the issuance of shares therein has been approved by the Company's Board;

(G) Common Stock issued pursuant to a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company;

(H) shares of Common Stock, Convertible Securities, or Rights or Options issued in connection with a bona fide business acquisition by the Company, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, as approved by the Company's Board; and

(I) any securities issued in any other transaction in which exemption from the anti-dilution provisions of this Section 5(h) is approved by an affirmative vote of the holders of at least a majority of the then-outstanding Series A Preferred voting together as a single class on an as-converted basis.

References to Common Stock in the subsections of this clause (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 5(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, ascertainable.

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(vi) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance (the “**First Dilutive Issuance**”), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions as the First Dilutive Issuance (a “**Subsequent Dilutive Issuance**”), then and in each such case upon a Subsequent Dilutive Issuance with respect to each of the Series A Preferred Conversion Price shall be reduced to the Series A Preferred Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance, as the case may be.

(i) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Preferred Conversion Price or the Series A-1 Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred or the Series A-1 Preferred, if the Series A Preferred or the Series A-1 Preferred is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall, upon request, prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred or Series A-1 Preferred so requesting at the holder’s address as shown in the Company’s books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Preferred Conversion Price or the Series A-1 Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred or the Series A-1 Preferred. Failure to request or provide such notice shall have no effect on any such adjustment.

(j) **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least ten (10) days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case, such shorter period approved by the holders of at least a majority of all outstanding Series A Preferred voting together as a single class on an as-converted basis) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or

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other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(k) **Automatic Conversion.**

(i) **Series Preferred.** Each share of Series A Preferred and Series A-1 Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price, as applicable, at any time upon the affirmative election of the holders of at least sixty percent (60%) of the outstanding shares of the Series A Preferred and Series A-1 Preferred, voting together as a single class. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(ii) **Series A Preferred.** Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price (A) at any time upon the affirmative election of the holders of at least two-thirds (2/3) of the outstanding shares of the Series A Preferred, (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is not less than three (3) times the Series A Original Issue Price (as adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least forty million dollars (\$40,000,000), or (C) upon the affirmative election of at least a majority of the outstanding shares of the Series A Preferred following the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, that covers the offer and sale of Common Stock for the account of the Company in which either the per share price or the gross cash proceeds to the Company (before underwriting discounts, commission and fees) do not meet the applicable requirements of this subsection (k)(ii) (B)(i) or (ii) above. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(iii) **Series A-1 Preferred.** Each share of Series A-1 Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A-1 Preferred Conversion Price immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least twenty five million dollars (\$25,000,000). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(iv) Upon the occurrence of any of the events specified in Section 5(k)(i), (ii) or (iii) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such

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shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

(l) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

(m) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(n) **Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(o) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

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(p) **Special Mandatory Conversion.** In the event that a holder of Series A Preferred is a Non-Participating Purchaser (as defined in the Purchase Agreement), each share of such holder's Series A Preferred shall be, automatically and without further action on the part of such holder, converted into Common Stock at the Series A Preferred Conversion Price then in effect.

(q) **Delivery of Certificates.** The holder of any shares of Series A Preferred converted pursuant to this Section IV.C.5 shall deliver to the Company during regular business hours at the office of any transfer agent of the Company for the Series A Preferred, or at such other place as may be designated by the Company, the certificate or certificates representing the shares so converted, duly endorsed or assigned in blank or to the Company. As promptly thereafter as practicable, the Company shall issue and deliver to such holder, at the place designated by the holder, a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. The person in whose name the certificate for such shares of Common Stock is to be issued shall be deemed to have become a shareholder of record of such shares on the date such holder becomes a Non-Participating Purchaser (as defined above).

**6. NO REISSUANCE OF SERIES PREFERRED.**

No share or shares of Series Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

**V.**

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

B. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

C. In the event that a member of the Board of Directors of the Company who is also a partner or employee of an entity that is a holder of Preferred Stock and that is in the business of investing and reinvesting in other entities, or an employee of an entity that manages such an entity (each, a "**Fund**") acquires knowledge of a potential transaction or other matter in such individual's capacity as a partner or employee of the Fund or the manager or general partner of the Fund (and other than directly in connection with such individual's service as a member of the Board of Directors of the Company) and that may be an opportunity of interest for both the Company and such Fund (a "**Corporate Opportunity**"), then the Company (i) renounces any expectancy that such director or Fund offer an opportunity to participate in such Corporate Opportunity to the Company and (ii) to the fullest extent permitted by law, waives any claim that such opportunity constituted a Corporate Opportunity that should have been presented by such director or Fund to the Company or any of its affiliates; provided, however, that such director acts in good faith.

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**VI.**

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further *provided* that:

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Amended and Restated Certificate of Incorporation.

B. Subject to any restrictions that may be set forth in this Amended and Restated Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

C. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

\* \* \* \*

**THREE:** This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

**FOUR:** This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

**IN WITNESS WHEREOF**, HDL Therapeutics, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 24<sup>th</sup> day of April 2008.

**HDL THERAPEUTICS, INC.**

By /s/ Roger Newton  
 Roger Newton  
 Its President and Chief Executive Officer

SIGNATURE PAGE

AMENDED AND RESTATED  
 CERTIFICATE OF INCORPORATION  
 OF HDL THERAPEUTICS, INC.

*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
 Delivered 11:15 AM 05/05/2008  
 FILED 11:15 AM 05/05/2008  
 SRV 080503050 - 4493349 FILE

STATE OF DELAWARE

CERTIFICATE OF OWNERSHIP

**SUBSIDIARY INTO PARENT**  
 Section 253

CERTIFICATE OF OWNERSHIP  
 MERGING

**ESPERION THERAPEUTICS, INC.**  
 a Delaware corporation

into

**HDL THERAPEUTICS, INC.**  
 a Delaware corporation

*Pursuant to Section 253 of the Delaware General Corporation Law, as amended (the "DGCL")*

HDL THERAPEUTICS, INC., a corporation incorporated on January 22, 2008, pursuant to the DGCL ("**Parent**"), **DOES HEREBY CERTIFY** that Parent owns all of the capital stock of ESPERION THERAPEUTICS, INC., a corporation incorporated on May 18, 1998 pursuant to the DGCL ("**Subsidiary**"), and that Parent, by the following resolution of its Board of Directors, duly adopted by unanimous written consent as of April 24, 2008, determined to and did merge into itself said Subsidiary:

**WHEREAS**, Parent lawfully owns at least 90% of the outstanding stock of Subsidiary; and

**WHEREAS**, Parent desires Subsidiary to merge into Parent pursuant to Section 253 of DGCL and to be possessed of all the estate, property, rights, privileges and franchises of Subsidiary.

**NOW, THEREFORE, BE IT RESOLVED**, that Subsidiary merge into Parent with Parent being the survivor and thereby assuming all of the liabilities and obligations of Subsidiary (the "**Merger**"), and

**FURTHER RESOLVED**, that an authorized officer of Parent be and is hereby authorized and directed to make and execute a certificate of ownership setting forth a copy of such resolution relating to the Merger and the date of adoption thereof, and to file the same in the office of the Secretary of State of Delaware.

**FURTHER RESOLVED**, that the officers of Parent be and they hereby are authorized and directed to do all acts and things whatsoever, whether within or without the State of Delaware; which may be in any way necessary or proper to effect the Merger.

**FURTHER RESOLVED**, that as a result of the Merger, each issued and outstanding share of capital stock of Subsidiary shall automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

**FURTHER RESOLVED**, that upon the effectiveness of the Merger, the name of the Parent shall be changed to "Esperion Therapeutics, Inc."

**FURTHER RESOLVED**, that the Merger shall be effective upon the date of filing of this Certificate of Ownership and Merger with the Secretary of State of the State of Delaware.

**FURTHER RESOLVED**, that all prior actions taken by the officers of Parent in connection with and in furtherance of the foregoing resolutions be, and each of them hereby is authorized, approved, ratified and confirmed in all respects as the proper acts and deeds of Parent.

Parent has caused this certificate to be signed by an authorized officer on May 1, 2008.

HDL THERAPEUTICS, INC.

By: /s/ Roger S. Newton  
Roger S. Newton  
Its President and CEO

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*State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:23 PM 02/12/2010  
FILED 04:15 PM 02/12/2010  
SRV 100139411 - 4493349 FILE*

AMENDMENT TO  
THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008.
2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, declaring said amendment to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

**RESOLVED:** That the Company amend its Amended and Restated Certificate of Incorporation by amending and restating Section 2(c)(i) of Article IV, Part C, to read in its entirety as follows (the "**Amendment**"):

"The holders of Series A Preferred voting as a single class on an as-converted basis shall be entitled to elect four (4) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "**Preferred Directors**"), and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors."

\* \* \*

3. That the foregoing Amendment to the Company's Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the General Corporation Law.

4. That this Amendment to the Company's Amended and Restated Certificate of Incorporation, which amends the provisions of the Company's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Section 242 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 12th day of February, 2010.

By: /s/ Roger Newton  
Name: Roger Newton  
Title: President and Chief Executive Officer

*State of Delaware  
Secretary of State  
Division of Corporations*

AMENDMENT TO  
THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, declaring said amendment to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

**RESOLVED:** That the Company amend its Amended and Restated Certificate of Incorporation by amending and restating Article IV, Parts A and B, to read in their entirety as follows (the "**Amendment**"):

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is eighty five million seven hundred fifty thousand two hundred ninety (85,750,290) shares, forty five million twenty five thousand one hundred forty five (45,025,145) shares of which shall be Common Stock (the "**Common Stock**") and forty million seven hundred twenty five thousand one hundred forty five (40,725,145) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth one cent (\$0.001) per share.

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B. Thirty four million two hundred fifty thousand (34,250,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred Stock**") and six million four hundred seventy five thousand one hundred forty five (6,475,145) shares of which shall be Series A-1 Preferred Stock (the "**Series A-1 Preferred**" and together with the Series A Preferred, the "**Series Preferred**")."

\* \* \*

3. That the foregoing Amendment to the Company's Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the General Corporation Law.

4. That this Amendment to the Company's Amended and Restated Certificate of Incorporation, which amends the provisions of the Company's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Section 242 of the General Corporation Law.

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**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 5th day of April, 2010.

By: /s/ Roger Newton  
Name: Roger Newton  
Title: President and Chief Executive Officer

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State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 06:44 PM 10/25/2010  
FILED 06:38 PM 10/25/2010  
SRV 101026480 - 4493349 FILE

AMENDMENT TO  
THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)



Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, declaring said amendment to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

**RESOLVED:** That the Company amend its Amended and Restated Certificate of Incorporation, as amended, by amending and restating Article IV, Parts A and B, to read in their entirety as follows (the "**Amendment**"):

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is ninety one million one hundred seventy two thousand three hundred twenty nine (91,172,329) shares, fifty million (50,000,000) shares of which shall be Common Stock (the "**Common Stock**") and forty one million one hundred seventy two thousand three hundred twenty nine (41,172,329) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one

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cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

B. Thirty four million two hundred seventy five thousand (34,275,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred Stock**") and six million eight hundred ninety seven thousand three hundred twenty nine (6,897,329) shares of which shall be Series A-1 Preferred Stock (the "**Series A-1 Preferred**" and together with the Series A Preferred, the "**Series Preferred**")."

\* \* \*

3. That the foregoing Amendment to the Company's Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the General Corporation Law.

4. That this Amendment to the Company's Amended and Restated Certificate of Incorporation, which amends the provisions of the Company's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Section 242 of the General Corporation Law.

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**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 25th day of October, 2010.

By: /s/ Roger Newton  
Name: Roger Newton  
Title: President and Chief Executive Officer

**State of Delaware**  
**Secretary of State**  
**Division of Corporations**  
**Delivered 10:17 AM 01/27/2011**  
**FILED 06:00 PM 01/26/2011**  
**SRV 110084519 - 4493349 FILE**

AMENDMENT TO  
THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment

to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, declaring said amendment to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

**RESOLVED:** That the Company amend its Amended and Restated Certificate of Incorporation, as amended, by amending and restating Article IV, Parts A and B, to read in their entirety as follows (the "**Amendment**"):

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is ninety one million six hundred eighty two thousand three hundred twenty nine (91,682,329) shares, fifty million (50,000,000) shares of which shall be Common Stock (the "**Common Stock**") and forty one million six hundred eighty two thousand three hundred twenty nine (41,682,329)

shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

B. Thirty four million seven hundred eighty five thousand (34,785,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred Stock**") and six million eight hundred ninety seven thousand three hundred twenty nine (6,897,329) shares of which shall be Series A-1 Preferred Stock (the "**Series A-1 Preferred**" and together with the Series A Preferred, the "**Series Preferred**")."

\* \* \*

3. That the foregoing Amendment to the Company's Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the General Corporation Law.

4. That this Amendment to the Company's Amended and Restated Certificate of Incorporation, which amends the provisions of the Company's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Section 242 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 26th day of January, 2011.

By: /s/ Roger Newton  
Name: Roger Newton  
Title: President and Chief Executive Officer

[Signature Page to the Amendment to the Certificate of Incorporation]

**STATE OF DELAWARE**  
**WAIVER OF REQUIREMENT**  
**FOR AFFIDAVIT OF EXTRAORDINARY CONDITION**

It appears to the Secretary of State that an earlier effort to deliver this instrument and tender such taxes and fees was made in good faith on the file date stamped hereto. The Secretary of State has determined that an extraordinary condition (as reflected in the records of the Secretary of State) existed at such date and time and that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed two business days) after the cessation of such extraordinary condition and establishes such date and time as the filing date of such instrument.

Jeffrey W. Bullock  
Jeffrey W. Bullock  
Secretary of State

*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
*Delivered 10:17 AM 01/27/2011*  
*FILED 06:00 PM 01/26/2011*  
*SRV 110084519 - 4493349 FILE*

**STATE OF DELAWARE**  
**WAIVER OF REQUIREMENT**  
**FOR AFFIDAVIT OF EXTRAORDINARY CONDITION**

It appears to the Secretary of State that an earlier effort to deliver this instrument and tender such taxes and fees was made in good faith on the file date stamped hereto. The Secretary of State has determined that an extraordinary condition (as reflected in the records of the Secretary of State) existed at such date and time and that such

earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed two business days) after the cessation of such extraordinary condition and establishes such date and time as the filing date of such instrument.

Jeffrey W. Bullock  
Jeffrey W. Bullock  
Secretary of State

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*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
*Delivered 03:28 PM 09/04/2012*  
*FILED 02:33 PM 09/04/2012*  
*SRV 120996450 - 4493349 FILE*

AMENDMENT TO  
THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 26, 2011.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, declaring said amendment to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

**RESOLVED:** That the Company amend its Amended and Restated Certificate of Incorporation, as amended, by amending and restating Article IV, Parts A and B, to read in their entirety as follows (the "**Amendment**"):

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is ninety two million six hundred forty seven thousand two hundred eighty three (92,647,283) shares, fifty million (50,000,000) shares of which shall be Common Stock (the "**Common Stock**") and forty two million six hundred forty seven thousand two hundred eighty three (42,647,283) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per

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share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

B. Thirty four million seven hundred eighty five thousand (34,785,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred Stock**") and seven million eight hundred sixty two thousand two hundred eighty three (7,862,283) of the authorized shares of Preferred Stock are hereby designated "Series A-1 Preferred Stock" (the "**Series A-1 Preferred**" and together with the Series A Preferred, the "**Series Preferred**")."

\* \* \*

3. That the foregoing Amendment to the Company's Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the General Corporation Law.

4. That this Amendment to the Company's Amended and Restated Certificate of Incorporation, which amends the provisions of the Company's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Section 242 of the General Corporation Law.

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**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 4<sup>th</sup> day of September, 2012.

By: /s/ Roger S. Newton  
Name: Roger Newton  
Title: President and Chief Executive Officer

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CERTIFICATE OF AMENDMENT  
OF THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 26, 2011. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 4, 2012.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, as amended, declaring this Amendment to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders thereto.

3. That this Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware with written notice to be given to those stockholders who did not consent as provided in that section.

4. That upon the effectiveness of this Amendment, Article IV, Part C, Section 2(b)(iv) of the Amended and Restated Certificate of Incorporation is hereby amended by replacing "2,300,000" with "4,800,000".

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5. That upon the effectiveness of this Amendment, Article IV, Part C, Section 5(h)(v)(B) of the Amended and Restated Certificate of Incorporation is hereby amended by replacing "2,300,000" with "4,800,000".

[Signature Page Follows]

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**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 20th day of December, 2012.

By: /s/ Tim Mayleben  
Name: Tim Mayleben  
Title: President and Chief Executive Officer

[Signature page to the Amendment to the Certificate of Incorporation]

CERTIFICATE OF CORRECTION  
OF THE  
CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the name of the Company is Esperion Therapeutics, Inc.
2. That an amendment to the Company's Amended and Restated Certificate of Incorporation that was filed with the Secretary of State of Delaware on December 20, 2012 (the "**Existing Certificate**") requires correction as permitted by Section 103 of the General Corporation Law.
3. That the inaccuracies or defects in the Existing Certificate to be corrected are typographical errors in Article IV, Part C, Section 2(b)(iv) and Article IV, Part C, Section 5(h)(v)(B).
4. That Article IV, Part C, Section 2(b)(iv) of the Existing Certificate is corrected by replacing "4,800,000" with "5,000,000".
5. That Article IV, Part C, Section 5(h)(v)(B) of the Existing Certificate is corrected by replacing "4,800,000" with "5,000,000".

[Signature Page Follows]

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**IN WITNESS WHEREOF**, this Certificate of Correction of the Certificate of Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 14th day of January, 2013.

By: /s/ Roger Newton  
Name: Roger Newton  
Title: Executive Chairman and Chief Scientific Officer

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*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
*Delivered 01:16 PM 02/08/2013*  
*FILED 01:06 PM 02/08/2013*  
*SRV 130149171 - 4493349 FILE*

CERTIFICATE OF AMENDMENT  
OF THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 26, 2011. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 4, 2012. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on December 20, 2012. A Certificate of Correction of such amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 14, 2013.
2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, as amended, declaring this Certificate of Amendment of the Amended and Restated Certificate of Incorporation of Esperion Therapeutics, Inc. (this "**Amendment**") to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders thereto.
3. That this Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware with written notice to be given to those stockholders who did not consent as provided in that section.

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4. That upon the effectiveness of this Amendment, Article IV, Parts A and B of the Amended and Restated Certificate of Incorporation are hereby amended and restated to read in their entirety as follows:

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is one hundred six million eighteen thousand five hundred six (106,018,506) shares, fifty-six million five hundred nineteen thousand two hundred fifty-three (56,519,253) shares of which shall be Common Stock (the "**Common Stock**") and forty-nine million four hundred ninety-nine thousand two hundred fifty-three (49,499,253) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

B. Forty-one million six hundred thirty-six thousand nine hundred seventy (41,636,970) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred Stock**") and seven million eight hundred sixty-two thousand two hundred eighty-three (7,862,283) shares of which shall be Series A-1 Preferred Stock (the "**Series A-1 Preferred**" and together with the Series A Preferred, the "**Series Preferred**")."

[Signature Page Follows]

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**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 8th day of February, 2013.

By: /s/ Tim Mayleben  
Name: Tim Mayleben  
Title: President and Chief Executive Officer

[Signature Page to the Amendment to the Certificate of Incorporation]

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**State of Delaware**  
**Secretary of State**  
**Division of Corporations**  
**Delivered 06:15 PM 03/25/2013**  
**FILED 06:06 PM 03/25/2013**  
**SRV 130356827 - 4493349 FILE**

CERTIFICATE OF AMENDMENT  
OF THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 26, 2011. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 4, 2012. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on December 20, 2012. A Certificate of Correction of such amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 14, 2013. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 8, 2013.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, as amended, declaring this Certificate of Amendment of the Amended and Restated Certificate of Incorporation of Esperion Therapeutics, Inc. (this "**Amendment**") to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders thereto.

3. That this Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to

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Section 228 of the General Corporation Law of the State of Delaware with written notice to be given to those stockholders who did not consent as provided in that section.

4. That upon the effectiveness of this Amendment, Article IV, Parts A and B of the Amended and Restated Certificate of Incorporation are hereby amended and restated to read in their entirety as follows:

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is one hundred eight million six hundred twenty thousand seven hundred fifty (108,620,750) shares, fifty-eight million two hundred twenty thousand three hundred seventy-five (58,220,375) shares of which shall be Common Stock (the "Common Stock") and fifty million four hundred thousand three hundred seventy-five (50,400,375) shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of on cent (\$0.001) per share.

B. Forty-two million five hundred thirty-eight thousand ninety-two (42,538,092) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred Stock") and seven million eight hundred sixty-two thousand two hundred eighty-three (7,862,283) shares of which shall be Series A-1 Preferred Stock (the "Series A-1 Preferred" and together with the Series A Preferred, the "Series Preferred")."

5. That upon the effectiveness of this Amendment, Article IV, Part C, Section 2(b)(iv) of the Amended and Restated Certificate of Incorporation is hereby amended by replacing "5,000,000" with "5,800,000".

6. That upon the effectiveness of this Amendment, Article IV, Part C, Section 5(h)(v)(B) of the Amended and Restated Certificate of Incorporation is hereby amended by replacing "5,000,000" with "5,800,000".

[Signature Page Follows]

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IN WITNESS WHEREOF, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 25<sup>th</sup> day of March, 2013.

By: /s/ Tim Mayleben  
Name: Tim Mayleben  
Title: President and Chief Executive Officer

[Signature Page to the Amendment to the Certificate of Incorporation]

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State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 08:29 PM 04/10/2013  
FILED 08:23 PM 04/10/2013  
SRV 130423293 - 4493349 FILE

CERTIFICATE OF AMENDMENT  
OF THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "Company"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 26, 2011. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 4, 2012. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on December 20, 2012. A Certificate of Correction of such amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 14, 2013. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 8, 2013. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on March 25, 2013.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, as amended, declaring this Certificate of Amendment of the Amended and Restated Certificate of Incorporation of Esperion Therapeutics, Inc. (this "Amendment") to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders thereto.

3. That this Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding

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the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware with written notice to be given to those stockholders who did not consent as provided in that section.

4. That upon the effectiveness of this Amendment, Article IV, Parts A and B of the Amended and Restated Certificate of Incorporation are hereby amended and restated to read in their entirety as follows:

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 142,620,750 shares, 75,220,375 shares of which shall be Common Stock (the "**Common Stock**") and 67,400,375 shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

B. 59,538,092 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred Stock**") and 7,862,283 shares of which shall be Series A-1 Preferred Stock (the "**Series A-1 Preferred**" and together with the Series A Preferred, the "**Series Preferred**")."

5. That upon the effectiveness of this Amendment, Section 2(c)(i) of Article IV, Parts C of the Amended and Restated Certificate of Incorporation is hereby amended and restated to read in their entirety as follows:

"The holders of Series A Preferred voting as a single class on an as-converted basis shall be entitled to elect five (5) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "**Preferred Directors**"), and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors."

[Signature Page Follows]

**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 10th day of April, 2013.

By: /s/ Tim Mayleben  
Name: Tim Mayleben  
Title: President and Chief Executive Officer

**Exhibit 3.1**

**CERTIFICATE OF AMENDMENT  
OF THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.**

(Pursuant to Section 242 of the  
General Corporation Law of the State of Delaware)

Esperion Therapeutics, Inc. (the "**Company**"), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

1. That the Company's original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 22, 2008 under the name "HDL Therapeutics, Inc." The Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 24, 2008. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 12, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 5, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on October 25, 2010. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 26, 2011. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 4, 2012. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on December 20, 2012. A Certificate of Correction of such amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 14, 2013. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 8, 2013. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on March 25, 2013. An amendment to the Company's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 10, 2013.

2. That the Board of Directors of the Company duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation of the Company, as amended, declaring this Certificate of Amendment of the Amended and Restated Certificate of Incorporation of Esperion Therapeutics, Inc. (this "**Amendment**") to be advisable and in the best interests of the Company and its stockholders, and authorizing the appropriate officers of the Company to solicit the consent of the stockholders thereto.

3. That this Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law with written notice to be given to those stockholders who did not consent as provided in that section.

4. That upon the effectiveness of this Amendment, Article IV of the Amended and Restated Certificate of Incorporation is hereby amended by inserting the following into Article IV, immediately before the first sentence therein:

"Effective immediately upon the filing of this Certificate of Amendment to the Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "**Effective Time**"), every six and nine hundred eighty-six thousandths (6.986) shares of Common Stock then issued



and outstanding or held in the treasury of the Company immediately prior to the Effective Time shall automatically be combined into one (1) share of Common Stock, without any further action by the holders of such shares (the "Reverse Stock Split"). The Reverse Stock Split will be effected on a certificate-by-certificate basis. No fractional shares shall be issued in connection with the Reverse Stock Split. In lieu of any fractional shares to which a holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Company's Board of Directors.

5. That upon the effectiveness of this Amendment, after taking into account the Reverse Stock Split, Article IV, Part A of the Amended and Restated Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

"A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 187,400,375 shares, 120,000,000 shares of which shall be Common Stock (the "**Common Stock**") and 67,400,375 shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of one-tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one-tenth of one cent (\$0.001) per share.

6. That upon the effectiveness of this Amendment, after taking into account the Reverse Stock Split, Article IV, Part C, Section 2(b)(iv) of the Amended and Restated Certificate of Incorporation is hereby amended by replacing "5,800,000" with "6,900,000".

7. That upon the effectiveness of this Amendment, after taking into account the Reverse Stock Split, Article IV, Part C, Section 5(c) of the Amended and Restated Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

"**Series A Preferred Conversion Price and Series A-1 Preferred Conversion Price.** The conversion price for the Series A Preferred shall be \$6.986 (the

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"**Series A Preferred Conversion Price**"). Such Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted. The conversion price for the Series A-1 Preferred shall be \$8.076 (the "**Series A-1 Preferred Conversion Price**"). Such Series A-1 Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A-1 Preferred Conversion Price herein shall mean the Series A-1 Preferred Conversion Price as so adjusted."

8. That upon the effectiveness of this Amendment, after taking into account the Reverse Stock Split, Article IV, Part C, Section 5(h)(v)(B) of the Amended and Restated Certificate of Incorporation is hereby amended by replacing "5,800,000" with "6,900,000".

*[Remainder of page intentionally left blank]*

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**IN WITNESS WHEREOF**, this Amendment to the Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Company on this 11<sup>th</sup> day of June, 2013.

By: /s/ Tim Mayleben  
Name: Tim Mayleben  
Title: President and Chief Executive Officer

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ESPERION THERAPEUTICS, INC.**

Esperion Therapeutics, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Esperion Therapeutics, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 22, 2008 (the "Original Certificate"). The name under which the Corporation filed the Original Certificate was "HDL Therapeutics, Inc."
2. This Amended and Restated Certificate of Incorporation (the "Certificate") amends, restates and integrates the provisions of the Amended and Restated Certificate of Incorporation, as it has been subsequently amended (the "Amended and Restated Certificate"), and was duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").
3. The text of the Amended and Restated Certificate is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I

The name of the Corporation is Esperion Therapeutics, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have authority to issue is one hundred twenty-five million (125,000,000), of which (i) one hundred twenty million (120,000,000) shares shall be a class designated as common stock, par value \$0.001 per share (the "Common Stock"), and (ii) five million (5,000,000) shares shall be a class designated as undesignated preferred stock, par value \$0.001 per share (the "Undesignated Preferred Stock").

Except as otherwise provided in any certificate of designations of any series of Undesignated Preferred Stock, the number of authorized shares of the class of Common Stock or Undesignated Preferred Stock may from time to time be increased or decreased (but not below the number of shares of such class outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation irrespective of the provisions of Section 242(b) (2) of the DGCL.

The powers, preferences and rights of, and the qualifications, limitations and restrictions upon, each class or series of stock shall be determined in accordance with, or as set forth below in, this Article IV.

A. COMMON STOCK

Subject to all the rights, powers and preferences of the Undesignated Preferred Stock and except as provided by law or in this Certificate (or in any certificate of designations of any series of Undesignated Preferred Stock):

(a) the holders of the Common Stock shall have the exclusive right to vote for the election of directors of the Corporation (the "Directors") and on all other matters requiring stockholder action, each outstanding share entitling the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate (or on any amendment to a certificate of designations of any series of Undesignated Preferred Stock) that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Undesignated Preferred Stock if the holders of such affected series of Undesignated Preferred Stock are entitled to vote, either separately or together with the holders of one or more other such series, on such amendment pursuant to this Certificate (or pursuant to a certificate of designations of any series of Undesignated Preferred Stock) or pursuant to the DGCL;

(b) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends, but only when and as declared by the Board of Directors or any authorized committee thereof; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of the Common Stock.

B. UNDESIGNATED PREFERRED STOCK

The Board of Directors or any authorized committee thereof is expressly authorized, to the fullest extent permitted by law, to provide by resolution or resolutions for, out of the unissued shares of Undesignated Preferred Stock, the issuance of the shares of Undesignated Preferred Stock in one or more series of such stock,

and by filing a certificate of designations pursuant to applicable law of the State of Delaware, to establish or change from time to time the number of shares of each such series, and to fix the designations, powers, including voting powers, full or limited, or no voting powers, preferences and the relative, participating, optional or other special rights of the shares of each series and any qualifications, limitations and restrictions thereof.

## ARTICLE V

### STOCKHOLDER ACTION

1. Action without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders and may not be taken or effected by a written consent of stockholders in lieu thereof.
2. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office, and special meetings of stockholders may not be called by any other person or persons. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

## ARTICLE VI

### DIRECTORS

1. General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided herein or required by law.
2. Election of Directors. Election of Directors need not be by written ballot unless the By-laws of the Corporation (the "By-laws") shall so provide.

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3. Number of Directors; Term of Office. The number of Directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The Directors, other than those who may be elected by the holders of any series of Undesignated Preferred Stock, shall be classified, with respect to the term for which they severally hold office, into three classes. The initial Class I Directors of the Corporation shall be Daniel Janney and Tim M. Mayleben; the initial Class II Directors of the Corporation shall be Louis Lange and Nicole Vitullo; and the initial Class III Directors of the Corporation shall be Patrick Enright, Dov Goldstein and Roger Newton. The initial Class I Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2014, the initial Class II Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2015, and the initial Class III Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2016. At each annual meeting of stockholders, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Notwithstanding the foregoing, the Directors elected to each class shall hold office until their successors are duly elected and qualified or until their earlier resignation, death or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV of this Certificate, the holders of any one or more series of Undesignated Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect Directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate and any certificate of designations applicable to such series.

4. Vacancies. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors and to fill vacancies in the Board of Directors relating thereto, any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in the size of the Board of Directors, or the death, resignation, disqualification or removal of a Director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum of the Board of Directors, and not by the stockholders. Any Director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier resignation, death or removal. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors, when the number of Directors is increased or decreased, the Board of Directors shall, subject to Article VI.3 hereof, determine the class or classes to which the increased or decreased number of Directors shall be apportioned; provided, however, that no decrease in the number of Directors shall shorten the term of any incumbent Director. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, shall exercise the powers of the full Board of Directors until the vacancy is filled.

5. Removal. Subject to the rights, if any, of any series of Undesignated Preferred Stock to elect Directors and to remove any Director whom the holders of any such series have

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the right to elect, any Director (including persons elected by Directors to fill vacancies in the Board of Directors) may be removed from office (i) only with cause and (ii) only by the affirmative vote of the holders of 75% or more of the outstanding shares of capital stock then entitled to vote at an election of Directors. At least forty-five (45) days prior to any annual or special meeting of stockholders at which it is proposed that any Director be removed from office, written notice of such proposed removal and the alleged grounds thereof shall be sent to the Director whose removal will be considered at the meeting.

## ARTICLE VII

### LIMITATION OF LIABILITY

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any amendment, repeal or modification of this Article VII by either of (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring before such amendment, repeal or modification of a person serving as a Director at the time of such amendment, repeal or modification.

ARTICLE VIII

EXCLUSIVE JURISDICTION OF DELAWARE COURTS

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or By-laws, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article VIII.

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ARTICLE IX

AMENDMENT OF BY-LAWS

1. Amendment by Directors. Except as otherwise provided by law, the By-laws of the Corporation may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the Directors then in office.
2. Amendment by Stockholders. The By-laws of the Corporation may be amended or repealed at any annual meeting of stockholders, or special meeting of stockholders called for such purpose, by the affirmative vote of at least 75% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class.

ARTICLE X

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal this Certificate in the manner now or hereafter prescribed by statute and this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation. Whenever any vote of the holders of capital stock of the Corporation is required to amend or repeal any provision of this Certificate, and in addition to any other vote of holders of capital stock that is required by this Certificate or by law, such amendment or repeal shall require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of the majority of the outstanding shares of each class entitled to vote thereon as a class, at a duly constituted meeting of stockholders called expressly for such purpose; provided, however, that the affirmative vote of not less than 75% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of not less than 75% of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of Article V, Article VI, Article VII, Article VIII, Article IX or Article X of this Certificate.

[End of Text]

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THIS AMENDED AND RESTATED CERTIFICATE OF INCORPORATION is executed as of this \_\_\_ day of \_\_\_\_\_, 2013.

ESPERION THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name: Tim M. Mayleben  
Title: President & Chief Executive Officer

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ZQ|CERT#|COY|CLS|RGSTRY|ACCT#|TRANSTYPE|RUN#|TRANSP#



CUSSP	XXXXXXXXXX
Holder ID	XXXXXXXXXX
Nominee Value	1,000,000.00
Number of Shares	125288
DTG	12/15/13 12:45:38.5245
Certificate Numbers	Num/No. Divest. Total
1234567890123456789	1 1
1234567890123456789	2 2
1234567890123456789	3 3
1234567890123456789	4 4
1234567890123456789	5 5
1234567890123456789	6 6
1234567890123456789	7 7
Total Transaction	

**COMMON STOCK**  
PAR VALUE \$0.001

Certificate Number  
**ZQ00000000**

**ESPERION THERAPEUTICS, INC.**  
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

**COMMON STOCK**  
THIS CERTIFICATE IS TRANSFERABLE  
IN CANTON, MA, JERSEY CITY, NJ AND  
COLLEGE STATION, TX

Shares  
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\*\*\*\*\*  
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THIS CERTIFIES THAT

**MR. SAMPLE & MRS. SAMPLE &  
MR. SAMPLE & MRS. SAMPLE**

CUSIP 29664R 10 6

SEE REVERSE FOR CERTAIN DEFINITIONS

is the owner of

**““ZERO HUNDRED THOUSAND  
ZERO HUNDRED AND ZERO””**

FULLY-PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF

**Esperion Therapeutics, Inc. (hereinafter called the “Company”)**, transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

President

SEAL  
 DELAWARE  
 2013

DATED **02/18/13** YYYY

COUNTERSIGNED AND REGISTERED:  
**COMPUTERSHARE TRUST COMPANY, N.A.**  
 TRANSFER AGENT AND REGISTRAR

By \_\_\_\_\_  
 AUTHORIZED SIGNATURE

1234567

**ESPERION THERAPEUTICS, INC.**

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE ARTICLES OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT MIN ACT - ..... Custodian ..... (Cust) (Minor)
TEN ENT - as tenants by the entireties	under Uniform Gifts to Minors Act ..... (State)
JT TEN - as joint tenants with right of survivorship and not as tenants in common	UNIF TRF MIN ACT - ..... Custodian (until age .....) (Cust) (Minor) under Uniform Transfers to Minors Act ..... (Minor) (State)

Additional abbreviations may also be used though not in the above list.

For value received, \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_  
PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE

\_\_\_\_\_ Shares  
of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney  
to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Dated: \_\_\_\_\_ 20\_\_\_\_  
Signature: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Signature(s) Guaranteed: Medallion Guarantee Stamp**  
THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17d-15.

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

**SECURITY INSTRUCTIONS**

THIS IS WATERMARKED PAPER. DO NOT ACCEPT WITHOUT NOTING WATERMARK. HOLD TO LIGHT TO VERIFY WATERMARK.



The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.  
If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

1534291

June 12, 2013

Esperion Therapeutics, Inc.  
46701 Commerce Center Drive  
Plymouth, MI 48170

Re: Securities Registered under Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-1 (File No. 333-188595) (as amended or supplemented, the "Registration Statement") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offering by Esperion Therapeutics, Inc., a Delaware corporation (the "Company"), of up to 5,175,000 shares (the "Shares") of the Company's Common Stock, \$0.001 par value per share, including Shares purchasable by the underwriters upon their exercise of an over-allotment option granted to the underwriters by the Company. The Shares are being sold to the several underwriters named in, and pursuant to, an underwriting agreement among the Company and such underwriters (the "Underwriting Agreement").

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinions set forth below, on certificates of officers of the Company.

The opinion set forth below is limited to the Delaware General Corporation Law (which includes reported judicial decisions interpreting the Delaware General Corporation Law).

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when the price and other terms upon which the Shares are to be sold have been approved by or on behalf of the Board of Directors of the Company (or a duly authorized committee of the Board of Directors) and the Shares have been issued and delivered against payment in accordance with such terms, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement and to the references to our firm under the caption "Legal Matters" in the Registration Statement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ GOODWIN PROCTER LLP

GOODWIN PROCTER LLP

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**ESPERION THERAPEUTICS, INC.**  
**2013 STOCK OPTION AND INCENTIVE PLAN**

**SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS**

The name of the plan is the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan (the “Plan”). The purpose of the Plan is to encourage and enable the officers, employees, Non-Employee Directors and other key persons (including Consultants) of Esperion Therapeutics, Inc. (the “Company”) and its Subsidiaries upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company’s welfare will assure a closer identification of their interests with those of the Company and its stockholders, thereby stimulating their efforts on the Company’s behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

“Act” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“Administrator” means either the Board or the compensation committee of the Board or a similar committee performing the functions of the compensation committee and which is comprised of not less than two Non-Employee Directors who are independent.

“Award” or “Awards,” except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Units, Restricted Stock Awards, Unrestricted Stock Awards, Cash-Based Awards, Performance Share Awards and Dividend Equivalent Rights.

“Award Certificate” means a written or electronic document setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Certificate is subject to the terms and conditions of the Plan.

“Board” means the Board of Directors of the Company.

“Cash-Based Award” means an Award entitling the recipient to receive a cash-denominated payment.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

“Consultant” means any natural person that provides bona fide services to the Company, and such services are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities.

“Covered Employee” means an employee who is a “Covered Employee” within the meaning of Section 162(m) of the Code.

“Dividend Equivalent Right” means an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee.

“Effective Date” means the date on which the Plan is approved by stockholders as set forth in Section 21.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“Fair Market Value” of the Stock on any given date means the fair market value of the Stock determined in good faith by the Administrator; provided, however, that if the Stock is admitted to quotation on the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), NASDAQ Global Market or another national securities exchange, the determination shall be made by reference to market quotations. If there are no market quotations for such date, the determination shall be made by reference to the last date preceding such date for which there are market quotations; provided further, however, that if the date for which Fair Market Value is determined is the first day when trading prices for the Stock are reported on a national securities exchange, the Fair Market Value shall be the “Price to the Public” (or equivalent) set forth on the cover page for the final prospectus relating to the Company’s Initial Public Offering.

“Incentive Stock Option” means any Stock Option designated and qualified as an “incentive stock option” as defined in Section 422 of the Code.

“Initial Public Offering” means the consummation of the first underwritten, firm commitment public offering pursuant to an effective registration statement under the Act covering the offer and sale by the Company of its equity securities, or such other event as a result of or following which the Stock shall be publicly held.

“Non-Employee Director” means a member of the Board who is not also an employee of the Company or any Subsidiary.

“Non-Qualified Stock Option” means any Stock Option that is not an Incentive Stock Option.

“Option” or “Stock Option” means any option to purchase shares of Stock granted pursuant to Section 5.

“Performance-Based Award” means any Restricted Stock Award, Restricted Stock Units, Performance Share Award or Cash-Based Award granted to a Covered Employee that is intended to qualify as “performance-based compensation” under Section 162(m) of the Code and the regulations promulgated thereunder.

“Performance Criteria” means the criteria that the Administrator selects for purposes of establishing the Performance Goal or Performance Goals for an individual for a Performance Cycle. The Performance Criteria (which shall be applicable to the organizational level specified by the Administrator, including, but not limited to, the Company or a unit, division, group, or Subsidiary of the Company) that will be used to establish Performance Goals are limited to the following: total shareholder return, earnings before interest, taxes, depreciation and amortization, net income (loss) (either before or after interest, taxes, depreciation and/or amortization), changes in the market price of the Stock, economic value-added, sales or revenue, development, clinical or regulatory milestones, acquisitions or strategic transactions, operating income (loss), cash flow (including, but not limited to, operating cash flow and free cash flow), return on capital, assets, equity, or investment, return on sales, gross or net profit levels, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, earnings (loss) per share of Stock, sales or market



shares and number of customers, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group.

“*Performance Cycle*” means one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Criteria will be measured for the purpose of determining a grantee’s right to and the payment of a Restricted Stock Award, Restricted Stock Units, Performance Share Award or Cash-Based Award, the vesting and/or payment of which is subject to the attainment of one or more Performance Goals. Each such period shall not be less than 12 months.

“*Performance Goals*” means, for a Performance Cycle, the specific goals established in writing by the Administrator for a Performance Cycle based upon the Performance Criteria.

“*Performance Share Award*” means an Award entitling the recipient to acquire shares of Stock upon the attainment of specified Performance Goals.

“*Restricted Stock Award*” means an Award of shares of Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant.

“*Restricted Stock Units*” means an Award of phantom stock units to a grantee.

“*Sale Event*” shall mean (i) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (ii) a merger, reorganization or consolidation pursuant to which the holders of the Company’s outstanding voting power and outstanding stock immediately prior to such transaction do not own a majority of the outstanding voting power and outstanding stock or other equity interests of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction, (iii) the sale of all of the Stock of the Company to an unrelated person, entity or group thereof acting in concert, or (iv) any other transaction in which the owners of the Company’s outstanding voting power immediately prior to such transaction do not own at least a majority of the outstanding voting power of the Company or any successor entity immediately upon completion of the transaction other than as a result of the acquisition of securities directly from the Company.

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“*Sale Price*” means the value as determined by the Administrator of the consideration payable, or otherwise to be received by stockholders, per share of Stock pursuant to a Sale Event.

“*Section 409A*” means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

“*Stock*” means the Common Stock, par value \$0.001 per share, of the Company, subject to adjustments pursuant to Section 3.

“*Stock Appreciation Right*” means an Award entitling the recipient to receive shares of Stock having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.

“*Subsidiary*” means any corporation or other entity (other than the Company) in which the Company has at least a 50 percent interest, either directly or indirectly.

“*Ten Percent Owner*” means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

“*Unrestricted Stock Award*” means an Award of shares of Stock free of any restrictions.

## SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEES AND DETERMINE AWARDS

(a) Administration of Plan. The Plan shall be administered by the Administrator.

(b) Powers of Administrator. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:

(i) to select the individuals to whom Awards may from time to time be granted;

(ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Unrestricted Stock Awards, Cash-Based Awards, Performance Share Awards and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more grantees;

(iii) to determine the number of shares of Stock to be covered by any Award;

(iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the forms of Award Certificates;

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(v) to accelerate at any time the exercisability or vesting of all or any portion of any Award;

(vi) subject to the provisions of Section 5(b), to extend at any time the period in which Stock Options may be exercised; and

(vii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be binding on all persons, including the Company and Plan grantees.

(c) Delegation of Authority to Grant Awards. Subject to applicable law, the Administrator, in its discretion, may delegate to the Chief Executive Officer of the Company all or part of the Administrator’s authority and duties with respect to the granting of Awards to individuals who are (i) not subject to the reporting and other provisions of Section 16 of the Exchange Act and (ii) not Covered Employees. Any such delegation by the Administrator shall include a limitation as to the amount of

Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(d) Award Certificate. Awards under the Plan shall be evidenced by Award Certificates that set forth the terms, conditions and limitations for each Award which may include, without limitation, the term of an Award and the provisions applicable in the event employment or service terminates.

(e) Indemnification. Neither the Board nor the Administrator, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Administrator (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under the Company's articles or bylaws or any directors' and officers' liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the Company.

(f) Foreign Award Recipients. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have employees or other individuals eligible for Awards, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which individuals outside the United

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States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent the Administrator determines such actions to be necessary or advisable (and such subplans and/or modifications shall be attached to this Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 3(a) hereof; and (v) take any action, before or after an Award is made, that the Administrator determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

### SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Stock Issuable. The maximum number of shares of Stock reserved and available for issuance under the Plan shall be the sum of (i) 1,100,000 shares (the "Initial Limit") plus (ii) on January 1, 2014 and each January 1 thereafter, the number of shares of Stock reserved and available for issuance under the Plan shall be cumulatively increased by two and a half percent of the number of shares of Stock issued and outstanding on the immediately preceding December 31 or such lesser number of shares of Stock as determined by the Administrator (the "Annual Increase") plus (iii) the shares underlying any Awards granted under the HDL Therapeutics, Inc. 2008 Incentive Stock Option and Restricted Stock Plan that are forfeited, canceled, held back upon the exercise of an Option or settlement of an Award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance of stock or otherwise terminated (other than by exercise). Subject to such overall limitation, the maximum aggregate number of shares of Stock that may be issued in the form of Incentive Stock Options shall not exceed the Initial Limit cumulatively increased on January 1, 2014 and on each January 1 thereafter by the lesser of the Annual Increase for such year or 700,000 shares of Stock. For purposes of this limitation, the shares of Stock underlying any Awards that are forfeited, canceled, held back upon exercise of an Option or settlement of an Award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance of Stock or otherwise terminated (other than by exercise) shall be added back to the shares of Stock available for issuance under the Plan. In the event the Company repurchases shares of Stock on the open market, such shares shall not be added to the shares of Stock available for issuance under the Plan. Subject to such overall limitations, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that Stock Options or Stock Appreciation Rights with respect to no more than the Initial Limit may be granted to any one individual grantee during any one calendar year period. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.

(b) Changes in Stock. Subject to Section 3(c) hereof, if, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company's capital stock, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of

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the Company or other non-cash assets are distributed with respect to such shares of Stock or other securities, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding shares of Stock are converted into or exchanged for securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, including the maximum number of shares that may be issued in the form of Incentive Stock Options, (ii) the number of Stock Options or Stock Appreciation Rights that can be granted to any one individual grantee and the maximum number of shares that may be granted under a Performance-Based Award, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, (iv) the repurchase price, if any, per share subject to each outstanding Restricted Stock Award, and (v) the exercise price for each share subject to any then outstanding Stock Options and Stock Appreciation Rights under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options and Stock Appreciation Rights) as to which such Stock Options and Stock Appreciation Rights remain exercisable. The Administrator shall also make equitable or proportionate adjustments in the number of shares subject to outstanding Awards and the exercise price and the terms of outstanding Awards to take into consideration cash dividends paid other than in the ordinary course or any other extraordinary corporate event. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

(c) Mergers and Other Transactions. Except as the Administrator may otherwise specify with respect to particular Awards in the relevant Award Certificate, in the case of and subject to the consummation of a Sale Event, all Options and Stock Appreciation Rights that are not exercisable immediately prior to the effective time of the Sale Event shall become fully exercisable as of the effective time of the Sale Event, all other Awards with time-based vesting, conditions or restrictions shall become fully vested and nonforfeitable as of the effective time of the Sale Event and all Awards with conditions and restrictions relating to the attainment of performance goals may become vested and nonforfeitable in connection with a Sale Event in the Administrator's discretion or to the extent specified in the relevant Award Certificate. In addition, except as the Administrator may otherwise specify with respect to particular Awards in the relevant Award Certificate, in the case of and subject to the consummation of a Sale Event, the parties thereto may cause the assumption or continuation of Awards theretofore granted by the successor entity, or the substitution of such Awards with new Awards of the successor entity or parent thereof, with appropriate adjustment as to the number and kind of shares and, if appropriate, the per share exercise prices, as such parties shall agree. To the extent the parties to such Sale Event do not provide for the assumption, continuation or substitution of Awards, upon the effective time of the Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate. In the event of such termination of Awards, (i) the Company shall have the option (in its sole discretion) to make or provide for a cash payment to the grantees holding Options and Stock Appreciation Rights, in exchange for the cancellation thereof, in an amount equal to the difference between (A) the Sale Price multiplied by the number of shares of Stock subject to outstanding Options and Stock Appreciation Rights (to the extent then exercisable at prices not in excess of the Sale Price) and (B) the aggregate exercise price of all such outstanding Options and Stock

exercise all outstanding Options and Stock Appreciation Rights (to the extent then exercisable) held by such grantee.

(d) Substitute Awards. The Administrator may grant Awards under the Plan in substitution for stock and stock based awards held by employees, directors or other key persons of another corporation in connection with the merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Administrator may direct that the substitute awards be granted on such terms and conditions as the Administrator considers appropriate in the circumstances. Any substitute Awards granted under the Plan shall not count against the share limitation set forth in Section 3(a).

#### SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full or part-time officers and other employees, Non-Employee Directors and key persons (including Consultants) of the Company and its Subsidiaries as are selected from time to time by the Administrator in its sole discretion.

#### SECTION 5. STOCK OPTIONS

Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a "subsidiary corporation" within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.

Stock Options granted pursuant to this Section 5 shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation at the optionee's election, subject to such terms and conditions as the Administrator may establish.

(a) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5 shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the option price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date.

(b) Option Term. The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than ten years after the date the Stock Option is granted. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the term of such Stock Option shall be no more than five years from the date of grant.

(c) Exercisability; Rights of a Stockholder. Stock Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. The Administrator may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(d) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written or electronic notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods to the extent provided in the Option Award Certificate:

(i) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(ii) Through the delivery (or attestation to the ownership) of shares of Stock that are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date;

(iii) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or

(iv) With respect to Stock Options that are not Incentive Stock Options, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price.

Payment instruments will be received subject to collection. The transfer to the optionee on the records of the Company or of the transfer agent of the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Option Award Certificate or applicable provisions of laws (including the satisfaction of any withholding taxes that the Company is obligated to withhold with respect to the optionee). In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of attested shares. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Stock Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Stock Options may be permitted through the use of such an automated system.

(e) Annual Limit on Incentive Stock Options. To the extent required for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value

(determined as of the time of grant) of the shares of Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

## SECTION 6. STOCK APPRECIATION RIGHTS

- (a) Exercise Price of Stock Appreciation Rights. The exercise price of a Stock Appreciation Right shall not be less than 100 percent of the Fair Market Value of the Stock on the date of grant.
- (b) Grant and Exercise of Stock Appreciation Rights. Stock Appreciation Rights may be granted by the Administrator independently of any Stock Option granted pursuant to Section 5 of the Plan.
- (c) Terms and Conditions of Stock Appreciation Rights. Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined from time to time by the Administrator. The term of a Stock Appreciation Right may not exceed ten years.

## SECTION 7. RESTRICTED STOCK AWARDS

- (a) Nature of Restricted Stock Awards. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Award at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award Certificate shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.
- (b) Rights as a Stockholder. Upon the grant of the Restricted Stock Award and payment of any applicable purchase price, a grantee shall have the rights of a stockholder with respect to the voting of the Restricted Stock and receipt of dividends; provided that if the lapse of restrictions with respect to the Restricted Stock Award is tied to the attainment of performance goals, any dividends paid by the Company during the performance period shall accrue and shall not be paid to the grantee until and to the extent the performance goals are met with respect to the Restricted Stock Award. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Stock shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Stock are vested as provided in Section 7(d) below, and (ii) certificated Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.
- (c) Restrictions. Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award Certificate. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, if a grantee's employment (or other service relationship) with the Company and its Subsidiaries

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terminates for any reason, any Restricted Stock that has not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price (if any) from such grantee or such grantee's legal representative simultaneously with such termination of employment (or other service relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a stockholder. Following such deemed reacquisition of unvested Restricted Stock that are represented by physical certificates, a grantee shall surrender such certificates to the Company upon request without consideration.

- (d) Vesting of Restricted Stock. The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed "vested." Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, a grantee's rights in any shares of Restricted Stock that have not vested shall automatically terminate upon the grantee's termination of employment (or other service relationship) with the Company and its Subsidiaries and such shares shall be subject to the provisions of Section 7(c) above.

## SECTION 8. RESTRICTED STOCK UNITS

- (a) Nature of Restricted Stock Units. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Unit at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award Certificate shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. At the end of the deferral period, the Restricted Stock Units, to the extent vested, shall be settled in the form of shares of Stock. To the extent that an award of Restricted Stock Units is subject to Section 409A, it may contain such additional terms and conditions as the Administrator shall determine in its sole discretion in order for such Award to comply with the requirements of Section 409A.
- (b) Election to Receive Restricted Stock Units in Lieu of Compensation. The Administrator may, in its sole discretion, permit a grantee to elect to receive a portion of future cash compensation otherwise due to such grantee in the form of an award of Restricted Stock Units. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with Section 409A and such other rules and procedures established by the Administrator. Any such future cash compensation that the grantee elects to defer shall be converted to a fixed number of Restricted Stock Units based on the Fair Market Value of Stock on the date the compensation would otherwise have been paid to the grantee if such payment had not been deferred as provided herein. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator

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deems appropriate. Any Restricted Stock Units that are elected to be received in lieu of cash compensation shall be fully vested, unless otherwise provided in the Award Certificate.

- (c) Rights as a Stockholder. A grantee shall have the rights as a stockholder only as to shares of Stock acquired by the grantee upon settlement of Restricted Stock Units; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the phantom stock units underlying his Restricted Stock Units, subject to such terms and conditions as the Administrator may determine.

(d) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, a grantee's right in all Restricted Stock Units that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 9. UNRESTRICTED STOCK AWARDS

Grant or Sale of Unrestricted Stock. The Administrator may, in its sole discretion, grant (or sell at par value or such higher purchase price determined by the Administrator) an Unrestricted Stock Award under the Plan. Unrestricted Stock Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

#### SECTION 10. CASH-BASED AWARDS

Grant of Cash-Based Awards. The Administrator may, in its sole discretion, grant Cash-Based Awards to any grantee in such number or amount and upon such terms, and subject to such conditions, as the Administrator shall determine at the time of grant. The Administrator shall determine the maximum duration of the Cash-Based Award, the amount of cash to which the Cash-Based Award pertains, the conditions upon which the Cash-Based Award shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-Based Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Administrator. Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award and may be made in cash or in shares of Stock, as the Administrator determines.

#### SECTION 11. PERFORMANCE SHARE AWARDS

(a) Nature of Performance Share Awards. The Administrator may, in its sole discretion, grant Performance Share Awards independent of, or in connection with, the granting of any other Award under the Plan. The Administrator shall determine whether and to whom Performance Share Awards shall be granted, the Performance Goals, the periods during which performance is to be measured, which may not be less than one year except in the case of a Sale Event, and such other limitations and conditions as the Administrator shall determine.

(b) Rights as a Stockholder. A grantee receiving a Performance Share Award shall have the rights of a stockholder only as to shares actually received by the grantee under the Plan and not with respect to shares subject to the Award but not actually received by the grantee. A grantee shall be entitled to receive shares of Stock under a Performance Share Award only upon

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satisfaction of all conditions specified in the Performance Share Award Certificate (or in a performance plan adopted by the Administrator).

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 18 below, in writing after the Award is issued, a grantee's rights in all Performance Share Awards shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 12. PERFORMANCE-BASED AWARDS TO COVERED EMPLOYEES

(a) Performance-Based Awards. Any employee or other key person providing services to the Company and who is selected by the Administrator may be granted one or more Performance-Based Awards in the form of a Restricted Stock Award, Restricted Stock Units, Performance Share Awards or Cash-Based Award payable upon the attainment of Performance Goals that are established by the Administrator and relate to one or more of the Performance Criteria, in each case on a specified date or dates or over any period or periods determined by the Administrator. The Administrator shall define in an objective fashion the manner of calculating the Performance Criteria it selects to use for any Performance Cycle. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. The Administrator, in its discretion, may adjust or modify the calculation of Performance Goals for such Performance Cycle in order to prevent the dilution or enlargement of the rights of an individual (i) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development, (ii) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or (iii) in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions provided however, that the Administrator may not exercise such discretion in a manner that would increase the Performance-Based Award granted to a Covered Employee. Each Performance-Based Award shall comply with the provisions set forth below.

(b) Grant of Performance-Based Awards. With respect to each Performance-Based Award granted to a Covered Employee, the Administrator shall select, within the first 90 days of a Performance Cycle (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) the Performance Criteria for such grant, and the Performance Goals with respect to each Performance Criterion (including a threshold level of performance below which no amount will become payable with respect to such Award). Each Performance-Based Award will specify the amount payable, or the formula for determining the amount payable, upon achievement of the various applicable performance targets. The Performance Criteria established by the Administrator may be (but need not be) different for each Performance Cycle and different Performance Goals may be applicable to Performance-Based Awards to different Covered Employees.

(c) Payment of Performance-Based Awards. Following the completion of a Performance Cycle, the Administrator shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance Cycle have been achieved and, if so, to

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also calculate and certify in writing the amount of the Performance-Based Awards earned for the Performance Cycle. The Administrator shall then determine the actual size of each Covered Employee's Performance-Based Award, and, in doing so, may reduce or eliminate the amount of the Performance-Based Award for a Covered Employee if, in its sole judgment, such reduction or elimination is appropriate.

(d) Maximum Award Payable. The maximum Performance-Based Award payable to any one Covered Employee under the Plan for a Performance Cycle is 1,100,000 shares of Stock (subject to adjustment as provided in Section 3(b) hereof) or \$2,000,000 in the case of a Performance-Based Award that is a Cash-Based Award.

#### SECTION 13. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. A Dividend Equivalent Right may be granted hereunder to any grantee as a component of an award of Restricted Stock Units, Restricted Stock Award or Performance Share Award or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Certificate. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a

combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of an award of Restricted Stock Units or Restricted Stock Award with performance vesting or Performance Share Award shall provide that such Dividend Equivalent Right shall be settled only upon settlement or payment of, or lapse of restrictions on, such other Award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other Award.

(b) Interest Equivalents. Any Award under this Plan that is settled in whole or in part in cash on a deferred basis may provide in the grant for interest equivalents to be credited with respect to such cash payment. Interest equivalents may be compounded and shall be paid upon such terms and conditions as may be specified by the grant.

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, a grantee's rights in all Dividend Equivalent Rights or interest equivalents granted as a component of an award of Restricted Stock Units, Restricted Stock Award or Performance Share Award that has not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 14. TRANSFERABILITY OF AWARDS

(a) Transferability. Except as provided in Section 14(b) below, during a grantee's lifetime, his or her Awards shall be exercisable only by the grantee, or by the grantee's legal representative or guardian in the event of the grantee's incapacity. No Awards shall be sold, assigned, transferred or otherwise encumbered or disposed of by a grantee other than by will or

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by the laws of descent and distribution or pursuant to a domestic relations order. No Awards shall be subject, in whole or in part, to attachment, execution, or levy of any kind, and any purported transfer in violation hereof shall be null and void.

(b) Administrator Action. Notwithstanding Section 14(a), the Administrator, in its discretion, may provide either in the Award Certificate regarding a given Award or by subsequent written approval that the grantee (who is an employee or director) may transfer his or her Non-Qualified Options to his or her immediate family members, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Award. In no event may an Award be transferred by a grantee for value.

(c) Family Member. For purposes of Section 14(b), "family member" shall mean a grantee's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the grantee's household (other than a tenant of the grantee), a trust in which these persons (or the grantee) have more than 50 percent of the beneficial interest, a foundation in which these persons (or the grantee) control the management of assets, and any other entity in which these persons (or the grantee) own more than 50 percent of the voting interests.

(d) Designation of Beneficiary. Each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Administrator and shall not be effective until received by the Administrator. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

#### SECTION 15. TAX WITHHOLDING

(a) Payment by Grantee. Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company's obligation to deliver evidence of book entry (or stock certificates) to any grantee is subject to and conditioned on tax withholding obligations being satisfied by the grantee.

(b) Payment in Stock. Subject to approval by the Administrator, a grantee may elect to have the Company's minimum required tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued pursuant to any

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Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due.

#### SECTION 16. SECTION 409A AWARDS

To the extent that any Award is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A (a "409A Award"), the Award shall be subject to such additional rules and requirements as specified by the Administrator from time to time in order to comply with Section 409A. In this regard, if any amount under a 409A Award is payable upon a "separation from service" (within the meaning of Section 409A) to a grantee who is then considered a "specified employee" (within the meaning of Section 409A), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the grantee's separation from service, or (ii) the grantee's death, but only to the extent such delay is necessary to prevent such payment from being subject to interest, penalties and/or additional tax imposed pursuant to Section 409A. Further, the settlement of any such Award may not be accelerated except to the extent permitted by Section 409A.

#### SECTION 17. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment:

(a) a transfer to the employment of the Company (from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another); or

(b) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing.

#### SECTION 18. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(c) or 3(d), without prior stockholder approval, in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or Stock Appreciation Rights or effect repricing through cancellation and re-grants or cancellation of Stock Options or Stock Appreciation Rights in exchange for cash. To the extent required under the rules of any securities exchange or market system on which the Stock is listed, to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code, or to ensure that compensation earned under Awards qualifies as performance-based compensation under Section 162(m) of the Code, Plan amendments shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. Nothing in this Section 18 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(b) or 3(c).

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#### SECTION 19. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

#### SECTION 20. GENERAL PROVISIONS

(a) No Distribution. The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

(b) Delivery of Stock Certificates. Stock certificates to grantees under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the grantee, at the grantee's last known address on file with the Company. Uncertificated Stock shall be deemed delivered for all purposes when the Company or a Stock transfer agent of the Company shall have given to the grantee by electronic mail (with proof of receipt) or by United States mail, addressed to the grantee, at the grantee's last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic "book entry" records). Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Administrator has determined, with advice of counsel (to the extent the Administrator deems such advice necessary or advisable), that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed, quoted or traded. All Stock certificates delivered pursuant to the Plan shall be subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state or foreign jurisdiction, securities or other laws, rules and quotation system on which the Stock is listed, quoted or traded. The Administrator may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Administrator may require that an individual make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems necessary or advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any individual to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.

(c) Stockholder Rights. Until Stock is deemed delivered in accordance with Section 20(b), no right to vote or receive dividends or any other rights of a stockholder will exist with respect to shares of Stock to be issued in connection with an Award, notwithstanding the exercise of a Stock Option or any other action by the grantee with respect to an Award.

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(d) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(e) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to the Company's insider trading policies and procedures, as in effect from time to time.

(f) Forfeiture of Awards under Sarbanes-Oxley Act. If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, then any grantee who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002 shall reimburse the Company for the amount of any Award received by such individual under the Plan during the 12-month period following the first public issuance or filing with the United States Securities and Exchange Commission, as the case may be, of the financial document embodying such financial reporting requirement.

#### SECTION 21. EFFECTIVE DATE OF PLAN

This Plan shall become effective immediately prior to the Company's Initial Public Offering, following stockholder approval of the Plan in accordance with applicable state law, the Company's bylaws and articles of incorporation, and applicable stock exchange rules or pursuant to written consent. No grants of Stock Options and other Awards may be made hereunder after the tenth anniversary of the Effective Date and no grants of Incentive Stock Options may be made hereunder after the tenth anniversary of the date the Plan is approved by the Board.

#### SECTION 22. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without regard to conflict of law principles.

DATE APPROVED BY BOARD OF DIRECTORS: June 5, 2013

DATE APPROVED BY STOCKHOLDERS: June 7, 2013

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**INCENTIVE STOCK OPTION AGREEMENT  
UNDER THE ESPERION THERAPEUTICS, INC.  
2013 STOCK OPTION AND INCENTIVE PLAN**

Name of Optionee: \_\_\_\_\_

No. of Option Shares: \_\_\_\_\_

Option Exercise Price per Share: \$ \_\_\_\_\_  
**[FMV on Grant Date (110% of FMV if a 10% owner)]**

Grant Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_  
**[up to 10 years (5 if a 10% owner)]**

Pursuant to the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan as amended through the date hereof (the "Plan"), Esperion Therapeutics, Inc. (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.001 per share (the "Stock"), of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan.

1. **Exercisability Schedule.** No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 2 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as the Optionee remains an employee of the Company or a Subsidiary on such dates:

Incremental Number of Option Shares Exercisable*	( )%	Exercisability Date
	( )%	
	( )%	
	( )%	
	( )%	
	( )%	

\* Max. of \$100,000 per yr.

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. **Manner of Exercise.**

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; or (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or (iv) a combination of (i), (ii) and (iii) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the Shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.



3. **Termination of Employment.** If the Optionee's employment by the Company or a Subsidiary (as defined in the Plan) is terminated, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) **Termination Due to Death.** If the Optionee's employment terminates by reason of the Optionee's death, any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Optionee's legal representative or legatee for a period of 12 months from the date of death or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) **Termination Due to Disability.** If the Optionee's employment terminates by reason of the Optionee's disability (as determined by the Administrator), any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of such disability, may thereafter be exercised by the Optionee for a period of 12 months from the date of disability or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of disability shall terminate immediately and be of no further force or effect.

(c) **Termination for Cause.** If the Optionee's employment terminates for Cause, any portion of this Stock Option outstanding on such date shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" shall mean, unless otherwise provided in an employment agreement between the Company and the Optionee, a determination by the Administrator that the Optionee shall be dismissed as a result of (i) any material breach by the Optionee of any agreement between the Optionee and the Company; (ii) the conviction of, indictment for or plea of nolo contendere by the Optionee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Optionee of the Optionee's duties to the Company.

(d) **Other Termination.** If the Optionee's employment terminates for any reason other than the Optionee's death, the Optionee's disability, or Cause, and unless otherwise determined by the Administrator, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of termination shall terminate immediately and be of no further force or effect.

The Administrator's determination of the reason for termination of the Optionee's employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

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4. **Incorporation of Plan.** Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. **Transferability.** This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. **Status of the Stock Option.** This Stock Option is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), but the Company does not represent or warrant that this Stock Option qualifies as such. The Optionee should consult with his or her own tax advisors regarding the tax effects of this Stock Option and the requirements necessary to obtain favorable income tax treatment under Section 422 of the Code, including, but not limited to, holding period requirements. To the extent any portion of this Stock Option does not so qualify as an "incentive stock option," such portion shall be deemed to be a non-qualified stock option. If the Optionee intends to dispose or does dispose (whether by sale, gift, transfer or otherwise) of any Option Shares within the one-year period beginning on the date after the transfer of such shares to him or her, or within the two-year period beginning on the day after the grant of this Stock Option, he or she will so notify the Company within 30 days after such disposition.

7. **Tax Withholding.** The Optionee shall, not later than the date as of which the exercise of this Stock Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the minimum required tax withholding obligation to be satisfied, in whole or in part, by withholding from shares of Stock to be issued to the Optionee a number of shares of Stock with an aggregate Fair Market Value that would satisfy the minimum withholding amount due.

8. **No Obligation to Continue Employment.** Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Optionee at any time.

9. **Integration.** This Agreement constitutes the entire agreement between the parties with respect to this Stock Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

10. **Data Privacy Consent.** In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number,

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home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

11. **Notices.** Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Optionee's Signature

Optionee's name and address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NON-QUALIFIED STOCK OPTION AGREEMENT  
FOR COMPANY EMPLOYEES  
UNDER ESPERION THERAPEUTICS, INC.  
2013 STOCK OPTION AND INCENTIVE PLAN**

Name of Optionee: \_\_\_\_\_

No. of Option Shares: \_\_\_\_\_

Option Exercise Price per Share: \$ \_\_\_\_\_  
[FMV on Grant Date]

Grant Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_  
[No more than 10 years]

Pursuant to the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan as amended through the date hereof (the "Plan"), Esperion Therapeutics, Inc. (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.001 per share (the "Stock") of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. This Stock Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 2 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as Optionee remains an employee of the Company or a Subsidiary on such dates:

Incremental Number of Option Shares Exercisable	Exercisability Date
( )%	
( )%	
( )%	
( )%	
( )%	

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; (iv) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; or (v) a combination of (i), (ii), (iii) and (iv) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance

with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the Shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a

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holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment. If the Optionee's employment by the Company or a Subsidiary (as defined in the Plan) is terminated, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's employment terminates by reason of the Optionee's death, any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Optionee's legal representative or legatee for a period of 12 months from the date of death or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Termination Due to Disability. If the Optionee's employment terminates by reason of the Optionee's disability (as determined by the Administrator), any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of such disability, may thereafter be exercised by the Optionee for a period of 12 months from the date of disability or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of disability shall terminate immediately and be of no further force or effect.

(c) Termination for Cause. If the Optionee's employment terminates for Cause, any portion of this Stock Option outstanding on such date shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" shall mean, unless otherwise provided in an employment agreement between the Company and the Optionee, a determination by the Administrator that the Optionee shall be dismissed as a result of (i) any material breach by the Optionee of any agreement between the Optionee and the Company; (ii) the conviction of, indictment for or plea of nolo contendere by the Optionee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Optionee of the Optionee's duties to the Company.

(d) Other Termination. If the Optionee's employment terminates for any reason other than the Optionee's death, the Optionee's disability or Cause, and unless otherwise determined by the Administrator, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any portion of this Stock

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Option that is not exercisable on the date of termination shall terminate immediately and be of no further force or effect.

The Administrator's determination of the reason for termination of the Optionee's employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Stock Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the minimum required tax withholding obligation to be satisfied, in whole or in part, by withholding from shares of Stock to be issued to the Optionee a number of shares of Stock with an aggregate Fair Market Value that would satisfy the minimum withholding amount due.

7. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Optionee at any time.

8. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Stock Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

9. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv)

authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

**ESPERION THERAPEUTICS, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: \_\_\_\_\_

Optionee's Signature \_\_\_\_\_

Optionee's name and address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**NON-QUALIFIED STOCK OPTION AGREEMENT  
FOR NON-EMPLOYEE DIRECTORS  
UNDER ESPERION THERAPEUTICS, INC.  
2013 STOCK OPTION AND INCENTIVE PLAN**

Name of Optionee: \_\_\_\_\_

No. of Option Shares: \_\_\_\_\_

Option Exercise Price per Share: \$ \_\_\_\_\_

**[FMV on Grant Date]**

Grant Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**[No more than 10 years]**

Pursuant to the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan as amended through the date hereof (the "Plan"), Esperion Therapeutics, Inc. (the "Company") hereby grants to the Optionee named above, who is a Director of the Company but is not an employee of the Company, an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.001 per share (the "Stock"), of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. This Stock Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 2 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as the Optionee remains in service as a member of the Board on such dates:

Incremental Number of Option Shares Exercisable	Exercisability Date
( )%	_____
( )%	_____
( )%	_____
( )%	_____
( )%	_____

Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; (iv) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; or (v) a combination of (i), (ii), (iii) and (iv) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of Stock Options under the Plan and any subsequent resale of the shares of Stock will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the Shares attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a

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holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination as Director. If the Optionee ceases to be a Director of the Company, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's service as a Director terminates by reason of the Optionee's death, any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Optionee's legal representative or legatee for a period of 12 months from the date of death or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Other Termination. If the Optionee ceases to be a Director for any reason other than the Optionee's death, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the date the Optionee ceased to be a Director, for a period of twelve months from the date the Optionee ceased to be a Director or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date the Optionee ceases to be a Director shall terminate immediately and be of no further force or effect.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. No Obligation to Continue as a Director. Neither the Plan nor this Stock Option confers upon the Optionee any rights with respect to continuance as a Director.

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7. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Stock Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

8. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

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9. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Optionee's Signature

Optionee's name and address:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**RESTRICTED STOCK AWARD AGREEMENT  
 UNDER THE ESPERION THERAPEUTICS, INC.  
 2013 STOCK OPTION AND INCENTIVE PLAN**

Name of Grantee: \_\_\_\_\_

No. of Shares: \_\_\_\_\_

Grant Date: \_\_\_\_\_

Pursuant to the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan (the "Plan") as amended through the date hereof, Esperion Therapeutics, Inc. (the "Company") hereby grants a Restricted Stock Award (an "Award") to the Grantee named above. Upon acceptance of this Award, the Grantee shall receive the number of shares of Common Stock, par value \$0.001 per share (the "Stock") of the Company specified above, subject to the restrictions and conditions set forth herein and in the Plan. The Company acknowledges the receipt from the Grantee of consideration with respect to the par value of the Stock in the form of cash, past or future services rendered to the Company by the Grantee or such other form of consideration as is acceptable to the Administrator.

1. Award. The shares of Restricted Stock awarded hereunder shall be issued and held by the Company's transfer agent in book entry form, and the Grantee's name shall be entered as the stockholder of record on the books of the Company. Thereupon, the Grantee shall have all the rights of a stockholder with respect to such shares, including voting and dividend rights, subject, however, to the restrictions and conditions specified in Paragraph 2 below. The Grantee shall (i) sign and deliver to the Company a copy of this Award Agreement and (ii) deliver to the Company a stock power endorsed in blank.

2. Restrictions and Conditions.

(a) Any book entries for the shares of Restricted Stock granted herein shall bear an appropriate legend, as determined by the Administrator in its sole discretion, to the effect that such shares are subject to restrictions as set forth herein and in the Plan.

(b) Shares of Restricted Stock granted herein may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of by the Grantee prior to vesting.

(c) If the Grantee's employment with the Company and its Subsidiaries is voluntarily or involuntarily terminated for any reason (including death) prior to vesting of shares of Restricted Stock granted herein, all shares of Restricted Stock shall immediately and automatically be forfeited and returned to the Company.

3. Vesting of Restricted Stock. The restrictions and conditions in Paragraph 2 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains an employee of the Company or a Subsidiary on such Dates. If a series

of Vesting Dates is specified, then the restrictions and conditions in Paragraph 2 shall lapse only with respect to the number of shares of Restricted Stock specified as vested on such date.

Incremental Number of Shares Vested	Vesting Date
( )%	
( )%	
( )%	
( )%	

Subsequent to such Vesting Date or Dates, the shares of Stock on which all restrictions and conditions have lapsed shall no longer be deemed Restricted Stock. The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 3.

4. Dividends. Dividends on shares of Restricted Stock shall be paid currently to the Grantee.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Award shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Transferability. This Agreement is personal to the Grantee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution.

7. Tax Withholding. The Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. Except in the case where an election is made pursuant to Paragraph 8 below, the Company shall have the authority to cause the required minimum tax withholding obligation to be satisfied, in whole or in part, by withholding from shares of Stock to be issued or released by the transfer agent a number of shares of Stock with an aggregate Fair Market Value that would satisfy the minimum withholding amount due.

8. Election Under Section 83(b). The Grantee and the Company hereby agree that the Grantee may, within 30 days following the Grant Date of this Award, file with the Internal Revenue Service and the Company an election under Section 83(b) of the Internal Revenue Code. In the event the Grantee makes such an election, he or she agrees to provide a copy of the election to the Company. The Grantee acknowledges that he or she is responsible for obtaining the advice of his or her tax advisors with regard to the Section 83(b) election and that he or she is relying solely on such advisors and not on any statements or representations of the Company or any of its agents with regard to such election.

9. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Grantee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Grantee at any time.

10. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

11. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

12. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

**ESPERION THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Grantee's Signature

Grantee's name and address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RESTRICTED STOCK UNIT AWARD AGREEMENT  
FOR COMPANY EMPLOYEES  
UNDER ESPERION THERAPEUTICS, INC.  
2013 STOCK OPTION AND INCENTIVE PLAN**

Name of Grantee: \_\_\_\_\_

No. of Restricted Stock Units: \_\_\_\_\_

Grant Date: \_\_\_\_\_

Pursuant to the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan as amended through the date hereof (the "Plan"), Esperion Therapeutics, Inc. (the "Company") hereby grants an award of the number of Restricted Stock Units listed above (an "Award") to the Grantee named above. Each Restricted Stock Unit shall relate to one share of Common Stock, par value \$0.001 per share (the "Stock") of the Company.

1. **Restrictions on Transfer of Award.** This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any shares of Stock issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Stock Units have vested as provided in Paragraph 2 of this Agreement and (ii) shares of Stock have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. **Vesting of Restricted Stock Units.** The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains an employee of the Company or a Subsidiary on such Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Stock Units specified as vested on such date.

<b>Incremental Number of Restricted Stock Units Vested</b>	<b>Vesting Date</b>
( )%	
( )%	
( )%	
( )%	

The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 2.

3. **Termination of Employment.** If the Grantee's employment with the Company and its Subsidiaries terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Stock Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal

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representatives will thereafter have any further rights or interests in such unvested Restricted Stock Units.

4. **Issuance of Shares of Stock.** As soon as practicable following each Vesting Date (but in no event later than two and one-half months after the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of shares of Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a stockholder of the Company with respect to such shares.

5. **Incorporation of Plan.** Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. **Tax Withholding.** The Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required minimum tax withholding obligation to be satisfied, in whole or in part, by withholding from shares of Stock to be issued to the Grantee a number of shares of Stock with an aggregate Fair Market Value that would satisfy the withholding amount due.

7. **Section 409A of the Code.** This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

8. **No Obligation to Continue Employment.** Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Grantee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the employment of the Grantee at any time.

9. **Integration.** This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

10. **Data Privacy Consent.** In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv)

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authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

11. **Notices.** Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

**ESPERION THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Grantee's Signature



**RESTRICTED STOCK UNIT AWARD AGREEMENT  
FOR NON-EMPLOYEE DIRECTORS  
UNDER ESPERION THERAPEUTICS, INC.  
2013 STOCK OPTION AND INCENTIVE PLAN**

Name of Grantee: \_\_\_\_\_  
 No. of Restricted Stock Units: \_\_\_\_\_  
 Grant Date: \_\_\_\_\_

Pursuant to the Esperion Therapeutics, Inc. 2013 Stock Option and Incentive Plan as amended through the date hereof (the "Plan"), Esperion Therapeutics, Inc. (the "Company") hereby grants an award of the number of Restricted Stock Units listed above (an "Award") to the Grantee named above. Each Restricted Stock Unit shall relate to one share of Common Stock, par value \$0.001 per share (the "Stock") of the Company.

1. **Restrictions on Transfer of Award.** This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any shares of Stock issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Stock Units have vested as provided in Paragraph 2 of this Agreement and (ii) shares of Stock have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. **Vesting of Restricted Stock Units.** The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains in service as a member of the Board on such Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Stock Units specified as vested on such date.

Incremental Number of Restricted Stock Units Vested	( )%	Vesting Date
	( )%	
	( )%	
	( )%	
	( )%	

The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 2.

3. **Termination of Service.** If the Grantee's service with the Company and its Subsidiaries terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Stock Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and

neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Stock Units.

4. **Issuance of Shares of Stock.** As soon as practicable following each Vesting Date (but in no event later than two and one-half months after the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of shares of Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a stockholder of the Company with respect to such shares.

5. **Incorporation of Plan.** Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. **Section 409A of the Code.** This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

7. **No Obligation to Continue as a Director.** Neither the Plan nor this Award confers upon the Grantee any rights with respect to continuance as a Director.

8. **Integration.** This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

9. **Data Privacy Consent.** In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

**ESPERION THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Grantee's Signature

Grantee's name and address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Consent of Independent Registered Public Accounting Firm**

We consent to the reference to our firm under the caption “Experts” and the use of our report dated April 12, 2013 (except Note 1(a) and Note 18, as to which the date is April 19, 2013, and for Note 1(b), as to which the date is June 11, 2013), in Amendment No. 2 to the Registration Statement (Form S-1 No. 333-188595) and related Prospectus of Esperion Therapeutics, Inc. dated June 12, 2013.

/s/ Ernst & Young LLP

Milwaukee, Wisconsin  
June 12, 2013

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