AKORN INC
Form 10-Q
August 17, 2009

Table of Contents

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

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

FOR THE QUARTERLY PERIOD ENDED June 30, 2009

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER: 001-32360

AKORN, INC.

(Exact Name of Registrant as Specified in its Charter)

LOUISIANA	72-0717400
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
1925 W FIELD CT STE 300 LAKE FOREST, ILLINOIS	60045
(Address of Principal Executive Offices)	(Zip Code)

(847) 279-6100

(Registrant s telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes þ **No** o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes o No o

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer o **Accelerated filer** þ **Non-accelerated filer** o **Smaller reporting company** o

(Do not check if a smaller reporting company)

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes o **No** þ

At July 31, 2009 there were 90,293,178 shares of common stock, no par value, outstanding.

Table of Contents

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements.

AKORN, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
IN THOUSANDS, EXCEPT SHARE DATA

	JUNE 30, 2009 (UNAUDITED)	DECEMBER 31, 2008 (AUDITED)
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 1,019	$ 1,063
Trade accounts receivable (less allowance for doubtful accounts of $18 and $22, respectively)	9,044	6,529
Other receivable		1,221
Inventories	24,607	30,163
Prepaid expenses and other current assets	986	1,770
TOTAL CURRENT ASSETS	35,656	40,746
PROPERTY, PLANT AND EQUIPMENT, NET	32,839	34,223
OTHER LONG-TERM ASSETS		
Intangibles, net	5,353	6,017
Deferred financing costs	1,391	272
Other	1,561	1,071
TOTAL OTHER LONG-TERM ASSETS	8,305	7,360
TOTAL ASSETS	$ 76,800	$ 82,329
LIABILITIES AND SHAREHOLDERS EQUITY		
CURRENT LIABILITIES		
Trade accounts payable	$ 5,239	$ 8,795
Accrued compensation	1,158	1,070
Accrued expenses and other liabilities	3,077	2,906
Short term subordinated debt related party	5,742	5,332
Revolving line of credit related party	5,509	
Warrants liability related party	2,719	
Supply agreement termination costs	4,750	
TOTAL CURRENT LIABILITIES	28,194	18,103
LONG-TERM LIABILITIES		
Lease incentive obligation	1,394	1,484
Product warranty liability	1,299	1,299
Other long-term liabilities	825	
TOTAL LONG-TERM LIABILITIES	3,518	2,783
TOTAL LIABILITIES	31,712	20,886

SHAREHOLDERS EQUITY		
Common stock, no par value 150,000,000 shares authorized; 90,244,618 and 90,072,662 shares issued and outstanding at June 30, 2009 and December 31, 2008, respectively	171,903	170,617
Warrants to acquire common stock	2,731	2,731
Accumulated deficit	(129,546)	(111,905)
TOTAL SHAREHOLDERS EQUITY	45,088	61,443
TOTAL LIABILITIES AND SHAREHOLDERS EQUITY	$ 76,800	$ 82,329

See notes to condensed consolidated financial statements.

Table of Contents

AKORN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
IN THOUSANDS, EXCEPT PER SHARE DATA
(UNAUDITED)

	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	2009	2008	2009	2008
Revenues	$ 16,300	$ 21,229	$ 38,340	$ 35,688
Cost of sales	14,634	16,402	31,311	27,114
GROSS PROFIT	1,667	4,827	7,029	8,574
Selling, general and administrative expenses	5,832	5,914	12,829	12,171
Supply agreement termination expenses	99		5,929	
Amortization of intangibles	339	338	914	677
Research and development expenses	1,691	1,225	2,668	3,601
TOTAL OPERATING EXPENSES	7,961	7,477	22,340	16,449
OPERATING LOSS	(6,294)	(2,650)	(15,311)	(7,875)
Write-off and amortization of deferred financing costs	(98)		(1,552)	
Interest expense, net	(376)	(169)	(654)	(284)
Equity in earnings of unconsolidated joint venture	128		188	
Change in fair value of warrants liability	(310)		(310)	
Other expense				(201)
LOSS BEFORE INCOME TAXES	(6,950)	(2,819)	(17,639)	(8,360)
Income tax provision			2	3
NET LOSS	$ (6,950)	$ (2,819)	$ (17,641)	$ (8,363)
NET LOSS PER SHARE:				
BASIC	$ (0.08)	$ (0.03)	$ (0.20)	$ (0.09)
DILUTED	$ (0.08)	$ (0.03)	$ (0.20)	$ (0.09)
SHARES USED IN COMPUTING NET LOSS PER SHARE:				
BASIC	90,218	89,204	90,161	89,129
DILUTED	90,218	89,204	90,161	89,129

See notes to condensed consolidated financial statements.

Table of Contents

AKORN, INC.
CONDENSED CONSOLIDATED STATEMENT OF SHAREHOLDERS EQUITY
FOR THE SIX MONTHS ENDED JUNE 30, 2009 AND 2008
UNAUDITED
(In Thousands)

	Common Stock		Warrants to acquire Common	Accumulated	
Six Months Ended June 30, 2009	**Shares**	**Amount**	**Stock**	**Deficit**	**Total**
BALANCES AT DECEMBER 31, 2008	90,073	$ 170,617	$ 2,731	$ (111,905)	$ 61,443
Net loss				(17,641)	(17,641)
Employee stock purchase plan issuances	73	90			90
Amortization of deferred compensation related to restricted stock awards	99	193			193
Restricted stock awards vested net of amounts withheld for payment of employee tax liability		(47)			(47)
Stock-based compensation expense		1,050			1,050
BALANCES AT JUNE 30, 2009	90,245	$ 171,903	$ 2,731	$ (129,546)	$ 45,088

	Common Stock		Warrants to acquire Common	Accumulated	
Six Months Ended June 30, 2008	**Shares**	**Amount**	**Stock**	**Deficit**	**Total**
BALANCES AT DECEMBER 31, 2007	88,901	$ 165,829	$ 2,795	$ (103,966)	$ 64,658
Net loss				(8,363)	(8,363)
Exercise of warrants into common stock	50	101	(64)		37
Exercise of stock options	189	511			511
Employee stock purchase plan issuances	17	103			103
Amortization of deferred compensation related to restricted stock awards	66	358			358
Restricted stock awards vested net of amounts withheld for payment of employee tax liability		(158)			(158)
Stock-based compensation expense		891			891
BALANCES AT JUNE 30, 2008	89,223	$ 167,635	$ 2,731	$ (112,329)	$ 58,037

Table of Contents

AKORN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
IN THOUSANDS (UNAUDITED)

	SIX MONTHS ENDED JUNE 30	
	2009	**2008**
OPERATING ACTIVITIES		
Net loss	$ (17,641)	$ (8,363)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,848	2,222
Amortization of deferred financing fees	1,552	
Non-cash stock compensation expense	1,243	1,249
Non-cash supply agreement termination expense	1,051	
Non-cash change in fair value of warrants liability	310	
Equity in earnings of unconsolidated joint venture	(188)	
Changes in operating assets and liabilities:		
Trade accounts receivable	(2,515)	(5,989)
Inventories	5,556	5,720
Prepaid expenses and other current assets	574	140
Other long-term assets		1,246
Supply agreement termination liabilities	4,750	
Trade accounts payable	(3,556)	(9,639)
Other long-term liabilities	825	
Accrued expenses and other liabilities	579	362
NET CASH USED IN OPERATING ACTIVITIES	(4,612)	(13,052)
INVESTING ACTIVITIES		
Purchases of property, plant and equipment	(642)	(1,420)
Purchase of product licensing rights	(250)	
NET CASH USED IN INVESTING ACTIVITIES	(892)	(1,420)
FINANCING ACTIVITIES		
Repayment of long-term debt		(208)
Restricted cash for revolving credit agreement		(2,050)
Loan origination fees new revolving line of credit	(1,313)	
Proceeds from line of credit	5,509	9,658
Proceeds from exercise of stock warrants		37
Proceeds under stock option and stock purchase plans	1,264	456
NET CASH PROVIDED BY FINANCING ACTIVITIES	5,460	7,893
DECREASE IN CASH AND CASH EQUIVALENTS	(44)	(6,579)
Cash and cash equivalents at beginning of period	1,063	7,948
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 1,019	$ 1,369
SUPPLEMENTAL DISCLOSURES		
Amount paid for interest	$ 227	$ 366

Amount paid for income taxes	$ 3	$ 3

See notes to condensed consolidated financial statements

Table of Contents

AKORN, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

NOTE A BUSINESS AND BASIS OF PRESENTATION

Business: Akorn, Inc. and its wholly owned subsidiary, Akorn (New Jersey), Inc. (collectively, the Company or Akorn), manufacture and market diagnostic and therapeutic pharmaceuticals in specialty areas such as ophthalmology, rheumatology, anesthesia, antidotes and vaccines, among others. Customers, including physicians, optometrists, wholesalers, group purchasing organizations and other pharmaceutical companies, are served primarily from three operating facilities in the United States. In September 2004, the Company, along with a venture partner, Strides Arcolab Limited (Strides), formed a mutually owned limited liability company, Akorn-Strides, LLC (the Joint Venture Company). The accompanying unaudited condensed consolidated financial statements include the accounts of Akorn, Inc. and Akorn (New Jersey) Inc. Intercompany transactions and balances have been eliminated in consolidation.

Basis of Presentation: These financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and accordingly do not include all the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, all adjustments of a normal and recurring nature considered necessary for a fair presentation have been included in these financial statements. Operating results for the six-month period ended June 30, 2009 are not necessarily indicative of the results that may be expected for a full year. For further information, refer to the consolidated financial statements and footnotes for the year ended December 31, 2008, included in the Company s Annual Report on Form 10-K filed with the Securities and Exchange Commission (the SEC) on March 30, 2009.

NOTE B SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates: The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially from those estimates. Significant estimates and assumptions for the Company relate to the allowance for doubtful accounts, the allowance for chargebacks, the allowance for rebates, the allowance for product returns and discounts, the reserve for slow-moving and obsolete inventories, the carrying value of intangible assets and the carrying value of deferred income tax assets.

Chargebacks: The Company enters into contractual agreements with certain third parties such as hospitals and group-purchasing organizations to sell certain products at predetermined prices. The parties have elected to have these contracts administered through wholesalers that buy the product from the Company and subsequently sell it to these third parties. When a wholesaler sells products to one of these third parties that are subject to a contractual price agreement, the difference between the price paid to the Company by the wholesaler and the price under the specific contract is charged back to the Company by the wholesaler. The Company tracks sales and submitted chargebacks by product number and contract for each wholesaler. Utilizing this information, the Company estimates a chargeback percentage for each product. The Company reduces gross sales and increases the chargeback allowance by the estimated chargeback amount for each product sold to a wholesaler. The Company reduces the chargeback allowance when it processes a request for a chargeback from a wholesaler. Actual chargebacks processed by the Company can vary materially from period to period based upon actual sales volume through the wholesalers. However, the Company s expense provision for chargebacks is recorded at the time when sales revenues are recognized.

Management obtains certain wholesaler inventory reports to aid in analyzing the reasonableness of the chargeback allowance. The Company assesses the reasonableness of its chargeback allowance by applying the product chargeback percentage based on historical activity to the quantities of inventory on hand per the wholesaler inventory reports and an estimate of in-transit inventory that is not reported on the wholesaler inventory reports at the end of the period. In accordance with its accounting policy, the Company s estimate of the percentage amount of wholesaler inventory that will ultimately be sold to a third party that is subject to a contractual price agreement is based on a six-quarter trend of such sales through wholesalers. The Company uses this percentage estimate (95% in 2009 and 2008) until historical

trends indicate that a revision should be made.

Table of Contents

On an ongoing basis, the Company evaluates its actual chargeback rate experience and new trends are factored into its estimates each quarter as market conditions change.

Sales Returns: Certain of the Company s products are sold with the customer having the right to return the product within specified periods and guidelines for a variety of reasons, including but not limited to, pending expiration dates. Provisions are made at the time of sale based upon tracked historical experience, by product and by customer in some cases. The Company estimates its sales returns reserve based on a historical percentage of returns to sales. One-time historical factors or pending new developments that would impact the expected level of returns are taken into account to determine the appropriate reserve estimate at each balance sheet date.

As part of the evaluation of the balance required, the Company considers actual returns to date that are in process, the expected impact of any product recalls and the wholesaler s inventory information to assess the magnitude of unconsumed product that may result in a sales return to the Company in the future. The sales returns level can be impacted by factors such as overall market demand and market competition and availability for substitute products which can increase or decrease the end-user pull through for sales of the Company s products and ultimately impact the level of sales returns. Actual returns experience and trends are factored into the Company s estimates each quarter as market conditions change.

NOTE C STOCK BASED COMPENSATION

Effective January 1, 2006, the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), Share Based Payment (SFAS 123(R)), applying the modified prospective method. Prior to the adoption of SFAS 123(R), the Company applied the provisions of APB Opinion No. 25, Accounting for Stock Issued to Employees, in accounting for its stock-based awards, and accordingly, recognized no compensation cost for its stock plans other than for its restricted stock awards.

Under the modified prospective method, SFAS 123(R) applies to new awards and to awards that were outstanding as of December 31, 2005 that are subsequently vested, modified, repurchased or cancelled. Compensation expense recognized during the three and six month periods ended June 30, 2009 includes the portion vesting during those periods for (1) all share-based payments granted prior to, but not yet vested as of December 31, 2005, based on the grant date fair value estimated in accordance with the original provisions of Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation (SFAS 123) and (2) all share-based payments granted subsequent to December 31, 2005, based on the grant-date fair value estimated using the Black-Scholes option-pricing model.

Under SFAS No. 123(R), stock compensation cost is estimated at the grant date based on the fair value of the award, and the cost is recognized as expense ratably over the vesting period. The Company uses the Black-Scholes model for estimating the fair value of stock options in providing the pro forma fair value method disclosures pursuant to SFAS No. 123(R). Determining the assumptions that enter into the model is highly subjective and requires judgment. The Company uses an expected volatility that is based on the historical volatility of its stock. The expected life assumption is based on historical employee exercise patterns and employee post-vesting termination behavior. The risk-free interest rate for the expected term of the option is based on the average market rate on U.S. treasury securities in effect during the quarter in which the options were granted. The dividend yield reflects historical experience as well as future expectations over the expected term of the option. Also, under SFAS No. 123(R), the Company is required to estimate forfeitures at the time of grant and revise in subsequent periods, if necessary, if actual forfeitures differ from those estimates. After reviewing historical forfeiture information, the Company decided to revise its estimate from 10% used in 2006 and 2007 to 13% as an estimated forfeiture rate for 2008 and 2009.

Stock compensation expense related to options of $255,000 and $1,050,000 was recognized during the three and six-month periods ended June 30, 2009, respectively. Stock compensation expense related to options of $427,000 and $891,000 was recognized during the three and six-month periods ended June 30, 2008. For stock compensation expense related to options issued prior to January 1, 2006, the Company used the multiple award method for allocating the compensation cost to each period. For stock compensation expense related to options issued on or after January 1, 2006, concurrent with the adoption of SFAS 123(R), the Company has elected to use the single-award method for allocating the compensation cost to each period.

Table of Contents

The weighted-average assumptions used in estimating the fair value of the stock options granted during the three months ended June 30, 2009 and 2008, along with the weighted-average grant date fair values, were as follows:

	THREE MONTHS ENDED JUNE 30, 2009	THREE MONTHS ENDED JUNE 30, 2008
Expected volatility	80%	46%
Expected life (in years)	3.9	4.0
Risk-free interest rate	2.2%	3.2%
Dividend yield		
Fair value per stock option	$0.56	$ 1.54
Forfeiture rate	13%	10%

A summary of stock-based compensation activity within the Company s stock-based compensation plans for the six-month period ended June 30, 2009 is as follows:

	Number of Shares (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2008	3,684	$ 5.20	2.56	$ 44
Granted	1,027	$ 1.03		
Exercised				
Forfeited	(1,301)	$ 5.13		
Outstanding at June 30, 2009	3,410	$ 3.97	2.89	$ 242
Exercisable at June 30, 2009	1,830	$ 5.10	1.73	$ 11

The aggregate intrinsic value for stock options outstanding and exercisable is defined as the difference between the market value of the Company s common stock as of the end of the period and the exercise price of the stock options. No stock options were exercised during the first six months of 2009.

The Company also grants restricted stock awards to certain employees and members of its Board of Directors. Restricted stock awards are valued at the closing market value of the Company s common stock on the day of grant and the total value of the award is recognized as expense ratably over the vesting period of the grants. The Company did not grant any restricted stock awards during the second quarter of 2009. As of June 30, 2009, the total amount of unrecognized compensation expense related to nonvested restricted stock awards was $138,000. The Company recognized compensation expense of $33,000 and $193,000 during the three and six-month periods ended June 30 2009, related to outstanding restricted stock awards. The Company recognized compensation expense of $133,000 and $358,000 during the three and six-month periods ended June 30 2008, related to outstanding restricted stock awards. The following is a summary of nonvested restricted stock activity:

	Weighted Average

	Number of Shares (in thousands)	Grant Date Fair Value
Nonvested at December 31, 2008	125	$ 5.74
Granted	55	2.19
Vested	(155)	4.22
Nonvested at June 30, 2009	25	7.34

NOTE D REVENUE RECOGNITION

The Company recognizes product sales for its ophthalmic, hospital drugs & injectables, and biologics & vaccines business segments upon the shipment of goods or upon the delivery of goods as appropriate. Revenue is recognized when all obligations of the Company have been fulfilled and collection of the related receivable is probable.

Table of Contents

The contract services segment, which produces products for third party customers based upon their specifications and at pre-determined prices, also recognizes sales upon the shipment of goods or upon delivery of the product or service as appropriate. Revenue is recognized when all obligations of the Company have been fulfilled and collection of the related receivable is probable.

Provision for estimated doubtful accounts, chargebacks, rebates, discounts and product returns is made at the time of sale and is analyzed and adjusted, if necessary, at each balance sheet date.

NOTE E ACCOUNTS RECEIVABLE ALLOWANCES

The nature of the Company s business inherently involves, in the ordinary course, significant amounts and substantial volumes of transactions and estimates relating to allowances for doubtful accounts, product returns, chargebacks, rebates and discounts given to customers. This is a natural circumstance of the pharmaceutical industry and not specific to the Company and inherently lengthens the final net collections process. Depending on the product, the end-user customer, the specific terms of national supply contracts and the particular arrangements with the Company s wholesaler customers, certain rebates, chargebacks and other credits are deducted from the Company s accounts receivable. The process of claiming these deductions depends on wholesalers reporting to the Company the amount of deductions that were earned under the respective terms with end-user customers (which in turn depends on which end-user customer, with different pricing arrangements might be entitled to a particular deduction). This process can lead to partial payments against outstanding invoices as the wholesalers take the claimed deductions at the time of payment.

The provisions for the following customer reserves are reflected in the accompanying financial statements as reductions of revenues in the statements of operations with the exception of the allowance for doubtful accounts which is reflected as part of selling, general and administrative expense. The ending reserve amounts are included in trade accounts receivable in the accompanying balance sheets.

Net trade accounts receivable consists of the following at (in thousands):

	JUNE 30, 2009	DECEMBER 31, 2008
Gross accounts receivable	$ 17,563	$ 18,723
Less:		
Allowance for doubtful accounts	(18)	(22)
Returns reserve	(3,170)	(2,539)
Discount and allowances reserve	(326)	(322)
Chargeback and rebates reserves	(5,005)	(9,311)
Net trade accounts receivable	$ 9,044	$ 6,529

For the three-month periods ended June 30, 2009 and 2008, the Company recorded chargeback and rebate expense of $6,350,000 and $7,866,000, respectively. For the six-month periods ended June 30, 2009 and 2008, the Company recorded chargeback and rebate expense of $13,940,000 and $16,176,000, respectively. These decreases for both the three and six month periods were primarily due to a favorable sales mix of lower chargeback products in 2009.

For the three-month periods ended June 30, 2009 and 2008, the Company recorded a provision for product returns of $2,788,000 and $853,000 respectively. For the six-month periods ended June 30, 2009 and 2008, the Company recorded a provision for product returns of $3,320,000 and $950,000, respectively. The increase in the product returns was primarily due to a provision of $863,000 related to the Company s Akten® ophthalmic solution product, $242,000 in additional returns for a product recall on the Company s Cyanide Antidote Kits due to a supplier syringe recall, lower than anticipated market pull through on Ophthalmic products and also to reflect increased returns anticipated from wholesalers on certain other products. Akten® was launched in October 2008 and the significant returns were not previously anticipated as the Company had expected to capture significant market share based on the product s attributes. The Company has commenced a trial sampling and price reduction program along with additional field

sales coverage for key users to stimulate market demand for this product.

For the three-month periods ended June 30, 2009 and 2008, the Company recorded a net benefit for doubtful accounts of $11,000 and a net provision for doubtful accounts of $2,000, respectively. For the six-month periods ended June 30, 2009 and 2008, the Company recorded a net benefit for doubtful accounts of $4,000 and a net provision for doubtful accounts of $0, respectively.

Table of Contents

For the three-month periods ended June 30, 2009 and 2008, the Company recorded a provision for cash discounts of $358,000 and $400,000, respectively. This decrease primarily relates to the decrease in sales for the quarter. For the six-month periods ended June 30, 2009 and 2008, the Company recorded a provision for cash discounts of $867,000 and $791,000, respectively. This increase primarily relates to the increase in sales for the respective six month periods.

NOTE F INVENTORIES

The components of inventories are as follows (in thousands):

	JUNE 30, 2009	DECEMBER 31, 2008
Finished goods	$ 13,943	$ 21,000
Work in process	2,040	1,802
Raw materials and supplies	8,624	7,361
	$ 24,607	$ 30,163

The Company maintains reserves and records provisions for slow-moving and obsolete inventory as well as inventory with a carrying value in excess of its net realizable value. Inventory at June 30, 2009 and December 31, 2008 is reported net of these reserves of $855,000 and $1,179,000, respectively, primarily related to finished goods. At June 30, 2009, the Company had $864,000 in its ending inventory for raw material related to its generic oral Vancomycin capsule product. The Company has not yet received U.S. Food and Drug Administration (FDA) approval, however it believes that FDA approval is probable and it will be able to fully realize the costs of this inventory upon FDA approval.

NOTE G PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment consists of the following (in thousands):

	JUNE 30, 2009	DECEMBER 31, 2008
Land	$ 396	$ 396
Buildings and leasehold improvements	19,993	19,607
Furniture and equipment	46,438	46,297
	66,827	66,300
Accumulated depreciation	(34,300)	(32,710)
	32,527	33,590
Construction in progress	312	633
Property, plant, & equipment, net	$ 32,839	$ 34,223

NOTE H FINANCING ARRANGEMENTS

Subordinated Note Payable

On July 28, 2008, the Company borrowed $5,000,000 from The John N. Kapoor Trust dated September 20, 1989 (the Kapoor Trust), the sole trustee and sole beneficiary of which is Dr. John N. Kapoor, the Company s Chairman of the Board of Directors and the holder of a significant stock position in the Company, in return for issuing the trust a Subordinated Promissory Note (Subordinated Note). The Subordinated Note accrues interest at a rate of 15% per year and was due and payable on July 28, 2009. The proceeds from the Subordinated Note were used in conjunction with the amended MBL Distribution Agreement that was negotiated with the Massachusetts Biologic Laboratories of the

University of Massachusetts Medical School (MBL) on July 14, 2008, which resulted in favorable pricing and reduced purchase commitments for the Company (see also Note L Commitments and Contingencies). This debt was refinanced on August 17, 2009 (see Note P Subsequent Events).

Credit Facility

On January 7, 2009, the Company entered into a Credit Agreement (the Credit Agreement) with General Electric Capital Corporation (GE Capital) as agent for several financial institutions (the Lenders) to replace its previous credit agreement with Bank

Table of Contents

of America which expired on January 1, 2009, which, as is more fully discussed below, was subsequently assigned. Pursuant to the Credit Agreement, the Lenders agreed, among other things, to extend loans to the Company under a revolving credit facility (including a letter of credit subfacility) up to an aggregate principal amount of $25,000,000 (the Credit Facility). At the Company s election, borrowings under the Credit Facility bore interest at a rate equal to either: (i) the Base Rate (defined as the highest of the Wall Street Journal prime rate, the federal funds rate plus 0.5% or LIBOR plus 1.0%), plus a margin equal to (x) 4% for the period commencing on the closing date through April 14, 2009, or (y) a percentage that ranged between 3.75% and 4.25% for the period after April 14, 2009, or (ii) LIBOR (or 2.75%, if LIBOR is less than 2.75%), plus a margin equal to (x) 5% for the period commencing on the closing date through April 14, 2009, or (y) a percentage that ranged between 4.75% and 5.25% for the period after April 14, 2009. Upon the occurrence of any event of default, the Company was to pay interest equal to an additional 2.0% per year. The Credit Agreement contained affirmative, negative and financial covenants customary for financings of this type. The negative covenants included restrictions on liens, indebtedness, payments of dividends, disposition of assets, fundamental changes, loans and investments, transactions with affiliates and negative pledges. The financial covenants included fixed charge coverage ratio, minimum-EBITDA, minimum liquidity and a maximum level of capital expenditures. In addition, the Company s obligations under the Credit Agreement could have been accelerated upon the occurrence of an event of default under the Credit Agreement, which included customary events of default such as payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, bankruptcy and insolvency related defaults, defaults relating to judgments, defaults relating to certain governmental enforcement actions, and a change of control default.

Also on January 7, 2009, in connection with the Credit Agreement, the Company entered into a Guaranty and Security Agreement (the Guaranty and Security Agreement) with GE Capital, as agent for the Lenders and each other secured party thereunder. Pursuant to the Guaranty and Security Agreement, the Company granted a security interest to GE Capital in the collateral described in the Guaranty and Security Agreement as security for the Credit Facility. The Company s obligations were secured by substantially all of its assets, excluding its ownership interest in Akorn-Strides, LLC and in certain licenses and other property in which assignments are prohibited by confidential provisions.

In connection with the Credit Agreement, on January 7, 2009, the Company also entered into a Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing by the Company, in favor of GE Capital, relating to the real property owned by the Company located in Decatur, IL. The mortgage granted a security interest in the two parcels of real property to GE Capital, as security for the Credit Facility.

Also on January 7, 2009, in connection with the Credit Agreement, the Company entered into a Subordination Agreement with the Kapoor Trust and GE Capital, as agent for the Lenders. Pursuant to the Subordination Agreement, the Kapoor Trust and the Company agreed that the Subordinated Note payable to the Kapoor Trust was subordinated to the Credit Facility, except that so long as there was no event of default outstanding under the Credit Agreement, the Company could repay that debt in full if the repayment occurred by July 28, 2009.

On February 19, 2009, GE Capital informed the Company that it was applying a reserve against availability which effectively restricted the Company s borrowings under the Credit Agreement to the balance outstanding as of February 19, 2009, which was $5,523,620. GE Capital advised that it had applied this reserve due to concerns about financial performance, including the Company s prospective compliance with certain covenants in the Credit Agreement for the quarter ended March 31, 2009.

On March 31, 2009, the Company consented to an Assignment Agreement (Assignment) between GE Capital and EJ Funds LP (EJ Funds) which transferred to EJ Funds all of GE Capital s rights and obligations under the Credit Agreement. Pursuant to the Assignment, EJ Funds became the agent and lender under the Credit Agreement. Accordingly, GE is no longer the Company s lender. Dr. Kapoor is the President of EJ Financial Enterprises, Inc., a healthcare consulting investment company (EJ Financial) and EJ Financial is the general partner of EJ Funds.

In connection with the Assignment, on April 13, 2009, the Company entered into a Modification, Warrant and Investor Rights Agreement (the Modification Agreement) with EJ Funds that, among other things, (i) reduced the revolving loan commitment under the Credit Agreement to $5,650,000, (ii) provided an extended cure period until July 22, 2009 for any event, other than specified types of Material Defaults listed in the Modification Agreement,

which could constitute an Event of Default under the Credit Agreement, unless that period is terminated earlier due to the occurrence of a Material Default or as otherwise provided in the Modification Agreement, (iii) set the interest rate for all amounts outstanding under the Credit Agreement at an annual rate of 10% with interest payable monthly, (iv) granted a security interest in and lien upon all the collateral under the Credit Agreement to the Kapoor Trust as

Table of Contents

security for the Subordinated Note, and (v) requires the Company, within 30 days after the date of the Modification Agreement, to enter into security documents consisting of a security agreement and mortgages (if requested by the Kapoor Trust) in form and substance substantially similar to the corresponding security documents under the Credit Agreement for the Kapoor Trust s interest in connection with the Subordinated Note. The Modification Agreement also granted EJ Funds the right to require the Company to nominate two directors to serve on its Board of Directors. The Kapoor Trust is entitled to require the Company to nominate a third director under its Stock Purchase Agreement dated November 15, 1990 with the Kapoor Trust. In addition, the Company agreed to pay all accrued legal fees and other expenses of EJ Funds that relate to the Credit Agreement and other loan documents, including legal expenses incurred with respect to the Modification Agreement and the Assignment.

Pursuant to the Modification Agreement, on April 13, 2009, the Company granted EJ Funds a warrant (the Modification Warrant) to purchase 1,939,639 shares of its common stock at an exercise price of $1.11 per share, subject to certain adjustments. The Modification Warrant expires five years after its issuance and is exercisable upon payment of the exercise price in cash or by means of a cashless exercise yielding a net share figure. Under the Modification Agreement, the Company has the right to convert the Subordinated Note into term indebtedness under the Credit Agreement in exchange for additional warrants, on terms substantially identical to the Modification Warrant, to purchase 343,299 shares of its common stock for each $1,000,000 of converted debt. The exercise price of those warrants would also be $1.11 per share. The estimated fair value of the Modification Warrant, using a Black-Scholes valuation model, is $1,532,000 at June 30, 2009.

As of March 31, 2009, the Company classified the estimated fair value of the Modification Warrant and the warrants to be issued in conjunction with its Reimbursement and Warrant Agreement (see Note L Commitments and Contingencies) as a component of warrants to be issued within shareholder s equity, but has subsequently determined the warrants should be classified as a current liability in accordance with EITF 00-19, *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company s Own Stock*. This reclassification is a result of the requirement that the shares to be issued upon exercise of the warrants be registered shares which cannot be absolutely assured.

The fair value of these warrants increased from $2,409,000 at March 31, 2009 to approximately $2,719,000 as of June 30, 2009 and this $310,000 increase in the fair value of the warrants liability was reflected as a non-operating expense item in the Company s condensed consolidated statement of operations. Future increases or decreases in the fair value of these warrants will be recorded in a similar manner.

In 2008, the Company capitalized $272,000 of loan origination fees and costs in association with the Credit Facility. In 2009, the Company incurred closing costs and additional legal fees related to the Credit Facility of $1,182,000. Upon the assignment of the Credit Facility to EJ Funds, the Company expensed the total deferred financing costs of $1,454,000. In 2009, the Company capitalized $1,358,000 for the fair value of the Modification Warrant and $131,000 for other costs in association with the assignment of the Credit Facility. The Company is amortizing the fees associated with the Credit Facility assignment on a straight-line basis over the remaining term of the Credit Facility which amounted to $98,000 in amortization for the three months ended June 30, 2009.

NOTE I COMMON STOCK ISSUANCE

On March 8, 2006, the Company issued 4,311,669 shares of its common stock in a private placement with various investors at a price of $4.50 per share which included warrants to purchase 1,509,088 additional shares of common stock. The warrants are exercisable for a five-year period at an exercise price of $5.40 per share and may be exercised by cash payment of the exercise price or by means of a cashless exercise. All 1,509,088 warrants remained outstanding as of June 30, 2009. The total price of the private placement was approximately $19,402,000 and the net proceeds to the Company, after payment of approximately $1,324,000 of commissions and expenses, was approximately $18,078,000. The net proceeds were allocated based on the relative fair market values of the common stock and warrants with $16,257,000 allocated to the common stock and $1,821,000 allocated to the warrants.

NOTE J EARNINGS PER COMMON SHARE

Basic net loss per common share is based upon weighted average number of common shares outstanding. Diluted net loss per common share is based upon the weighted average number of common shares outstanding, including the dilutive effect, if any, of stock options and warrants using the treasury stock method. However, for the three-month

periods ended June 30, 2009 and 2008 and the

Table of Contents

six-month periods ended June 30, 2009 and 2008, the assumed exercise of any of these securities would have been anti-dilutive and, accordingly, the diluted loss per share equals the basic loss per share for that period.

The number of such shares as of June 30, 2009 and June 30, 2008 subject to warrants was 5,406,000 and 1,965,000, respectively. The number of such shares as of June 30, 2009 and June 30, 2008 subject to stock options was 3,410,000 and 4,399,000, respectively.

NOTE K INDUSTRY SEGMENT INFORMATION

The Company classifies its operations into four business segments: ophthalmic, hospital drugs & injectables, biologics & vaccines, and contract services. The ophthalmic segment manufactures, markets and distributes diagnostic and therapeutic pharmaceuticals. The hospital drugs & injectables segment manufactures, markets and distributes drugs and injectable pharmaceuticals, primarily in niche markets. The biologics & vaccines segment markets adult Tetanus Diphtheria (Td) and flu vaccines directly to hospitals and physicians as well as through wholesalers and national distributors. The contract services segment manufactures products for third party pharmaceutical and biotechnology customers based on their specifications. The Company s basis of accounting in preparing its segment information is consistent with that used in preparing its consolidated financial statements.

Selected financial information by industry segment is presented below (in thousands).

	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	2009	2008	2009	2008
REVENUES				
Ophthalmic	$ 2,984	$ 4,288	$ 8,064	$ 10,241
Hospital Drugs & Injectables	3,306	4,851	7,834	9,933
Biologics & Vaccines	7,831	10,002	18,529	11,819
Contract Services	2,179	2,088	3,913	3,695
Total revenues	$ 16,300	$ 21,229	$ 38,340	$ 35,688
GROSS PROFIT (LOSS)				
Ophthalmic	$ (457)	$ 968	$ 551	$ 2,810
Hospital Drugs & Injectables	226	1,328	1,110	2,429
Biologics & Vaccines	1,661	1,786	5,032	2,154
Contract Services	237	745	336	1,181
Total gross profit	1,667	4,827	7,029	8,574
Operating expenses	7,961	7,477	22,340	16,449
Operating loss	(6,294)	(2,650)	(15,311)	(7,875)
Interest & other expense	(656)	(169)	(2,328)	(485)
Loss before income taxes	$ (6,950)	$ (2,819)	$ (17,639)	$ (8,360)

The Company manages its business segments to the gross profit level and manages its operating and other costs on a company-wide basis. Intersegment activity at the gross profit level is minimal. The Company does not identify assets by segment for internal purposes, as certain manufacturing and warehouse facilities support more than one segment.

NOTE L COMMITMENTS AND CONTINGENCIES

(i) The Company has an outstanding product warranty reserve which relates to a ten-year expiration guarantee on injectable radiation antidote products (DTPA) sold to the United States Department of Health and Human Services in 2006. The Company is performing yearly stability studies for this product and, if the annual stability does not support

the ten-year product life, it will replace the product at no charge. The Company s supplier, Hameln Pharmaceuticals, will also share one-half of this cost if the product does not meet the stability requirement. If the ongoing product testing confirms the ten-year stability for DTPA, the Company will not incur a replacement cost and this reserve will be eliminated with a corresponding reduction to cost of sales after the ten-year period.

(ii) The Company has negotiated a payment deferral of $825,000 for product development milestone fees with one of its development partners. The Company will pay these fees during the second half of 2010.

Table of Contents

(iii) In July 2008, the Company and MBL amended their Exclusive Distribution Agreement dated as of March 22, 2007 (the MBL Distribution Agreement) to: (i) allow the Company to destroy its remaining inventory of Td vaccine, 15 dose/vial, in exchange for receiving an equivalent number of doses of preservative-free Td vaccine, 1 dose/vial (the Single-dose Product) at no additional cost other than destruction and documentation expenses; (ii) reduce the purchase price of the Single-dose Product during the first year of the MBL Distribution Agreement by approximately 14.4%; (iii) reduce the Company s purchase commitment for the second year by approximately 34.7%; and (iv) reduce the Company s purchase commitment for the third year by approximately 39.5%.

The Company was subsequently unable to make a payment of approximately $3,375,000 for Td vaccine products which was due to MBL by February 27, 2009 under its MBL Distribution Agreement. While the Company made a partial payment of $1,000,000 to MBL on March 13, 2009, it would have also been unable to make another payment of approximately $3,375,000 due to MBL on March 28, 2009. Accordingly, the company entered into a letter agreement with MBL on March 27, 2009 (MBL Letter Agreement), pursuant to which it agreed to pay MBL the $5,750,000 remaining due for these Td vaccine products plus an additional $4,750,000 in consideration of the amendments to the MBL Distribution Agreement payable according to a periodic payment schedule through June 30, 2010 (the Settlement Payments). In addition, pursuant to the MBL Letter Agreement, the MBL Distribution Agreement was converted to a non-exclusive agreement, the Company became obligated to provide MBL with a standby letter of credit (the L/C) by April 12, 2009 to secure its obligation to pay amounts due to MBL, and the Company was released from its obligation to further purchase Td vaccine products from MBL upon providing MBL with such L/C. In addition, pursuant to the MBL Letter Agreement, MBL agreed not to declare a breach or otherwise act to terminate the MBL Distribution Agreement, if the Company complied with the terms of the MBL Letter Agreement, the MBL Distribution Agreement (as amended by the MBL Letter Agreement) and any agreements required to be entered into pursuant to the MBL Letter Agreement.

On April 15, 2009, the Company entered into a Settlement Agreement with MBL (the MBL Settlement Agreement) to elaborate the MBL Letter Agreement. The MBL Settlement Agreement provides that the Company will pay MBL the Settlement Payments according to a monthly payment schedule through June 30, 2010. The MBL Settlement Agreement provides that MBL may only draw on the L/C if: (i) the Company fails to make any Settlement Payment when due, (ii) any Settlement Payment made is set aside or otherwise required to be repaid by MBL, or (iii) the Company becomes the debtor in a bankruptcy or other insolvency proceeding begun before October 6, 2010 and no replacement letter of credit has been issued prior to the expiration of the L/C. The Company has made timely payments on all Settlement Payments to date.

Also on April 15, 2009, the Company entered into an amendment to the MBL Distribution Agreement with MBL (the MBL Amendment). The MBL Amendment modified the MBL Distribution Agreement to, among other things, eliminate the Company s future minimum purchase requirements under the MBL Distribution Agreement.

On April 15, 2009, the Company entered into a Reimbursement and Warrant Agreement (the Reimbursement Agreement) with EJ Funds and the Kapoor Trust, pursuant to which the Kapoor Trust agreed to provide the L/C as security for the Company s payment obligations to MBL under the MBL Letter Agreement and the MBL Settlement Agreement. Simultaneous with the delivery of the Reimbursement Agreement, the L/C was issued by Bank of America in favor of MBL. The Reimbursement Agreement provides, among other things, that the Company will reimburse the Kapoor Trust for any draws by MBL under the L/C through the mechanism of causing the amount of the draws to become term indebtedness payable to the Kapoor Trust on the same terms as the revolving debt under the Credit Agreement. All of the Company s obligations under the Reimbursement Agreement will also be considered secured obligations under the Credit Agreement. Pursuant to the Reimbursement Agreement, the Company also issued a warrant to the Kapoor Trust (the Reimbursement Warrant) to purchase 1,501,933 shares of its common stock at an exercise price of $1.11 per share, subject to certain adjustments. The Reimbursement Warrant expires five years from the date of issuance and is exercisable upon payment of the exercise price in cash or by means of a cashless exercise yielding a net share figure. In addition, the Reimbursement Agreement provides that the Company must issue the Kapoor Trust additional warrants, at that same price of $1.11 per share, to purchase 200,258 shares of its common stock per $1,000,000 drawn on the L/C. The estimated fair value of the Reimbursement Warrant, using a Black-Scholes valuation model, is $1,187,000 at June 30, 2009.

The shares of the Company s common stock issuable upon exercise of the Modification Warrant and the Reimbursement Warrant, along with those other warrants that may be issued under the Modification Agreement and Reimbursement Agreement and other shares of common stock held by EJ Funds, the Kapoor Trust and their affiliates, are subject to registration rights as set forth in the Modification Agreement. Under the Modification Agreement, the Company agreed to file a registration statement with the SEC within 75 days of the date of the Modification Agreement. The Company also agreed to continue the effectiveness of the registration statement until the

Table of Contents

earliest of the dates (i) all securities registrable thereunder have been sold, (ii) all such registrable securities may be sold in a single transaction by their holders to the public under Rule 144 under the Securities Act of 1933, and (iii) no shares of the Company s common stock registered under the registration statement qualify as registrable securities thereunder.

(iv) On January 29, 2009, Arthur S. Przybyl was notified he would no longer be the President and Chief Executive Officer of the Company. Mr. Przybyl s Executive Employment Agreement dated April 24, 2006, which was filed with the SEC as Exhibit 10.1 to the Company s Current Report on Form 8-K filed April 28, 2006, required the Company to pay severance under certain circumstances specified in the Executive Employment Agreement. The Company has advised Mr. Przybyl that it does not believe those circumstances occurred. Mr. Przybyl has demanded an arbitration to resolve these issues. Accordingly, the Company does not yet know whether it will ultimately pay Mr. Przybyl any severance or, if so, how much will be paid. The Company has also asserted claims against Mr. Przybyl.

(v) The Company manufactures and distributes finished drug products within the jurisdiction of several regulatory authorities two of which are the U.S. Food and Drug Administration (FDA) and the U.S. Drug Enforcement Agency (DEA). Failure to comply with respective regulatory criteria could result in material impact to the Company (e.g. withholding of product approvals, interruption to operations, product recalls and/or seizure). To date, Akorn continues to operate within this jurisdiction, having undergone two cGMP inspections by the FDA during 2009 one inspection at each of its two manufacturing sites. The Company received no observations at its Somerset, New Jersey facility and is in the process of responding to observations at its Decatur, Illinois and will work with the FDA to resolve any open questions. No adverse impact to the Company has occurred to date, from these inspections.

(vi) The Company is a party in other legal proceedings and potential claims arising in the ordinary course of its business. The amount, if any, of ultimate liability with respect to such matters cannot be determined. Despite the inherent uncertainties of litigation, management of the Company at this time does not believe that such proceedings will have a material adverse impact on the financial condition, results of operations, or cash flows of the Company.

NOTE M CUSTOMER AND SUPPLIER CONCENTRATION

AmerisourceBergen Health Corporation (Amerisource), Cardinal Health, Inc. (Cardinal) and McKesson Drug Company (McKesson) are all distributors of the Company s products, as well as suppliers of a broad range of health care products. These three customers accounted for 59% and 60% of the Company s gross revenues and 54% and 48% of net revenues for the three months ended June 30, 2009 and 2008, respectively. They accounted for approximately 56% and 54% of the gross accounts receivable balance as of June 30, 2009 and December 31, 2008, respectively. These three customers accounted for 63% and 64% of the Company s gross revenues and 56% and 49% of net revenues for the six months ended June 30, 2009 and 2008, respectively. No other customers accounted for more than 10% of gross sales, net revenues or gross trade receivables for the indicated dates and periods.

If sales to any of Amerisource, Cardinal or McKesson were to diminish or cease, the Company believes that the end users of its products would find little difficulty obtaining the Company s products either directly from the Company or from another distributor.

For the three months ended June 30, 2009, Alcan Global Pharma Packaging, Colbert Packaging Corporation, Intrapac Corporation and Interchem Corporation accounted for 13%, 14%, 14% and 15% of the Company s purchases, respectively. Colbert Packaging Corporation accounted for 16% of the Company s purchases in the three months ended June 30, 2008. For the six months ended June 30, 2009, MBL (supplier for vaccine products) accounted for 58% of the Company s purchases. For the six months ended June 30, 2008, MBL and Draxis Pharma (supplier for IC Green) accounted for 61% and 11% of the Company s purchases, respectively.

The Company requires a supply of quality raw materials and components to manufacture and package pharmaceutical products for its own use and for third parties with which it has contracted. The principal components of the Company s products are active and inactive pharmaceutical ingredients and certain packaging materials. Certain of these ingredients and components are available from only a single source and, in the case of certain of the Company s Abbreviated New Drug Applications and New Drug Applications (NDAs), only one supplier of raw materials has been identified. Because FDA approval of drugs requires manufacturers to specify their proposed suppliers of active ingredients and certain packaging materials in their applications, FDA approval of any new supplier would be required if active ingredients or such packaging materials were no longer available from the

specified supplier. The qualification of a new supplier could delay the Company s development and marketing efforts. If for any reason the Company is unable to obtain sufficient quantities of any of the raw materials or components required to produce and package its products, it may not be able to manufacture its products as planned, which could have a material adverse effect on the Company s business, financial condition and results of operations.

NOTE N RECENT ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. In February of 2008, the FASB issued FASB Staff position 157-2 which delayed the effective date of SFAS 157 for non-financial assets and liabilities which are not measured at fair value

Table of Contents

on a recurring basis (at least annually) until fiscal years beginning after November 15, 2008. The Company adopted SFAS 157 effective January 1, 2008 and the adoption did not have a material impact on the Company s results of operation or financial position.

In December 2007, the FASB issued SFAS No. 160, Non-Controlling Interests in Consolidated Financial Statements an amendment of ARB No. 51 (SFAS 160). SFAS 160 establishes new standards for the accounting for and reporting of non-controlling interests (formerly minority interests) and for the loss of control of partially owned and consolidated subsidiaries. SFAS 160 does not change the criteria for consolidating a partially owned entity. SFAS 160 is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 160 did not have a material impact on the Company s consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007) (SFAS 141R), a revision of SFAS 141, Business Combinations. SFAS 141R establishes requirements for the recognition and measurement of acquired assets, liabilities, goodwill, and non-controlling interests. SFAS 141R also provides disclosure requirements related to business combinations. SFAS 141R is effective for fiscal years beginning after December 15, 2008. SFAS 141R will be applied prospectively to business combinations with an acquisition date on or after the effective date.

In April 2008, the FASB issued FSP SFAS No. 142-3, *Determination of the Useful Life of Intangible Assets.* The FSP amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. The intent of the FSP is to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141 (revised 2007), *Business Combinations,* and other U.S. GAAP. The FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Early adoption is prohibited. The Company does not believe that FSP SFAS No. 142-3 will have a material impact on its financial statements.

In April 2009, the FASB issued FSP No. FAS 107-1 and APB 28-1, Interim Disclosures about Fair Value of Financial Instruments. FSP No. and APB 28-1 requires entities to provide disclosure of the fair value of all financial instruments, for which it is practicable to estimate that value, in interim reporting periods as well as in annual financial statements. As of June 30, 2009, the Company adopted FSP No. FAS 107-1 and APB 28-1, which was effective for interim periods ending after June 15, 2009. The Company s cash, accounts receivable, accounts payable and debt obligations approximate fair value at June 30, 2009.

In May 2009, the FASB issued SFAS No. 165, Subsequent Events which establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued for interim and annual periods ending after June 15, 2009. The Company adopted this standard as of June 30, 2009 and considered the accounting and disclosure of events occurring after the balance sheet date through the date and time the Company s financial statements were issued on August 17, 2009. The adoption of this standard did not have an impact on the Company s financial statements.

In June 2009, the FASB issued SFAS No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles a replacement of SFAS No. 162 (SFAS 168) to become the single source of authoritative nongovernmental U.S. GAAP. Rules and interpretations of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. SFAS 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The adoption of this standard is not expected to have a material impact on the Company s financial statements.

NOTE O UNCONSOLIDATED JOINT VENTURE

The Joint Venture Company launched its first commercialized product in the third quarter of 2008. The Joint Venture Company purchases product from Strides while the Company assists with the sales and product distribution/fulfillment functions. The Company and Strides each own a 50% interest in the Joint Venture Company.

Operating results of the Joint Venture Company for the three months ended June 30, 2009 included revenue of $1,895,000, gross profit of $401,000 and net income of $256,000. For the six months ended June 30, 2009, operating results included revenue of $2,763,000, gross profit of $960,000 and net income of $376,000. The Company s 50% share of the Joint Venture Company net income, $128,000 and $188,000 for the three and six month periods ended June 30, 2009, respectively, is reflected as equity in earnings of unconsolidated joint venture on the Company s

statement of operations and statement of cash flows.

Table of Contents

As of June 30, 2009 and December 31, 2008, the Joint Venture Company owed the Company $312,000 and $210,000, respectively, related to sales and product distribution/fulfillment functions.

NOTE P SEVERANCE CHARGES

During the second quarter, management restructured its operations resulting in the elimination of approximately 25 positions as part of a broad cost reduction emphasis for the Company. Severance charges of $493,000 were recorded for the quarter ended June 30, 2009 and were primarily related to the elimination of operational and administrative positions and changes in the senior executive team. The charges were recorded in selling, general and administrative expenses on the statement of operations. The remaining severance obligation at June 30, 2009 of $387,000 will be paid during 2009 and 2010.

NOTE Q SUBSEQUENT EVENTS

On August 17, 2009 the Company completed negotiations with EJ Funds for additional capacity on its Revolver, increasing the loan commitment from $5,650,000 to $10,000,000. The Revolver is secured by the assets of the Company and is not subject to debt covenants until April 1, 2010. In connection with this loan commitment increase, the Company will issue EJ Funds 1,560,619 warrants to purchase its common stock at an exercise price of $1.16, the closing price of the Company s stock on August 14, 2009. The estimated fair value of these warrants, using a Black-Scholes valuation model, is $1,170,000 and this amount will be capitalized as financing costs and amortized over the remaining term of the Revolver.

On August 17, 2009 the Company also refinanced its $5,000,000 subordinated debt payable to the Kapoor Trust. The principal amount of $5,000,000 has been increased to $5,853,267 to include accrued interest through August 16, 2009 and the annual interest rate of 15% has remained unchanged. The term of the Subordinated Note has been extended by an additional five years and is now due and payable on August 17, 2014. As part of this refinancing agreement, the Company will issue the Kapoor Trust an additional 2,099,935 warrants to purchase the Company s common stock at an exercise price of $1.16, the closing price of the Company s stock on August 14, 2009. The estimated fair value of these warrants, using a Black-Scholes valuation model, is $1,575,000 and this amount will be capitalized as financing costs and amortized over the term of the subordinated debt.

Table of Contents

Item 2.

AKORN, INC.
MANAGEMENT S DISCUSSION AND ANALYSIS
OF FINANCIAL CONDITION AND
RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS AND FACTORS AFFECTING FUTURE RESULTS

Certain statements in this Form 10-Q constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act. When used in this document, the words anticipate, believe, estimate and expect a similar expressions are generally intended to identify forward-looking statements. Any forward-looking statements, including statements regarding the intent, belief or expectations of Akorn or its management are not guarantees of future performance. These statements involve risks and uncertainties and actual results may differ materially from those in the forward-looking statements as a result of various factors, including but not limited to:

our ability to comply with all of the requirements of the U.S. Food and Drug Administration (FDA), including current Good Manufacturing Practices regulations;

our ability to avoid defaults under debt covenants;

our ability to obtain regulatory approvals for products manufactured in our new lyophilization facility;

our ability to generate cash from operations sufficient to meet our working capital requirements;

our ability to obtain additional funding or financing to operate and grow our business;

the effects of federal, state and other governmental regulation on our business;

our success in developing, manufacturing, acquiring and marketing new products;

our ability to make timely payments to our Td vaccine supplier;

the success of our strategic partnerships for the development and marketing of new products;

our ability to bring new products to market and the effects of sales of such products on our financial results;

the effects of competition from generic pharmaceuticals and from other pharmaceutical companies;

availability of raw materials needed to produce our products; and

other factors referred to in this Form 10-Q, our Form 10-K and our other SEC filings.

Table of Contents

RESULTS OF OPERATIONS

THREE MONTHS ENDED JUNE 30, 2009 COMPARED TO THREE MONTHS ENDED JUNE 30, 2008

The following table sets forth, for the periods indicated, revenues by segment, excluding intersegment sales (in thousands):

	THREE MONTHS ENDED JUNE 30,	
	2009	**2008**
Ophthalmic segment	$ 2,984	$ 4,288
Hospital Drugs & Injectables segment	3,306	4,851
Biologics & Vaccines segment	7,831	10,002
Contract Services segment	2,179	2,088
Total revenues	$ 16,300	$ 21,229

Consolidated revenues decreased $4,929,000 or 23.2% in the quarter ended June 30, 2009 compared to the same period in 2008 mainly due to decreased sales of Td vaccine and overall lower sales to wholesalers combined with significant reserve provisions for product returns as discussed below.

Ophthalmic segment revenues decreased 30.4%, or $1,304,000, primarily due to a provision of $863,000 we recorded to recognize a significant return of our Akten® ophthalmic solution product and also overall less favorable wholesaler returns experience. Akten® was launched in October 2008 and the significant returns were not previously anticipated as we had expected to capture significant market share based on the product s attributes. We commenced a trial sampling and price reduction program in the May/June period to stimulate market demand for this NDA product and do not expect additional significant returns of the product. Hospital drugs and injectables segment revenues decreased 31.8% or $1,545,000 reflecting the decreased sales volume of anesthesia and antidote products and the impact of a supplemental $242,000 returns reserve related to a recall of our Cyanide Antidote Kit due to a recall of a supplier s syringe used in the kit. Vaccine sales for this quarter decreased by $2,171,000 versus the prior year period primarily due to quarterly sales variations in our Td vaccine products as first quarter sales were very strong at $10,698,000. Contract services revenues increased by 4.4%, or $91,000, mainly due to increased order volumes on ophthalmic contract products.

Consolidated gross profit was $1,667,000 or 10.2% for the second quarter of 2009 as compared to a gross profit of $4,827,000 or 22.7% in the same period a year ago mainly due to lower hospital drug and injectable sales to wholesalers, the impact of $1,311,000 million increase in the product returns reserve for ophthalmics and hospital drugs and injectables, and the mix towards lower margin hospital drugs and injectables and contract manufacturing products. We continue to seek margin enhancement opportunities through our product offerings and efficiencies directed at reducing our product returns expense as well as efficiencies and cost reductions in our operating facilities.

Selling, general and administrative (SG&A) expenses decreased by $82,000 or 1.4%, during the quarter ended June 30, 2009 as compared to the same period in 2008. We implemented cost reduction measures including personnel reductions and reduced travel costs that were partially offset by severance costs of $493,000 in the three months ended June 30, 2009.

In the three months ended June 30, 2009, we recognized an additional $99,000 in legal fees related to the termination of our supply agreement with MBL.

Research and development (R&D) expense increased $466,000 or 38.0% in the quarter, to $1,691,000 from $1,225,000 for the same period in 2008 mainly due to the timing of product development milestone expenses.

Net interest expense for the second quarter of 2009 was $376,000 versus $169,000 for the same period in 2008. This increase is primarily due to interest on our subordinated note which commenced in the third quarter of 2008. Also included in non-operating expenses for the second quarter of 2009 was $98,000 for amortization of deferred finance costs related to the credit facility and $310,000 for the change in the fair value of the warrants liability.

Table of Contents

For the three-month period ended June 30, 2009, the income tax provision was $2,000 versus income tax provision of $3,000 during the same period in 2008. This relates to minimum state income tax assessments.

We reported a net loss of $6,950,000 for the three months ended June 30, 2009, versus a net loss of $2,819,000 for the same period in 2008 mainly due to the decreased sales volume and gross profit along with higher R&D expense, net interest expense and other non-operating expenses as discussed above.

SIX MONTHS ENDED JUNE 30, 2009 COMPARED TO SIX MONTHS ENDED JUNE 30, 2008

The following table sets forth, for the periods indicated, revenues by segment, excluding intersegment sales (in thousands):

	SIX MONTHS ENDED JUNE 30,	
	2009	2008
Ophthalmic segment	$ 8,064	$ 10,241
Hospital Drugs & Injectables segment	7,834	9,933
Biologics & Vaccines segment	18,529	11,819
Contract Services segment	3,913	3,695
Total revenues	$ 38,340	$ 35,688

Consolidated revenues increased $2,652,000 or 7.4% for the six months ended June 30, 2009 compared to the same period in 2008.

Ophthalmic segment revenues decreased $2,177,000 or 21.3%, primarily due to a provision of $863,000 we recorded to recognize a significant return of our Akten® ophthalmic solution product and also overall less favorable wholesaler returns experience. Akten® was launched in October 2008 and the significant returns were not previously anticipated as we had expected to capture significant market share based on the product s attributes. We are commencing a trial sampling and price reduction program to stimulate market demand for this NDA product and do not expect additional significant returns of the product. Hospital Drugs & Injectables segment revenues decreased by $2,099,000 or 21.1% mainly due to decreased sales of anesthesia products. Biologics & Vaccines sales increased by $6,710,000 or 56.8% as our Td vaccine market penetration has improved. The loss of our exclusivity with our Td vaccine supplier, as noted in our first quarter 2009 10-Q, may adversely impact our ability to maintain market share and generate future Td sales. Our contract services segment revenues increased by $218,000 or 5.9% mainly due to increased order volumes on contract products

Year-to-date consolidated gross profit was $7,029,000 or 18.3% for 2009 as compared to a gross profit of $8,574,000 or 24.0% for the same period a year ago mainly due to the sales volume variation matters for each segment discussed above. We continue to seek margin enhancement opportunities through our product offerings as well as through cost reductions at our operating facilities.

SG&A expenses increased by $658,000 or 5.4 %, for the year to date period ended June 30, 2009 as compared to the same period in 2008. The key components of this increase in 2009 were $493,000 severance for employee reductions and $330,000 for increased building rent related to our new Gurnee, Illinois warehouse and Lake Forest, Illinois corporate headquarters.

In the first six months of 2009, we recognized $5,929,000 in expense related to the termination of our supply agreement with MBL which consisted of $4,750,000 in settlement payments, $1,051,000 in costs for an associated letter of credit guarantee for the $10,500,000 in total payments due MBL, and $128,000 in other related costs.

R&D expense decreased $933,000 or 25.9% for the six months ended June 30, 2009, to $2,668,000 from $3,601,000 for the same period in 2008 mainly due to reduced internal product development activities and reduced product development milestone expenses with our strategic business partners.

Net interest expense for the six month period ended June 30, 2009 was $654,000 as compared to $284,000 for the same period in 2008. This increase is primarily due to interest on our subordinated note payable which commenced in the third quarter of 2008. Also included in non-operating expenses for the six month period ended June 30, 2009 was

$1,552,000 for amortization and write-offs of deferred finance costs related to the credit facility and $310,000 for the change in the fair value of the warrants liability.

For the six-month period ended June 30, 2009, the income tax provision was $2,000 as compared to an income tax provision of $3,000 for the same period in 2008. These amounts reflect minimum state income tax assessments as we incurred tax losses in both periods.

Table of Contents

We reported a net loss of $17,641,000 for the six months ended June 30, 2009, as compared to a net loss of $8,363,000 for the same period in 2008 mainly due to lower gross profit as a result of product mix and higher product returns experience, higher SG&A expenses, $5,929,000 in expenses associated with the termination of our supply agreement with MBL and $1,552,000 in amortization and write-offs of deferred finance costs, partially offset by lower R&D expense as discussed above.

FINANCIAL CONDITION AND LIQUIDITY

Overview

During the six-month period ended June 30, 2009, we used $4,612,000 in cash from operations, primarily due to the $17,641,000 net loss, a $2,515,000 accounts receivable increase in line with higher sales levels and a $3,556,000 decrease in accounts payable (primarily reduced Td vaccine payables), partially offset by a $5,556,000 decrease in inventory as we reduced our stock of Td vaccines and the addition of $4,750,000 in supply agreement termination liabilities associated with our Td vaccine supply agreement termination. In addition we had $1,552,000 in deferred financing cost write-offs along with non-cash depreciation, amortization, stock compensation, supply agreement termination expense and change in fair value of the warrants liability totaling $5,452,000. Investing activities generated an $892,000 reduction in cash flow mainly due to capital expenditures for plant equipment. Financing activities provided $5,460,000 in cash primarily due to the $5,509,000 in proceeds from our credit facility with EJ Funds, partially offset by $1,313,000 in loan origination fees (see Credit Facility below), along with proceeds from stock option exercises of $1,264,000.

During the six-month period ended June 30, 2008, we used $13,052,000 in cash from operations, primarily due to the $8,363,000 net loss, a $9,406,000 change in working capital items mainly due to an increase in accounts receivable related to increased sales and reduced accounts payable related to payments for vaccine inventory, partially offset by a reduction in vaccine inventory and non-cash expenses of $3,471,000 for the period. Investing activities generated a $1,420,000 reduction in cash flow mainly due to capital expenditures for production equipment and our new warehouse/office facilities. Financing activities provided $7,893,000 in cash, primarily due to the $9,658,000 in proceeds from our Credit Facility and $493,000 in proceeds from stock option and warrant exercises, partially offset by an increase in the restricted cash requirement of $2,050,000.

Credit Facility

On January 7, 2009, we entered into a Credit Agreement (Credit Agreement) with General Electric Capital Corporation (GE Capital) as agent for several financial institutions (the Lenders) to replace our previous credit agreement with Bank of America which expired on January 1, 2009. Pursuant to the Credit Agreement, the Lenders agreed, among other things, to extend loans to us under a revolving credit facility (including a letter of credit subfacility) up to an aggregate principal amount of $25,000,000 (the Credit Facility). At our election, borrowings under the Credit Facility bore interest at a rate equal to either: (i) the Base Rate (defined as the highest of the Wall Street Journal prime rate, the federal funds rate plus 0.5% or LIBOR plus 1.0%), plus a margin equal to (x) 4% for the period commencing on the closing date through April 14, 2009, or (y) a percentage that ranged between 3.75% and 4.25% for the period after April 14, 2009, or (ii) LIBOR (or 2.75%, if LIBOR is less than 2.75%), plus a margin equal to (x) 5% for the period commencing on the closing date through April 14, 2009, or (y) a percentage that ranged between 4.75% and 5.25% for the period after April 14, 2009. Upon the occurrence of any event of default, we were to pay interest equal to an additional 2.0% per year. The Credit Agreement contained affirmative, negative and financial covenants customary for financings of this type. The negative covenants included restrictions on liens, indebtedness, payments of dividends, disposition of assets, fundamental changes, loans and investments, transactions with affiliates and negative pledges. The financial covenants included fixed charge coverage ratio, minimum-EBITDA, minimum liquidity and a maximum level of capital expenditures. In addition, our obligations under the Credit Agreement could have been accelerated upon the occurrence of an event of default under the Credit Agreement, which included customary events of default such as payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, bankruptcy and insolvency related defaults, defaults relating to judgments, defaults relating to certain governmental enforcement actions, and a change of control default. The Credit Facility would have terminated, and all amounts outstanding thereunder would have been due and payable, on January 7, 2013, or on an earlier date as specified in the Credit Agreement.

Also on January 7, 2009, in connection with the Credit Agreement, we entered into a Guaranty and Security Agreement (Guaranty and Security Agreement) with GE Capital, as agent for the Lenders and each other secured party thereunder. Pursuant to the Guaranty and Security Agreement, we had granted a security interest to GE Capital in the collateral described in the Guaranty and Security

Table of Contents

Agreement as security for the Credit Facility. Our obligations were secured by substantially all of our assets, excluding our ownership interest in Akorn-Strides, LLC and in certain licenses and other property in which assignments are prohibited by confidential provisions.

In connection with the Credit Agreement, on January 7, 2009, we also entered into a Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing by us, in favor of GE Capital, relating to the real property owned by us located in Decatur, Illinois. The mortgage granted a security interest in the two parcels of real property to GE Capital, as security for the Credit Facility.

Also on January 7, 2009, in connection with the Credit Agreement, we entered into a Subordination Agreement with the Kapoor Trust and GE Capital, as agent for the Lenders. Pursuant to the Subordination Agreement, the Kapoor Trust agreed that our debt pursuant to the Subordinated Promissory Note dated as of July 28, 2008, in the principal amount of $5,000,000 (Subordinated Note) payable to the Kapoor Trust was subordinated to the Credit Facility, except that so long as there was no event of default outstanding under the Credit Agreement, we could repay the Subordinated Note in full if the repayment occurred by July 28, 2009.

On February 19, 2009, GE Capital informed us that it was applying a reserve against availability which effectively restricted our borrowings under the Credit Agreement to the balance outstanding as of February 19, 2009, which was $5,523,620. GE Capital advised that it was applying this reserve due to concerns about financial performance, including our prospective compliance with certain covenants in the Credit Agreement for the quarter ended March 31, 2009.

On March 31, 2009, we consented to an Assignment Agreement (Assignment) between GE Capital and EJ Funds LP (EJ Funds) which transferred to EJ Funds all of GE Capital s rights and obligations under the Credit Agreement. Pursuant to the Assignment, EJ Funds became the agent and lender under the Credit Agreement. Accordingly, GE Capital is no longer our lender. Dr. Kapoor is the President of EJ Financial Enterprises, Inc., a healthcare consulting investment company (EJ Financial) and EJ Financial is the general partner of EJ Funds.

In connection with the Assignment, on April 13, 2009, we entered into a Modification, Warrant and Investor Rights Agreement (the Modification Agreement) with EJ Funds that, among other things, (i) reduced the revolving loan commitment under the Credit Agreement to $5,650,000, (ii) provided an extended cure period until July 22, 2009 for any event, other than specified types of Material Defaults listed in the Modification Agreement, which could constitute an Event of Default under the Credit Agreement, unless that period is terminated earlier due to the occurrence of a Material Default or as otherwise provided in the Modification Agreement, (iii) set the interest rate for all amounts outstanding under the Credit Agreement at an annual rate of 10% with interest payable monthly, (iv) granted a security interest in and lien upon all the collateral under the Credit Agreement to the Kapoor Trust as security for the Subordinated Note, and (v) requires us, within 30 days after the date of the Modification Agreement, to enter into security documents consisting of a security agreement and mortgages (if requested by the Kapoor Trust) in form and substance substantially similar to the corresponding security documents under the Credit Agreement for the Kapoor Trust s interest in connection with the Subordinated Note. The Modification Agreement also granted EJ Funds the right to require us to nominate two directors to serve on our Board of Directors. The Kapoor Trust is entitled to require us to nominate a third director under our Stock Purchase Agreement dated November 15, 1990 with the Kapoor Trust. In addition, we agreed to pay all accrued legal fees and other expenses of EJ Funds that relate to the Credit Agreement and other loan documents, including legal expenses incurred with respect to the Modification Agreement and the Assignment.

Pursuant to the Modification Agreement, on April 13, 2009, we granted EJ Funds a warrant (the Modification Warrant) to purchase 1,939,639 shares of our common stock at an exercise price of $1.11 per share, subject to certain adjustments. The Modification Warrant expires five years after its date of issuance and is exercisable upon payment of the exercise price in cash or by means of a cashless exercise yielding a net share figure. Under the Modification Agreement, we have the right to convert the Subordinated Note into term indebtedness under the Credit Agreement in exchange for additional warrants, on terms substantially identical to the Modification Warrant, to purchase 343,299 shares of our common stock for each $1,000,000 of converted debt. The exercise price of those warrants would also be $1.11 per share. The estimated fair value of the Modification Warrant, using a Black-Scholes valuation model, is $1,532,000 at June 30, 2009.

Subordinated Debt

On July 28, 2008, we borrowed $5,000,000 from the Kapoor Trust in return for issuing the trust the Subordinated Note. The Subordinated Note accrues interest at a rate of 15% per year and was due and payable on July 28, 2009. The proceeds from the

Table of Contents

Subordinated Note were used in conjunction with the July 2008 amended MBL Distribution Agreement, which resulted in favorable pricing and reduced purchase commitments (see also Note L Commitments and Contingencies).

CONTRACTUAL OBLIGATIONS

In July 2008, we amended our Exclusive Distribution Agreement with the Massachusetts Biologic Laboratories of the University of Massachusetts Medical School (MBL) dated as of March 22, 2007 (the MBL Distribution Agreement) to: (i) allow us to destroy our remaining inventory of Tetanus Diphtheria (Td) vaccine, 15 dose/vial, in exchange for receiving an equivalent number of doses of preservative-free Tetanus Diphtheria vaccine, 1 dose/vial (the Single-dose Product) at no additional cost other than destruction and documentation expenses; (ii) reduce the purchase price of the Single-dose Product during the first year of the MBL Distribution Agreement by approximately 14.4%; (iii) reduce our purchase commitment for the second year by approximately 34.7%; and (iv) reduce our purchase commitment for the third year by approximately 39.5%.

We were subsequently unable to make a payment of approximately $3,375,000 for Td vaccine products which was due to MBL by February 27, 2009 under the MBL Distribution Agreement. While we made a partial payment of $1,000,000 to MBL on March 13, 2009, we were unable to make another payment of approximately $3,375,000 due to MBL on March 28, 2009. Accordingly, we entered into a letter agreement with MBL on March 27, 2009 (MBL Letter Agreement), pursuant to which we agreed to pay MBL the $5,750,000 remaining due for these Td vaccine products plus an additional $4,750,000 in consideration of the amendments to the MBL Distribution Agreement payable according to a periodic payment schedule through June 30, 2010 (the Settlement Payments). In addition, pursuant to the MBL Letter Agreement, the MBL Distribution Agreement was converted to a non-exclusive agreement, we became obligated to provide MBL with a standby letter of credit (the L/C) to secure our obligation to pay amounts due to MBL, and we were released from our obligation to further purchase Td vaccine products from MBL upon providing MBL with such L/C. In addition, pursuant to the MBL Letter Agreement, MBL agreed not to declare a breach or otherwise act to terminate the MBL Distribution Agreement if we complied with the terms of the MBL Letter Agreement, the MBL Distribution Agreement (as amended by the MBL Letter Agreement) and any agreements required to be entered into pursuant to the MBL Letter Agreement.

On April 15, 2009, we entered into a Settlement Agreement with MBL (the MBL Settlement Agreement) to elaborate the MBL Letter Agreement. The MBL Settlement Agreement provides that we will pay MBL the Settlement Payments according to a monthly payment schedule through June 30, 2010. The MBL Settlement Agreement provides that MBL may only draw on the L/C if: (i) we fail to make any Settlement Payment when due, (ii) any Settlement Payment made is set aside or otherwise required to be repaid by MBL, or (iii) we become the debtor in a bankruptcy or other insolvency proceeding begun before October 6, 2010 and no replacement letter of credit has been issued prior to the expiration of the L/C.

Also on April 15, 2009, we entered into an amendment to the MBL Distribution Agreement with MBL (the MBL Amendment). The MBL Amendment modified the MBL Distribution Agreement to, among other things, eliminate our future minimum purchase requirements under the MBL Distribution Agreement. To date we have made timely payments for the Settlement Payments due MBL.

On April 15, 2009, we also entered into a Reimbursement and Warrant Agreement (the Reimbursement Agreement) with EJ Funds and the Kapoor Trust, pursuant to which the Kapoor Trust agreed to provide the L/C as security for our payment obligations to MBL under the MBL Letter Agreement and the MBL Settlement Agreement. Simultaneous with the delivery of the Reimbursement Agreement, the L/C was issued by the Bank of America in favor of MBL. The Reimbursement Agreement provides, among other things, that we will reimburse the Kapoor Trust for any draws by MBL under the L/C through the mechanism of causing the amount of the draws to become term indebtedness payable to the Kapoor Trust on the same terms as the revolving debt under the Credit Agreement. All of our obligations under the Reimbursement Agreement will also be considered secured obligations under the Credit Agreement. Pursuant to the Reimbursement Agreement, we also issued a warrant to the Kapoor Trust (the Reimbursement Warrant) to purchase 1,501,933 shares of our common stock at an exercise price of $1.11 per share, subject to certain adjustments. The Reimbursement Warrant expires five years from the date of issuance and is exercisable upon payment of the exercise price in cash or by means of a cashless exercise yielding a net share figure. In addition, the Reimbursement Agreement provides that we must issue the Kapoor Trust additional warrants, at that

same price of $1.11 per share, to purchase 200,258 shares of our common stock per $1,000,000 drawn on the L/C. The estimated fair value of the Reimbursement Warrant, using a Black-Scholes valuation model, is $1,187,000 at June 30, 2009.

The shares of our common stock issuable upon exercise of the Modification Warrant and the Reimbursement Warrant, along with those other warrants that may be issued under the Modification Agreement and Reimbursement Agreement and other shares of common stock held by EJ Funds, the Kapoor Trust and their affiliates, are subject to registration rights as set forth in the Modification Agreement.

Table of Contents

Under the Modification Agreement, we agreed to file a registration statement with the SEC within 75 days of the date of the Modification Agreement. We also agreed to continue the effectiveness of the registration statement until the earliest of the dates (i) all securities registrable thereunder have been sold, (ii) all such registrable securities may be sold in a single transaction by their holders to the public under Rule 144 under the Securities Act, and (iii) no shares of our common stock registered under the registration statement qualify as registrable securities thereunder.

CRITICAL ACCOUNTING POLICIES

The preparation of financial statements in accordance with generally accepted accounting principles requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. A summary of our significant accounting policies is included in Item 1. Financial Statements, Note B Summary of Significant Accounting Policies, which are included in our Annual Report on Form 10-K for the year ended December 31, 2008. Certain of our accounting policies are considered critical, as these policies require significant, difficult or complex judgments by management, often employing the use of estimates about the effects of matters that are inherently uncertain. Such policies are summarized in Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations of our Annual Report on Form 10-K for the year ended December 31, 2008. There have been no significant changes in the application of the critical accounting policies since December 31, 2008.

RECENT ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. In February of 2008, the FASB issued FASB Staff position 157-2 which delays the effective date of SFAS 157 for non-financial assets and liabilities which are not measured at fair value on a recurring basis (at least annually) until fiscal years beginning after November 15, 2008. We adopted SFAS 157 effective January 1, 2008 and the adoption did not have a material impact on our results of operation or financial position.

In December 2007, the FASB issued SFAS No. 160, Non-Controlling Interests in Consolidated Financial Statements an amendment of ARB No. 51 (SFAS 160). SFAS 160 establishes new standards for the accounting for and reporting of non-controlling interests (formerly minority interests) and for the loss of control of partially owned and consolidated subsidiaries. SFAS 160 does not change the criteria for consolidating a partially owned entity. SFAS 160 is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 160 did not have a material impact on our consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007) (SFAS 141R), a revision of SFAS 141, Business Combinations. SFAS 141R establishes requirements for the recognition and measurement of acquired assets, liabilities, goodwill, and non-controlling interests. SFAS 141R also provides disclosure requirements related to business combinations. SFAS 141R is effective for fiscal years beginning after December 15, 2008. SFAS 141R will be applied prospectively to business combinations with an acquisition date on or after the effective date.

In April 2008, the FASB issued FSP SFAS No. 142-3, *Determination of the Useful Life of Intangible Assets.* The FSP amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. The intent of the FSP is to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141 (revised 2007), *Business Combinations,* and other U.S. GAAP. The FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Early adoption is prohibited. We do not believe that FSP SFAS No. 142-3 will have a material impact on its financial statements.

In April 2009, the FASB issued FSP No. FAS 107-1 and APB 28-1, Interim Disclosures about Fair Value of Financial Instruments. FSP No. and APB 28-1 requires entities to provide disclosure of the fair value of all financial instruments, for which it is practicable to estimate that value, in interim reporting periods as well as in annual financial statements. As of June 30, 2009, we adopted FSP No. FAS 107-1 and APB 28-1, which was effective for interim periods ending after June 15, 2009. Our cash, accounts receivable, accounts payable and debt obligations approximate fair value at June 30, 2009.

25

Table of Contents

In May 2009, the FASB issued SFAS No. 165, Subsequent Events which establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued for interim and annual periods ending after June 15, 2009. We adopted this standard as of June 30, 2009 and considered the accounting and disclosure of events occurring after the balance sheet date through the date and time our financial statements were issued on August 17, 2009. The adoption of this standard did not have an impact on our financial statements.

In June 2009, the FASB issued SFAS No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles a replacement of SFAS No. 162 (SFAS 168) to become the single source of authoritative nongovernmental U.S. GAAP. Rules and interpretations of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. SFAS 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The adoption of this standard is not expected to have a material impact on our financial statements.

OFF-BALANCE SHEET ARRANGEMENTS

We do not have any off-balance sheet arrangements that have had, or are reasonably likely to have, a current or future material effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are not subject to market risk associated with changes in interest rates as our interest rates on the Subordinated Note and the Credit Facility are both fixed interest rates.

We have no material foreign exchange risk. We have no market risk sensitive instruments entered into for trading purposes.

Our financial instruments consist mainly of cash, accounts receivable, accounts payable and debt. The carrying amounts of these instruments, except debt, approximate fair value due to their short-term nature.

The fair value of the debt obligations approximated their recorded values as of June 30, 2009.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

An evaluation was performed, under the supervision and with the participation of our management, including the Interim Chief Executive Officer (CEO) and Chief Financial Officer (CFO), of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the Act)). There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including cost limitations, judgments used in decision making, assumptions regarding the likelihood of future events, soundness of internal controls, fraud, the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can provide only reasonable, and not absolute, assurance of achieving their control objectives. Based on that evaluation, management, including the Interim CEO and CFO, has concluded that, as of June 30, 2009, our disclosure controls and procedures were effective in all material respects at the reasonable assurance level to ensure that information required to be disclosed in reports that we file or submit under the Act is recorded, processed, summarized and timely reported in accordance with the rules and forms of the SEC.

Changes in Internal Control Over Financial Reporting

In the fiscal quarter ended June 30, 2009, there was no change in the Company s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company s internal control over financial reporting.

Table of Contents

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are a party in legal proceedings and potential claims arising in the ordinary course of our business. The amount, if any, of ultimate liability with respect to such matters cannot be determined. Despite the inherent uncertainties of litigation, at this time we do not believe that such proceedings will have a material adverse impact on our financial condition, results of operations, or cash flows.

On April 3, 2009, our former President and Chief Executive Officer, Arthur Przybyl, filed a demand for arbitration against the Company under his April 24, 2006 Executive Employment Agreement (the Employment Agreement). A copy of the Employment Agreement is Exhibit 10.1 to the Current Report on Form 8-K we filed with the SEC on April 28, 2006. Mr. Przybyl initiated this arbitration with the Chicago, Illinois office of the American Arbitration Association under an arbitration provision in the Employment Agreement.

In his arbitration demand, Mr. Przybyl seeks severance and related benefits that would have been payable under the Employment Agreement were Mr. Przybyl terminated without cause and had he met additional requirements. Severance would have included 18 months of Mr. Przybyl s base salary and a cash bonus equal to 1.5 times the average of the last two annual bonuses received by Mr. Przybyl. The salary component would have been $715,500 and, because Mr. Przybyl received no bonus for 2007 or 2008, we believe the bonus component would have been $0. Mr. Przybyl s arbitration demand states that he seeks more than $1,250,000.

We originally anticipated that we would pay severance to Mr. Przybyl. However, we later concluded that we had grounds for terminating Mr. Przybyl for good cause as that term is defined in the Employment Agreement. Accordingly, we informed Mr. Przybyl of that conclusion, after which Mr. Przybyl initiated the arbitration. In our response to Mr. Przybyl s claim that we filed in the arbitration, we asserted counterclaims against Mr. Przybyl for (among other things) breach of contract and breach of fiduciary duty. We seek affirmative monetary relief under our counterclaims. The arbitration is in the early stages of discovery and an arbitration hearing date has been set for November 2009.

ITEM 1A. RISK FACTORS

There have been no material changes from the risk factors disclosed in Part 1, Item 1A, of our Form 10-K filed March 30, 2009.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

On August 23, 2005, we filed a Registration Statement on Form S-3 (File No. 333-127794) (the S-3) with the SEC, which was declared effective on September 7, 2005. Pursuant to Rule 429 under the Securities Act of 1933, the prospectus included in the S-3 is a combined prospectus and relates to the previously filed Registration Statement on Form S-1 (File No. 333-119168) (the S-1), as to which the S-3 constitutes Post-Effective Amendment No. 3. Such Post-Effective Amendment became effective concurrently with the effectiveness of the S-3. The S-3 relates to the resale of 64,964,680 shares, no par value per share, of our common stock by the selling stockholders identified in the S-3, which have been issued or reserved for issuance upon the conversion or exercise of shares of our Series A Preferred Stock, shares of Series B Preferred Stock, warrants and convertible notes, including shares estimated to be issuable or that have been issued in satisfaction of accrued and unpaid dividends and interest on shares of preferred stock and convertible notes, respectively. Of the 64,964,680 shares of our common stock registered under the S-3, 60,953,394 of such shares were registered under the S-1. The shares of common stock registered by the S-3 and the S-1 represent the number of shares that have been issued or are issuable upon the conversion or exercise of the Series A Preferred Stock, Series B Preferred Stock, warrants and convertible notes described in the Registration Statement, including shares estimated to be issuable in satisfaction of dividends accrued and unpaid through December 31, 2007 on such securities. All shares of Series A Preferred Stock, Series B Preferred Stock and all convertible notes have been converted to shares of our common stock.

With respect to the S-1, we estimated the aggregate offering price of the amount registered to be $182,246,053, which was derived from the average of the bid and asked prices of our common stock on September 17, 2004, as reported on the OTC Bulletin Board(R). With respect to the S-3, we estimated the aggregate offering price of the amount registered to be $10,870,585, which was derived from the average of the high and low prices of our common stock as reported on the American Stock Exchange on August 18, 2005. Such amounts were estimated solely for the

purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act of 1933. As of June 30, 2009, we are aware of the sale of 20,554,359 shares of common stock by selling stockholders

Table of Contents

under the S-3 or the S-1. We do not know at what price such shares were sold, or how many shares of common stock will be sold in the future or at what price. We have not and will not receive any of the proceeds from the sale of the shares by the selling stockholders. The selling stockholders will receive all of the proceeds from the sale of the shares and will pay all underwriting discounts and selling commissions, if any, applicable to the sale of the shares. We will, in the ordinary course of business, receive proceeds from the issuance of shares upon exercise of the warrants described in the S-3 or the S-1, which we will use for working capital and other general corporate purposes.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

ITEM 5. OTHER INFORMATION

None.

Table of Contents

ITEM 6. EXHIBITS

Those exhibits marked with a (*) refer to exhibits filed herewith. The other exhibits are incorporated herein by reference, as indicated in the following list. Portions of the exhibits marked with a (W) are the subject of a Confidential Treatment Request under 17 C.F.R. §§ 200.80(b)(4), 200.83 and 240.24b-2.

Exhibit No.	Description
(4.1)	Akorn, Inc. Common Stock Purchase Warrant, dated April 13, 2009, in favor of EJ Funds LP, incorporated by reference to Exhibit 4.1 to Akorn, Inc. s report on Form 8-K filed on April 17, 2009.
(4.2)	Modification, Warrant and Investor Rights Agreement, dated April 13, 2009, among Akorn, Inc., Akorn (New Jersey), Inc., and EJ Funds LP, incorporated by reference to Exhibit 4.2 to Akorn, Inc. s report on Form 8-K filed on April 17, 2009.
(4.3)	Akorn, Inc. Common Stock Purchase Warrant, dated April 15, 2009, in favor of John N. Kapoor Trust dated 9/20/89, incorporated by reference to Exhibit 4.1 to Akorn, Inc. s report on Form 8-K filed on April 21, 2009.
(10.1)	Credit Agreement dated January 7, 2009, by and between Akorn, Inc., Akorn (New Jersey), Inc. and General Electric Capital Corporation, incorporated by reference to Exhibit 10.1 to Akorn Inc. s report on Form 8-K filed on January 9, 2009.
(10.2)W	Letter Agreement dated March 27, 2009 between Akorn, Inc. and Massachusetts Biologic Laboratories of the University of Massachusetts Medical School, incorporated by reference to Exhibit 10.72 to Akorn, Inc s report on Form 10-K for the fiscal year ended December 31, 2008, filed on March 30, 2009.
(10.3)	Memorandum of Agreement, dated March 31, 2009, among EJ Funds LP, Akorn Inc., and Akorn (New Jersey), Inc., incorporated by reference to Exhibit 10.1 to Akorn Inc. s report on Form 8-K filed on April 6, 2009.
(10.4)	Assignment, dated March 31, 2009, among General Electric Capital Corporation, EJ Funds LP, Akorn, Inc., and Akorn (New Jersey), Inc., incorporated by reference to Exhibit 10.2 to Akorn Inc. s report on Form 8-K filed on April 6, 2009.
(10.5)	Reimbursement and Warrant Agreement, dated April 15, 2009, among Akorn, Inc. Akorn (New Jersey), Inc., John N. Kapoor Trust dated 09/20/89, and EJ Funds LP, incorporated by reference to Exhibit 10.1 to Akorn Inc. s report on Form 8-K filed on April 21, 2009.
(10.6)W	Settlement Agreement, dated April 15, 2009, between Akorn, Inc. and Massachusetts Biologic Laboratories of the University of Massachusetts Medical School, incorporated by reference to Exhibit 10.2 to Akorn Inc. s report on Form 8-K filed on April 21, 2009.
(10.7)W	Fourth Amendment to Exclusive Distribution Agreement, dated April 15, 2009, between Akorn, Inc. and Massachusetts Biologic Laboratories of the University of Massachusetts Medical School, incorporated by reference to Exhibit 10.2 to Akorn Inc. s report on Form 8-K filed on April 21, 2009.
(31.1)*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a).
(31.2)*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a).

(32.1)* Certification of Chief Executive Officer pursuant to 18 U.S.C. § 1350.

(32.2)* Certification of Chief Financial Officer pursuant to 18 U.S.C. § 1350.

Table of Contents

SIGNATURES

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

AKORN, INC.

/s/ Timothy A. Dick
Timothy A. Dick
Sr. Vice President, Chief Financial Officer
(Duly Authorized and Principal Financial Officer)

Date: August 17, 2009