Risk Factors Comparison 2025-02-18 to 2024-02-23 Form: 10-K

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The Company is subject to a number of risks that if realized could materially adversely affect its business, results of operations, cash flow, financial condition or prospects. The following is a summary of the principal risk factors facing the Company. The list below is not exhaustive, and the Company faces additional challenges and risks. Investors should carefully consider all of the information set forth in this Annual Report on Form 10- K, including the following risk factors, before deciding to invest in any of the Company' s securities. Risk Factors Summary Our business is subject to a number of risks and uncertainties, including those risks discussed at length below. These risks include, among others, the following: • We have incurred significant losses since our inception, anticipate that we will continue to have losses, and may never achieve or maintain profitability. • We may need additional funding to conduct our future clinical trials and to complete development and commercialization of our product candidates. If we are unable to raise capital when needed, we would be forced to delay, reduce, or eliminate our product development programs or commercialization efforts. • Our operating activities may be restricted as a result of covenants related to the outstanding indebtedness under our loan and security agreement with Hercules and we may be required to repay the outstanding indebtedness in an event of default, which could have a materially adverse effect on our business. • We have a limited operating history ~~and history~~ of commercializing products, which may make it difficult to evaluate our business and prospects. • We are substantially dependent on the success of our products and cannot guarantee that any of our product candidates will successfully complete any planned or ongoing clinical trials, receive regulatory approval, or be successfully commercialized. • If safety and efficacy data for our product candidates, a reference drug, or published literature does not satisfactorily demonstrate safety and efficacy to the FDA, or if the FDA and other regulators do not permit us to rely on the data of a reference drug or published literature, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development and commercialization of our product candidates. • Although Breakthrough Therapy, Fast Track **,** and other designations are designed to expedite the development and review of drugs, they may not ultimately lead to a faster approval process or faster development of regulatory review **,** and they will not increase the likelihood that our product candidates will receive marketing approval, for example, Breakthrough Therapy designation by the FDA for AXS- 05 for the treatment of AD agitation. • We face significant competition from other pharmaceutical and biotechnology companies, academic institutions, government agencies, and other research organizations. Our operating results will suffer if we fail to compete effectively. • If we are unable to establish effective marketing, sales and distribution capabilities or enter into agreements with third parties to market, sell and distribute our products, we may be unable to generate substantial product revenues. • If any of our products do not achieve broad market acceptance, ~~the~~ **we may be unable to generate substantial product** revenues ~~that we generate from their sales will be limited~~ . • We rely, and expect to continue to rely, on third parties to ~~conduct, supervise,~~ **perform many essential services for our products** and ~~monitor~~ **product candidates, including services related to** our preclinical studies and clinical trials, **warehousing** and **inventory control, distribution, government price reporting, customer service, and adverse event reporting. If** ~~those~~ **these** third parties ~~may not~~ **fail to** perform satisfactorily, including by failing to meet deadlines for the completion of ~~such~~ **our preclinical studies and clinical** trials **,** or ~~failing~~ **fail** to comply with **legal and** regulatory requirements **, our ability to commercialize any of our products will be significantly impacted and we may be subject to regulatory sanctions** . • If the manufacturers upon whom we rely fail to produce our products in the volumes that we require on a timely basis, or to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of, or be unable to meet demand for, our products and may lose **or fail to generate** potential revenues ~~. • As an NDA applicant and commercial " virtual manufacturer, " we may rely in many cases on third parties to perform many essential services for our products, including services related to warehousing and inventory control, distribution, government price reporting, customer service, and adverse event reporting. If these third parties fail to perform as expected or to comply with legal and regulatory requirements, our ability to commercialize any of our products will be significantly impacted and we may be subject to regulatory sanctions~~ . • Patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. • We have licensed and may need to license certain intellectual property from third parties in the future. Such licenses may not be available or may not be available on commercially reasonable terms. Our business may be materially harmed if the licenses are not available or terminated for any reason. • If we fail to comply with federal, state, and foreign healthcare laws, including **laws governing** fraud and abuse ~~and~~ **,** transparency ~~and~~ **,** health and other data protection, information privacy and security ~~laws~~ , we could face substantial penalties **and liabilities,** and our business, financial condition, results of operations, and prospects could be adversely affected. • If the government or third- party payors fail to provide adequate coverage and payment rates for any of our products, or if **such payors and health care providers including** health maintenance ~~organization~~ **organizations** (HMOs) ~~or~~ **and** long- term care facilities choose to use therapies that are less expensive, our revenue and prospects for profitability ~~will~~ **may** be limited. • We have and may continue to significantly increase the size of our organization, and we may experience difficulties in managing growth. If we are unable to implement appropriate controls and procedures to manage our growth, we will not be able to implement our business plan successfully. • If we fail to maintain an effective system of internal controls over financial reporting, we may not be able to accurately report our financial condition, results of operations or cash flows, which may adversely affect investor confidence in us and, as a result, the value of our common stock. • Our principal stockholders and management own a significant percentage of our stock and may be able to exert significant control over matters subject to stockholder approval. • The use of our net operating loss carryforwards and

research tax credits may be limited. RISKS RELATED TO OUR FINANCIAL CONDITION AND CAPITAL REQUIREMENTS We are a biopharmaceutical company with a limited operating history. Since inception, we have incurred significant operating losses. Our net loss was $ ~~239~~ **287** . 2 million for the year ended December 31, ~~2023~~ **2024** . As of December 31, ~~2023~~ **2024** , we had an accumulated deficit of $ ~~835~~ **1, 122** . ~~6~~ **8** million. In 2022, we commenced the commercial sale of Auvelity in the United States and Sunosi in the United States and select global markets. **In January 2025, Symbravo ® was approved by the FDA for the acute treatment of migraine with or without aura in adults.** Apart from **Auvelity,** Sunosi **,** and ~~Auvelity~~ **Symbravo** , we have no other products which have received regulatory approval. We expect to continue to incur substantial expenses and operating losses, as we continue to develop our current and future product candidates. In addition, we expect to incur significant sales, marketing, and manufacturing expenses related to the commercialization of **Auvelity,** Sunosi, ~~Auvelity~~ **Symbravo** , and any other product candidate which **the FDA** may ~~be approved~~ **approve** or which we may in- license. We anticipate that our expenses will increase substantially as we: • seek regulatory approval for additional product candidates; • hire additional commercial, clinical, medical, quality, regulatory, and scientific personnel; • add operational, financial, and management information systems and personnel; • expand our sales, marketing, and distribution infrastructure; • expand external manufacturing capabilities and production to commercialize any additional products for which we may obtain regulatory approval and that we choose not to license to a third party; • undertake additional manufacturing activities of our product candidates to satisfy FDA requirements for marketing application submissions; • ~~conduct our clinical trials with AXS - 05 in AD agitation; • conduct our clinical trials with AXS- 12 in narcolepsy; •~~ continue to evaluate, plan for, and conduct clinical trials for AXS- 05 as an aid to smoking cessation treatment and other CNS disorders; • continue to evaluate, plan for, and conduct clinical trials for solriamfetol in additional indications; • continue to evaluate, plan for, and potentially submit ~~an NDA~~ **NDAs** for **other pipeline products** ~~AXS- 14 in fibromyalgia~~ ; • continue to expand commercial sales of **Auvelity and** Sunosi ~~and Auvelity~~ **; • commercially launch Symbravo** ; • develop, in - license, or acquire additional product candidates; • conduct late - stage clinical trials for any product candidates that successfully complete early - stage clinical trials; • conduct additional non - clinical studies with any product candidates; and • maintain, expand, and protect our intellectual property portfolio. To become and remain profitable, we must succeed in developing (or in- licensing) and commercializing products that generate significant revenue. This will require us to be successful in a range of challenging activities, which may include completing preclinical testing and clinical trials of our product candidates, discovering additional product candidates, potentially entering into collaboration and license agreements, obtaining regulatory approval for product candidates and manufacturing, marketing, and selling any products for which we may obtain regulatory approval, achieving market acceptance of our products, satisfying any post- marketing requirements, maintaining appropriate distribution, setting prices, and obtaining reimbursement for our products from private insurance or government payors. We are only in the preliminary stages of some of these activities with respect to certain products and product candidates. We may never succeed in some of these activities and, even if we do, may never achieve profitability. Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to accurately predict the timing or amount of increased expenses we may incur or when, or if, we will be able to achieve profitability. If we are required by the FDA or comparable foreign regulatory authorities to perform studies in addition to those currently expected, or if there are any delays in completing our clinical trials or the development of any of our product candidates, our expenses could increase. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings, continue the commercialization of our products **,** or even continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment. Conducting clinical trials, pursuing regulatory approvals, establishing outsourced manufacturing relationships, and successfully manufacturing and commercializing our product candidates is a time - consuming, expensive, and uncertain process that takes years to complete. We may need to raise additional capital to: • fund our future clinical trials for our current product candidates, especially if we encounter any unforeseen delays or difficulties in our planned development activities; • fund our operations and continue to commercialize our products; • qualify and outsource the commercial ~~-~~ scale manufacturing of our products under ~~current good manufacturing practices, or~~ cGMP; • develop additional product candidates; and • in - license other product candidates. We believe that our current cash is sufficient to fund anticipated operations into cash flow positivity, based on the current operating plan. Our assumptions may prove to be wrong, and we could spend our available financial resources faster than we currently expect. Further, we may not have sufficient financial resources to meet all of our objectives. Our future funding requirements will depend on many factors, including, but not limited to: • the rate of progress and costs related to the development of our product candidates, including the costs of preparing filings for regulatory approval; • the costs associated with conducting additional clinical and non- clinical studies with any of our product candidates; • the potential for delays in our efforts to seek regulatory approval for our product candidates, and any costs associated with such delays; • the costs associated with selling, marketing, and distributing our approved products; • the costs of filing, prosecuting, defending, and enforcing any patent claims and other intellectual property rights associated with our product candidates; • the cost and timing of manufacturing, or having third parties manufacture, sufficient supplies of our product candidates in preparation for commercialization; • the effect of competing technological and market developments; • revenues from commercial sales of our approved products; • the terms and timing of any collaborative, licensing, co - promotion, or other arrangements that we may establish; and • the success of the commercialization of any of our current products and, if approved, any of our product candidates. Future capital requirements will also depend on the extent to which we acquire or invest in additional businesses, products, and technologies. Until we can generate a sufficient amount of product revenue, if ever, we may finance future cash needs through public or private equity offerings, debt financings, royalties, and corporate collaboration and licensing arrangements, as well as through interest income earned on cash and investment balances. We cannot be certain that additional funding will be available on acceptable terms, or

at all. If adequate funds are not available, we may be required to delay, reduce the scope of, or eliminate one or more of our development programs or our commercialization efforts. In September 2020, we entered into a Loan and Security Agreement, or the Loan Agreement, for a term loan, which we refer to as the 2020 Term Loan, with Hercules Capital, Inc., or Hercules, in its capacity as administrative agent and collateral agent and as a lender, and the other financial institutions that from time to time become parties to the Loan Agreement, collectively referred to as the Lenders, secured by a lien on substantially all of our assets, including intellectual property. In October 2021, we entered into a First Amendment to the Loan Agreement to, among other things, increase the size of the 2020 Term Loan. In March 2022, we entered into a Second Amendment to the Loan Agreement that, among other things, changed the terms of the Term Loan Advances (as defined in the Loan Agreement) upon the consummation of the Acquisition (as defined in the Loan Agreement). In January 2023, we entered into ~~a~~ **the** Third Amendment **, which** ~~to the Loan Agreement that~~ amended the terms of the Loan Agreement to, among other things, increase the size of the aggregate principal amount under the 2020 Term Loan from $ 300. 0 million to $ 350. 0 million, reduce the interest rate, and extend the maturity and interest- only period of the Loan Agreement. In May 2023, we entered into **the** ~~a Waiver and~~ Fourth Amendment **, which** ~~to the Loan Agreement that~~ increased the amount of cash that could be held by ~~Axsome Malta Ltd., or~~ the Malta Subsidiary ~~,~~ outside of the United States and waived any purported default with respect to the amount of cash held by the Malta Subsidiary prior to the date of the Fourth Amendment. In August 2023, Hercules granted Axsome a waiver to the Fourth Amendment, increasing the amount of cash that could be held by the Malta Subsidiary outside of the United States until December 31, 2023 **. In September 30, 2024, we entered into the Fifth Amendment, which amended the terms of the Loan Agreement to, among other things: (i) increase the size of the aggregate principal amount under tranche 3 of the 2020 Term Loan from $ 75. 0 to $ 80. 0 million; (ii) extend the availability periods of certain tranches of the 2020 Term Loan; (iii) alter the terms of the performance covenants contained in the Loan Agreement and also add a new performance covenant; (iv) conditionally waive the minimum cash requirement during such periods of time that Axsome' s market capitalization exceeds $ 1. 5 billion; and (v) permit the Malta Subsidiary to request an advance from the Lenders up to a certain amount to the extent that Axsome may request an advance in such amount and to increase the amount of cash that the Malta Subsidiary may hold outside of the United States, as set forth in greater detail in the Fifth Amendment** . The Loan Agreement contains various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things, sell, transfer, lease or dispose of certain assets; incur indebtedness; encumber or permit liens on certain assets; make certain investments; make certain restricted payments, including paying dividends on, or repurchasing or making distributions with respect to, our common stock; and enter into certain transactions with affiliates. Our business may be adversely affected by these restrictions on our ability to operate our business. The covenants under the Loan Agreement also ~~requiring~~ **require** maintaining a minimum amount of cash in an account or accounts in which the Lenders have a first priority security interest. A breach of any of the covenants under the Loan Agreement could result in a default under the 2020 Term Loan. Upon the occurrence of an event of default under the 2020 Term Loan, the Lenders could elect to declare all amounts outstanding, if any, to be immediately due and payable and terminate all commitments to extend further credit. If there are any amounts outstanding that we are unable to repay, the Lenders could proceed against the collateral granted to it to secure such indebtedness. We ~~have a limited operating history of commercializing products, which may make it difficult to evaluate our business and prospects. We~~ are ~~an early~~ **a commercial** - stage ~~commercial~~ company. Prior to our commercialization of Auvelity and Sunosi in 2022 **, and the recent approval of Symbravo** , we had not obtained marketing approvals for any product candidates, manufactured products on a commercial scale or arranged for a third party to do so on our behalf, or conducted sales and marketing activities necessary for successful commercialization. Consequently, predictions about our future success or viability may not be as accurate as they would be if we had a longer history of successfully developing and commercializing products. We expect our financial condition and operating results to continue to fluctuate from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. We have transitioned from a company with solely a research and development focus to a company also capable of undertaking commercial activities. We may **continue to** encounter unforeseen expenses, difficulties, complications and delays, and **this** may not be **a** successful ~~in such a~~ transition. We are currently operating in a period of economic uncertainty and capital markets disruption, which has been significantly impacted by geopolitical instability **, ongoing military conflicts between Russia and Ukraine and between Israel and Hamas, Hezbollah, and the Houthis, and record inflation** . Our business, financial condition **,** and results of operations could be materially adversely affected by any negative impact on the global economy and capital markets resulting from **the conflicts in Ukraine and the Middle East,** geopolitical tensions **, or record inflation** . U. S. and global markets are experiencing volatility and disruption following the escalation of geopolitical tensions and the start of the military conflict between Russia and Ukraine. On February 24, 2022, a full- scale military invasion of Ukraine by Russian troops was reported. Although the length and impact of the ongoing military conflict is highly unpredictable, the conflict in Ukraine could lead to market disruptions, including significant volatility in commodity prices, credit and capital markets, as well as supply chain interruptions. We are continuing to monitor the situation in Ukraine and globally and assessing its potential impact on our business. Additionally, the military conflict in Ukraine has led to sanctions and other penalties being levied by the United States, European Union and other countries against Russia. Additional potential sanctions and penalties have also been proposed and / or threatened. Russian military actions and the resulting sanctions could adversely affect the global economy and financial markets and lead to instability and lack of liquidity in capital markets, potentially making it more difficult for us to obtain additional funds. In addition, on October 7, 2023, Hamas militants and members of other terrorist organizations infiltrated Israel' s southern border from the Gaza Strip and conducted a series of terror attacks on civilian and military targets. Shortly following the attack, Israel' s security cabinet declared war against Hamas, and Israel launched an aerial bombardment of various targets within the Gaza Strip and then also began ground operations in the Gaza Strip, which remain ongoing. ~~It~~ **Other terrorist and / or regional organizations have joined the hostilities as well, including Hezbollah in Lebanon, and the Houthis in Yemen, and it** is

possible that other ~~terrorist and / or regional organizations~~ **countries in the Middle East, including Iran,** will ~~join the~~ **become further involved in** hostilities **with Israel, resulting in a further widening of the conflict. The intensity and duration of Israel' s current wars are difficult to predict** as **are such wars' implications for** ~~well, resulting in a widening of the conflict, which could negatively impact~~ the global economy ~~. Furthermore, because of current geopolitical tensions, the Biden administration has recently signed multiple executive orders regarding China. One particular executive order titled Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy, signed on September 12, 2022, will likely impact the pharmaceutical industry to encourage U. S. domestic manufacturing of pharmaceutical products. Moreover, there have been Congressional legislative proposals, such as the recent bill titled the Biosecure Act, to discourage contracting with Chinese companies on the development or manufacturing of pharmaceutical products. Any additional executive orders or legislative action regarding or potential sanctions on China could materially impact our current manufacturing partners~~ . Although our business has not been materially impacted by these geopolitical issues **, or the U. S. domestic political climate,** to date, it is impossible to predict the extent to which our operations, or those of our suppliers and manufacturers, will be impacted in the short and long term, or the ways in which ~~the conflict~~ **conflicts** may impact our business. The extent and duration of ~~the~~ military action, sanctions **,** and resulting market disruptions are impossible to predict, but could be substantial. Any such disruptions may also magnify the impact of other risks described herein **. Political uncertainty may have an adverse impact on our operating performance and results of operations. General political uncertainty may have an adverse impact on our operating performance and results of operations. In particular, the U. S. continues to experience significant political events that cast uncertainty on global financial and economic markets, especially following the recent presidential election. It is presently unclear exactly what actions the second Trump administration in the U. S. will implement, and if implemented, how these actions may impact the biopharmaceutical industry in the U. S. Any actions taken by the Trump administration, including the many recent executive orders, may have a negative impact on the U. S. economy and on our business, financial condition, and results of operations** . Climate change or legal, regulatory or market measures to address climate change may negatively affect our business, results of operations, cash flows and prospects. We believe that climate change has the potential to negatively affect our business and results of operations, cash flows and prospects. We are exposed to physical risks (such as extreme weather conditions or rising sea levels), risks in transitioning to a low- carbon economy (such as additional legal or regulatory requirements, changes in technology, market risk **,** and reputational risk) and social and human effects (such as population dislocations and harm to health and well- being) associated with climate change. These risks can be either acute (short- term) or chronic (long- term). The adverse impacts of climate change include increased frequency and severity of natural disasters and extreme weather events such as hurricanes, tornados, wildfires (exacerbated by drought), flooding, and extreme heat. Extreme weather and sea- level rise pose physical risks to our facilities as well as those of our suppliers. Such risks include losses incurred as a result of physical damage to facilities, loss or spoilage of inventory, and business interruption caused by such natural disasters and extreme weather events. Other potential physical impacts due to climate change include reduced access to high- quality water in certain regions and the loss of biodiversity, which could impact future product development. These risks could disrupt our operations and its supply chain, which may result in increased costs. New legal or regulatory requirements may be enacted to prevent, mitigate, or adapt to the implications of a changing climate and its effects on the environment. These regulations, which may differ across jurisdictions, could result in us being subject to new or expanded carbon pricing or taxes, increased compliance costs, restrictions on greenhouse gas emissions, investment in new technologies, increased carbon disclosure and transparency, upgrade of facilities to meet new building codes, and the redesign of utility systems, which could increase our operating costs, including the cost of electricity and energy used by us. Our supply chain would likely be subject to these same transitional risks and would likely pass along any increased costs to us. RISKS RELATED TO OUR BUSINESS AND THE DEVELOPMENT OF OUR PRODUCT CANDIDATES We currently have ~~two~~ **three** products approved for commercial distribution. We have invested a significant portion of our efforts and financial resources in the development of our product candidates. Our business, including our ability to generate revenue, depends entirely on the successful commercialization of **Auvelity,** Sunosi **,** and ~~Auvelity~~ **Symbravo,** and the successful development and commercialization of our product candidates and / or future in- licensing activities, which may never occur. Furthermore, given the nature of our business, the biopharmaceutical industry in general and the uncertainty and costs associated with developing and commercializing our products within a complicated and costly regulatory regime, our goals, plans and assumptions with respect to our products may evolve or change. For example, we may not continue to emphasize, focus our research and development efforts on or direct resources to certain of our product candidates, and we may shift our focus and resources to our other current or future products. Any such change in our business strategy could harm our business, cause uncertainty or confusion in the marketplace or harm the clinical prospects of our products. Our product candidates will require additional clinical and non- clinical development, regulatory approval, commercial manufacturing arrangements, significant marketing efforts, and further investment before we generate any revenues from the sale of such product candidates. **Multiple clinical** ~~A Phase 3 trial~~ **trials** ~~with AXS- 05 in AD agitation, a Phase 3 trial with AXS- 12 in narcolepsy, and a Phase 3 trial of solriamfetol in ADHD~~ are ongoing. As a result of one or more risks discussed in this section, we cannot assure you that we will meet projected timelines related to these trials. We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the FDA or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates. Even if our product candidates are approved, they may be subject to limitations on the indicated uses for which they may be marketed, distribution restrictions, or to other conditions of approval, may contain significant safety warnings, including boxed warnings, contraindications, and precautions, may not be approved with label statements necessary or desirable for successful commercialization, or may contain requirements for costly post- market testing and surveillance, or other requirements, including the submission of a ~~risk evaluation and mitigation strategy, or~~ REMS ~~,~~ to monitor the safety or efficacy of the

products. If we do not receive regulatory approval for, and successfully commercialize, our product candidates, we will not be able to generate revenue from these product candidates in the foreseeable future, or at all. Any significant delays in obtaining approval for and commercializing our product candidates will have a material adverse impact on our business and financial condition. Although we submitted NDAs to the FDA for Auvelity (which was approved) and for **Symbravo** ~~AXS- 07~~ for the acute treatment of migraines (which received a CRL **and has now been approved**), we have not otherwise submitted an NDA to the FDA, or similar drug approval filings to comparable foreign authorities, for any product candidate, and we cannot be certain that our current or future product candidates will be successful in clinical trials or receive regulatory approval. Our product candidates are susceptible to the risks of failure inherent at any stage of product development, including the appearance of unexpected adverse events or failure to achieve its primary endpoints in subsequent clinical trials, including our initiated and planned Phase 3 clinical trials. We conducted one interim analysis for the Phase 2 / 3 trial of AXS- 05 in TRD and one interim analysis for the Phase 2 / 3 trial of AXS- 05 for the treatment of AD agitation. We may elect to conduct interim analyses for our other clinical trials. Interim results of a clinical trial do not necessarily predict final results, and interim results may result in early stoppage of our clinical trials for futility or modifications to our clinical trials, including the addition of additional subjects. Further, our product candidates may not receive regulatory approval even if they are successful in clinical trials. If approved for marketing by applicable regulatory authorities, our ability to generate revenues from our product candidates depend on our ability to: • create market demand for our product candidates through our own marketing and sales activities, and any other arrangements to promote these product candidates that we may otherwise establish; • receive regulatory approval for claims that are necessary or desirable for successful marketing; • hire, train, and deploy a sales force to commercialize our product candidates; • manufacture (or have manufactured by third parties) our product candidates in sufficient quantities and at acceptable quality and manufacturing cost to meet commercial demand at launch and thereafter; • establish and maintain agreements with wholesalers, distributors, and group purchasing organizations on commercially reasonable terms; • create partnerships with, or offer licenses to, third parties to promote and sell our product candidates in foreign markets where we receive marketing approval; • maintain patent and trade secret protection and regulatory exclusivity for our product candidates; • launch commercial sales of our product candidates, whether alone or in collaboration with others; • achieve market acceptance of our product candidates by patients, the medical community, and government and private third - party payors; • achieve appropriate reimbursement for our product candidates; • effectively compete with other therapies; and • maintain a continued acceptable safety profile of our product candidates following launch. Potential conflicts of interest exist with respect to the intellectual property rights that we license from an entity owned by our Chief Executive Officer and Chairman of the Board, and it is possible that our interests and their interests may diverge. In 2012, we entered into three exclusive license agreements with Antecip ~~Bioventures II LLC, or Antecip~~ , an entity owned by our Chief Executive Officer and Chairman of the Board, Herriot Tabuteau, M. D., in which we were granted exclusive licenses to develop, manufacture, and commercialize Antecip' s patents and applications related to the development of certain of the Company' s then current product candidates. The patents licensed from Antecip include certain intellectual property pertaining to the Company' s Auvelity product / AXS- 05 portfolio product. Although Dr. Tabuteau dedicates all of his working time to us, because Antecip is an inactive intellectual property holding company, he may face potential conflicts of interest regarding these licensing transactions as a result of his ownership of Antecip. The license agreements provide that, subject to the reasonable consent of Antecip, we have the right to control the prosecution or defense, as the case may require, of a patent infringement claim involving the licensed intellectual property. Our interests with respect to pleadings and settlements in such cases may be at odds with those of Antecip. If there is a dispute between us and Antecip, Dr. Tabuteau will have a conflict of interest because he may, at the time of a prospective dispute, simultaneously have a financial interest in and owe a fiduciary duty to Antecip and simultaneously have a financial interest in and owe a fiduciary duty to us. For example, if a contractual dispute arises between us and Antecip under any of the license agreements we have with Antecip, Dr. Tabuteau may be in a position where he would benefit if Antecip prevails, to the detriment of our business or our investors, even though he is an officer and director of our company, because he is the sole owner of Antecip. Similarly, if we have a claim of any kind against Antecip, Dr. Tabuteau may be, even as our Chief Executive Officer and Chairman of the Board, reluctant to assert a claim by us against Antecip because of his financial interest in Antecip. We cannot assure you that any conflicts will be resolved in our favor, and as a result, our business could be impeded or materially harmed. We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success. Because we have limited financial and managerial resources, we focus on developing product candidates for specific indications that we identify as most likely to succeed, in terms of both its regulatory approval and commercialization. As such, we are currently primarily focused on the development of solriamfetol for additional indications, AXS- 05 for the treatment of agitation associated with AD ~~,~~ and smoking cessation ~~, AXS- 07 for the acute treatment of migraines~~ , AXS- 12 for the treatment of narcolepsy **,** and AXS- 14 for the treatment of fibromyalgia. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that may prove to have greater commercial potential. Additionally, as more fully described in " Business — Material License Agreements, " we are required to pay to an entity owned by our Chief Executive Officer and Chairman of the Board certain royalty payments related to the sales of the Company' s Auvelity product / AXS- 05 portfolio product, as well as two product candidates that are not currently in active development. This may influence management' s decision concerning which product candidates or indications to pursue and / or the manner in which our products are commercialized. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing, or other royalty arrangements in cases in which it would have been more advantageous for us to retain

sole development and commercialization rights to such product candidate. Our future growth may depend on our ability to identify and develop product candidates **,** and if we do not successfully identify and develop product candidates or integrate them into our operations, we may have limited growth opportunities. A component of our business strategy is to continue to develop a pipeline of product candidates by developing products that we believe are a strategic fit with our focus on ~~central nervous system, or~~ CNS ~~, therapeutics~~ ---- **therapies** . However, these business activities may entail numerous operational and financial risks, including: • difficulty or inability to secure financing to fund business activities for such development; • disruption of our business and diversion of our management' s time and attention; • higher than expected development costs; • exposure to unknown liabilities; • difficulty in managing multiple product development programs; and • inability to successfully develop new products or clinical failure. For instance, our prior efforts have resulted in our decision not to further develop certain product candidates that, at one time, appeared to be promising. Likewise, we received a CRL from the FDA relating to the Company' s **Symbravo** ~~AXS- 07 portfolio~~ product in 2022 (we **have since obtained approval** ~~intend to resubmit the NDA~~ for **Symbravo** ~~AXS- 07~~) ~~. We have limited resources to identify and execute the development of products~~ . Moreover, we may devote resources to potential development that are never completed, or we may fail to realize the anticipated benefits of such efforts. If we do not successfully develop and commercialize product candidates, we may not be able to obtain revenues from such product candidates in future periods. We are not permitted to commercialize, market, promote, or sell any product candidate in the United States without obtaining marketing approval from the FDA. ~~Comparable foreign regulatory~~ **In the EU, we are not permitted to commercialize, market, promote, or sell any product candidate without obtaining marketing approval from the EC or national competent** authorities **at** ~~, such as~~ the **EU member state level** ~~European Medicines Agency, or EMA, impose similar restrictions~~ . In the United States, we currently plan to, at least initially, seek approval of some of our product candidates using the 505 (b) (2) pathway. These 505 (b) (2) product candidates include **additional indications for** AXS- 05 ~~and AXS- 07~~ . The FDA interprets Section 505 (b) (2) of the ~~Federal Food, Drug, and Cosmetic Act, or~~ FDCA ~~,~~ for purposes of approving an NDA, to permit the applicant to rely, in part, upon published literature or the FDA' s previous findings of safety and efficacy for an approved product. The FDA, though, requires companies to perform additional clinical trials or preclinical studies to support any deviation from the previously approved product and to support reliance on the FDA' s prior findings of safety and efficacy or published literature. Under the 505 (b) (2) pathway, the FDA may approve our product candidates for all or some of the label indications for which the referenced product has been approved, as well as for any new indication sought pursuant to the Section 505 (b) (2) process. The label, however, may require all or some of the limitations, contraindications, warnings, or precautions included in the reference product' s label, including a box warning (commonly referred to as a " black box warning "), or may require additional limitations, contraindications, warnings, or precautions, including class - wide warnings. For instance, antidepressants, including Auvelity, include a class - wide black box warning regarding the increased risk of suicidal thoughts and behavior. In addition, because we plan to file certain product candidates under an NDA submitted pursuant to 505 (b) (2), we will rely, at least in part, upon a reference drug and published literature. For example, we **have and / or** intend to rely on third- party studies in the published literature as well as FDA findings of safety and efficacy for approved drug products containing the same active molecules in AXS- 05 ~~and AXS- 07~~ . If the FDA disagrees with our conclusions regarding the appropriateness of our reliance on a reference drug or published literature, we could be required to conduct additional clinical trials or other studies to support our NDA, which could lead to unanticipated costs and delays or to the termination of our development program. If we are unable to obtain approval for our pharmaceutical formulations through the 505 (b) (2) NDA process, we may be required to pursue the more expensive and time consuming 505 (b) (1) approval process, which consists of full reports of investigations of safety and effectiveness conducted by or for the applicant. In addition, because we have submitted NDAs for AXS- 05 and AXS- 07 pursuant to the 505 (b) (2) process, we have not conducted certain additional clinical trials for these product candidates and, as such, we will have less experience with actual testing of these product candidates. There may also be circumstances under which the FDA would not allow us to pursue a 505 (b) (2) application. For instance, should the FDA approve a pharmaceutically equivalent product to our product candidates before we obtain approval, we would no longer be able to use the 505 (b) (2) pathway. In that case, it is the FDA' s policy that the appropriate submission would be an ANDA, for a generic version of the approved product. We may, however, not be able to immediately submit an ANDA or have an ANDA approval made effective, as we could be blocked by others' periods of patent and regulatory exclusivity protection. Notwithstanding the approval of a number of products by the FDA under 505 (b) (2) over the last few years, pharmaceutical companies and others have objected to the FDA' s interpretation of Section 505 (b) (2). If the FDA' s interpretation of Section 505 (b) (2) is successfully challenged, the FDA may change its policies and practices with respect to Section 505 (b) (2) regulatory approvals, which could delay or even prevent the FDA from approving any NDA that we submit pursuant to the 505 (b) (2) process. Moreover, our inability to pursue a 505 (b) (2) application could result in new competitive products reaching the market more quickly than our product candidates, which could hurt our competitive position and our business prospects. ~~An NDA submitted under Section 505 (b) (2) subjects us to the risk that we may be subject to a patent infringement lawsuit or regulatory actions that would delay or prevent the review or approval of our product candidates. Under the Hatch- Waxman Act, the holder of patents listed in the Orange Book for NDAs that a 505 (b) (2) application references may file a patent infringement lawsuit after receiving notice of the paragraph IV certification. Filing of a patent infringement lawsuit against the filer of the 505 (b) (2) applicant within 45 days of the patent or NDA owner' s receipt of notice triggers a one time, automatic, 30 months stay of the FDA' s ability to make the 505 (b) (2) NDA approval effective. In such a case, the FDA may not make the 505 (b) (2) NDA approval effective until the earlier of 30 months from the receipt of the notice of the paragraph IV certification, the expiration of the patent, when the infringement case concerning each such patent was favorably decided in the applicant' s favor or settled, or such shorter or longer period as may be ordered by a court. Accordingly, we may invest a significant amount of time and expense in the development of one or more product candidates only to be subject to significant delay and patent litigation before such product candidates may be commercialized, if at all. In addition, a 505 (b)~~

~~(2) application approval will not be made effective until any existing non- patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, or NCE, or exclusivities for changes to NCEs listed in the Orange Book for the referenced product have expired or, if possible, are carved out from the label. In practice, companies that produce branded reference listed drugs often bring patent litigation against applicants that seek regulatory approval to market generic or reformulated versions of their products. Litigation to enforce or defend intellectual property rights is often complex and often involves significant expense and can delay or prevent introduction or sale of our product candidates. If a court finds patents valid and infringed by our product candidates, we may be required to cease selling, relinquish or destroy existing stock, or pay monetary damages unless we can obtain a license from the patent holder. There may also be situations where we use our business judgment and decide to market and sell our approved products, notwithstanding the fact that allegations of patent infringement have not been finally resolved by the courts, an approach known as an " at risk launch. " The risk involved in doing so can be substantial because the remedies available to the owner of a patent for infringement may include, among other things, damages measured by the profits lost by the patent owner which may be greater than the profits earned by the infringer. In the case of willful infringement, such damages may be increased up to three times. An adverse decision in patent litigation could have a material adverse effect on our business, financial position, and results of operations and could cause the market value of our common stock to decline.~~ The regulatory approval **timelines and** processes of the FDA and comparable foreign authorities are lengthy, time consuming, and inherently unpredictable. If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals, we will not be able to commercialize our product candidates as expected, and our ability to generate revenue will be materially impaired. The **timeline for review and** time required to obtain approval by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities and the availability and prioritization of regulatory agency resources. **The timeline for regulatory approval can be affected by a variety of factors, including budget and funding levels, agency staffing, and statutory, regulatory, and policy changes.** In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate' s clinical development, vary among jurisdictions, and / or require us to amend our clinical trial protocols or conduct additional studies that require regulatory or ~~institutional review board, or~~ IRB ~~,~~ approval, or otherwise cause delays in the approval or rejection of an application. To date, we have submitted two NDAs to the FDA and have obtained regulatory approval for ~~one~~ **both** of our product candidates, Auvelity **and Symbravo** . It is possible that none of our other existing product candidates, or any product candidates we may seek to develop in the future, will ever obtain regulatory approval. Any delay in obtaining or failure to obtain required approvals **or uncertainty in the timing of regulatory action** could materially adversely **impact our development efforts and** affect our ability or that of any of our collaborators to generate revenue from the particular product candidate, which likely would result in significant harm to our financial position and adversely impact our stock price. Our products and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale, and distribution, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States, and by the EMA ~~,~~ **and / or national competent authorities** in Europe, and similar regulatory authorities outside the United States and Europe. Failure to obtain marketing approval for a product candidate will prevent us from commercializing the product candidate. We have limited experience in filing and supporting the applications necessary to gain marketing approvals and rely on third ~~-~~ party contract research organizations, or CROs, and consultants to assist us in this process. Securing marketing approval requires the submission of extensive preclinical and clinical data and supporting information to regulatory authorities for each therapeutic indication to establish the product candidate' s safety and efficacy for that indication and the submission of information about the product manufacturing process to, and inspection of manufacturing facilities and clinical trial sites by, the regulatory authorities. Clinical testing is expensive and can take many years to complete, and its outcome is inherently uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies; our product candidates' mechanism of action; studies conducted by third parties in different patient populations, using different products, or using different study designs; and early clinical trials of our product candidates may not be predictive of the results of later - stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical trials. Preclinical studies may also reveal unfavorable product candidate characteristics, including safety concerns. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials. Our future clinical trial results may not be successful. Moreover, should there be a flaw in a clinical trial, it may not become apparent until the clinical trial is well advanced. We may also experience numerous unforeseen events during, or as a result of, clinical trials and in the course of our preparation, submission, and review of NDA filings that could delay or prevent our ability to receive marketing approval or commercialize our product candidates, including: • regulators or IRBs may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site or amend trial protocols; • we may experience delays in reaching, or fail to reach, agreement on acceptable clinical trial contracts or clinical trial protocols with prospective trial sites and our CROs; • clinical trials of our product candidates may produce negative or inconclusive results, or our studies may fail to reach the necessary level of statistical or clinical significance, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs; • interim analyses may result in our clinical trials being discontinued for safety or futility reasons or may result in modifications to our clinical trials that prolong the trials or make them difficult and more expensive to complete, such as increases in the number of subjects; • the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate, or participants may drop out of these clinical trials at a higher rate than we anticipate; • our third - party contractors may fail to comply with regulatory requirements or the clinical trial protocol, or meet

their contractual obligations to us in a timely manner, or at all, or we may be required to engage in additional clinical trial site monitoring; • we, the regulators, or IRBs may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or a finding that the participants are being exposed to unacceptable health risks, undesirable side effects, or other unexpected characteristics of the product candidate, or due to findings of undesirable effects caused by a chemically or mechanistically similar drug or drug candidate. We may also discontinue clinical research and programs due to changing business priorities; • changes in marketing approval policies during the development period rendering our data insufficient to obtain marketing approval; • changes in or the enactment of additional statutes or regulations; • changes in regulatory review for each submitted product application; • the cost of clinical trials of our product candidates may be greater than we anticipate, or we may have insufficient funds for a clinical trial or to pay the substantial user fees required by the FDA upon the filing of an NDA; • the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; • we may decide, or regulators may require us, to conduct additional clinical trials, analyses, reports, data, or preclinical / nonclinical studies than we currently plan, or we may abandon product development programs. For instance, although we believe that we are able to rely on the Phase 2 CONCERT trial and ~~ongoing~~ SYMPHONY trial to support an NDA for AXS- 12 for the treatment of cataplexy and narcolepsy and the completed Phase 2 trial and Phase 3 trial to support an NDA for AXS- 14 for the management of fibromyalgia, the FDA could still require additional studies to support the approval of an NDA for these product candidates. The outcome of our studies may further necessitate additional clinical or preclinical work; • we may fail to reach an agreement with regulators regarding the scope or design of our clinical trials; • we may have delays in adding new investigators or clinical trial sites, or we may experience a withdrawal of clinical trial sites; • patients that enroll in our studies may misrepresent their eligibility or may otherwise not comply with the clinical trial protocol, resulting in the need to drop the patients from the study or clinical trial, increase the needed enrollment size for the study or clinical trial, or extend the study' s or clinical trial' s duration; • there may be regulatory questions regarding interpretations of data and results, or new information may emerge regarding our product candidates; • the FDA or comparable foreign regulatory authorities may disagree with our study design or our interpretation of data from preclinical studies and clinical trials or find that a product candidate' s benefits do not outweigh its safety risks. For instance, in our communications with the FDA, the FDA has raised questions and had comments regarding our preclinical studies and clinical trials, such as comments on the acceptability of the proposed trial designs for our product candidates, the number of patients planned for our studies, our data analysis plans, the species and doses used in our preclinical studies, and the results of our preclinical studies; • the FDA or comparable foreign regulatory authorities may disagree with our belief that certain product attributes are advantageous or may require further study of product attributes that are different than our reference listed drugs. Pharmacokinetic differences between our product candidates and the reference listed drugs, may also make bridging studies more difficult or may prevent us from using the 505 (b) (2) pathway. If we are prevented from using the 505 (b) (2) pathway, we will need to use the more time consuming and expensive NDA pathway to receive product approval; • the FDA or comparable foreign regulatory authorities may not accept data from studies with clinical trial sites in foreign countries; • the FDA or comparable foreign regulatory authorities may disagree with our intended indications; • the FDA or comparable foreign regulatory authorities may fail to approve or subsequently find fault with the manufacturing processes or our manufacturing facilities for clinical and future commercial supplies; • in connection with the CMC data necessary for our NDA filing and approval, we will need to conduct stability studies and provide stability data to establish appropriate retest or expiration dating periods; • ~~applicable to all future drug substance and drug product batches manufactured, packaged, and stored under similar circumstances, to establish the long- term storage conditions, and to provide evidence of the effect of various environmental conditions on the quality of the drug substance and drug product-- ~~our product candidates may not demonstrate sufficient long- term stability to support an NDA filing or obtain approval, or the product shelf life may be limited by stability results; • there may be delays in the FDA' s ability to conduct necessary Pre- Approval Inspections, or PAIs, and more generally the FDA or comparable foreign regulatory authorities may take longer than we anticipate to make a decision on our product candidates; and • we may not be able to demonstrate that a product candidate provides an advantage over current standards of care or current or future competitive therapies in development. Moreover, if we are required to conduct additional clinical trials or other testing of our product candidates beyond that which we currently contemplate, if we are unable to successfully complete clinical trials or other testing of our product candidates, if the results of these trials or tests are not positive, or are only modestly positive **,** or if there are safety concerns, we may: • be delayed in obtaining marketing approval for our product candidates; • not obtain marketing approval at all; • obtain approval for indications or patient populations that are not as broad as intended or desired or are not covered by our intellectual property; • obtain approval with labeling that includes significant use or distribution restrictions, including restrictions on the intended patient population, or safety warnings, including boxed warnings, contraindications, and precautions, or may not include label statements necessary or desirable for successful commercialization; • be subject to additional post - marketing testing and surveillance requirements, including REMS; or • have the product removed from the market after obtaining marketing approval. **In addition, the FDA' s and other regulatory authorities' policies with respect to clinical trials may change and additional government regulations may be enacted. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies governing clinical trials, our product development plans may be impacted. For example, in December 2022, with the passage of the Food and Drug Omnibus Reform Act (FDORA), Congress required sponsors to develop and submit a diversity action plan for each phase 3 clinical trial or any other " pivotal study " of a new drug or biological product. These plans are meant to encourage the enrollment of more diverse patient populations in late- stage clinical trials of FDA- regulated products. Specifically, diversity action plans must include the sponsor' s goals for enrollment, the underlying rationale for those goals, and an explanation of how the sponsor intends to meet them. In terms of the compliance deadline, the requirement to submit a diversity action plan applies to clinical studies for which enrollment**

begins 180 days after the final guidance is published, which was originally anticipated to occur in June 2025. In January 2025, the previously- published draft guidance was removed from the FDA website, which may impact the eventual publication date of the final guidance, and as a result, may delay the compliance deadline. Our product candidate development costs will also increase if we experience delays in testing or approvals and we may not have sufficient funding to complete the testing and approval process for any of our product candidates. We may be required to obtain additional funds to complete clinical trials and prepare for possible commercialization of our product candidates. We do not know whether any additional preclinical tests or clinical trials will be required, will begin as planned, will need to be restructured, or will be completed on schedule, or at all. Significant delays relating to any preclinical studies or clinical trials also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors, or the competitors of our collaborators, to bring products to market before we do and impair our ability to successfully commercialize our product candidates and may harm our business and results of operations. In addition, many of the factors that cause, or lead to, such delays may ultimately lead to the denial of marketing approval of any of our product candidates. If any of this occurs, our business, financial condition, results of operations, and prospects may be materially harmed. Regulatory authorities have substantial discretion in the approval process and may refuse to accept any application or may decide that our data are insufficient for approval and require additional preclinical studies, clinical trials, or other studies. In addition, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit, or prevent marketing approval of a product candidate. During the course of review, the FDA may also request or require additional CMC, or other data and information, and the development and provision of these data and information may be time consuming and expensive. For example, in the CRL with respect to our NDA for **Symbravo** ~~AXS- 07~~, the FDA noted the need for additional CMC data **. Symbravo was subsequently approved by the FDA** . Furthermore, there is the possibility that the FDA or comparable foreign regulatory authorities have not previously reviewed product candidates for the indications we are pursuing, such as AD agitation or smoking cessation. As a result, we may experience delays in regulatory approval due to uncertainties in the approval process. If we experience delays in obtaining approval, if we fail to obtain approval of a product candidate or if the label for a product candidate does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate, the commercial prospects for such product candidate may be harmed and our ability to generate revenues from that product candidate will be materially impaired. Furthermore, there is the possibility that the FDA or comparable foreign regulatory authorities have not previously reviewed product candidates for the indications we are pursuing, such as AD agitation or smoking cessation. As a result, we may experience delays in regulatory approval due to uncertainties in the approval process. If we cannot demonstrate an acceptable safety and toxicity profile for our product candidates, we will not be able to continue our clinical trials of or obtain approval for those product candidates. In order to obtain approval of a product candidate we must demonstrate safety in various nonclinical tests (including, for example, carcinogenicity studies, drug- drug interaction studies, and toxicity studies), in addition to human clinical trials. At the time of initiating human clinical trials, we may not have conducted or may not conduct all the types of nonclinical testing ultimately required by regulatory authorities, or future nonclinical tests may indicate safety concerns regarding our product candidates. Nonclinical testing and clinical testing are both expensive and time- consuming and have uncertain outcomes. Even if initial tests appear favorable, later testing may have unfavorable results. We may experience numerous unforeseen events during, or as a result of, the testing process, which could delay or prevent our ability to develop or commercialize our product candidates, including: • our preclinical or nonclinical testing may produce inconclusive or negative safety results, which may require us to conduct additional nonclinical testing or to abandon product candidates; • our product candidates may have unfavorable pharmacology or toxicity characteristics or suggest possible drug- drug interaction; • our product candidates may cause undesirable side effects; and • the FDA or other regulatory authorities may determine that additional safety testing is required. Any such events would increase our costs and could delay or prevent our ability to commercialize our product candidates, which could adversely impact our business, financial condition and results of operation. The FDA may determine that any of our current or future product candidates have undesirable side effects that could delay or prevent their regulatory approval or commercialization. Undesirable side effects caused by our product candidates could cause us, IRBs, and other reviewing entities or regulatory authorities to interrupt, delay, or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign authorities. For example, if concerns are raised regarding the safety of a new drug as a result of undesirable side effects identified during clinical or preclinical testing, the FDA may order us to cease further development, decline to approve the drug, or issue a letter requesting additional data or information prior to making a final decision regarding whether or not to approve the drug. The number of requests for additional data or information issued by the FDA in recent years has increased and resulted in substantial delays in the approval of several new drugs. Undesirable side effects caused by any of our current or future product candidates could also result in denial of regulatory approval by the FDA or other comparable foreign authorities for any or all targeted indications or the inclusion of unfavorable information in our product labeling, such as limitations on the indicated uses for which the products may be marketed or distributed, a label with significant safety warnings, including boxed warnings, contraindications, and precautions, a label without statements necessary or desirable for successful commercialization, or may result in requirements for costly post - marketing testing and surveillance, or other requirements, including REMS, to monitor the safety or efficacy of the products, and in turn prevent us from commercializing and generating revenues from the sale of any of our current or future product candidates. Based on the side effects disclosed in ~~FDA~~ **the EMA required** product ~~labeling~~ --- **label** for marketed drugs that contain the same active ~~molecules~~ - **molecule** as our product ~~candidate~~ **candidates** , AXS- ~~07~~ **12 and AXS- 14** may result in ~~fatigue~~ **decreased appetite** , ~~confusion~~ **insomnia, agitation, anxiety, dizziness, headache, paresthesia, akathisia, dysgeusia, accommodation disorder, mydriasis, glaucoma, vertigo, tachycardia, palpitations, vasodilation, hypotension, hypertension** , dry mouth, ~~diarrhea~~ **vomiting** , **hyperhidrosis** ~~nausea, insomnia, anemia, increased appetite, anxiety, sweating, dizziness, palpitations, arrythmia, tachycardia, abnormal vision,~~

~~syncope, seizure, tremor, tinnitus, dizziness, somnolence, paresthesia, dysgeusia, dyspepsia, constipation, weight increase or decrease, gastritis, hematuria, flatulence, esophagitis, gastric ulcers, gastroesophageal reflux, gastrointestinal hemorrhages, colitis~~ , rash, **sensation of incomplete bladder emptying, urinary tract infection, dysuria, urinary retention, erectile dysfunction, ejaculatory** pain ~~or tightness in the chest~~ , ~~neck~~ **ejaculatory delay** , **chills** ~~throat or jaw, upper respiratory tract infections, influenza- like symptoms~~ , or other adverse events or potential adverse events reported or discussed in the product labels for ~~meloxicam - containing or rizatriptan- containing products including Anjeso, Vivlodex, Mobic, and Maxalt. Based on the side effects disclosed in the EMA required product label for marketed drugs that contain the same active molecule as our product candidate, AXS- 12 and AXS- 14 may result in decreased appetite, insomnia, agitation, anxiety, dizziness, headache, paresthesia, akathisia, dysgeusia, accommodation disorder, mydriasis, glaucoma, vertigo, tachycardia, palpitations, vasodilation, hypotension, hypertension, dry mouth, vomiting, hyperhidrosis, rash, sensation of incomplete bladder emptying, urinary tract infection, dysuria, urinary retention, erectile dysfunction, ejaculatory pain, ejaculatory delay, chills, or other adverse events or potential adverse events reported or discussed in the product labels for~~ reboxetine containing products **,** including Edronax **®** . Known side effects for Auvelity ~~and ,~~ Sunosi **, and Symbravo** are described on the approved labels for those products. In relation to further development efforts with respect to these compounds, different patient populations may react to these compounds differently. For example, AD agitation patients in the case of AXS- 05 or ADHD patients in the case of solriamfetol may experience different side effects than patients taking these products for their currently approved indications. This is particularly true where different dosing, formulations or methods of administration are implicated. If any of our other product candidates are associated with serious adverse events or undesirable side effects or have properties that are unexpected, we may need to abandon development or limit development of that product candidate to certain uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe, or more acceptable from a risk - benefit perspective. The drug - related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in potential product liability claims. Any of these occurrences may significantly harm our business, financial condition, results of operations, and prospects. If we experience delays or difficulties in the enrollment of patients in clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented. We may not be able to initiate or continue conducting clinical trials for our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or similar regulatory authorities outside the United States. Some of our competitors have ongoing clinical trials for product candidates that treat the same indications as our product candidates, and patients who would otherwise be eligible for our clinical trials may instead enroll in clinical trials of our competitors' product candidates. Patient enrollment is affected by other factors **,** including: • the size and nature of the patient population; • the severity of the disease under investigation; • the eligibility criteria for, and design of, the clinical trial in question, including factors such as frequency of required assessments, length of the study, and ongoing monitoring requirements; • the perceived risks and benefits of the product candidate under study, including the potential advantages or disadvantages of the product candidate being studied in relation to other available therapies; • competition in recruiting and enrolling patients in clinical trials; • the efforts to facilitate timely enrollment in clinical trials; • the patient referral practices of physicians; • effectiveness of publicity created by clinical trial sites regarding the trial; • patients' ability to comply with the specific instructions related to the trial protocol, proper documentation, and use of the drug product; • inability to obtain or maintain patient informed consents; • risk that enrolled patients will drop out before completion; • the ability to identify patients for enrollment and maintain a sufficient level of patient participants in our clinical studies; • the ability to monitor patients adequately during and after treatment; and • the proximity and availability of clinical trial sites for prospective patients. Our inability to enroll a sufficient number of patients for our clinical trials would result in significant delays which would cause us to miss our projected timelines and could require us to abandon one or more clinical trials altogether. For instance, because we are seeking regulatory approval for certain indications that may have a narrow or small patient population, it may be difficult to find patients eligible to participate in our clinical studies at a sufficient rate or in a sufficient quantity. We may be required by the FDA to modify the entry criteria for our planned Phase 3 clinical trials and these changes may make it more difficult to enroll patients in our clinical trials. Moreover, patients in our clinical trials, especially patients in our control groups, may be at risk for dropping out of our studies if they are not experiencing relief of their symptoms. A significant number of withdrawn patients would compromise the quality of our data. Enrollment delays or slower periods of enrollment in our clinical trials may result in increased development costs for our product candidates, or the inability to complete development of our product candidates, which would cause the value of our company to decline, limit our ability to obtain additional financing, and materially impair our ability to generate revenues. Development of combination product candidates may present more or different challenges than development of single agent product candidates. Certain product candidates of ours, including AXS- 05 ~~and AXS- 07~~ , are combination therapies. A combination therapy is a single drug product that consists of two or more active ingredients, with each component making a contribution to the claimed effect of the drug. The development of combination drugs may be more complex than the development of single agent products and generally requires that sponsors demonstrate the contribution of each component to the claimed effect and the safety and efficacy of the product as a whole. This requirement may make the design and conduct of clinical trials more complex, requiring more clinical trial subjects. We also may not be able to meet the FDA' s approval standards required for combination products. The FDA' s requirements concerning combination products may change in the future. Moreover, the applicable requirements for approval may differ from country to country. Changes in product candidate manufacturing or formulation may result in additional costs or delay. As product candidates are developed through preclinical studies to late- stage clinical trials towards approval and commercialization, it is common that various aspects of the development program, such as manufacturing methods and formulation, are altered along the way in an effort to optimize processes and results. For instance, as we begin scale- up efforts for commercial- size manufacturing batches, formulation changes may be necessary to improve tablet robustness. Such changes carry the risk that they will not achieve these

intended objectives. Any of these changes could cause our product candidates to perform differently and affect the results of planned clinical trials or other future clinical trials conducted with the altered materials. Such changes may also require additional testing, FDA notification, or FDA approval. This could delay completion of clinical trials; require the conduct of bridging clinical trials or studies, or the repetition of one or more clinical trials; increase clinical trial costs; delay approval of our product candidates; and jeopardize our ability to commence product sales and generate revenue. Failure to obtain marketing approval in international jurisdictions would prevent our products from being marketed abroad. In order to market and sell our products in the ~~European Union, or~~ EU, and many other jurisdictions, we or our third - party collaborators must obtain separate marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the United States generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the United States, it is required that the product be approved for reimbursement before the product can be approved for sale in that country. We or these third parties may not obtain approvals from regulatory authorities outside the United States on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one regulatory authority outside the United States does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. However, the failure to obtain approval in one jurisdiction may compromise our ability to obtain approval elsewhere. We may not be able to file for marketing approvals and may not receive necessary approvals to commercialize our products in any market. ~~Although Breakthrough Therapy, Fast Track, and other designations are designed to expedite the development and review of drugs, they may not ultimately lead to a faster approval process or faster development of regulatory review and they will not increase the likelihood that our product candidates will receive marketing approval, for example, Breakthrough Therapy designation by the FDA for AXS- 05 for the treatment of AD agitation.~~ We have received a Fast Track product designation for AXS- 05 for both the treatment of TRD as well as for the treatment of AD agitation, and we may seek Fast Track designation for other of our current or future product candidates. The FDA may designate a product for Fast Track review if it is intended, whether alone or in combination with one or more other products, for the treatment of a serious or life- threatening disease or condition, and it demonstrates the potential to address unmet medical needs for such a disease or condition. For Fast Track products, sponsors may have greater interactions with the FDA, and the FDA may initiate review of sections of a Fast Track product' s application before the application is complete. This rolling review may be available if the FDA determines, after preliminary evaluation of clinical data submitted by the sponsor, that a Fast Track product may be effective. The sponsor must also provide, and the FDA must approve, a schedule for the submission of the remaining information, and the sponsor must pay applicable user fees. We also received Breakthrough Therapy designation for AXS- 05 for both the treatment of MDD and the treatment of AD agitation, and we may seek Breakthrough Therapy designation for other current or future product candidates. A Breakthrough Therapy is defined as a product candidate that is intended, alone or in combination with one or more other drugs, to treat a serious or life-threatening disease or condition, and preliminary clinical evidence indicates that the product candidate may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For product candidates that have been designated as breakthrough therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Breakthrough Therapy designation also allows the sponsor to request a Priority Review or file sections of the NDA on an ongoing basis for rolling review where the FDA may consider beginning review portions of a marketing application before the full submission is complete. Product candidates designated as Breakthrough Therapies by the FDA are also eligible for Priority Review if supported by clinical data at the time of the submission of the NDA. Breakthrough Therapy or Fast Track designation is within the discretion of the FDA. The receipt of a Breakthrough Therapy or Fast Track designation for a product candidate may not ultimately result in a faster development process or review, and it does not in any way assure approval of product candidates by the FDA. In addition, the FDA may later decide to rescind the Breakthrough Therapy or Fast Track designation for one or more of our applicable product candidates if such product candidates no longer meet the conditions for qualification of this program. For example, we were initially granted Breakthrough Therapy designation for AXS- 12 for the treatment of cataplexy in patients with narcolepsy in August 2020. In July 2021, the FDA rescinded our Breakthrough Therapy designation due to the FDA approving an additional drug product for the treatment of cataplexy in narcolepsy. Regulatory approval is limited by the FDA or comparable foreign regulatory authorities to those specific indications and conditions for which clinical safety and efficacy have been demonstrated, and we may be subject to fines, penalties, injunctions, or other enforcement actions if we are determined to be promoting the use of our products for unapproved or " off - label " uses, resulting in damage to our reputation and business. We, and any of our collaborators, must comply with requirements concerning advertising and promotion for any of our products for which we or they obtain marketing approval. Promotional communications with respect to prescription drugs are subject to a variety of legal and regulatory restrictions and continuing review by the FDA, Department of Justice, HHS' s **OIG** ~~Office of Inspector General~~, state attorneys general, members of Congress, and the public. When the FDA or comparable foreign regulatory authorities issue regulatory approval for a product candidate, the regulatory approval is limited to those specific uses and indications for which a product is approved. If we are not able to obtain FDA **or comparable foreign regulatory authorities'** approval for any desired uses or indications for our products and product candidates, we may not market or promote our products for those indications and uses, referred to as off - label uses, and our business may be adversely affected. We further must be able to sufficiently substantiate any claims that we make for our products including claims comparing our products to other companies' products. While physicians may choose to prescribe drugs for uses that are not described in the product' s labeling and for uses that differ from those tested in clinical studies and approved by the regulatory authorities, we are prohibited from marketing and promoting the products for indications and uses that are not specifically approved by the

FDA or comparable foreign regulatory authorities. These off - label uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities in the United States and in many other major markets do not generally restrict or regulate the behavior of physicians in their choice of treatment within the practice of medicine. Regulatory authorities do, however, restrict communications by pharmaceutical companies concerning off - label use. If we are found to have impermissibly promoted any of our products, we may become subject to significant liability and government fines. The FDA and other agencies actively enforce the laws and regulations regarding product promotion, particularly those prohibiting the promotion of off - label uses, and a company that is found to have improperly promoted a product may be subject to significant sanctions. 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 of permanent injunctions under which specified promotional conduct is changed or curtailed. Thus, we and any of our collaborators will not be able to promote any products we develop for indications or uses for which they are not approved. In the United States, engaging in the impermissible promotion of our products, following approval, for off ~~-~~ - label uses can also subject us to false claims and other litigation under federal and state statutes, including fraud and abuse and consumer protection laws, which can lead to civil and criminal penalties and fines, agreements with governmental authorities that materially restrict the manner in which we promote or distribute drug products and do business through, for example, corporate integrity agreements, suspension or exclusion from participation in federal and state healthcare programs, and debarment from government contracts and refusal of future orders under existing contracts. Recent court decisions have impacted the FDA' s enforcement activity regarding off- label promotion in light of First Amendment considerations; however, there are still significant risks in this area in part due to the potential **FCA** ~~False Claims Act~~ exposure. The **FCA** ~~False Claims Act~~ allows any individual to bring a lawsuit against a pharmaceutical company on behalf of the federal government alleging submission of false or fraudulent claims ~~,~~ or causing others to present such false or fraudulent claims, for payment by a federal program such as Medicare or Medicaid. If the government decides to intervene and prevails in the qui tam lawsuit, the individual will share in the proceeds from any fines or settlement funds. If the government declines to intervene, the individual may pursue the case alone. Under the **FCA** ~~False Claims Act~~ , a penalty may be imposed for each false claim, for example, a claim for payment for each prescription for the product, and, when aggregated, these penalties often total millions of dollars and incentivize qui tam lawsuits. These **FCA** ~~False Claims Act~~ lawsuits against pharmaceutical companies have increased significantly in volume and breadth, leading to several substantial civil and criminal settlements, ~~up to $ 3. 0 billion,~~ pertaining to certain sales practices and promoting off ~~-~~ - label drug uses. This growth in litigation has increased the risk that a pharmaceutical company will have to defend a false claim action; pay settlement fines or restitution, as well as criminal and civil penalties; agree to comply with burdensome reporting and compliance obligations; and be excluded from Medicare, Medicaid, or other federal and state healthcare programs. If we or our collaborators do not lawfully promote our approved products, if any, we may become subject to such litigation and **other actions and** , if we do not successfully defend against such actions, those actions may have a material adverse effect on our business, financial condition, results of operations, and prospects. In the United States, the distribution of product samples to physicians must further comply with the requirements of the U. S. **PDMA** ~~Prescription Drug Marketing Act~~ . If the FDA determines that our promotional materials or activities violate its regulations and policies pertaining to product promotion, it could request that we modify our promotional materials or activities or subject us to regulatory or other enforcement actions, including issuance of warning letters or untitled letters, suspension or withdrawal of an approved product from the market, requests for recalls, payment of civil fines, disgorgement of money, imposition of operating restrictions, injunctions, or criminal prosecution. These regulatory and enforcement actions could significantly harm our business, financial condition, results of operations, and prospects. We are, and will continue to be subject to, ongoing obligations and continued regulatory review, which may result in significant additional expense. Additionally, any of our products, could be subject to labeling and other restrictions and market withdrawal and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our products. Our product (s) are subject to extensive and ongoing requirements of and review by the FDA and other regulatory authorities, including requirements related to the manufacturing processes, post - approval clinical data, labeling, packaging, distribution, adverse event reporting, storage, recordkeeping, export, import, advertising, marketing, and promotional activities for such product. These requirements further include submissions of safety and other post- marketing information, including manufacturing deviations and reports; registration and listing requirements; the payment of annual program fees for our products; continued compliance with cGMP requirements relating to manufacturing, quality control, quality assurance, and corresponding maintenance of records and documents; requirements regarding the distribution of samples to physicians and recordkeeping; and GCP, for any clinical trials that we conduct post - approval. We and any of our collaborators, including our contract manufacturers, could be subject to periodic unannounced inspections by the FDA to monitor and ensure compliance with cGMP and GCP. Application holders must further notify the FDA, and depending on the nature of the change, obtain FDA pre- approval for product and manufacturing changes. Application fees may apply to certain changes. In addition, later discovery of previously unknown adverse events or that the drug is less effective than previously thought or other problems with our products, manufacturers, or manufacturing processes, or failure to comply with regulatory requirements both before and after approval, may yield various results, including: • restrictions on manufacturing or distribution, or marketing of such products; • restrictions on the labeling, including required additional warnings, such as black box warnings, contraindications, precautions, and restrictions on the approved indication or use; • modifications to promotional pieces; • requirements to conduct post - marketing studies or clinical trials; • clinical holds or termination of clinical trials; • requirements to establish or modify a REMS or a comparable foreign authority may require that we establish or modify a similar strategy, that may, for instance, require us to create or modify a medication guide outlining the risks of the previously unidentified side effects for distribution to patients, or restrict distribution of the product, if and when approved, and impose burdensome implementation requirements on

us; • changes to the way the drug is administered; • liability for harm caused to patients or subjects; • reputational harm; • the drug becoming less competitive; • warning or untitled letters; • suspension of marketing or withdrawal of the products from the market; • regulatory authority issuance of safety alerts, Dear Healthcare Provider letters, press releases, or other communications containing warnings or other safety information about the drug; • refusal to approve pending applications or supplements to approved applications that we submit; • recall of products; • fines, damages, restitution, or disgorgement of profits or revenues; • suspension or withdrawal of marketing approvals; • refusal to permit the import or export of our products; • product seizure or detention; • FDA debarment, debarment from government contracts, and refusal of future orders under existing contracts, exclusion from federal healthcare programs, consent decrees, or corporate integrity agreements; or • injunctions or the imposition of civil or criminal penalties, including imprisonment. Any of these events could prevent us from achieving or maintaining market acceptance of the particular ~~products~~ **product**, or could substantially increase the costs and expenses of commercializing such product, which in turn could delay or prevent us from generating significant revenues from its sale. Any of these events could further have other material and adverse effects on our operations and business and could adversely impact our stock price and could significantly harm our business, financial condition, results of operations, and prospects. The FDA' s policies may change and additional government regulations may be enacted that could prevent, limit, or delay regulatory approval of our product candidates or that could impose additional regulatory obligations on our products. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and be subject to regulatory enforcement action. **In addition, there is a great degree of uncertainty regarding how recent U. S. Supreme Court decisions, including Loper Bright Enterprises v. Raimondo, 603 U. S. 369 (2024) and Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 603 U. S. 799 (2024), will impact the FDA' s enforcement and decision-making authority. Loper Bright explicitly overturned Chevron deference, which previously gave judicial deference to administrative action by agencies in the executive branch. Furthermore, the Supreme Court' s decision in Corner Post may result in challenges to FDA decisions by new litigants long into the future. These decisions could result in additional legal challenges to regulations and guidance issued by federal agencies, including the FDA, on which we rely. Any such legal challenges, if successful, could have a material impact on our business. Additionally, the Loper decision may result in increased regulatory uncertainty, inconsistent judicial interpretations, and could impact various aspects of the agency rulemaking process, any of which could adversely impact our business and operations. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action or as a result of legal challenges, either in the United States or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, our business could be materially harmed.** Should any of the above actions take place, they could adversely affect our ability to achieve or sustain profitability. Further, the cost of compliance with post - approval regulations may have a negative effect on our operating results and financial condition ~~. Timelines for the review of our regulatory submissions by the FDA and other regulatory agencies are subject to change and uncertainty, which may delay the potential approval of any product candidates we seek to develop or commercialize. We cannot predict the timeline for review of submissions to any regulatory authorities or when any of our product candidates will receive marketing approval, if at all. The timeline for regulatory approval can be affected by a variety of factors, including disruptive effects of the COVID- 19 pandemic, budget and funding levels, agency staffing, and statutory, regulatory and policy changes. Delays or uncertainty in the timing of regulatory action in response to our submissions could adversely impact our development and commercialization efforts and our business prospects~~. A variety of risks associated with international operations could materially adversely affect our business. We are, and may become party to further agreements, pursuant to which we out- license our products outside of the United States. The Company also currently markets Sunosi in Canada. We expect that we will be subject to additional risks related to entering into international business relationships, including: • different regulatory requirements for approval of drugs in foreign countries; • the potential for so - called parallel importing, particularly within Europe, which is what happens when a local seller, faced with high or higher local prices, opts to import goods from a foreign market (with low or lower prices) rather than buying them locally with EU laws supporting such " free movement of goods " within the EU; • stricter harmonized EU rules on data privacy particularly in relation to **personal data, including** health data **,** than is the case in the United States which are being further toughened with the EU General Data Protection Regulation, or the GDPR, which became enforceable beginning May 25, 2018; • challenges enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States; • unexpected changes in tariffs, trade barriers, and regulatory requirements and in the health care policies of foreign jurisdictions; • economic weakness, including inflation, or political instability in particular foreign economies and markets; • compliance with tax, employment, immigration, and labor laws for employees living or traveling abroad; • foreign taxes, including withholding of payroll taxes; • foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country; • difficulties staffing and managing foreign operations; • workforce uncertainty in countries where labor unrest is more common than in the United States and worker rights tend to be stronger; • costs of compliance with U. S. laws and regulations for foreign operations, including the **FCPA** ~~Foreign Corrupt Practices Act~~ or comparable foreign regulations, and the risks and costs of noncompliance; • production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and • business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters including earthquakes, typhoons, floods, and fires. These and other risks associated with our international operations may materially adversely affect our ability to attain or maintain profitable operations. We **are exposed to market risk from fluctuations in currency exchange rates and interest rates. We operate in multiple jurisdictions, and virtually all sales are denominated in currencies of the local jurisdiction. Additionally, we have entered and may enter into**

business development transactions, borrowings, or other financial transactions that may give rise to currency and interest rate exposure. Since we cannot, with certainty, foresee and mitigate against such adverse changes, fluctuations in currency exchange rates, interest rates, and inflation could negatively affect our business, cash flow, results of operations, financial condition, and prospects. In order to mitigate against the adverse impact of these market fluctuations, we may from time to time enter into hedging agreements. While hedging agreements, such as currency options and forwards and interest rate swaps, may limit some of the exposure to exchange rate and interest rate fluctuations, such attempts to mitigate these risks may be costly and not always successful. We will need to obtain FDA approval (and that of comparable foreign regulatory authorities) of any proposed product names, and any failure or delay associated with such approval may adversely affect our business. Any name we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U. S. Patent and Trademark Office, or USPTO. The FDA typically conducts a review of proposed product names, including an evaluation of the potential for confusion with other product names. The FDA may also object to a product name if it believes the name inappropriately implies medical claims or contributes to an overstatement of efficacy. If the FDA objects to any of our proposed product names, we may be required to adopt alternative names for our product candidates. If we adopt alternative names, we would lose the benefit of any existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product name that would qualify under applicable trademark laws, not infringe the existing rights of third parties, and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner **,** or at all, which would limit our ability to commercialize our product candidates. RISKS RELATED TO THE COMMERCIALIZATION OF OUR PRODUCTS The development and commercialization of new drug products is highly competitive. We face competition with respect to our current products and product candidates and will face competition with respect to any product candidates that we may seek to develop or commercialize in the future, from major pharmaceutical companies, specialty pharmaceutical companies, and biotechnology companies worldwide. There are a number of large pharmaceutical and biotechnology companies that currently market and sell products or are pursuing the development of products for the treatment of CNS disorders. Potential competitors also include academic institutions, government agencies, and other public and private research organizations that conduct research, seek patent protection, and establish collaborative arrangements for research, development, manufacturing, and commercialization. Specifically, there are a large number of companies developing or marketing therapies for CNS disorders, including many major pharmaceutical and biotechnology companies. Among the companies that currently market or are developing therapies that, if approved, our product candidates would potentially compete with include: AbbVie Inc.; Amgen Inc.; Avadel Pharmaceuticals plc; Biogen Inc.; Eli Lilly and Company; H. Lundbeck A / S; Harmony Biosciences **LLC** ; Intra- Cellular Therapies, Inc.; Janssen; Jazz; Otsuka Pharmaceutical Co. Ltd.; Pfizer ~~Inc.; Relmada Therapeutics Inc.; Sage Therapeutics, Inc.~~ ; and Takeda Pharmaceutical Company Limited. Our commercial opportunities could be reduced or eliminated if our competitors develop and commercialize products that are safer, ~~are~~ more effective, have fewer or less severe side effects, ~~are~~ more convenient, or ~~are~~ less expensive than any products that we may develop. Our competitors also may obtain FDA or other regulatory approval for their products more rapidly than we may obtain approval for ours, which could result in our competitors establishing a strong market position before we are able to enter the market. In addition, our ability to compete may be affected in many cases by insurers or other third ~~-~~ - party payors seeking to encourage the use of generic products or therapeutically similar lower cost brands. If our product candidates achieve marketing approval, we expect that they will be priced at a significant premium over competitive generic products, which would further impact our commercialization efforts. Generic forms of the active ingredients of our product candidates, including dextromethorphan, bupropion, meloxicam, rizatriptan, and reboxetine, are available in the United States and abroad and could be used off- label. Any such off- label use could adversely affect our profitability and have a negative effect on our operating results and financial condition. For example, even though meloxicam is not currently approved for the treatment of acute migraine, we would not be able to prevent a physician from prescribing it for such treatment. Nor could we prevent a payor from offering favorable coverage for such product and disadvantaging our product candidates, even if the generics would be used off- label. Many of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals, and marketing approved products than we do. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Early- stage companies may also prove to be significant competitors, particularly through collaborative arrangements with, or acquisition by large and established companies. These third parties compete with us in recruiting and retaining qualified scientific and management personnel and establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs. If the FDA or comparable foreign regulatory authorities approve generic or similar versions of any of our products that receive marketing approval, or such authorities do not grant our products appropriate periods of exclusivity before approving generic or similar versions of our products, the sales of our products could be adversely affected. Once an NDA is approved, the covered product becomes a " reference listed drug " in the FDA' s Orange Book. Manufacturers may seek approval of generic versions of reference listed drugs through submission of ANDAs in the United States. In support of an ANDA, a generic manufacturer need not conduct full clinical studies. Rather, the applicant generally must show that its product has the same active ingredient (s), dosage form, strength, route of administration, and conditions of use or labeling, among other commonalities, as the reference listed drug and that the generic version is bioequivalent to the reference listed drug, meaning it is absorbed in the body at the same rate and to the same extent. For example, in February 2023, we received a paragraph IV certification notice letter from Teva providing notification to the Company that Teva has submitted an ANDA to the FDA seeking approval to manufacture, use, or sell a generic version of Auvelity. Additionally, beginning in August 2023, we received paragraph IV

certification notice letters from six other pharmaceutical companies providing notification to the Company that each such filer has submitted an ANDA to the FDA seeking approval to manufacture, use, or sell a generic version of Sunosi. Recently, the FDA and Congress have also taken steps to encourage increased generic drug competition in the market. Generic products may be significantly less costly to bring to market than the reference listed drug and companies that produce generic products are generally able to offer them at lower prices and are generally preferred by third - party payors. Thus, following the introduction of a generic drug, a significant percentage of the sales of any branded product or reference listed drug is typically lost to the generic product. Moreover, in addition to generic competition, we could face competition from other companies seeking approval of drug products that are similar to ours using the 505 (b) (2) pathway. Such applicants may be able to rely on our products, or other approved drug products or published literature to develop drug products that are similar to ours. The introduction of a drug product similar to our product candidates could expose us to increased competition. Further, if we do not file a patent infringement lawsuit against a generic manufacturer within 45 days of receiving notice of its paragraph IV certification, the ANDA or 505 (b) (2) applicant may not be subject to a 30 - month stay. Litigation or other proceedings to enforce or defend intellectual property rights are often very complex in nature, may be expensive and time consuming, may divert our management' s attention from our core business, and may result in unfavorable results that could adversely impact our ability to prevent third parties from competing with our products. Accordingly, we may be subject to generic competition or competition from similar products, or may need to commence patent infringement proceedings, which would divert our resources. Competition that our products may face from generic or similar versions of our products could materially and adversely impact our future revenue, profitability, and cash flows and substantially limit our ability to obtain a return on the investments we have made in our product candidates. AXS- 12 received Orphan Drug Designation from the FDA. However, there is no guarantee that we will receive this designation for any of our other product candidates or receive or maintain any corresponding benefits for any of our other product candidates that may receive Orphan Drug Designation in the future, including periods of exclusivity. AXS- 12 received Orphan Drug Designation from FDA for the treatment of narcolepsy. We may also seek Orphan Drug Designation for our other products, as appropriate. Orphan Drug Designation, however, may be lost if the indications for which we develop any of our future product candidates do not meet the orphan drug criteria. Moreover, following product approval, orphan drug exclusivity may be lost if the FDA determines, among other reasons, that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantity of the product to meet the needs of patients with the rare disease or condition. Even if we obtain orphan drug exclusivity for any of our current or future product candidates, that exclusivity may not effectively protect the product from competition because different products can be approved for the same condition. Even after an orphan product is approved, the FDA can subsequently approve a product containing the same principal molecular features for the same condition if the FDA concludes that the later product is clinically superior in that it is shown to be safer or more effective or makes a major contribution to patient care. The FDA or the EMA may grant orphan exclusivity to two different sponsors for the same compound or active molecule and for the same indication. For example, if another sponsor receives FDA approval for a reboxetine containing product for the treatment of narcolepsy before we obtain FDA approval for AXS- 12 for the treatment of narcolepsy, we would be prevented from launching our product in the United States for this indication for a period of at least 7 years. If another sponsor receives EMA approval for a reboxetine containing product for the treatment of narcolepsy before we obtain EMA approval for AXS- 12 for the treatment of narcolepsy, we would be prevented from launching our product in the EU for this indication for a period of at least 10 to 12 years. The FDA may undertake a reevaluation of aspects of its orphan drug regulations and policies at any time and may possibly do so in response to a recent court decision regarding the plain meaning of the exclusivity provision of the Orphan Drug Act. We do not know if, when, or how the FDA may change the orphan drug regulations and policies, and it is uncertain how any changes might affect our business. Depending on what changes the FDA may make to its orphan drug regulations and policies, our business, financial condition, results of operations, and prospects could be harmed. **If we are unable to establish effective marketing, sales and distribution capabilities or enter into agreements with third parties to market, sell and distribute our products, we may be unable to generate significant product awareness and that lack of awareness may limit the product revenues that we generate.** We recently expanded our commercial infrastructure for the marketing, sale, and distribution of pharmaceutical products, which included the creation of a sales force to launch our commercial stage products throughout the United States. This **effort** requires additional compliance with a range of federal and state laws. Additionally, we currently commercialize Sunosi outside the United States. Each global market we commercialize Sunosi in has its own set of applicable laws. We have limited experience in the marketing, sale, and distribution of pharmaceutical products, and there are significant risks involved in the building and managing of a commercial infrastructure. We have to compete with other pharmaceutical and biotechnology companies to recruit, hire, train, manage, and retain marketing and sales personnel. In the event we are unable to maintain our marketing and sales infrastructure, we may not be able to successfully commercialize any of our existing commercial stage products or future product candidates, which would limit our ability to generate revenue. Factors that may inhibit our efforts to commercialize any of our products on our own include: • our inability to recruit, train, manage, and retain adequate numbers of effective sales and marketing personnel; • the inability of sales personnel to obtain access to physicians or **appropriately** persuade adequate numbers of physicians to prescribe any of our current or future product candidates; • our inability to effectively oversee a geographically dispersed sales and marketing team; • the application of federal and state drug distribution and supply chain requirements to our business; • the costs associated with training sales and marketing personnel on legal and regulatory compliance matters and monitoring their actions; • an inability to secure adequate **or any** coverage and reimbursement by government and private health plans **or other payers** ; • the clinical indications and labeled claims for which the product is approved; • limitations or warnings, including distribution or use restrictions, contained in the product' s approved labeling; • any distribution and use restrictions imposed by the FDA or to which we agree as part of a mandatory REMS or voluntary risk management plan; • liability for sales or marketing personnel who fail to comply with the

applicable legal and regulatory requirements; • the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines; and • unforeseen costs and expenses associated with creating an independent sales and marketing organization or engaging a contract sales organization. If additional product candidates are approved, we may incur expenses prior to product launch in expanding our sales force and compliant marketing and sales infrastructure. If a commercial launch is delayed as a result of FDA requirements or other reasons, we may incur these expenses prior to being able to realize any revenue from sales of such product candidate (s). Furthermore, our sales force and marketing teams may not be successful in commercializing any of our current or future product candidates. **If any of our products do not achieve broad market acceptance, the revenues that we generate from their sales will be limited.** Our products, and, if approved, our product candidates, may not gain acceptance among physicians, patients, third- party payors, ~~and~~ **or** others in the medical community. If any of our products or product candidates, for which we obtain regulatory approval, do not gain an adequate level of market acceptance, we may not generate significant product revenues or become profitable. Market acceptance of any of our products by the medical community, patients, and third- party payors will depend on a number of factors, some of which are beyond our control. For example, physicians are often reluctant to switch their patients from existing therapies even when new and potentially more effective or convenient treatments enter the market. **Physicians and their patients may likewise make decisions about therapies based on cost and insurance coverage and reimbursement. Such reimbursement may be impacted by our ability to enter into single- case agreements (in the absence of a longer term agreement) with insurance companies, and the absence of any agreement or inadequate coverage or reimbursement may require patients to pay from their own funds, but the costs of our product may be prohibitive in such cases.** Further, patients often acclimate to the therapy that they are currently taking **. While they may** ~~and do not want to~~ switch ~~unless~~ **if** their physicians recommend switching products ~~or~~ **, there is no guarantee. Additionally,** they **may also** ~~are required to~~ switch therapies due to lack of reimbursement for existing therapies **or for other reasons** . Even if physicians prescribe our products, third- party payors **may not provide coverage or** may not consider them cost effective without a significant price concession, which could negatively impact our revenue. Third- party payors may also implement onerous access controls, which could further impede our efforts to effectively transition eligible patients to our therapies. Efforts to educate the medical community and third- party payors on the benefits of our products may require significant resources and may not be successful. If any of our product candidates is approved but does not achieve an adequate level of market acceptance, we may not generate significant revenues **,** and we may not become profitable. The degree of market acceptance of any of our products will depend on a number of factors, including: • the efficacy of our products; • the prevalence and severity of adverse events associated with such product; • the clinical indications for which the product is approved and the approved claims that we may make for the product; • limitations or warnings contained in the product' s FDA - approved labeling, including potential limitations or warnings for such product candidate, that may be more restrictive than other competitive products; • changes in the standard of care for the targeted indications for such product candidate, which could reduce the marketing impact of any claims that we could make following FDA approval, if obtained; • the relative convenience and ease of administration of such product; • cost of treatment versus economic and clinical benefit in relation to alternative treatments or therapies; • the availability of adequate coverage or reimbursement by third parties, such as insurance companies and other healthcare payors, and by government healthcare programs, including Medicare and Medicaid; • the willingness of third- party payors to prefer **other** ~~similar but less expensive~~ products **,** even if not approved for our product' s indication; • the extent and strength of our marketing and distribution of such product; • the safety, efficacy, and other potential advantages over, and availability of, alternative treatments already used or that may later be approved for any of our intended indications; • distribution and use restrictions imposed by the FDA with respect to such product or to which we agree as part of a mandatory **REMS** ~~risk evaluation and mitigation strategy~~ or voluntary risk management plan; • the timing of market introduction of such product, as well as competitive products; • our ability to offer such product candidate for sale at competitive prices, including prices that are competitive with generic products; • the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies; • the extent and strength of our third - party manufacturer and supplier support; • the approval of other new products for the same indications; • adverse publicity about the product or favorable publicity about competitive products; and • potential product liability claims. Our efforts to educate the medical community and third ~~-~~ **-** party payors on the benefits of our products may require significant resources and may never be successful. Even if the medical community accepts that one of our product candidates is safe and effective for its approved indications **and third- party payors provide coverage and reimbursement for the same** , physicians and patients may not immediately be receptive to such product candidate and may be slow to adopt it as an accepted treatment of the approved indication **or may not accept it at all** . It is unlikely that any labeling approved by the FDA will contain claims that one of our product candidates is safer or more effective than competitive products or will permit us to promote such product candidate as being superior to competing products. The potential market opportunities for our products and / or product candidates are difficult to precisely estimate. Our estimates of the potential market opportunities are predicated on many assumptions including industry knowledge and publications, third - party research reports, and other surveys. While we believe that our internal assumptions are reasonable, these assumptions involve the exercise of significant judgment on the part of our management and are inherently uncertain, and the reasonableness of these assumptions has not been assessed by an independent source. If any of the assumptions proves to be inaccurate, the actual markets for our product candidates could be smaller than our estimates of the potential market opportunities. We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability and may have to limit our products' commercialization. The use of any of our current or future product candidates in clinical trials, and the sale of any of our products exposes us to the risk of product liability claims. We face inherent risk of product liability related to the testing of our product candidates in human clinical trials and face an even greater risk for our commercialized products. For example, we may be sued if any products we develop allegedly ~~causes~~ **cause** injury or ~~is~~ **are** found to be otherwise unsuitable during clinical

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, negligence, strict liability or a breach of warranties. Claims could also be asserted under state consumer protection acts. Product liability claims might be brought against us by consumers, healthcare providers, or others using, administering, or selling our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities or be required to limit commercialization of our products. Even successful defense would require significant financial and management resources. Regardless of merit or eventual outcome, liability claims may result in loss of revenue ~~from~~ **,** including from: • decreased demand for our products; • impairment of our business reputation or financial stability; • costs of related litigation; • substantial monetary awards to patients or other claimants; • diversion of management attention; • loss of revenues; • withdrawal of clinical trial participants and potential termination of clinical trial sites or entire clinical programs; • the inability to commercialize our product candidates; • significant negative media attention; • decrease in our stock price; • initiation of investigations and enforcement actions by regulators; and • product recalls, withdrawals, or labeling, marketing, or promotional restrictions. We have obtained limited product liability insurance coverage for our products and our clinical trials. We have also obtained local policies in those foreign jurisdictions where it was appropriate. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, 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 due to liability. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business and our prospects. Sunosi is a controlled substance and may be subject to U. S. federal and state controlled substance laws and regulations, and our failure to comply with these laws and regulations, or the cost of compliance with these laws and regulations, could materially and adversely affect our business, results of operations, financial condition and growth prospects. Sunosi contains controlled substances as defined in the Federal Controlled Substances Act, or CSA. Controlled substances are subject to a number of requirements and restrictions under the CSA and implementing regulations, including certain registration, security, recordkeeping, reporting, import, export and other requirements administered by the U. S. Drug Enforcement Administration, or DEA. The DEA classifies controlled substances into five schedules: Schedule I, II, III, IV or V substances. Schedule I substances by definition have a high potential for abuse, **have** no currently " accepted medical use " in the U. S., lack accepted safety for use under medical supervision, and may not be prescribed, marketed or sold in the U. S. Pharmaceutical products approved for use in the U. S. which contain a controlled substance are listed as Schedule II, III, IV or V, with Schedule II substances considered to present the highest potential for abuse or dependence and Schedule V substances the lowest relative risk of abuse among such substances. Schedule I and II drugs are subject to the strictest controls under the CSA, including manufacturing and procurement quotas, heightened security requirements and additional criteria for importation. In addition, dispensing of Schedule II drugs is further restricted. For example, they may not be refilled without a new prescription. Sunosi is a Schedule IV controlled substance. Individual states have also established controlled substance laws and regulations. Though state- controlled substances laws often mirror federal law, they may separately schedule our products or our product candidates as well. We **,** or our partners **,** may also be required to obtain separate state registrations, permits or licenses in order to be able to manufacture, distribute, administer or prescribe controlled substances for clinical trials or commercial sale, and failure to meet applicable regulatory requirements could lead to enforcement and sanctions by the states in addition to those from the DEA or otherwise arising under federal law. U. S facilities conducting research, manufacturing, distributing, importing or exporting, or dispensing controlled substances must be registered (licensed) to perform these activities and must comply with the security, control, recordkeeping and reporting obligations under the CSA, DEA regulations and corresponding state requirements. DEA and state regulatory bodies conduct periodic inspections of certain registered establishments that handle controlled substances. Obtaining and maintaining the necessary registrations and complying with the regulatory obligations may result in delay of the importation, manufacturing, distribution or clinical research of our products and ~~products~~ **product** candidates. Furthermore, failure to maintain compliance with the CSA and DEA and state regulations by us or any of our contractors, distributors or pharmacies can result in regulatory action that could have a material adverse effect on our business, financial condition and results of operations. DEA and state regulatory bodies may seek civil penalties, refuse to renew necessary registrations, or initiate proceedings to restrict, suspend or revoke those registrations. In certain circumstances, violations could lead to criminal penalties. Any penalties imposed by the DEA to us or our third- party manufacturers ~~which~~ could have a material adverse effect on our business, results of operations, financial condition and growth prospects. RISKS RELATED TO OUR DEPENDENCE ON THIRD PARTIES We rely on third - parties to conduct, supervise, and monitor our preclinical studies and certain clinical trials for our product candidates and do not currently plan to independently conduct preclinical studies or clinical trials of any other potential product candidates. We expect to continue to rely on third parties, such as CROs, clinical data management organizations, medical institutions, and clinical investigators, to conduct our preclinical studies and clinical trials. While we have agreements governing their activities, we have limited influence over their actual performance and control only certain aspects of their activities. The failure of these third parties to successfully carry out their contractual duties or meet expected deadlines could substantially harm our business because we may not obtain marketing approval for or commercialize our product candidates in a timely manner **,** or at all. Moreover, these agreements might terminate for a variety of reasons, including a failure to perform by the third parties. If we need to enter into alternative arrangements, that could delay our product development activities and adversely affect our business. Our reliance on these third parties for development activities will reduce our control over these activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory, and scientific standards and our reliance on third parties does not relieve us of our regulatory responsibilities. For example, we will remain responsible for ensuring that each of our clinical trials

is conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that our preclinical trials are conducted in accordance with ~~good laboratory practice, or~~ GLP ~~,~~ as appropriate. Moreover, the FDA and comparable foreign regulatory authorities require us to comply with standards, such as GCP for conducting, monitoring, 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 trial participants are protected. As a clinical trial sponsor, we also have regulatory requirements that directly apply to us. Regulatory authorities enforce these requirements through periodic inspections of trial sponsors, clinical investigators, and trial sites. If we or any of the third parties we engage fail to comply with applicable GCP, we **,** or those third parties **,** may be subject to enforcement or other legal actions, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials. In addition, when we submit an NDA for review, we are required to report certain financial interests of our third - party investigators if these relationships exceed certain financial thresholds or meet other criteria. The FDA and comparable foreign regulatory authorities may question the integrity of the data from those clinical trials conducted by investigators who previously served or currently serve as scientific advisors or consultants to us from time to time and receive cash compensation in connection with such services or otherwise receive compensation from us that could be deemed to impact study outcome, proprietary interests in a product candidate, certain company equity interests, or significant payments of other sorts. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials ~~complies~~ **comply** with GCP regulations. In addition, our clinical trials must be conducted with product candidates that were produced under cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. We also are required to register certain clinical trials and post the results of certain completed clinical trials on a government sponsored database, ClinicalTrials. gov, within specified timeframes. Failure to do so or to meet the related submission requirements can result in enforcement actions, including civil monetary penalties and adverse publicity. Third parties we engage to conduct research may also have relationships with other entities, some of which may be our competitors, for whom they may also be conducting clinical trials or other drug development activities that could harm our competitive position. In addition, these third parties are not our employees, and except for remedies available to us under our agreements with such third parties, we cannot control whether or not they devote sufficient time and resources to our ongoing clinical, non- clinical, and preclinical programs. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our preclinical studies or clinical trials in accordance with regulatory requirements or our stated protocols, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our clinical trials may be extended, delayed, or terminated and we may not be able to obtain, or may be delayed in obtaining, marketing approvals for our product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates, or we or they may be subject to regulatory enforcement actions. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed. To the extent we are unable to successfully identify and manage the performance of third- party service providers in the future, our business may be materially and adversely affected. If any of our relationships with these third parties ~~terminates~~ **terminate** , we may not be able to enter into arrangements with alternative resources or to do so on commercially reasonable terms. Switching or adding additional third parties involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new third party commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Though we carefully manage our relationships with these third- party vendors, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects, and results of operations **. If the manufacturers upon whom we rely fail to produce our products in the volumes that we require on a timely basis, or to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of, or be unable to meet demand for, our products and may lose potential revenues** . We do not manufacture any of our products, and we do not currently plan to develop any capacity to do so. We currently outsource all manufacturing of our products to third parties typically without any guarantee that there will be sufficient supplies to fulfill our requirements or that we may obtain such supplies on acceptable terms. Any delays in obtaining adequate supplies with respect to our products may delay or disrupt the development or commercialization of our products. Moreover, we do not yet in all cases have agreements established regarding commercial supply of our product candidates, and we may not be able to establish or maintain commercial manufacturing arrangements on commercially reasonable terms for any of our current or future product candidates for which we obtain approval in the future. We may not succeed in our efforts to establish manufacturing relationships or other alternative arrangements for any of our existing or future products and programs. Our products may compete with other products and product candidates for access to manufacturing facilities. There are a limited number of manufacturers that operate under cGMP regulations and that are both capable of manufacturing for us and willing to do so. If our existing third - party manufacturers, or the third parties that we engage in the future to manufacture a product for commercial sale or for our clinical trials, should cease to continue to do so for any reason, we likely would experience delays in obtaining sufficient quantities of our product for us to meet commercial demand or to advance our clinical trials while we identify and qualify replacement suppliers. If **,** for any reason we are unable to obtain adequate supplies of our products or the drug substances used to manufacture them, it will be more difficult for us to develop our products and compete effectively. Further, even if we do establish such collaborations or arrangements, our third - party manufacturers may breach, terminate, or not renew these agreements. Any problems or delays we experience in preparing for commercial - scale manufacturing of a product candidate may result in a delay in FDA approval of the product candidate or may impair our ability to manufacture commercial quantities or such quantities at an acceptable cost, which could result in the delay, prevention, or impairment of

clinical development and commercialization of our product candidates and could adversely affect our business. For example, our manufacturers will need to produce specific batches of our product candidates to demonstrate acceptable stability under various conditions and for commercially viable lengths of time. We and our contract manufacturers will need to demonstrate to the FDA and other regulatory authorities that this is acceptable stability data for our product candidates, as well as validate methods and manufacturing processes, in order to receive regulatory approval to commercialize any of our current or future product candidates. Furthermore, if our commercial manufacturers fail to deliver the required commercial quantities of bulk drug substance or finished product on a timely basis and at commercially reasonable prices, we would likely be unable to meet demand for our products and we would lose potential revenues. We have a limited number of contract manufacturers for our products. At times **,** we may have only one manufacturer for a product. In addition, we do not have any long - term commitments from our suppliers of clinical trial material or guaranteed prices for our product candidates. The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, particularly in scaling up initial production. These problems include difficulties with production costs and yields; quality control, including stability of the product candidate and quality assurance testing; shortages of qualified personnel; and compliance with strictly enforced federal, state, and foreign regulations. Our manufacturers may not perform as agreed. If our manufacturers were to encounter any of these difficulties, our ability to provide product candidates to patients in our clinical trials and for commercial use, if approved, would be jeopardized. In addition, all manufacturers of our products must comply with cGMP requirements enforced by the FDA and comparable foreign regulatory authorities that are applicable to both finished drug products and active pharmaceutical ingredients used both for clinical and commercial supply, through its facilities inspection program. The FDA must verify our contract manufacturers' compliance with cGMP requirements and comparable foreign regulatory authorities will similarly inspect our contract manufacturers' facilities after we submit our marketing applications to the agency and comparable foreign regulatory authorities. The cGMP requirements include quality control, quality assurance, and the maintenance of records and documentation. Manufacturers of our products may be unable to comply with our specifications, these cGMP requirements and with other FDA, state, and foreign regulatory requirements. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA or other regulatory authorities, they will not be able to secure or maintain regulatory approval for their manufacturing facilities. While we are ultimately responsible for the manufacture of our products, other than through our contractual arrangements, we have little control over our manufacturers' compliance with these regulations and standards. If the FDA or a comparable foreign regulatory authority does not approve these facilities for the manufacture of our products or if it withdraws any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop or market our products, or obtain regulatory approval for, our product candidates. A failure to comply with these requirements may result in regulatory enforcement actions against our manufacturers or us, including fines and civil and criminal penalties, including imprisonment; suspension or restrictions ~~of~~ **on** production; suspension, delay, or denial of product approval or supplements to approved products; clinical holds or termination of clinical studies; warning or untitled letters; regulatory authority communications warning the public about safety issues with the drug; refusal to permit the import or export of the products; product seizure, detention, or recall; suits under the civil **FCA** ~~False Claims Act~~ ; corporate integrity agreements; consent decrees; or withdrawal of product approval. If the safety of any quantities supplied is compromised due to our manufacturers' failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for our product candidates or successfully commercialize our products. Any failure or refusal to supply our products or components for our current or future product candidates that we may develop could delay, prevent, or impair our clinical development or commercialization efforts. Any change in our manufacturers could be costly because the commercial terms of any new arrangement could be less favorable and because the expenses relating to the transfer of necessary technology and processes could be significant **. As an NDA applicant and commercial " virtual manufacturer, " we may rely in many cases on third parties to perform many essential services for our products, including services related to warehousing and inventory control, distribution, government price reporting, customer service, and adverse event reporting. If these third parties fail to perform as expected or to comply with legal and regulatory requirements, our ability to commercialize any of our products will be significantly impacted and we may be subject to regulatory sanctions** . We have retained third- party service providers to perform a variety of functions related to the sale and distribution of our products, key aspects of which are out of our direct control. These service providers provide key services related to warehousing and inventory control, distribution, government price reporting, and customer service, and, as a result, much of our inventory is stored at a single warehouse maintained by one such service provider. We substantially rely on this service provider as well as other third- party providers that perform services for us, including entrusting our inventories of products to their care and handling. If these third- party service providers fail to comply with applicable laws and regulations, fail to meet expected deadlines, or otherwise do not carry out their contractual duties to us, or encounter physical or natural damage at their facilities, our ability to deliver product to meet commercial demand would be significantly impaired and we may be subject to regulatory enforcement action. **Moreover, these agreements might terminate for a variety of reasons. If we fail to enter into alternative arrangements, this could further delay the commercialization of our products and adversely affect our business.** In addition, we may engage third parties to perform various other services for us relating to adverse event reporting, safety database management, fulfillment of requests for medical information regarding our products and related services. If the quality or accuracy of the data maintained by these service providers is insufficient, or these third parties otherwise fail to comply with regulatory requirements related to adverse event reporting, we could be subject to regulatory sanctions. Additionally, if a third party errs in calculating government pricing information from transactional data in our financial records, it could impact our discount and rebate liability and potentially cause government programs to overpay providers for our products, which could expose us to significant **FCA** ~~False Claims Act~~

liability and other civil monetary penalties. Any collaboration arrangements that we are a party to or may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our product candidates. Our business model is to commercialize our product candidates in the United States, and we may either commercialize products outside the United States ourselves or collaborate with pharmaceutical or biotechnology companies, or academic institutions, for the development or commercialization of our product candidates in the rest of the world. For example, we currently commercialize Sunosi in Canada. In February 2023, we announced a licensing transaction with Pharmanovia to market Sunosi in Europe and certain countries in the Middle East / North Africa. Our current and future collaboration arrangements may not be successful, and the success of them will depend heavily on the efforts and activities of our collaborators. Collaborators generally have significant discretion in determining the efforts and resources that they will apply to these collaboration arrangements. For clinical trials of our product candidates being conducted by our collaborators, for example, the Phase 2 clinical trial of AXS- 05 for smoking cessation in collaboration with Duke University, we relied on timeline estimates provided by our collaborators for these trials. Such timeline estimates may differ materially from actual trial completion dates. Disagreements between parties to a collaboration arrangement regarding clinical development and commercialization matters can lead to delays in the development process or commercializing the applicable product candidate and, in some cases, termination of the collaboration arrangement. These disagreements can be difficult to resolve if neither of the parties has final decision- making authority. We may license the right to market and sell our products under our collaborators' labeler codes. Alternatively, we may enter into agreements with collaborators to market and sell our products under our own labeler code, in which case errors and omissions by collaborators in capturing and transmitting transactional data may impact the accuracy of our government price reporting. Collaborations with pharmaceutical companies and other third parties often are terminated or allowed to expire by the other party. Any such termination or expiration would adversely affect us financially and could harm our business reputation. Any future collaborations we might enter into may pose a number of risks, including: • collaborators may not perform their obligations as expected; • collaborators may not pursue development and commercialization of any product candidates which achieve regulatory approval or may elect not to continue or renew development or commercialization programs based on clinical trial results, changes in the collaborators' strategic focus or available funding, or external factors, such as an acquisition, that divert resources or create competing priorities; • collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials, or require a new formulation of a product candidate for clinical testing; • collaborators could fail to make timely regulatory submissions for a product candidate; • collaborators may not comply with all applicable regulatory requirements or may fail to report safety data in accordance with all applicable regulatory requirements; • collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our products or product candidates if the collaborators believe that competitive products are more likely to be successfully developed or can be commercialized under terms that are more economically attractive than ours; • product candidates discovered in collaboration with us may be viewed by our collaborators as competitive with their own product candidates or products, which may cause collaborators to cease to devote resources to the commercialization of our product candidates; • a collaborator with marketing and distribution rights to one or more of our product candidates that achieve regulatory approval may not commit sufficient resources to the marketing and distribution of such product candidate or product; • disagreements with collaborators, including disagreements over proprietary rights, contract interpretation, or the preferred course of development, might cause delays or termination of the research, development, or commercialization of product candidates, lead to additional responsibilities for us with respect to product candidates, or result in litigation or arbitration, any of which would be time consuming and expensive; • collaborators may not properly maintain or defend our intellectual property rights or may use our proprietary information in such a way as to invite litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential litigation; and • collaborators may infringe the intellectual property rights of third parties, which may expose us to litigation and potential liability. If any collaborations we might enter into in the future do not result in the successful development and commercialization of products **,** or if one of our collaborators subsequently terminates its agreement with us, we may not receive any future research funding or milestone or royalty payments under the collaboration. If we do not receive the funding we expect under the agreements, our development of our product candidates could be delayed and we may need additional resources to develop our product candidates and our product platform. Additionally, if any future collaborator of ours is involved in a business combination, the collaborator might deemphasize or terminate development or commercialization of any product candidate licensed to it by us. If one of our collaborators terminates its agreement with us, we may find it more difficult to attract new collaborators and our reputation in the business and financial communities could be adversely affected. RISKS RELATED TO INTELLECTUAL PROPERTY It is difficult and costly to protect our proprietary rights, and, as a result, we may not be able to ensure their protection. In addition, patents have a limited lifespan and will eventually expire. Market exclusivity awarded by the FDA upon the approval of an NDA is limited in scope and duration. For example, our New Chemical Entity exclusivity for Sunosi ~~expires~~ **expired** on June 17, 2024 with an Orphan Drug Exclusivity relating to the product' s narcolepsy indication expiring on June 17, 2026. For Auvelity, the New Product Exclusivity expires on August 18, 2025. Neither of these expiry dates take into account the effect of the statutory 30- month stay should we timely commence litigation against any generic filer. A generic filer may be permitted to launch a generic version of either of our products following expiry of these exclusivities if our patents do not preclude a generic launch. Patent litigation is inherently uncertain, and we cannot guarantee the outcome of any such proceedings or that we would succeed in stopping the " at risk " launch of a generic version of either of our currently commercialized products during the pendency of litigation following expiry of the 30- month stay. Such a generic launch could materially impact our commercial success. We seek to protect intellectual property relating to our products and portfolio products by prosecuting patents in the United States and elsewhere. The patent prosecution process is expensive and time consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a

reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. Moreover, should we enter into additional collaborations we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance, and enforcement of our patent applications and patents. Therefore, these patents and patent applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the United States. The patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents and patent applications or in third - party patents and patent applications. The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. Moreover, the patent application process is also subject to numerous risks and uncertainties, and there can be no assurance that we or any of our future development partners will be successful in protecting any of our current or future product candidates that we may develop, license, or acquire by obtaining and defending patents. For example: • we may not have been the first to conceive of and reduce to practice the inventions covered by each of our pending patent applications and issued patents; • we may not have been the first to file patent applications for these inventions; • others may independently develop similar or alternative technologies or duplicate any of our product candidates or technologies; • it is possible that none of the pending patent applications will result in issued patents; • the issued patents may not cover commercially viable active products, may not provide us with any competitive advantages, or may be successfully challenged by third parties; • we may not develop additional proprietary technologies that are patentable; • patents of others may have an adverse effect on our business; • noncompliance with requirements of governmental patent agencies 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, potentially allowing competitors to enter the market earlier than would otherwise have been the case; • our competitors, many of whom have substantially greater resources than we do and many of whom have made significant investments in competing technologies, may seek or may have already obtained patents that will limit, interfere with, or eliminate our ability to make, use, and sell our potential product candidates; or • there may be significant pressure on the U. S. government and international governmental bodies to limit the scope of available patent protection both inside and outside the United States for disease treatments that prove successful, as a matter of public policy regarding worldwide health concerns. Patents have a limited lifespan. In most countries, including the United States, the expiration of a patent is typically 20 years from the date that the application for the patent is filed or 20 years from the earliest non- provisional filing date to which priority is claimed if the patent is granted from a continuing application (e. g., continuation, divisional, or continuation- in- part). Various extensions of patent term may be available in particular countries; however, in all circumstances the life of a patent, and the protection it affords, has a limited term. If we encounter delays in obtaining regulatory approvals, the period of time during which we could market a product under patent protection could be reduced. We expect to seek extensions of patent terms where these are available in any countries where we are prosecuting patents. Such possible extensions include those permitted under the Drug Price Competition and Patent Term Restoration Act of 1984 in the United States, which permits a patent term extension of up to five years to cover an FDA-approved product. The actual length of the extension will depend on the amount of patent term lost while the product was in clinical trials. However, the applicable authorities, including the ~~U. S. Patent and Trademark Office, or~~ USPTO **,** and the FDA in the United States, and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available, and may refuse to grant extensions to our patents, or may grant more limited extensions than we request. If this occurs, our competitors may be able to take advantage of our investment in development and clinical trials by referencing our clinical and preclinical data, and then may be able to launch their product earlier than might otherwise be the case. On September 16, 2011, the Leahy- Smith America Invents Act, or the Leahy- Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U. S. patent law. These include provisions that affect the way patent applications are prosecuted and may also affect patent litigation. In particular, under the Leahy- Smith Act, the United States transitioned in March 2013 to a ~~"~~ **“** first to file ~~"~~ **”** system in which the first inventor to file a patent application will be entitled to the patent. Third parties are allowed to submit prior art before the issuance of a patent by the USPTO and may become involved in post- grant proceedings including reexamination, post- grant review, inter- partes review, or derivation or interference proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding, or litigation could reduce the scope or enforceability of, or invalidate, our patent rights, which could adversely affect our competitive position. Future patent reform legislation in the U. S. and / or in jurisdictions outside the U. S. could potentially further increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. Obtaining and maintaining our patent protection depends on compliance with various procedural, documentary, fee payment, and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for noncompliance with these requirements. The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment, and other similar provisions during the patent prosecution process. Periodic maintenance fees, renewal fees, annuity fees, and various other governmental fees on patents or patent applications will be due to be paid to the USPTO and various patent agencies outside of the United States in several stages over the lifetime of the patents and applications. We have systems in place to remind us to pay these fees, and we employ and rely on reputable law firms and other professionals to effect payment of these fees to the USPTO and non - U. S. patent agencies for the patents and patent applications we own and those that we in - license. We also employ reputable law firms and other professionals to help us comply with the various documentary and other procedural requirements with respect to

the patents and patent applications that we own and those that we in - license. In some cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, our competitors might be able to enter the market and this circumstance would have a material adverse effect on our business. If we , or any future collaboration partner , are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in any litigation would harm our business. Our ability to develop, manufacture, market, and sell any of our products depends upon our ability to avoid infringing the proprietary rights of third parties, and our commercial success depends upon our ability, and the ability of our collaborators, to develop, manufacture, market, and sell our products and use our proprietary technologies without infringing the proprietary rights of third parties. There is considerable intellectual property litigation in the biotechnology and pharmaceutical industries. Numerous U. S. and foreign issued patents and pending patent applications owned by third parties exist in the general field of treatment and management of CNS disorders and cover the use of numerous compounds and formulations in our targeted markets. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future. Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we and our licensors may not be successful in defending intellectual property claims by third parties, which could have a material adverse effect on our business, financial condition, results of operations, and prospects. Regardless of the outcome of any litigation, defending against litigation may be expensive, time consuming, and distracting to management. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that any of our current or future products may infringe. There could also be existing patents of which we are not aware that any of our current or future products may inadvertently infringe. If a third- party claims that we infringe their intellectual property rights, we could face a number of issues, including: • infringement and other intellectual property claims which, whether meritorious or not, can be expensive and time consuming to litigate and can divert management' s attention from our core business; • substantial damages for past infringement which we may have to pay if a court decides that our product infringes on a competitor' s patent; • a court prohibiting us from selling or licensing our product unless the patent holder licenses the patent to us, which it would not be required to do; • if a license is available from a patent holder, we may have to pay substantial royalties or grant cross licenses to our patents; and • redesigning our products and processes so they do not infringe, which may not be possible or could require substantial funds and time. If we are found to infringe a third party' s intellectual property rights, we could be required to obtain a license from such third party to continue developing and marketing our products and technology. However, we may not be able to obtain any required license on commercially reasonable terms, or at all. Even if we were able to obtain a license, it could be non - exclusive, thereby giving our competitors access to the same technologies licensed to us. We could be forced, including by court order, to cease commercializing the infringing technology or product. In addition, we could be found liable for monetary damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent. A finding of infringement could prevent us from commercializing our products or force us to cease some of our business operations, which could materially harm our business. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business, financial condition, results of operations, and prospects. We may be involved in lawsuits to protect or enforce our patents or the patents of our licensors, which could be expensive, time consuming, and unsuccessful. Competitors may infringe our issued patents, our in- licensed patents, or other intellectual property that we own or in- license. Under the terms of our license agreements with Antecip, if we believe a third party is infringing on the patents subject to the licenses, we are obligated, at our own expense, to initiate suit against those third parties. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents and / or to challenge the validity of the asserted patent (s) before a court or the USPTO (e. g., in post- grant proceedings such as Inter Partes Review before the Patent Trial and Appeal Board (PTAB) of the USPTO). In addition, in a patent infringement or validity proceeding, a decision maker (e. g., a court or the PTAB) may decide that a patent of ours is invalid or unenforceable, in whole or in part; construe the patent' s claims narrowly; or refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation proceeding or related proceeding at the USPTO could put one or more of our patents at risk of being invalidated or interpreted narrowly. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. Many of our competitors are larger than we are and have substantially greater resources than we do. They are, therefore, likely to be able to sustain the costs of complex patent litigation longer than we could. In addition, the uncertainties associated with litigation could have a material adverse effect on our ability to raise the funds necessary to continue our clinical trials, continue our internal research programs, in- license needed technology, or enter into development partnerships that would help us bring our product candidates to market. We are a party to certain license agreements under which we are granted rights to intellectual property, including patent rights that are important to our business. We expect that we may need to enter into additional license agreements in the future to commercialize our products, in which case we would be required to obtain a license from additional third parties. Such licenses may not be available on commercially reasonable terms, or at all, which could materially harm our business, financial condition, results of operations, and prospects. We rely on these licenses to use intellectual property that may be material to our business and important or necessary to the development or commercialization of our products. Our existing license agreements impose, and we expect that future license agreements will impose on us, various exclusivity obligations. If we fail to comply with our obligations under these agreements, the applicable licensor may have the right to terminate our license, in which case we may not be able to develop or commercialize the products covered by such

license. In January 2020, we entered into an agreement with Pfizer ~~Inc., or Pfizer,~~ for an exclusive U. S. license to Pfizer' s clinical and nonclinical data, and intellectual property for reboxetine, the active pharmaceutical ingredient in AXS- 12 **,** which Axsome is developing for the treatment of narcolepsy. The agreement also provides Axsome exclusive rights to develop and commercialize esreboxetine, a new late- stage product candidate now referred to as AXS- 14, in the U. S. for the treatment of fibromyalgia. Under the terms of the agreement, we received from Pfizer an exclusive U. S. license to Pfizer data for reboxetine and esreboxetine encompassing a full range of nonclinical studies, and short- term and long- term clinical trials involving more than five thousand patients. The licensed data includes results of a positive Phase 3 trial and a positive Phase 2 trial of esreboxetine in the treatment of fibromyalgia. We will have the exclusive right and sole responsibility of developing AXS- 14 (esreboxetine) in the U. S. for the treatment of fibromyalgia and for other indications. Pfizer received 82, 019 shares of our common stock having a value of $ 8. 0 million, based on the average closing price of our common stock for the 10 prior trading days of $ 97. 538, in consideration for the license and rights. Pfizer also received an upfront cash payment of $ 3. 0 million and will receive up to $ 323 million in regulatory and sales milestones and tiered mid- single to low double- digit royalties on future sales. Pfizer will also have a right of first negotiation on any potential future strategic transactions involving AXS- 12 and AXS- 14. Under the agreement, we are obligated to use commercially reasonable efforts to develop, manufacture and commercialize the compounds and products in the United States and to seek and maintain regulatory approvals for the compounds and products. The agreement will expire on a product- by- product basis upon expiration of the last- to- expire royalty term for such product. On expiration (but not earlier termination), we will have a perpetual, non- exclusive, fully paid, royalty- free and irrevocable license under the licensed patent rights and related data to develop, manufacture, use, commercialize and otherwise exploit the compounds. Either party may terminate the agreement for the other party' s material breach following a cure period. Pfizer may immediately terminate the agreement upon certain insolvency events relating to us. We may terminate the agreement for any reason upon ninety days written notice to Pfizer at any time after the first anniversary of the agreement. If the license agreement with Pfizer is terminated for any reason, our business, financial condition, results of operations, and prospects will be materially harmed. In 2012, we entered into three exclusive license agreements with Antecip ~~Bioventures II LLC, or Antecip,~~ an entity owned by our Chief Executive Officer and Chairman of the Board, Herriot Tabuteau, M. D., in which we were granted exclusive licenses to develop, manufacture, and commercialize Antecip' s patents and applications related to the development of AXS- 05, as well as two product candidates that are not currently in development, anywhere in the world for human therapeutic, veterinary, and diagnostic use. The agreements were amended in August 2015 to update the schedule of patents and applications subject to the license agreements. Pursuant to the agreements, we are required to use commercially reasonable efforts to develop, obtain regulatory approval for, and commercialize AXS- 05. Under the terms of the agreements, we are required to pay to Antecip a royalty equal to 3. 0 % for AXS- 05, of net sales of products containing the licensed technology by us, our affiliates, or permitted sublicensees. These royalty payments are subject to reduction by an amount up to 50. 0 % of any required payments to third parties. Unless earlier terminated by a party for cause or by us for convenience, the agreements remain in effect on a product- by- product and country- by- country basis until the later to occur of (1) the applicable product is no longer covered by a valid claim in that country or (2) 10 years from the first commercial sale of the applicable product in that country. Upon expiration of the agreements with respect to a product in a country, our license grant for that product in that country will become a fully paid **-** up, royalty **-** free, perpetual non - exclusive license. If Antecip terminates any of the agreements for cause, or if we exercise our right to terminate any of the agreements for convenience, the rights granted to us under such terminated agreement will revert to Antecip. We are dependent upon the license agreements with Antecip and if any of the license agreements with Antecip are terminated for any reason, our business, financial condition, results of operations, and prospects will be materially harmed. In connection with the ~~acquisition~~ **Acquisition** ~~of Sunosi~~, in addition to the upfront purchase price, we assumed certain liabilities in connection with the ~~acquisition~~ **Acquisition** and agreed to make non- refundable, non- creditable royalty payments to Jazz on U. S. net sales. There are no royalty payments due to Jazz for net sales outside of the U. S. In addition, we assumed all of the commitments of Jazz to SK and Aerial. The assumed commitments to SK and Aerial include single- digit tiered royalties and certain sales and development milestones. We are dependent on these agreements, and if we breach these agreements, our business, financial condition, results of operations, and prospects will be materially harmed. We may be subject to claims that our employees, independent contractors, or consultants have wrongfully used or disclosed alleged trade secrets of their former employers or other third parties. As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these individuals or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. 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. We may be unable to adequately prevent disclosure of trade secrets and other proprietary information. We rely on trade secrets to protect our proprietary technological advances and know - how, 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, contractors, outside scientific collaborators, sponsored researchers, and other advisors, including the third parties we rely on to manufacture our products, to protect our trade secrets and other proprietary information. However, any party with whom we have executed such an agreement may breach that agreement and disclose our proprietary information, including our trade secrets. Accordingly, 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. Costly and time - consuming litigation could be necessary to enforce and determine the scope of our proprietary rights. In addition, others may independently discover our trade secrets and proprietary information. Further, the FDA, as part of its Transparency Initiative, a proposal to increase disclosure and make data more accessible to the public, is currently considering whether to make additional information

publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA' s disclosure policies may change in the future, if at all. Failure to obtain or maintain trade secret protection could enable competitors to use our proprietary information to develop products that compete with our products or cause additional, material adverse effects upon our competitive business position and financial results. We **,** or our licensors **,** may not be able to protect our intellectual property rights throughout the world. Filing, prosecuting, and defending patent applications and patents on products in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can 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 where enforcement rights are not as strong as those 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 do not favor the enforcement of patents and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents 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 and 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 or our licensors' intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license. RISKS RELATED TO LEGAL AND COMPLIANCE MATTERS **If we fail to comply with federal, state, and foreign healthcare laws, including laws governing fraud and abuse, transparency, health, and other data protection, information privacy and security, we could face substantial penalties and liabilities, and our business, financial condition, results of operations, and prospects could be adversely affected.** As a pharmaceutical company, we are subject to many federal and state healthcare laws, including those described in the " Business — Government Regulation and Product Approval " section of this Annual Report on Form 10- K, such as the federal Anti- Kickback Statute, the federal civil and criminal **FCA** ~~False Claims Act~~, the civil monetary penalties statute, the Medicaid Drug Rebate ~~statute~~ **Statute** and other price reporting requirements, the Veterans Health Care Act of 1992, the Sunshine Act, **HIPAA, the FCPA, the ACA, and** ~~the~~ **other** ~~Foreign Corrupt Practices Act of 1977, the Patient Protection and Affordable Care Act of 2010, and similar~~ state and foreign laws. Even though we do not and will not control referrals of healthcare services or bill directly to Medicare, Medicaid, or other third- party payors, certain federal and state healthcare laws and regulations pertaining to fraud and abuse **, disclosures,** and patients' rights are and will be applicable to our business. We are subject to healthcare ~~fraud and abuse~~ laws by both the federal government and the states in which we conduct our business **as well as by other third parties, such as patients** . There are numerous other laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns, and some state privacy and security laws apply ~~more broadly~~ **in broader circumstances** than ~~the Health Insurance Portability and Accountability Act (~~HIPAA ~~)~~ and its implementing regulations. For example, California enacted legislation – the ~~California Consumer Privacy Act, or~~ CCPA ~~—~~**,** which went into effect in January **2020, as subsequently amended by the CPRA, passed on November 3,** 2020. The CCPA, among other things, creates data privacy obligations for covered companies and provides new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also creates a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. Further, many data privacy and security laws within the U. S. have concurrent jurisdiction, which could subject us to enforcement by multiple agencies under multiple statutes for the same conduct (e. g., FTC enforcement under Section 5, HHS- Office for Civil Rights enforcement under HIPAA, and actions by state Attorneys General for violation of applicable state laws). **Since the passage of the CCPA, certain other states have passed similar laws that may also have similar impacts on our data processing practices and incurred costs. Some of these state laws have not taken effect, and we cannot predict if states will subsequently amend those laws, if other states will pass similar laws, or the costs and expenses that we will incur to comply with such laws.** In addition, EU member states and other foreign jurisdictions, including Switzerland, have adopted data protection laws and regulations which impose significant compliance obligations. Moreover, the collection and use of personal **data, including** health data **, relating to individuals located** in the EU, which was formerly governed by the provisions of the EU Data Protection Directive **95 / 46** , was replaced with the EU ~~General Data Protection Regulation, or the~~ GDPR ~~,~~ in May 2018. The GDPR, which is wide- ranging in scope, imposes several requirements relating to the ~~consent~~ **legal basis** of the **processing of** ~~individuals to whom the~~ personal data ~~relates~~ , the information provided to the individuals, the security and confidentiality of the personal data, data breach notification and the use of third- party processors in connection with the processing of personal data. The GDPR also imposes strict rules on the transfer of personal data out of the ~~EU~~ **EEA** to the U. S. **and other non- EEA countries that do not provide a level of protection to personal data in line with the GDPR standard** , provides an enforcement authority **in each EU member state** and imposes large penalties for noncompliance, including the potential for fines of up to € 20 million or 4 % of the annual global ~~revenues~~ **turnover** of the noncompliant company, whichever is greater. The GDPR requirements apply not only to third- party transactions, but also to transfers of information between us and our subsidiaries, including employee information. The recent ~~implementation~~ **coming into force** of the GDPR has increased our responsibility and liability in relation to personal data that we process, including in clinical trials,

and we may in the future be required to put in place additional mechanisms to ensure compliance with the GDPR, which could divert management' s attention and increase our cost of doing business. Moreover, new regulation or legislative actions regarding data privacy and security (together with applicable industry standards) may increase our costs of doing business. In this regard, we expect that there will continue to be new proposed laws, regulations and industry standards relating to privacy and data protection in the United States, the EU and other jurisdictions, and we cannot determine the impact such future laws, regulations and standards may have on our business. If we **,** or our operations **,** are found to be in violation of any federal or state healthcare, data or information privacy law, or any other governmental regulations that apply to us, we may be subject to penalties, including civil, criminal, and administrative penalties, damages, fines, disgorgement, debarment from government contracts, refusal of orders under existing contracts, exclusion from participation in U. S. federal or state health care programs, corporate integrity agreements, and the curtailment or restructuring of our operations, any of which could materially adversely affect our ability to operate our business and our financial results. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil, or administrative sanctions, including but not limited to, exclusions from participation in government healthcare programs, which could also materially affect our business. Although an effective compliance program can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Moreover, achieving and sustaining compliance with applicable federal and state fraud laws may prove costly. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management' s attention from the operation of our business. In both domestic and foreign markets, sales of our products depend in part upon the availability of coverage and reimbursement from third- party payors. Such third- party payors include government health programs **,** such as Medicare and Medicaid, managed care ~~providers~~ **organizations** , private health insurers, and other **similar programs and** organizations. Coverage decisions may depend upon clinical and economic standards that disfavor new drug products when more established or lower cost therapeutic alternatives are already available or subsequently become available. Many private payors employ " new- to- market blocks " for newly launched medications and other products until the payors have had the opportunity to make a coverage decision based upon their internal review of such products. When a medication or other product is not covered, the patient **or other third party** is responsible to pay the full price, which can significantly limit utilization. If reimbursement is not available, or is available only **up** to limited levels, our product candidates may be competitively disadvantaged, and we, or our collaborators, may not be able to successfully commercialize our product candidates. Even if coverage is provided, the approved reimbursement amount may not be high enough to allow us, or our collaborators, to establish or maintain a market share sufficient to realize a sufficient return on our or their investments. Alternatively, securing favorable reimbursement terms may require us to compromise pricing and prevent us from realizing an adequate margin over cost. There is significant uncertainty related to third- party payor coverage and reimbursement of newly approved drugs. Marketing approvals, pricing, and reimbursement for new drug products ~~vary~~ **varies** widely from country to country. Current and future legislation **and / or administrative action** may significantly change the approval requirements in ways that could involve additional costs and cause delays in obtaining approvals **. For example, on September 20, 2024, the Centers for Medicare & Medicaid Services issued a final rule titled " Medicaid Program; Misclassification of Drugs, Program Integrity Updates Under the Medicaid Drug Rebate Program, " which may impact our reimbursement and rebate strategy** . Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after marketing or product licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay commercial launch of the product, possibly for lengthy time periods, which may negatively impact the revenues we are able to generate from the sale of the product in that country. Additionally, drug pricing is a key state and federal issue within the U. S., with recent legislation and additional proposals designed to bring more transparency to drug pricing, reduce the cost of prescription drugs under Medicare and Medicaid, review the relationship between pricing and manufacturer patient programs and reform government program reimbursement methodologies for drugs. We expect continued focus and pressure on drug pricing going forward. Adverse pricing limitations may hinder our ability or the ability of our collaborators to recoup our or their investment in one or more of our products or product candidates. Our ability, and the ability of our collaborators, to commercialize our product candidates will depend in part on the extent to which coverage and reimbursement for these products and related treatments will be available from government ~~health~~ **healthcare programs** ~~administration authorities~~ , private health insurers, and other organizations. Regulatory authorities and third- party payors, such as private health insurers and **HMOs** ~~health maintenance organizations~~ , decide which medications they will cover and establish reimbursement levels. The healthcare industry is acutely focused on cost containment, both in the United States and elsewhere. Several third- party payors are requiring that drug companies provide them with predetermined discounts from list prices, are using preferred drug lists to leverage greater discounts in competitive classes, are disregarding therapeutic differentiators within classes, and are challenging the prices charged for drugs. Brand drugs without generic equivalents are often included in therapeutic classes with other brands that have generic versions and may be similarly disadvantaged by the availability of low-cost alternatives within the class, particularly if a generic version of the same agent is available in another form. Third- party payors, whether foreign or domestic, or governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs. In addition, in the United States, no uniform policy of coverage and reimbursement for drug products exists among third- party payors. Therefore, coverage and reimbursement for drug products can differ significantly from payor to payor. Further, we believe that future coverage and reimbursement will likely be subject to increased restrictions both in the United States and in international markets. Third- party coverage and reimbursement for our products or product candidates for which we receive regulatory approval may not be available or adequate in either the United States or international

markets, which could have a negative effect on our business, financial condition, results of operations, and prospects. Assuming coverage is approved, the resulting reimbursement payment rates might not be adequate. If payors subject our products to maximum payment amounts or impose limitations that make it difficult to obtain reimbursement, providers may choose to use therapies which are less expensive or have fewer access restrictions when compared to our product candidates. Additionally, if payors require high copayments, beneficiaries may decline prescriptions and seek alternative therapies. We may need to conduct post- marketing studies in order to demonstrate the cost effectiveness of any **of** our products to the satisfaction of hospitals and other target customers and their third- party payors. Such studies might require us to commit a significant amount of management time and financial and other resources. Our products might not ultimately be considered cost effective. Adequate third- party coverage and reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on investment in product development. In addition, federal programs impose penalties on manufacturers of drugs marketed under an NDA, including 505 (b) (2) drugs, in the form of mandatory additional rebates and / or discounts if commercial prices increase at a rate greater than the Consumer Price Index Urban, and these rebates and / or discounts, which can be substantial, may impact our ability to raise commercial prices. Regulatory authorities and third- party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications, which could affect our ability or that of our collaborators to sell our product candidates profitably. These payors may not view our products, if any, as cost effective, and coverage and reimbursement may not be available to our customers, or those of our collaborators, or may not be sufficient to allow our products, if any, to be marketed on a competitive basis. Cost control initiatives could cause us, or our collaborators, to decrease, discount, or rebate a portion of the price we, or they, might establish for products, which could result in lower than anticipated product revenues. If the realized prices for our products, if any, decrease or if governmental and other third- party payors do not provide adequate coverage or reimbursement, our prospects for revenue and profitability will suffer. There may also be delays in obtaining coverage and reimbursement for newly approved drugs, and coverage may be more limited than the indications for which the drug is approved by the FDA or comparable foreign regulatory authorities. Moreover, eligibility for reimbursement does not imply that any drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale, and distribution. Interim reimbursement levels for new drugs, if applicable, may also not be sufficient to cover our costs and may only be temporary. Reimbursement rates may vary, by way of example, according to the use of the drug and the clinical setting in which it is used. Reimbursement rates may also be based on reimbursement levels already set for lower cost drugs or may be incorporated into existing payments for other services. Prices paid for a drug also vary depending on the class of trade. Prices charged to government customers are subject to price controls, including ceilings, and private institutions obtain discounts through group purchasing organizations. Net prices for drugs may be further reduced by mandatory discounts or rebates required by government healthcare programs and demanded by private payors. Drugs approved under NDAs, including 505 (b) (2) drugs, are subject to greater discounts and reporting obligations under federal programs than drugs approved under ANDAs, and the inflation penalty applicable to these products can equal the selling price. It is also not uncommon for market conditions to warrant multiple discounts to different customers on the same unit, such as purchase discounts to institutional care providers and rebates to the health plans that pay them, which reduces the net realization on the original sale. In addition, increasingly, third- party payors are requiring higher levels of evidence of the benefits and clinical outcomes of new technologies and are challenging the prices charged. We, and our collaborators, cannot be sure that coverage will be available for any product that we, or they, commercialize and, if available, that the reimbursement rates will be adequate. Further, the net reimbursement for drug products may be subject to additional reductions if there are changes to laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States. An inability to promptly obtain coverage and adequate payment rates from both government funded and private payors for any **of** our product candidates for which we obtain marketing approval could have a material adverse effect on our operating results, ~~our~~ ability to raise capital needed to commercialize products, and ~~our~~ overall financial condition. We are subject to new legislation, regulatory proposals, and healthcare payor initiatives that may increase our costs of compliance, and adversely affect our ability to market our products, obtain collaborators, and raise capital. In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval of our product candidates, restrict or regulate post - approval activities, and affect our ability, or the ability of our collaborators, to profitably sell any products for which we obtain marketing approval. It is unclear what impact these various efforts have and will have on our business operations and resulting financial condition. We expect that current laws, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we, or our collaborators, may receive for any approved products. ~~It is unclear how regulations and sub- regulatory policy, which fluctuate continually, may affect interpretation and further implementation of the ACA and its practical effects on our business.~~ We are unable to predict the future course of federal or state healthcare legislation in the United States directed at broadening the availability of healthcare and containing or lowering the cost of healthcare, including drugs and biologics. Any further changes in the law or regulatory framework that reduce our revenue or increase our costs could also have a material and adverse effect on our business, financial condition and results of operations. **We** ~~While the full effect that the ACA may have on our business continues to evolve, we~~ expect that ~~the ACA, as well as other~~ federal and state healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria, increased regulatory burdens and operating costs, decreased net revenue from our pharmaceutical products, decreased potential returns from our development efforts, and additional downward pressure on the price that we receive for any approved drug. There is also an increasing focus on the price of drugs, both at the state and federal levels, and it is likely that additional pricing controls will be enacted and could harm our business, financial condition and results of operations. For instance, states such as California have begun enacting transparency laws aimed at curbing drug price increases. We continue to monitor the potential impact of proposals and recently enacted legislation to lower prescription drug costs at the

federal and state level. For example, the IRA was ~~recently~~ signed into law by President Biden ~~, which~~ **in August 2022. The IRA** makes significant changes to how drugs are covered and paid for under the Medicare program, including the creation of financial penalties for drugs whose prices rise faster than the rate of inflation, redesign of the Medicare Part D program to require manufacturers to bear more of the liability for certain drug benefits, and government price- setting for certain Medicare Part D drugs, starting in 2026, and Medicare Part B drugs starting in 2028. **The IRA' s changes include, by way of example, capping Medicare beneficiary out- of- pocket spending at $ 2, 000 for 2025 and providing for no beneficiary cost sharing above the annual out- of- pocket threshold. Additionally, as of January 1, 2025, the existing Medicare Coverage Gap Discount Program ended and was replaced by the Manufacturer Discount Program, through which a manufacturer provides discounts for brand- name drugs and biologics in the initial and catastrophic coverage phases under the Medicare Part D benefit. These changes eliminated the Medicare Part D coverage gap benefit phase (commonly referred to as the " donut hole "), in which a Medicare beneficiary was originally responsible for 100 % of the costs of covered prescription drugs following an initial coverage phase until the costs initiated a catastrophic coverage phase, but which was gradually phased out through the end of 2024.** We are evaluating what effect, if any, the IRA may have on our business. Any reduction in reimbursement from Medicare or other government healthcare programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability **,** or commercialize our drugs. Legislative and regulatory proposals may also be made to expand post **-** approval requirements and restrict sales and promotional activities for drugs. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance, or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates, if any, may be. In addition, increased scrutiny by the U. S. Congress of the FDA' s approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post- marketing testing and other requirements. In addition, there have been a number of other legislative and regulatory proposals aimed at changing the pharmaceutical industry. For instance, the enacted ~~Drug Supply Chain Security Act, or~~ DSCSA imposes obligations on manufacturers of prescription drug products for commercial distribution, regulating the distribution of the products at the federal level, and sets certain standards for federal or state registration and compliance of entities in the supply chain (manufacturers and repackagers, wholesale distributors, third-party logistics providers, and dispensers). The DSCSA preempts certain previously enacted state pedigree laws and the pedigree requirements of the ~~Prescription Drug Marketing Act, or~~ PDMA. Trading partners within the drug supply chain must now ensure certain product tracing requirements are met **;** that they are doing business with other authorized trading partners; and they are required to exchange transaction information, transaction history, and transaction statements. Product identifier information (an aspect of the product tracing scheme) is also now required. The DSCSA requirements, development of standards, and the system for product tracing have been and will continue to be phased in over a period of years ~~, with the FDA indicating it would permit certain exemptions and exclusions, and enforcement discretion on certain aspects due to the COVID-19 pandemic, although this situation may continue to evolve~~ . The distribution of product samples continues to be regulated under the PDMA, and some states also impose regulations on drug sample distribution. Compliance with the federal track and trace requirements may increase our operational expenses and impose significant administrative burdens. As a result of these and other new proposals, we may determine to change our current manner of operation, provide additional benefits, or change our contract arrangements, any of which could have a material adverse effect on our business, financial condition, and results of operations **. In the EU, recently adopted and pending legislation will impact regulatory procedures for medicinal products. Key developments include Regulation (EU) 2021 / 2282 on health technology assessment (HTA Regulation), which became applicable in the EU on 12 January 2025. Additionally, in April 2023, the EC adopted a proposal to revise the EU pharmaceutical legislation consisting of a new directive and a new regulation that would replace Directive 2001 / 83 / EC and Regulation (EC) 726 / 2004, among others. In April 2024, the European Parliament introduced amendments to the EC' s proposal. The EU legislative process remains ongoing, with several stages still required before the reform can receive final approval. If approved, the reform would mark the most significant overhaul of EU pharmaceutical law since 2004, with a wide range of impacts including on approval procedures, regulatory data protection, or RDP, and the so- called " Bolar exemption, " among others. We are subject to a variety of U. S. and international laws and regulations. We are currently subject to a number of government laws and regulations, and, in the future, could become subject to new government laws and regulations. The costs of compliance with such laws and regulations, or the negative results of non- compliance, could adversely affect our business, cash flow, results of operations, financial condition, and prospects; these laws and regulations include (i) additional health care reform initiatives in the U. S. or in other countries, including additional mandatory discounts or fees; (ii) the FCPA or other anti- bribery and corruption laws; (iii) new laws, regulations, and judicial or other governmental decisions affecting pricing, drug reimbursement, and access or marketing within or across jurisdictions; (iv) changes in intellectual property laws; (v) changes in accounting standards; (vi) new and increasing data privacy regulations and enforcement, particularly in the EU, the U. S., and China; (vii) legislative mandates or preferences for local manufacturing of pharmaceutical products; (viii) emerging and new global regulatory requirements for reporting payments and other value transfers to healthcare professionals; (ix) environmental regulations, such as the EU' s Corporate Sustainability Reporting Directive; and (x) the potential impact of importation restrictions, embargoes, trade sanctions, and legislative and / or other regulatory changes** . Governments outside the United States tend to impose strict price controls, which may adversely affect our revenues, if any. In international markets, reimbursement and health care payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. In some countries, particularly the countries of the EU, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain coverage and

reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost - effectiveness of our product candidate to other available therapies. There can be no assurance that our products will be considered cost - effective by third - party payors, that an adequate level of reimbursement will be available, or that the third - party payors' reimbursement policies will not adversely affect our ability to sell our products profitably. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed, possibly materially. Our employees, independent contractors, consultants, commercial partners, principal investigators, or CROs may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a material adverse effect on our business. We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees, independent contractors, consultants, commercial partners, principal investigators, or CROs could include intentional, reckless, negligent, or unintentional failures to comply with FDA regulations, comply with applicable fraud and abuse laws, provide accurate information to the FDA, report financial information or data accurately, or disclose unauthorized activities to us. This misconduct could also involve the improper use or misrepresentation of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter this type of misconduct, and the precautions we take to detect and prevent this activity may not be effective 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 be in compliance with such 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, financial condition, and results of operations, including the imposition of significant fines or other sanctions. Further, even if we are successful in mounting a defense, we may incur substantial costs in preparing and maintaining our defense and any such action would be time- and resource- intensive and potentially divert management' s attention from the business, which could adversely affect our ability to operate our business and our results of operations. Our third - party manufacturers may use hazardous materials in the production of our products and **,** if so, they must comply with environmental laws and regulations, which can be expensive and restrict how we or they do business. Manufacturing activities for the production of our products involve the controlled storage, use, and disposal of hazardous materials, including the components of our products, and other hazardous compounds. Our third - party manufacturers and we are subject to federal, state, and local laws and regulations governing the use, manufacture, storage, handling, release, and disposal of, and exposure to, these hazardous materials. Violation of these laws and regulations could lead to substantial fines and penalties. Although we believe that our safety procedures, and those of our third - party manufacturers, for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, state or federal authorities may curtail our use of these materials and interrupt our business operations. In addition, we could become subject to potentially material liabilities relating to the investigation and cleanup of any contamination, whether currently unknown or caused by future releases. Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous, or radioactive materials. In addition, we may incur substantial costs in order to comply with current or future environmental, health, and safety laws and regulations. These current or future laws and regulations may impair our research, development, or production efforts. Our failure to comply with these laws and regulations also may result in substantial fines, penalties, or other sanctions. RISKS RELATED TO OUR BUSINESS OPERATIONS As of February ~~13~~ **11** , ~~2024~~ **2025** , we had ~~545~~ **683** full - time employees. Our management, personnel, systems, and facilities currently in place may not be adequate to support future growth. In addition, we may not be able to recruit and retain qualified personnel in the future, particularly for sales and marketing positions, due to competition for personnel among pharmaceutical businesses, and the failure to do so could have a significant negative impact on our future product revenues and business results. Further, the value to employees of stock options or restricted stock units that vest over time is significantly affected by movements in our stock price that are beyond our control and may at any time be insufficient to counteract more lucrative offers from other companies. Our need to effectively manage our operations, growth and various projects requires that we: • continue the hiring and training of personnel for our commercial organization, and maintain appropriate systems, policies and infrastructure to support that organization; • ensure that our consultants and other service providers successfully carry out their contractual obligations, provide high quality results, and meet expected deadlines; • continue to carry out our own contractual obligations to our licensors and other third parties; and • continue to improve our operational, financial, and management controls, reporting systems, and procedures. We may be unable to successfully implement these tasks on a larger scale and, accordingly, may not achieve our development and commercialization goals. Our continued growth could strain our personnel resources and infrastructure, and if we are unable to implement appropriate controls and procedures to manage our growth, we will not be able to implement our business plan successfully. As we continue to complete our clinical trials and commercialize our product candidates, and as our company continues to grow, we may experience significant strains on our resources, including to our administrative, operational and financial infrastructure, which will result in additional burdens on management. Our success will depend in part upon the ability of our senior management to manage this growth effectively. To do so, we must continue to hire, train and manage new employees as needed. If our new hires perform poorly, or if we are unsuccessful in hiring, training, managing and integrating these new employees, or if we are not successful in retaining our existing employees, our business would be harmed. To manage the expected growth of our operations and personnel, we will need to continue to improve our operational, financial and management controls and our reporting systems and procedures. We may acquire businesses or products, or form strategic alliances in the future, and we may not realize the benefits of such acquisitions or alliances. We may acquire additional businesses or products, form strategic alliances or create joint ventures with third parties that we believe will

complement or augment our existing business. If we acquire businesses with promising markets or technologies, we may not be able to realize the benefit of acquiring such businesses if we are unable to successfully integrate them with our existing operations and company culture. We may encounter numerous difficulties in developing, manufacturing, and marketing any new products resulting from a strategic alliance or acquisition that delay or prevent us from realizing their expected benefits or enhancing our business. We cannot assure you that, following any such acquisition, we will achieve the expected synergies to justify the transaction. We may not be able to manage our business effectively if we are unable to attract and retain key personnel. Our industry has experienced a high rate of turnover of management personnel in recent years. We are highly dependent on the skills and leadership of our management team, including Dr. Herriot Tabuteau, our Chief Executive Officer and Chairman of the Board. We do not have formal employment agreements with any of our management team. However, we typically enter into offer letters with our executive officers and key personnel. Our senior management may terminate their employment with us at any time. If we lose one or more members of our senior management team, our ability to successfully implement our business strategy could be seriously harmed. Replacing these employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to develop, gain regulatory approval of, and commercialize products successfully. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain, or motivate additional key personnel. We do not maintain " key person " insurance for any of our executives or other employees. As a public company, we continue to incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes- Oxley Act, as well as rules subsequently implemented by the SEC and The Nasdaq Stock Market LLC, or Nasdaq, impose various requirements on public companies, including requiring establishment and maintenance of effective disclosure controls and internal control over financial reporting and changes in corporate governance practices. Our management and other personnel devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations have increased our legal and financial compliance costs and have made some activities more time- consuming and costly. The Sarbanes- Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure controls and procedures. Under Section 404 (a) of the Sarbanes- Oxley Act, we are required to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This report must include disclosure of any material weaknesses identified by our management during its periodic assessment of our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting that results in more than a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis. Section 404 (b) of the Sarbanes- Oxley Act also requires our independent auditors to attest to, and report on, this management assessment. Ensuring that we have adequate internal controls in place so that we can produce accurate financial statements on a timely basis is a costly and time- consuming effort. If we are not able to comply with the requirements of Section 404 , or if we , or our independent registered public accounting firm , are unable to attest to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our stock could decline and we could be subject to sanctions or investigations by Nasdaq, the SEC, or other regulatory authorities, which would require additional financial and management resources. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we would be required to implement remediation procedures aimed at mitigating the control weakness or weaknesses. Until such remediation procedures succeed in mitigating the control weakness or weaknesses, we would be unable to assert that our internal control over financial reporting is effective. We cannot assure you that there will not be material weaknesses in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to timely and accurately report our financial condition, results of operations or cash flows. The cost of compliance with Section 404 requires us to incur substantial accounting expense and expend significant management time on compliance - related issues as we implement additional corporate governance practices and comply with reporting requirements. Although we currently use the services of a third- party accounting firm to assist us with internal controls, we currently do not have an internal audit group, and we may need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Moreover, if we are not able to comply with these requirements in a timely manner , or if we , or our independent registered public accounting firm , identifies deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline, we could lose investor confidence in the accuracy and completeness of our financial reports, and we could be subject to sanctions or investigations by Nasdaq, the SEC or other regulatory authorities, which would require additional financial and management resources. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets. Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud. We are subject to the periodic reporting requirements of the Exchange Act. Our disclosure controls and procedures are designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accumulated and communicated to management, recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. In addition, as discussed above, the Sarbanes- Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In particular, Section 404 of the Sarbanes- Oxley Act requires us to perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on, and our independent registered public accounting firm to attest to, the effectiveness of our internal control over financial reporting. Pursuant to Section 404, we are required to provide an annual management report on the effectiveness of our internal

control over financial reporting and we will also be required to include with such annual report an attestation report on internal controls over financial reporting issued by our independent registered public accounting firm. In the future, our independent registered public accounting firm may issue a report that is adverse in the event that we have not maintained effective internal controls over financial reporting, in all material respects. Any failure to maintain effective disclosure controls and internal control over financial reporting could have a material and adverse effect on our business, results of operations and financial condition and could cause a decline in the trading price of our common stock. These inherent limitations include the realities that judgments in decision- making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements or insufficient disclosures due to error or fraud may occur and not be detected. Our business and operations would suffer in the event of system failures. Despite our implementation of security measures, our internal computer systems and those of our CROs and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war, telecommunication and electrical failures, cyber- attacks or cyber- intrusions over the Internet, attachments to emails, persons inside our organization, or persons with access to systems inside our organization. The risk of a security breach or disruption, particularly through cyber- attacks or cyber intrusion, including by computer hackers, foreign governments, and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our product candidate development programs. For example, the loss of clinical trial data from completed, ongoing, or planned clinical trials 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 were to result in a loss of or damage to our data or applications, or inappropriate disclosure of personal, confidential, or proprietary information, we could incur liability and the further development of any of our product candidates could be delayed. Environmental, social **,** and governance matters may impact our business and reputation. Governmental authorities, non- governmental organizations, customers, investors, external stakeholders and employees are increasingly sensitive to environmental, social **,** and governance, or ESG ~~,~~ concerns, such as diversity and inclusion, climate change, water use, recyclability or recoverability of packaging, and plastic waste. This focus on ESG concerns may lead to new requirements that could result in increased costs associated with developing, manufacturing and distributing our products. Our ability to compete could also be affected by changing customer preferences and requirements, such as growing demand for more environmentally friendly products, packaging or supplier practices, or by failure to meet such customer expectations or demand. While we strive to improve ~~its~~ **our** ESG performance, we risk negative stockholder reaction, including from proxy advisory services, as well as damage to ~~its~~ **our** brand and reputation, if we do not act responsibly, or if we are perceived to not be acting responsibly in key ESG areas, including equitable access to medicines and vaccines, product quality and safety, diversity and inclusion, environmental stewardship, support for local communities, corporate governance and transparency, and addressing human capital factors in our operations. If we do not meet the ESG expectations of ~~its~~ **our** investors, customers and other stakeholders, we could experience reduced demand for ~~its~~ **our** products, loss of customers, and other negative impacts on our business and results of operations **. In addition, this emphasis on environmental, social, and other sustainability matters has resulted and may result in the adoption of new laws and regulations, including new reporting requirements. If we fail to comply with new laws, regulations, or reporting requirements, our reputation and business could be adversely impacted** . RISKS RELATED TO OWNERSHIP OF OUR COMMON STOCK An active trading market for our common stock may not be sustained. In November 2015, we closed our initial public offering. Prior to our initial public offering, there was no public market for shares of our common stock. Although we have completed our initial public offering and shares of our common stock are listed and trading on The Nasdaq Global Market, an active trading market for our shares may not be sustained. If an active market for our common stock does not continue, it may be difficult for our stockholders to sell their shares without depressing the market price for the shares or sell their shares at or above the prices at which they acquired their shares or sell their shares at the time they would like to sell. Any inactive trading market for our common stock may also impair our ability to raise capital to continue to fund our operations by selling shares. The market price of our common stock may be highly volatile. The trading price of our common stock is likely to be highly volatile. For example, in 2019, we experienced an extraordinary level of appreciation in our stock price. Such levels of gain are unlikely to continue in the future. Since then **,** we have seen both significant appreciations and depreciations in our stock price. As a result of this volatility, investors may not be able to sell their common stock at or above the price paid for the shares. The market price for our common stock may be influenced by many factors, including: • the commercial success of our products; • delays in the commencement, enrollment, and ultimate completion, of our planned and ongoing Phase 3 clinical trials for our product candidates; • any delay or refusal on the part of the FDA in approving an NDA for any of our current and future product candidates; • operating and stock price performance of other companies that investors deem comparable to ours; • recommendations by securities analysts; • news relating to our industry as a whole and news relating to trends in our markets; • results of clinical trials of any of our current and future product candidates or those of our competitors; • actual or anticipated variations in quarterly or annual operating results; • failure to meet or exceed financial projections we provide to the public, if any; • failure to meet or exceed the estimates and projections of the investment community, including securities analysts; • introduction of competitive products or technologies; • changes or developments in laws or regulations applicable to our product candidates; • the perception of the pharmaceutical industry by the public, legislatures, regulators, and the investment community; • general economic and market conditions and overall fluctuations in U. S. equity markets; • data or security breaches; • developments concerning our sources of manufacturing supply, warehousing, and inventory control; • disputes or other developments relating to patents or other proprietary rights; • additions or departures of key scientific or management personnel; • announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us; • capital

commitments; • investors' general perception of our company and our business; • announcements and expectations of additional financing efforts, including the issuance of debt, equity or convertible securities; • sales of our common stock, including sales by our directors and officers or significant stockholders; • changes in the market valuations of companies similar to us; • announcements by us or our competitors of significant acquisitions, strategic partnerships, or divestitures; • general conditions or trends in our industry; and • the other factors described in this " Risk Factors " section. In addition, the stock market in general, and the market for mid- cap pharmaceutical and biotechnology companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. If equity research analysts do not publish research or reports, or publish unfavorable research or reports, about us, our business, or our market, our stock price and trading volume could decline. The trading market for our common stock is influenced by the research and reports that equity research analysts publish about us and our business. We do not have any control over the equity research analysts that provide research coverage of our common stock or the content and opinions included in their reports. The price of our stock could decline if one or more equity research analysts downgrades our stock or issue other unfavorable commentary or research. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which in turn could cause our stock price or trading volume to decline. Our quarterly operating results may fluctuate significantly. We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including: • whether the FDA requires us to complete additional, unanticipated studies, tests, or other activities prior to approving any of our current and future product candidates, which may delay any such approval; • our ability to identify and enter into third - party manufacturing arrangements capable of manufacturing any of our current or future product candidates in commercial quantities; • our execution of other collaborative, licensing, or similar arrangements and the timing of payments we may make or receive under these arrangements; • variations in the level of expenses related to our future development programs; • any product liability or intellectual property infringement lawsuit in which we may become involved; • regulatory developments affecting our current products, or the products of our competitors; and • the level of underlying demand for our products **.** If our quarterly or annual operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly or annual fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance. Raising additional funds by issuing securities may cause dilution to existing stockholders and raising funds through lending and licensing arrangements may restrict our operations or require us to relinquish proprietary rights. We may finance our cash needs through a combination of equity offerings, debt financings, grants, and license and development agreements in connection with any collaborations until such time, if ever, as our product sales are sufficient to meet our cash needs. To the extent that we raise additional capital by issuing equity securities, our existing stockholders' ownership 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 and preferred equity 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 marketing, distribution or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs, or product candidates or grant licenses on terms that may not be favorable to us. Any debt financing we enter into may involve covenants that restrict our operations. These restrictive covenants may include limitations on additional borrowing and specific restrictions on the use of our assets as well as prohibitions on our ability to create liens, pay dividends, redeem our stock, or make investments. If we are unable to raise additional funds through equity or debt financings 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 product candidates that we would otherwise prefer to develop and market ourselves. As of February ~~13~~ **11** , ~~2024~~ **2025** , our executive officers, directors, and 5 % stockholders and their affiliates beneficially owned an aggregate of approximately ~~47~~ **44** % of our outstanding common stock. As a result, these stockholders have significant influence and may be able to determine all matters requiring stockholder approval. For example, these stockholders may be able to control elections of directors, amendments of our organizational documents, or approval of any merger, sale of assets, or other major corporate transaction. This concentration of ownership could delay or prevent any acquisition of our company on terms that other stockholders may desire and may adversely affect the market price of our common stock. Some of these persons or entities may have interests different than our other stockholders. For example, these stockholders, if they acted together, could significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions. These stockholders may be able to determine all matters requiring stockholder approval. The interests of these stockholders may not always coincide with our interests or the interests of other stockholders. This may also prevent or discourage unsolicited acquisition proposals or offers for our common stock that other stockholders may feel are in their best interest and our large stockholders may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock. Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to fall. Sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise adequate capital through the sale of additional equity securities. We are unable to predict the effect that sales may have on the prevailing market price of our common stock. As of February ~~13~~ **11** , ~~2024~~ **2025** , we have outstanding ~~47~~ **48** , ~~374~~ **765** , ~~375~~ **403** shares of common stock and 9, ~~590~~ **570** , ~~916~~ **909** shares of common stock equivalents that would increase the number of common stock outstanding if these instruments were

exercised or converted, including stock options to purchase common stock based on vesting requirements and warrants to purchase common stock, as well as outstanding restricted stock units. Of our currently outstanding shares of common stock, ~~39~~ **40** , ~~373~~ **726** , ~~446~~ **651** are freely tradable. The remainder of the outstanding shares of common stock are held by our affiliates and may be considered " control securities " for purposes of Rule 144 under the Securities Act. In addition, we have filed **, or will soon file,** one or more registration statements on Form S - 8 registering the issuance of an aggregate of ~~13~~ **15** , ~~705~~ **600** , ~~956~~ **010** shares of common stock subject to options or other equity awards issued or reserved for ~~future~~ issuance under our 2015 Omnibus Incentive Compensation Plan and ~~an additional~~ 1, 100, 000 shares of common stock reserved for ~~future~~ issuance under our 2023 Employee Stock Purchase Plan. Shares registered under registration statements on Form S- 8 will be available for sale in the public market subject to vesting arrangements and exercise of options, the lock up agreements described above and the restrictions of Rule 144 in the case of our affiliates. Our management will have broad discretion in the use of the net proceeds from our capital raises, including the proceeds from sales pursuant to our Sales Agreement, and may not use them effectively. Our management will have broad discretion in the application of the net proceeds from our capital raises, which we refer to as our Capital Raises, including the proceeds from sales pursuant to ~~our~~ **the** March 2022 ~~" at- the- market " sales~~ **Sales** ~~agreement~~ **Agreement** with ~~SVB Securities LLC (now known as Leerink Partners LLC, or Leerink), or~~ Leerink, which provides for the sale of up to $ 250. 0 million of our common stock from time to time, and our stockholders will not have the opportunity as part of their investment decision to assess whether the net proceeds from our Capital Raises are being used appropriately. Our stockholders may not agree with our decisions, and our use of the proceeds may not yield any return on investment for our stockholders. Because of the number and variability of factors that will determine our use of the net proceeds from our Capital Raises their ultimate use may vary substantially from their currently intended use. Our failure to apply the net proceeds of our Capital Raises effectively could compromise our ability to pursue our growth strategy and we might not be able to yield a significant return, if any, on our investment of those net proceeds. Our stockholders will not have the opportunity to influence our decisions on how to use our net proceeds from our Capital Raises. Pending their use, we may invest the net proceeds from our Capital Raises in short- term, investment- grade, interest- bearing instruments and U. S. government securities. These temporary investments are not likely to yield a significant return. Our net operating loss carryforwards and any future research and development tax credits may expire and not be used. As of December 31, ~~2023~~ **2024** , we had U. S. federal net operating loss, **or** NOL, carryforwards of approximately $ ~~547~~ **572. 1** million and foreign NOL carryforwards of $ ~~0~~ **4** . ~~7~~ **8** million. U. S. federal net operating loss carry forwards amounting to $ ~~60~~ **59. 8** million generated before the 2018 tax year will start expiring beginning 2032, if we have not used them prior to that time, and the **U. S. federal** net operating losses of approximately $ ~~487~~ **512. 3** million generated in 2018 and later have an indefinite carryforward period. Net operating loss carry forwards arising in taxable years ending after December 31, 2017, are no longer subject to expiration under the Internal Revenue Code of 1986, as amended, or the Code. Additionally, our ability to use any net operating loss and credit carryforwards to offset taxable income or tax, respectively, in the future will be limited under Sections 382 and 383 of the Code, respectively, if we have a cumulative change in ownership of more than 50 % within a three- year period. **In** ~~The completion of our initial public offering, together with our other~~ -- **the event a change of** ~~public and private Capital Raises, and other transactions that have occurred, may trigger, or may have already triggered, such an~~ ownership **occurs** ~~change. In addition, since we may need to raise additional funding to finance our operations, we may undergo further ownership changes in the future. We have never completed an analysis as to whether such a change of ownership has occurred, but in such an event~~ , we will be limited regarding the amount of net operating loss carryforwards and research tax credits that could be utilized annually in the future to offset taxable income or tax, respectively. Any such annual limitation may significantly reduce the utilization of the net operating loss carryforwards and research tax credits before they expire. In addition, certain states have suspended use of net operating loss carryforwards for certain taxable years, and other states are considering similar measures. As a result, we may incur higher state income tax expense in the future. Depending on our future tax position, continued suspension of our ability to use net operating loss carryforwards in states in which we are subject to income tax could have an adverse impact on our results of operations and financial condition. Because we do not intend to pay dividends on our common stock, returns for our stockholders will be limited to any increase in the value of our stock. We have never declared or paid any cash dividends on our capital stock. In addition, the terms of our existing credit facility with Hercules preclude us from paying cash dividends without Hercules' consent. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business and do not anticipate declaring or paying any cash dividends on our common stock for the foreseeable future. Any return to stockholders will therefore be limited to the appreciation of their stock, if any. Investors seeking cash dividends should not purchase our common stock. Provisions in our corporate charter documents and under Delaware law may prevent or frustrate attempts by our stockholders to change our management and hinder efforts to acquire a controlling interest in us, and the market price of our common stock may be lower as a result. There are provisions in our amended and restated certificate of incorporation and amended and restated bylaws that may make it difficult for a third party to acquire, or attempt to acquire, control of our company, even if a change in control was considered favorable by you and other stockholders. For example, our Board will have the authority to issue up to 10, 000, 000 shares of preferred stock and to fix the price, rights, preferences, privileges, and restrictions of the preferred stock without any further vote or action by our stockholders. We do not currently have any preferred stock outstanding. The issuance of shares of preferred stock may delay or prevent a change in control transaction. As a result, the market price of our common stock and the voting and other rights of our stockholders may be adversely affected. An issuance of shares of preferred stock may result in the loss of voting control to other stockholders. In addition, we are subject to the anti - takeover provisions of Section 203 of the Delaware General Corporation Law, or DGCL, which regulates corporate acquisitions by prohibiting Delaware corporations from engaging in specified business combinations with particular stockholders of those companies. These provisions could discourage potential acquisition proposals and could delay or prevent a change in control transaction. They could also have the effect of discouraging others

from making tender offers for our common stock, including transactions that may be in your best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock. Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees. Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternate ~~form~~ **forum** , the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, (3) any action asserting a claim arising pursuant to the DGCL, or (4) any other action asserting a claim against us that is governed by the internal affairs doctrine, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions of our amended and restated certificate of incorporation described above. This choice of forum provision may limit a stockholder' s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees or agents, which may discourage such lawsuits against us and our directors, officers, employees, and agents. Further, this choice of forum provision does not preclude or contract the scope of exclusive federal or concurrent jurisdiction for any actions brought under the Securities Act or the Exchange Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. In addition, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Securities Act or any other claim for which the federal and state courts have concurrent jurisdiction. Accordingly, our exclusive forum provision will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations. If a court were to find these provisions of our amended and restated certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition, and results of operations. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management and other employees.