NUVASIVE INC
Form 10-Q
November 06, 2009

Table of Contents

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

(Mark One)

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

For the quarterly period ended September 30, 2009

OR

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 000-50744

NUVASIVE, INC.
(Exact name of registrant as specified in its charter)

Delaware	**33-0768598**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

7475 Lusk Boulevard
San Diego, CA 92121
(Address of principal executive offices, including zip code)
(858) 909-1800
(Registrant s telephone number, including area code)
(Former name, former address and former fiscal year, if changed since last report)

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 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 the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer þ	Accelerated filer o	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

As of October 30, 2009, there were 38,218,153 shares of the registrant s common stock outstanding.

NUVASIVE, INC.
QUARTERLY REPORT ON FORM 10-Q
September 30, 2009
TABLE OF CONTENTS

Table of Contents

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NUVASIVE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

	September 30, 2009 (unaudited)	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 134,276	$ 132,318
Short-term marketable securities	55,915	45,738
Accounts receivable, net	51,245	51,622
Inventory	85,892	68,834
Prepaid expenses and other current assets	3,925	3,466
Total current assets	331,253	301,978
Property and equipment, net	77,543	73,686
Long-term marketable securities	10,032	45,305
Goodwill	102,264	2,332
Intangible assets, net	104,601	54,767
Other assets	7,337	9,338
Total assets	$ 633,030	$ 487,406
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable and accrued liabilities	$ 23,183	$ 26,633
Accrued payroll and related expenses	20,568	17,132
Acquisition related liabilities	15,414	
Royalties payable	2,201	1,722
Total current liabilities	61,366	45,487
Senior convertible notes	230,000	230,000
Long-term acquisition related liabilities	30,318	12,111
Other long-term liabilities	29,099	12,177
Commitments and contingencies		
Noncontrolling interests	13,689	
Stockholders equity:		
Common stock, $0.001 par value; 70,000 shares authorized, 38,184 and 36,310 issued and outstanding at September 30, 2009 and December 31, 2008, respectively	38	36
Additional paid-in capital	460,290	383,293
Accumulated other comprehensive income (loss)	211	(190)
Accumulated deficit	(191,981)	(195,508)
Total stockholders equity	268,558	187,631

Total liabilities and stockholders equity	$ 633,030	$ 487,406

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents

NUVASIVE, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	**2008**	**2009**	**2008**
Revenues	$94,916	$ 66,915	$263,405	$175,501
Cost of goods sold	18,417	12,195	49,901	30,845
Gross profit	76,499	54,720	213,504	144,656
Operating expenses:				
Sales, marketing and administrative	59,761	54,557	176,391	135,975
Research and development	10,654	6,396	30,047	19,797
In-process research and development		16,700		20,876
Total operating expenses	70,415	77,653	206,438	176,648
Interest income	203	1,460	1,318	4,373
Interest expense	(1,609)	(1,719)	(5,439)	(3,816)
Other income (expense), net	(242)	113	(729)	207
Total interest and other income (expense), net	(1,648)	(146)	(4,850)	764
Consolidated net income (loss)	$ 4,436	$(23,079)	$ 2,216	$ (31,228)
Net loss attributable to noncontrolling interests	$ (628)	$	$ (1,311)	$
Net income (loss) attributable to NuVasive, Inc.	$ 5,064	$(23,079)	$ 3,527	$ (31,228)
Net income (loss) per share attributable to NuVasive, Inc.:				
Basic net income (loss) per share	$ 0.13	$ (0.64)	$ 0.10	$ (0.88)
Diluted net income (loss) per share	$ 0.13	$ (0.64)	$ 0.09	$ (0.88)
Weighted average shares outstanding basic	37,733	35,931	37,008	35,674
Weighted average shares outstanding diluted	39,216	35,931	38,384	35,674

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents

NUVASIVE, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2009	**2008**
Operating activities:		
Net income (loss)	$ 3,527	$ (31,228)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	22,005	15,671
In-process research and development		20,876
Stock-based compensation	18,165	15,719
Leasehold abandonment charges	(1,997)	4,486
Noncontrolling interests	(1,311)	
Allowance for excess and obsolete inventory	2,470	(3)
Allowance for doubtful accounts	1,175	410
Other non-cash adjustments	2,248	1,019
Changes in operating assets and liabilities:		
Accounts receivable	(329)	(18,986)
Inventory	(19,027)	(22,136)
Prepaid expenses and other current assets	788	(941)
Accounts payable and accrued liabilities	2,410	3,898
Accrued payroll and related expenses	2,742	1,778
Net cash provided by (used in) operating activities	32,866	(9,437)
Investing activities:		
Cash paid for acquisitions (Note 3)	(24,055)	(41,256)
Cash paid for investment in Progentix (Note 3)	(10,000)	
Acquisition related milestone payments	(10,000)	
Purchases of property and equipment	(21,250)	(34,161)
Purchases of short-term marketable securities	(46,678)	(83,069)
Sales of short-term marketable securities	56,365	29,842
Purchases of long-term marketable securities	(17,964)	(51,390)
Sales of long-term marketable securities	32,971	14,778
Other assets		544
Net cash used in investing activities	(40,611)	(164,712)
Financing activities:		
Payments of long-term liabilities		(300)
Issuance of convertible debt, net of costs		222,414
Purchase of convertible note hedges		(45,758)
Sale of warrants		31,786
Issuance of common stock	9,618	8,480
Net cash provided by financing activities	9,618	216,622
Effect of exchange rate changes on cash	85	

Increase in cash and cash equivalents	1,958	42,473
Cash and cash equivalents at beginning of period	132,318	61,915
Cash and cash equivalents at end of period	$ 134,276	$ 104,388

See accompanying notes to unaudited condensed consolidated financial statements.

Table of Contents

NuVasive, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements

1. Description of Business

NuVasive, Inc. (the Company or NuVasive) was incorporated in Delaware on July 21, 1997. The Company is a medical device company focused on the design, development, and marketing of products for the surgical treatment of spine disorders. The Company s product portfolio is focused primarily on the U.S. spine implant market. Additionally, the Company has expanded into the global biologics market, the international spine implant market, and is developing products for the emerging motion preservation market.

NuVasive s principal product offering is based on its Maximum Access Surgery, or MAS® platform. The MAS platform combines four categories of products that collectively minimize soft tissue disruption during spine surgery with maximum visualization and safe, easy reproducibility for the surgeon: NeuroVision®, a proprietary software-driven nerve avoidance system; MaXcess®, a unique split-blade retractor system; a wide variety of specialized implants; and several biologic fusion enhancers. The MAS platform significantly reduces surgery time and returns patients to activities of daily living much faster than conventional approaches. Utilizing the Company s MAS platform s lateral approach, known as eXtreme Lateral Interbody Fusion, or XLIF®, the Company has built an entire spine franchise. With products today spanning lumbar, thoracic and cervical applications, the Company continues to expand and evolve its offering predicated on its research and development focus and dedication to outstanding service levels supported by a culture of Absolute Responsiveness®.

The Company loans its MAS systems to surgeons and hospitals that purchase implants and disposables for use in individual procedures. In addition, NeuroVision, MaXcess and surgical instrument sets are placed with hospitals for an extended period at no up-front cost to them provided they commit to minimum monthly purchases of disposables and implants. The Company sells a small quantity of MAS instrument sets, MaXcess and NeuroVision systems to hospitals. The Company also offers a range of allograft and spine implants such as rods, plates and screws. Implants and disposables are shipped from the Company s facilities.

2. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States (GAAP). In the opinion of management, the consolidated financial statements include all adjustments necessary, which are of a normal and recurring nature, for the fair presentation of the Company s financial position and of the results of operations and cash flows for the periods presented.

The accompanying unaudited condensed consolidated financial statements as of December 31, 2008 and for the three and nine months ended September 30, 2008 include the accounts of the Company and its wholly owned subsidiaries. The unaudited condensed consolidated financial statements as of September 30, 2009 and for the three and nine months then ended include the accounts of the Company and its wholly owned subsidiaries, as well as the accounts of a variable interest entity, Progentix Orthobiology, B.V. (Progentix), which is consolidated pursuant to existing guidance issued by the Financial Accounting Standards Board (FASB). There has been no material activity by the Company s subsidiaries during the periods presented. All significant intercompany accounts and transactions have been eliminated in consolidation.

Management evaluated all events or transactions that occurred after September 30, 2009 up through November 6, 2009, the date on which these financial statements were issued.

These financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2008 included in NuVasive s Annual Report on Form 10-K filed with the Securities and Exchange Commission. Operating results for the three and nine months ended September 30, 2009 and 2008 are not necessarily indicative of the results that may be expected for any other interim period or for the full year. The balance sheet at December 31, 2008 has been derived from the audited financial statements at that date, but does not include all of the information and footnotes required by GAAP for complete financial statements.

Table of Contents

3. Acquisitions and Investments

Cervitech® Inc. Acquisition

On May 8, 2009 (the Closing Date), the Company completed the purchase of all of the outstanding shares of Cervitech, Inc., a Delaware corporation (Cervitech), pursuant to a Share Purchase Agreement dated April 22, 2009 (the Purchase Agreement) for an initial payment of approximately $48 million consisting of cash totaling approximately $24 million and the issuance of 638,261 shares of NuVasive common stock to certain stockholders of Cervitech. Cervitech, a New Jersey based company, is focused on the clinical approval of the PCM® cervical disc system, a motion preserving total disc replacement device in the United States. This acquisition allows NuVasive the potential to accelerate its entry into the growing mechanical cervical disc replacement market.

In addition to the above payment, the Company may be obligated to make an additional milestone payment of $33 million if the U.S. Food and Drug Administration (FDA) issues an approval order allowing the commercialization of Cervitech s PCM device in the United States with an intended use for treatment of degenerative disc disease. The milestone payment may be made in cash or a combination of cash and up to half in NuVasive common stock, at the Company s discretion.

Purchase Price

The acquisition of Cervitech was recorded using the acquisition method of accounting in accordance with the revised authoritative guidance for business combinations.

The estimated purchase price is determined as follows (*in thousands)*:

Cash paid to sellers	$ 24,055
Market value of NuVasive common stock issued on Closing Date	24,215
Contingent consideration liability, due on achieving FDA approval	29,722
Total estimated purchase price	$ 77,992

The preliminary allocation of the estimated purchase price is based on management s preliminary valuation of the fair value of tangible, intangible assets and in-process research and development acquired and liabilities assumed as of the Closing Date and such estimates are subject to revision. The area of the purchase price allocation that is not yet finalized relates primarily to the valuation of income tax related assets acquired. Consequently, the amounts recorded at September 30, 2009 are subject to change, and the final amounts may differ. The following table summarizes the allocation of the estimated initial purchase price (*in thousands*):

	Estimated Fair Value	Estimated Useful Life
Total current assets	$ 1,233	
Property, plant and equipment	59	
Developed technology	700	14 years
Non-compete agreement	100	2 years
Trade name	700	10 years
In-process research and development	34,800	14 years
Goodwill	54,825	
Current liabilities	(483)	
Deferred income tax liabilities	(13,942)	
Total estimated initial purchase price allocation	$ 77,992	

The Goodwill balance related to the Cervitech Acquisition was $54.8 million as of September 30, 2009. Goodwill represents the excess of the purchase price over the fair value of tangible and identifiable intangible assets acquired.

Of the $54.8 million recorded as goodwill, none is expected to be deductible for tax purposes.

Contingent Consideration Liability

The arrangement requires the Company to pay an additional amount not to exceed $33 million in the event that Cervitech s device receives FDA approval. The fair value of the contingent consideration at the Closing Date was determined to be $29.7 million using a probability-weighted discounted cash flow model. This fair value measurement is based on significant inputs not observable in the market. The key assumptions in applying this approach were the interest rate and the probability assigned to the milestone being achieved. Management will remeasure the fair value of the contingent consideration at each reporting period, with any change in its

Table of Contents

fair value resulting from either the passage of time or events occurring after the acquisition date, such as changes in the estimate of the probability of achieving the milestone, being recorded in the current period s earnings. During the nine months ended September 30, 2009, there were no changes in estimate to affect the fair value of the contingent consideration liability other than accretion related solely to the passage of time. For the three and nine months ended September 30, 2009, the Company recorded approximately $0.4 million and $0.6 million, respectively, in expense to reflect the change in the fair value of the contingent consideration and increasing the fair value of the contingent consideration liability to $30.3 million at September 30, 2009. The $0.6 million change in fair value is recorded in the statement of operations as sales, marketing and administrative expenses.

Results of Operations

The accompanying condensed consolidated statement of operations for the nine months ended September 30, 2009 reflect the operating results of Cervitech since the date of the acquisition. The amount of loss attributable to Cervitech included in the Company s consolidated statement of operations from the acquisition date to September 30, 2009 was $1.5 million. For the three and nine months ended September 30, 2009, the Company s consolidated results of operations include acquisition-related expenses related to this acquisition of $0 and $1.2 million, respectively, which are included in sales, marketing and administrative expenses.

The Company has prepared the following unaudited pro forma financial statement information to compare results of the periods presented assuming the Cervitech acquisition had occurred as of January 1, 2008. These unaudited pro forma results have been prepared for comparative purposes only and do not purport to be an indicator of the results of operations that would have actually resulted had the acquisition occurred at the beginning of each of the periods presented, or of future results of operations. Assuming the Cervitech acquisition occurred as of January 1, 2008, the pro forma unaudited results of operations would have been as follows for the three and nine months ended September 30, 2009 and 2008:

	Three Months Ended		Nine Months Ended	
	September 30, 2009	September 30, 2008	September 30, 2009	September 30, 2008
Revenue	$94,916	$ 67,699	$263,943	$177,587
Net income (loss) attributable to NuVasive, Inc.	$ 5,064	$(22,770)	$ 2,679	$ (37,222)
Net income (loss) per share basic and diluted	$ 0.13	$ (0.62)	$ 0.07	$ (1.03)

The above pro forma unaudited results of operations do not include pro forma adjustments relating to costs of integration or post-integration cost reductions that may be incurred or realized by the Company in excess of actual amounts incurred or realized through September 30, 2009.

Investment in Progentix Orthobiology, B.V.

On January 13, 2009, the Company completed the purchase of forty percent (40%) of the capital stock of Progentix Orthobiology, B.V., a company organized under the laws of the Netherlands (Progentix), from existing shareholders (the Progentix Shareholders) pursuant to a Preferred Stock Purchase Agreement for $10 million in cash (the Initial Investment). Progentix has as its objective the development and exploitation of knowledge and products in the field of bone defects and the recovery of bone tissue in general. Progentix wishes to further extend the existing knowledge and patent position in the field of Osteoinductive Bone Graft Material Technology. Since inception, Progentix has incurred approximately $3.2 million in losses.

NuVasive and Progentix also entered into a Senior Secured Facility Agreement dated January 13, 2009, whereby Progentix may borrow up to $5 million from NuVasive to fund ongoing clinical and regulatory efforts (the Loan). The proceeds of the Loan are to be utilized towards achievement of all milestones, as defined in the Preferred Stock Purchase Agreement. The Loan accrues interest at a rate of six percent (6%) per year. Other than its obligations under the Loan, NuVasive is not obligated to provide additional funding to Progentix. Concurrent with the Preferred Stock Purchase Agreement, NuVasive, Progentix and the Progentix Shareholders entered into an Option Purchase Agreement dated January 13, 2009 (the Option Agreement), whereby NuVasive may be obligated (the Put Option),

upon the achievement within two years of certain milestones by Progentix, to purchase the remaining sixty percent (60%) of capital stock of Progentix from its shareholders for $45 million, payable in a combination of cash and/or NuVasive common stock at the Company s sole discretion, subject to certain adjustments (the Remaining Shares).

NuVasive may also be obligated, in the event that Progentix achieves the milestones contemplated above within the requisite two-year period, to make additional payments to Progentix shareholders, excluding NuVasive, of up to an aggregate total of $25 million, payable in a combination of cash and/or NuVasive common stock, at the Company s sole discretion, subject to certain adjustments, upon completion of additional milestones and dependent on NuVasive s sales success. NuVasive also has the right under the Option

Table of Contents

Agreement to purchase the Remaining Shares (the Call Option) at any time between the second anniversary and the fourth anniversary of the Option Agreement (the Option Period) for $35 million, payable in a combination of cash and/or NuVasive common stock, at the Company s sole discretion, subject to certain adjustments. In the event NuVasive achieves in excess of a specified annual sales run rate on Progentix products during the Option Period, NuVasive may be required to purchase the Remaining Shares for $35 million. NuVasive and Progentix also entered into a Distribution Agreement dated January 13, 2009, whereby Progentix appointed NuVasive as its exclusive distributor for certain Progentix products. The Distribution Agreement will be in effect for a term of ten years unless earlier terminated in accordance with its terms.

In accordance with authoritative guidance issued by the FASB, the Company has determined that Progentix is a variable interest entity (VIE) as it does not have the ability to finance its activities without additional subordinated financial support and its equity investors will not absorb their proportionate share of expected losses and will be limited in the receipt of the potential residual returns of Progentix. Additionally, pursuant to this guidance, NuVasive is considered its primary beneficiary as NuVasive has the obligation to absorb a majority of the expected losses and the right to receive a majority of expected residual returns of Progentix. This conclusion was reached due to the existence of the Put Option and Call Option to acquire the Remaining Shares at prices that were fixed upon entry into the arrangement, with the specific prices based upon the achievement of certain milestones within a specified period of time. The fixed nature of the Put Option and the Call Option limit Progentix Shareholders potential future returns. Accordingly, the financial position and results of operations of Progentix have been included in the consolidated financial statements from the date of the Initial Investment.

Pursuant to authoritative guidance, the equity interests in Progentix not owned by the Company are reported as noncontrolling interests on the consolidated balance sheet of the Company. Losses incurred by Progentix are charged to the Company and to the noncontrolling interest holders based on their ownership percentage. The Remaining Shares and the Option Agreement that was entered into between NuVasive, Progentix and the Progentix Shareholders are not considered to be freestanding financial instruments as defined by authoritative guidance. Therefore the Remaining Shares and the Option Agreement are accounted for as a combined unit in the consolidated financial statements as a redeemable noncontrolling interest that is initially recorded at fair value and classified as mezzanine equity.

Pursuant to authoritative guidance, when the embedded Put Option is exercisable and therefore the Remaining Shares considered currently redeemable (i.e., at the option of the holder), the instrument should be adjusted to its maximum redemption amount. If the embedded Put Option is considered not currently exercisable (e.g., because a contingency has not been met), and it is not probable that the embedded Put Option will become exercisable, an adjustment is not necessary until it is probable that the embedded Put Option will become exercisable. At September 30, 2009, the embedded Put Option was not deemed currently exercisable and therefore the Remaining Shares were not redeemable because the milestones referred to previously had not been met. Furthermore, at September 30, 2009, as it is not currently possible to predict the outcome of such milestones, the Company concluded it is not probable that the milestones will be met and that the Remaining Shares will become redeemable. The probability of redemption will be reevaluated on a quarterly basis.

Table of Contents

In accordance with authoritative guidance, we have recorded the identifiable assets, liabilities and noncontrolling interests in the VIE at their fair value upon initial consolidation. There has been no material change to the balances consolidated at the date of the Initial Investment, therefore only the balances consolidated as of September 30, 2009 are included below. Total assets and liabilities of Progentix as of September 30, 2009 are as follows *(in thousands):*

Total current assets	$ 629
Identifiable intangible assets, net	16,407
Goodwill	12,654
Accounts payable & accrued expenses	439
Other long term liabilities	50
Deferred tax liabilities	4,310
Noncontrolling interests	13,689

Intangible assets consolidated pursuant to the Progentix investment are included in the Intangible assets, net balance in the consolidated balance sheet as of September 30, 2009 and consist of the following *(in thousands):*

	Weighted-Average Amortization *(in years)*	**Gross Carrying Amount**	**Accumulated Amortization**	**Intangible Assets, Net**
Non-competition agreement	2	$ 300	$ 107	$ 193
Existing technology	10	5,400	386	5,014
In-process research and development		11,200		11,200
Total Progentix intangible assets		$16,900	$ 493	$16,407

Osteocel Biologics Business Acquisition

On July 24, 2008, NuVasive completed the acquisition of certain assets of Osiris Therapeutics, Inc. (Osiris) (the Osteocel® Biologics Business Acquisition) for $35 million in cash paid at closing pursuant to an Asset Purchase Agreement, as amended (the Asset Purchase Agreement). The completion date of this transaction is referred to as the Technology Closing Date. At the Technology Closing Date, the Company also entered into a Manufacturing Agreement, as amended (collectively with the Asset Purchase Agreement, the Agreements) with Osiris. Under the terms of these Agreements, NuVasive was obligated to make payments of up to $50 million in addition to the amount paid at closing, including milestone-based contingent payments not to exceed $20.0 million and non-contingent payments in the amount of $30.0 million.

As of September 30, 2009, the Company has paid $5 million in cash and made additional payments of $12.5 million in the form of the issuance of 293,331 shares of NuVasive common stock on June 30, 2009 and $12.5 million in the form of the issuance of 307,814 shares of NuVasive common stock on September 30, 2009, as payment in full for the non-contingent payments.

During March 2009, the Company made a $5 million cash payment towards the milestone-based contingent payments. At September 30, 2009, the Company determined that the achievement of the specified sales amount required for the payment of the remaining $15 million milestone-based contingent payment will likely be achieved and accordingly, has recorded the $15 million as a liability at September 30, 2009. This payment may be made in cash or through the delivery of NuVasive common stock of equivalent value, at the Company s election.

The Company s purchase price allocation was updated in 2009 to reflect the milestone-based payments made in 2009 and to reflect the impact of the amendments made to the Agreements in March 2009, which eliminated the performance contingencies applicable to $30 million of the $45 million in then-remaining milestones. The Goodwill balance related to the Osteocel® Biologics Business Acquisition was $33.7 million as of September 30, 2009. Goodwill represents the excess of the purchase price over the fair value of tangible and identifiable intangible assets acquired.

Table of Contents

Acquisition of Pedicle Screw Technology

In March 2008, NuVasive completed a buy-out of royalty obligations on SpheRx® pedicle screw and related technology products and acquired new pedicle screw intellectual property for cash payments aggregating $6.3 million. Of the aggregate purchase price, $2.1 million, representing the present value of the expected future cash flows associated with the terminated royalty obligations, was allocated to intangible assets to be amortized on a straight-line basis over a seven-year period. The remaining $4.2 million was allocated to in-process research and development (IPR&D) as the associated projects had not yet reached technological feasibility and had no alternative future uses.

4. Balance Sheet Reserves

The balances of the reserves for accounts receivable and inventory are as follows *(in thousands)*:

	September 30, 2009	December 31, 2008
Reserves for accounts receivable	$ 3,140	$ 1,952
Reserves for excess and obsolete inventory	4,405	2,778

The Company s inventory consists primarily of finished goods, disposables and specialized implants. Inventory is stated at the lower of cost or market and is recorded in cost of goods sold based on a method that approximates cost. The Company reviews the components of its inventory on a periodic basis for excess, obsolete or impaired inventory, and records a reserve for the identified items.

5. Goodwill and Intangible Assets

A summary of adjustments to the Goodwill balance for the nine months ended September 30, 2009 is as follows (*in thousands*):

Balance at December 31, 2008	$ 2,332
Progentix Investment (Note 3)	12,654
Cervitech Acquisition (Note 3)	54,825
First payment under the Osteocel March 2009 Amendments (Note 3)	5,000
Record non-contingent payment pursuant to Osteocel March 2009 Amendments (Note 3)	12,454
Record milestone-based payment pursuant to Osteocel March 2009 Amendments (Note 3)	14,999
Balance at September 30, 2009	$ 102,264

Identifiable intangible assets consisted of the following as of September 30, 2009 *(in thousands)*:

	Weighted-Average Amortization (in years)	Gross Carrying Amount	Accumulated Amortization	Intangible Assets, net
Intangible Assets Subject to Amortization:				
Trade name and trademarks	14	$ 5,900	$ (412)	$ 5,488
Customer relationships	14	9,730	(2,008)	7,722
Developed technology	14	31,975	(5,039)	26,936
Manufacturing know-how and trade secrets	13	20,408	(1,953)	18,455
In-process research and development		46,000		46,000
		$ 114,013	$ (9,412)	$ 104,601

Intangible Assets Not Subject to Amortization:

Goodwill	102,264
Total Intangible assets	$ 206,865

Table of Contents

Future estimated amortization expense related to acquired intangible assets subject to amortization is as follows *(in thousands)*:

Remaining 2009	$ 1,417
2010	5,777
2011	8,840
2012	8,817
2013	8,810
2014	8,775
Thereafter	62,165
	$ 104.601

Amortization expense was $1.4 million and $0.9 million for the three months ended September 30, 2009 and 2008, respectively, and $4.1 million and $1.8 million for the nine months ended September 30, 2009 and 2008, respectively. In-process research and development will be amortized beginning with the first sale of the respective acquired products over its estimated useful life of 13years. Through September 30, 2009, no amortization expense has been recorded for IPR&D.

6. Convertible Senior Notes

In March 2008, the Company issued $230.0 million principal amount of 2.25% Convertible Senior Notes (the Notes), which includes the subsequent exercise of the initial purchasers option to purchase an additional $30.0 million aggregate principal amount of the Notes. The net proceeds from the offering, after deducting the initial purchasers discount and costs directly related to the offering, were approximately $208.4 million. The Company will pay 2.25% interest per annum on the principal amount of the Notes, payable semi-annually in arrears in cash on March 15 and September 15 of each year. The Notes mature on March 15, 2013 (the Maturity Date). The fair value of the outstanding notes approximates their carrying value as of September 30, 2009.

The Notes will be convertible into shares of the Company s common stock, $0.001 par value per share, based on an initial conversion rate, subject to adjustment, of 22.3515 shares per $1,000 principal amount of the Notes (which represents an initial conversion price of approximately $44.74 per share). Holders may convert their notes at their option on any day up to and including the second scheduled trading day immediately preceding the Maturity Date. If a fundamental change to the Company s business occurs, as defined in the Notes, holders of the Notes have the right to require that the Company repurchase the Notes, or a portion thereof, at the principal amount plus accrued and unpaid interest.

In connection with the offering of the Notes, the Company entered into convertible note hedge transactions (the Hedge) with the initial purchasers and/or their affiliates (the Counterparties) entitling the Company to purchase up to 5.1 million shares of the Company s common stock at an initial stock price of $44.74 per share, each of which is subject to adjustment. In addition, the Company sold to the Counterparties warrants to acquire up to 5.1 million shares of the Company s common stock (the Warrants), subject to adjustment, at an initial strike price of $49.13 per share, subject to adjustment. The cost of the Hedge that was not covered by the proceeds from the sale of the Warrants was approximately $14.0 million and is reflected as a reduction of additional paid-in capital as of September 30, 2009. The impact of the Hedge is to raise the effective conversion price of the Notes to approximately $49.13 per share (or approximately 20.3542 shares per $1,000 principal amount of the Notes). The Hedge is expected to reduce the potential equity dilution upon conversion of the Notes if the daily volume-weighted average price per share of the Company s common stock exceeds the strike price of the Hedge. The Warrants could have a dilutive effect on the Company s earnings per share to the extent that the price of the Company s common stock during a given measurement period (the quarter or year to date period) exceeds the strike price of the Warrants.

7. Net Income (Loss) Per Share

Basic earnings (loss) per share (EPS) is calculated by dividing the net income (loss) by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted

EPS is computed by dividing net income (loss) by the weighted average number of common shares outstanding for the period and the weighted average number of dilutive common stock equivalents, such as the assumed vesting of outstanding unvested restricted stock units, options, and warrants. Common stock equivalents are only included in the calculation of diluted earnings per share when their effect is dilutive. There were no potentially dilutive common shares related to the Company s 2.25% Convertible Senior Notes due 2013, or the related warrants, for the three and nine months ended September 30, 2009 and 2008, as the Company s average stock price for the respective periods was less than the conversion price (approximately $44.74) of the Notes.

Table of Contents

(in thousands, except per share amounts)	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
Numerator:				
Net income (loss) attributable to NuVasive, Inc.	$ 5,064	$ (23,079)	$ 3,527	$ (31,228)
Denominator for basic and diluted net loss per share:				
Weighted average common shares outstanding for basic	37,733	35,931	37,008	35,674
Dilutive potential common stock outstanding:				
Stock options	1,421		1,342	
Restricted stock units	62		34	
Weighted average common shares outstanding for diluted	39,216	35,931	38,384	35,674
Basic net income (loss) per share attributable to NuVasive, Inc.	$ 0.13	$ (0.64)	$ 0.10	$ (0.88)
Diluted net income (loss) per share attributable to NuVasive, Inc.	$ 0.13	$ (0.64)	$ 0.09	$ (0.88)

During the three and nine month periods ended September 30, 2009, a weighted average of 1.3 million options and 2.5 million options, respectively, to purchase shares of common stock were not included in the computation of diluted earnings per share as their effect would have been antidilutive.

8. Comprehensive Income (Loss)

The components of comprehensive income (loss) are as follows (*in thousands*):

	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
Net income (loss)	$ 4,436	$ (23,079)	$ 2,216	$ (31,228)
Other comprehensive income (loss):				
Unrealized loss on investments	(41)	(202)	(340)	(318)
Translation adjustments	279	(76)	741	(99)
Total comprehensive income (loss)	4,674	(23,357)	2,617	(31,645)
Amounts attributable to noncontrolling interests				
Net loss	628		1,311	
Comprehensive income (loss) attributable to NuVasive, Inc.	$ 5,302	$ (23,357)	$ 3,928	$ (31,645)

9. *Marketable Securities*

Marketable securities consist of corporate debt securities, U.S. government treasury securities and government sponsored entities. We classify all securities as available-for-sale, as the sale of such securities may be required prior to maturity to implement management strategies. These securities are carried at fair value, with the unrealized gains and losses reported as a component of other comprehensive income (loss) in stockholder s equity until realized. A decline in the market value of any marketable security below cost that is determined to be other than temporary will

result in a revaluation of its carrying amount to fair value. The impairment is charged to earnings and a new cost basis for the security is established. No such impairment charges were recorded for any period presented.

Realized gains and losses from the sale of marketable securities, if any, are determined on a specific identification basis. Realized gains and losses and declines in value judged to be other-than-temporary, if any, on available-for-sale securities are included in other income or expense on the Consolidated Statements of Operations. Realized gains and losses during the periods presented were immaterial. Premiums and discounts are amortized or accreted over the life of the related security as an adjustment to yield using the straight-line method and are included in interest income on the Consolidated Statements of Operation. Interest and dividends on securities classified as available-for-sale are included in interest income on the Consolidated Statements of Operations.

Table of Contents

The composition of marketable securities is as follows (*in thousands*):

	Maturity in Years	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
September 30, 2009					
U.S. government treasury securities	Less than 1	$ 17,986	$ 37	$ (2)	$ 18,021
Securities of government-sponsored entities	Less than 1	32,021	67	(2)	32,086
Certificates of deposit	Less than 1	1,840		(2)	1,838
Corporate notes	Less than 1	3,943	27		3,970
Short-term marketable securities		55,790	131	(6)	55,915
Securities of government-sponsored entities	1 to 2	9,997	35		10,032
Total marketable securities at September 30, 2009		$ 65,787	$ 166	$ (6)	$ 65,947
December 31, 2008					
Commercial paper	Less than 1	$ 1,213		(2)	$ 1,211
Corporate notes	Less than 1	4,283	4	(6)	4,281
Securities of government-sponsored entities	Less than 1	40,054	197	(5)	40,246
Short-term marketable securities		45,550	201	(13)	45,738
Corporate notes	1 to 3	4,467	15	(52)	4,430
Securities of government-sponsored entities	1 to 3	40,495	380		40,875
Total marketable securities at December 31, 2008		$ 90,512	$ 596	$ (65)	$ 91,043

As of September 30, 2009, we had no significant investment positions that were in an unrealized loss position. We review our investments to identify and evaluate investments that have an indication of possible other-than-temporary impairment. Factors considered in determining whether a loss is other-than-temporary include the length of time and extent to which fair value has been less than the cost basis, the financial condition and near-term prospects of the investee, and our intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. We maintain an investment portfolio of various holdings, types and maturities. We do not use derivative financial instruments. We place our cash investments in instruments that meet high credit quality standards, as specified in our investment policy guidelines. These guidelines also limit the amount of credit exposure to any one issue, issuer or type of instrument.

10. *Fair Value Measurements*

Effective January 1, 2008, the Company adopted the authoritative guidance for the fair value measurements, which defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles, and expands disclosures about fair value measurements. The Company measures certain assets at fair value and thus there was no impact on the Company s consolidated financial statements upon adoption of the guidance. The guidance

requires fair value measurements be classified and disclosed in one of the following three categories:
Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.
Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.
Level 3: Unobservable inputs are used when little or no market data is available.

Table of Contents

The fair values of the Company s assets and liabilities, which are measured at fair value on a recurring basis, were determined using the following inputs (*in thousands*):

	Total	Quoted Price in Active Market (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
September 30, 2009				
Marketable Securities:				
U.S government treasury securities	$ 18,021	$ 18,021	$	$
Securities of government-sponsored entities	42,118		42,118	
Corporate notes	3,970		3,970	
Certificates of deposit	1,838	1,838		
Total marketable securities at September 30, 2009	$ 65,947	$ 19,859	$ 46,088	$
Contingent Consideration:				
Long-term acquisition related liabilities	$(30,318)	$	$	$ (30,318)

Effective January 1, 2009, the Company implemented the authoritative guidance for nonfinancial assets and liabilities that are remeasured at fair value on a non-recurring basis. As the Company has not elected to measure any financial assets or liabilities at fair value that were not previously required to be remeasured at fair value, the adoption of this guidance did not have a material impact on the financial position or results of operations. However, it could have an impact in future periods. In addition, the Company may have additional disclosure requirements in the event we complete an acquisition or incur asset impairment in future periods.

11. Income Taxes

Deferred income tax assets and liabilities are recognized for temporary differences between financial statement and income tax carrying values using tax rates in effect for the years such differences are expected to reverse. At December 31, 2008, the Company had net deferred tax assets of $85.4 million primarily attributable to net operating loss carry-overs, research and experimentation credits, original issue discount, stock-based compensation expense and fixed assets. Due to uncertainties surrounding the Company s ability to generate future taxable income to realize such deferred income tax assets, a full valuation allowance has been established. With immaterial exception, the Company continues to maintain a full valuation allowance against its deferred tax assets as of September 30, 2009.

On July 13, 2006, the FASB issued authoritative guidance related to recognizing and measuring tax positions taken or expected to be taken in a tax return which requires that uncertain income tax positions on income tax returns must be recognized at the largest amount that is more-likely-than-not to be sustained upon audit by the relevant tax authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. Additionally, guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition was provided. The Company adopted this authoritative guidance on January 1, 2007, its effective date. There have been no changes in unrecognized tax benefits or other items since December 31, 2008 and as such, disclosures included in the Company s 2008 Annual Report on Form 10-K continue to be relevant for the period ended September 30, 2009.

Table of Contents

12. Stock-Based Compensation

The Company estimates the fair value of stock options granted to employees and shares issued under the Employee Stock Purchase Plan, or ESPP Plan, using a Black-Scholes option-pricing model. The assumptions used to estimate the fair value of stock awards granted in the three and nine months ended September 30, 2009 and 2008 are as follows:

	Three and Nine Months Ended September 30, 2009	Three and Nine Months Ended September 30, 2008
Stock Options		
Volatility	45% to 48%	42%
Expected term (years)	3.3 to 4.9	2.5 to 4.5
Risk free interest rate	1.36% to 2.51%	2.46% to 3.41%
Expected dividend yield	0.0%	0.0%
ESPP		
Volatility	40% to 65%	42% to 65%
Expected term (years)	0.5 to 2	0.5 to 2
Risk free interest rate	0.92% to 4.86%	3.03% to 4.86%
Expected dividend yield	0.0%	0.0%

The compensation cost that has been included in the statement of operations for all stock-based compensation arrangements was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands, except per share amounts)	**2009**	**2008**	**2009**	**2008**
Sales, marketing and administrative expense	$ 4,265	$ 4,499	$ 14,748	$ 13,541
Research and development expense	901	922	3,417	2,178
Stock-based compensation expense	$ 5,166	$ 5,421	$ 18,165	$ 15,719
Effect on basic net income (loss) per share	$ (0.14)	$ (0.15)	$ (0.49)	$ (0.44)
Effect on diluted net income (loss) per share	$ (0.13)	$ (0.15)	$ (0.47)	$ (0.44)

Stock-based compensation for stock options and restricted stock units is recognized and amortized on an accelerated basis in accordance with authoritative guidance issued by the FASB.

Restricted Stock Units

During the nine months ended September 30, 2009, approximately 260,500 time-vested restricted stock units, or RSUs, were granted at a grant date fair value of $36.49 per share. For the three and nine months ended September 30, 2009, the Company recorded $0.9 million and $2.2 million, respectively, of stock-based compensation expense related to RSUs. During the three and nine months ended September 30, 2008, there were no RSUs granted.

13. Building Lease

In August 2008, the Company relocated its corporate headquarters to a two-building campus style complex in San Diego. In connection with this relocation, in the third quarter of 2008, the Company recorded a liability for approximately $3.9 million related to lease termination costs in connection with vacating the Company s former corporate headquarters. During the third quarter of 2009, due to continued growth, the Company decided to reoccupy the former corporate headquarters facility. Accordingly, at August 31, 2009, the remaining lease termination costs liability of $2.0 was reversed and is recorded as a reduction of sales, marketing, and administrative expenses for the three and nine months ended September 30, 2009.

16

Table of Contents

14. Impact of Recently Issued Accounting Standards

Recently Adopted Accounting Standards

Effective January 1, 2009, the Company implemented the FASB s revised authoritative guidance for business combinations. This revised guidance requires an acquiring company to measure all assets acquired and liabilities assumed, including contingent considerations and all contractual contingencies, at fair value as of the acquisition date. In addition, an acquiring company is required to capitalize in-process research and development and either amortize it over the life of the product, or write it off if the project is abandoned or impaired. Previously, post-acquisition adjustments related to business combination deferred tax asset valuation allowances and liabilities for uncertain tax positions were generally required to be recorded as an increase or decrease to Goodwill. The revised guidance does not permit this accounting and, generally, requires any such changes to be recorded in current period income tax expense. Thus, all changes to valuation allowances and liabilities for uncertain tax positions established in acquisition accounting, regardless of the guidance used to initially account for the business combination, will be recognized in current period income tax expense. The adoption of the revised guidance will have an impact on the Company s consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions consummated after the effective date of January 1, 2009.

Effective January 1, 2009, the Company adopted the revised authoritative guidance for the accounting treatment afforded preacquisition contingencies in a business combination. Under the revised guidance, an acquirer is required to recognize at fair value an asset acquired or liability assumed in a business combination that arises from a contingency if the acquisition-date fair value of the liability can be determined during the measurement period. If the acquisition-date fair value cannot be determined, the acquirer will apply the authoritative guidance used to evaluate contingencies to determine whether the contingency should be recognized as of the acquisition date or after the acquisition date. The adoption of the revised guidance will have an impact on the Company s consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions consummated after the effective date of January 1, 2009.

Effective January 1, 2009, the Company implemented FASB s revised authoritative guidance for consolidation, which addresses the accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent s ownership interest, and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. The guidance also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. The adoption of the revised guidance is expected to impact the Company s consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the investments made after the effective date of January 1, 2009.

Effective January 1, 2009, the Company adopted the FASB s revised authoritative guidance which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. This guidance requires enhanced disclosures concerning a company s treatment of costs incurred to renew or extend the term of a recognized intangible asset. The adoption of this guidance did not have a material impact on our consolidated financial position, results of operations or cash flows.

Effective April 1, 2009, the Company adopted FASB s revised authoritative guidance for fair value measurements which clarifies the measurement of fair value in a market that is not active, and is effective as of the issue date, including application to prior periods for which financial statements have not been issued. The Company also adopted additional authoritative guidance for determining whether a market is active or inactive, and whether a transaction is distressed, is applicable to all assets and liabilities (financial and nonfinancial) and which requires enhanced disclosures. The adoption of this guidance did not have a material impact on our consolidated financial position, results of operations or cash flows.

Effective April 1, 2009, the Company adopted authoritative guidance which provides additional guidance to provide greater clarity about the credit and noncredit component of an other-than-temporary impairment event and to more effectively communicate when an other-than-temporary impairment event has occurred. The adoption of this guidance, which applies to investments in debt securities, did not have a material impact on our consolidated financial

position, results of operations or cash flows.

Table of Contents

Recently Issued Accounting Standards

In June 2009, the FASB issued authoritative guidance for consolidations, which amends the consolidation guidance that applies to variable interest entities and significantly affects the overall consolidation analysis under previously issued guidance. This guidance is effective for years beginning January 1, 2010. The Company is currently evaluating the impact the adoption will have on its consolidated financial statements.

15. Legal Proceedings

Medtronic Sofamor Danek USA, Inc. Litigation

As previously disclosed, in August 2008, Medtronic Sofamor Danek USA, Inc. and its related entities (Medtronic) filed suit against NuVasive in the United States District Court for the Southern District of California (Medtronic Litigation), alleging that certain of NuVasive s products infringe, or contribute to the infringement of, twelve U.S. patents assigned or licensed to Medtronic. Three of the patents were later withdrawn by Medtronic, leaving nine patents. NuVasive brought counterclaims against Medtronic alleging infringement of certain of NuVasive s patents. Because of the number of patents involved, each side selected three patents to proceed with in the first phase of the litigation. The Medtronic Litigation is still in its early stages. NuVasive believes its own claims have merit and that Medtronic s claims lack merit. As of September 30, 2009, the probability of a favorable outcome cannot be reasonably determined, nor can the Company reasonably estimate a potential loss, therefore, in accordance with the authoritative guidance on the evaluation of contingencies, the Company has not recorded an accrual related to this litigation.

16. Subsequent Event

On November 4, 2009, the Company issued 400,277 shares of its common stock to Osiris for the payment of the remaining $15 million milestone-based contingent payment that was recorded as a liability at September 30, 2009.

Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements May Prove Inaccurate

You should read the following discussion of our financial condition and results of operations in conjunction with the unaudited consolidated financial statements and the notes to those statements included in this report. This discussion may contain forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, such as those set forth under heading Risk Factors, and elsewhere in this report, and similar discussions in our other Securities and Exchange Commission filings, including our Annual Report on Form 10-K for the year ending December 31, 2008. We do not intend to update these forward looking statements to reflect future events or circumstances.

Overview

We are a medical device company focused on the design, development and marketing of products for the surgical treatment of spine disorders. Our product portfolio is focused primarily on the $4.6 billion U.S. spine implant market. Additionally, we have expanded into the $1.5 billion global biologics market, the $1.5 billion international spine implant market, and are developing products for the emerging motion preservation market.

Our principal product offering is based on our Maximum Access Surgery, or MAS® platform. The MAS platform combines four categories of products that collectively minimize soft tissue disruption during spine surgery with maximum visualization and safe, easy reproducibility for the surgeon: NeuroVision®, a proprietary software-driven nerve avoidance system; MaXcess®, a unique split-blade retractor system; a wide variety of specialized implants; and several biologic fusion enhancers. MAS significantly reduces surgery time and returns patients to activities of daily living much faster than conventional approaches. Having redefined spine surgery with the MAS platform s lateral approach, known as eXtreme Lateral Interbody Fusion, or XLIF®, we have built an entire spine franchise. With over 50 products today that span lumbar, thoracic and cervical applications, we will continue to expand and evolve our offering predicated on our R&D focus and dedication to outstanding service levels supported by our culture of Absolute Responsiveness®.

Table of Contents

In recent years we have significantly expanded our product offering relating to procedures in the cervical spine as well as in the area of biologics. Our cervical product offering now provides a full set of solutions for cervical fusion surgery, including both allograft and CoRoent® implants, as well as cervical plating and posterior fixation products. We enhanced our biologic offering in 2007 with the acquisition of rights to FormaGraft®, a collagen synthetic product used to aid the fusion process. This offering expanded in 2008 with the acquisition of Osteocel® from Osiris Therapeutics, an allograft cellular matrix containing viable mesenchymal stem cells, or MSCs, to aid in spinal fusion. In 2009, we further developed NuVasive s biologic portfolio via an investment into Progentix, a company with a novel Osteoinductive synthetic that has properties similar to BMP as well as a proprietary manufacturing process that creates superior microstructure using calcium phosphate.

We also offer a suite of traditional spine surgery products, including certain products in our CoRoent suite of implants, a titanium surgical mesh system, a line of precision-machined cervical and lumbar allograft implants, and related instrumentation. Our Triad® and Extensure® lines of bone allograft, in our patented saline packaging, is human bone that has been processed and precision shaped for transplant. We also offer fusion fixation products that offer unique technological benefits such as our Helix® and Gradient Plus™ cervical plate systems and SpheRx pedicle screw system.

We have an active product development pipeline focused on expanding our current fusion product platform as well as products designed to preserve spinal motion. In May 2009, we acquired Cervitech, a company focused on clinical approval of the PCM cervical disc system, a motion preserving total disc replacement device. Enrollment of the pivotal trial is complete and the trial protocol requires a two-year follow up period on all patients before submitting to the FDA for potential approval. In August 2008, we completed the enrollment of our pivotal clinical trial for NeoDisc®, our cervical disc replacement device. The trial protocol requires a two-year follow up period on all patients before submitting to the FDA for potential approval.

From inception through September 30, 2009, we had an accumulated deficit of approximately $192.0 million.

Recent Developments

In January 2009, we purchased forty percent (40%) of the capital stock of Progentix Orthobiology, B.V., a company organized under the laws of the Netherlands (Progentix), from existing shareholders for $10 million in cash (the Initial Investment). Progentix has as its objective the development and exploitation of knowledge and products in the field of bone defects and the recovery of bone tissue in general. Progentix wishes to further extend the existing knowledge and patent position in the field of Osteoinductive Bone Graft Material Technology.

In May 2009, we purchased Cervitech® Inc., (Cervitech), a New Jersey based company focused on clinical approval of the PCM® cervical disc system, a motion preserving total disc replacement device, for an initial purchase price of approximately $48 million, consisting of cash totaling approximately $24 million and the issuance of 638,261 shares of NuVasive common stock to certain stockholders of Cervitech. This strategic acquisition allows us the potential to accelerate our entry into the growing mechanical cervical disc replacement market. Currently, the PCM investigational device is in an FDA-approved clinical trial in the United States and two-year follow up is scheduled to be completed in the fourth quarter of 2009. We anticipate submitting for FDA approval in the first quarter of 2010. The potential approval will further strengthen our cervical product offering and will enable us to continue our trend of increasing our market share.

Revenues. The majority of our revenues are derived from the sale of disposables and implants and we expect this trend to continue in the near term. We loan our NeuroVision systems and surgical instrument sets at no cost to surgeons and hospitals that purchase disposables and implants for use in individual procedures; there are no minimum purchase requirements of disposables and implants related to these loaned surgical instruments. In addition, we place NeuroVision, MaXcess and other MAS or cervical surgical instrument sets with hospitals for an extended period at no up-front cost to them provided they commit to minimum monthly purchases of disposables and implants. Our implants and disposables are currently sold and shipped from our primary distribution and warehousing operations facility located in Memphis, Tennessee. We recognize revenue for disposables or implants used upon receiving a purchase order from the hospital indicating product use or implantation. In addition, we sell a small number of MAS instrument sets, MaXcess devices, and NeuroVision systems. To date, we have derived less than 5% of our total revenues from these sales.

Sales and Marketing. Through September 30, 2009, substantially all of our operations are located in the United States and substantially all of our sales to date have been generated in the United States. We sell our products through a sales force comprised of exclusive independent sales agents and our own directly employed sales professionals; both selling only NuVasive spine surgery

Table of Contents

products. Our sales force provides a delivery and consultative service to our surgeon and hospital customers and is compensated based on sales and product placements in their territories. Sales force commissions are reflected in our statement of operations in the sales, marketing and administrative expense line. We expect to continue to expand our distribution channel. Beginning late in 2007 and continuing today, we are continuing our expansion in international sales efforts with the focus on both European and Asian markets. We expect our international sales force to be made up of a combination of distributors and direct sales personnel.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations is based upon our unaudited condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States (GAAP). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate our estimates including those related to bad debts, inventories, valuation of Goodwill, intangibles and other long-term assets, income taxes, and stock-based compensation. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities not readily apparent from other sources. Actual results may differ from these estimates. Our critical accounting policies and estimates are discussed in our annual report on Form 10-K for the fiscal year ended December 31, 2008 and there have been no material changes during the three and nine months ended September 30, 2009.

New accounting requirements.

Effective January 1, 2009, we implemented the Financial Accounting Standards Board s (FASB) revised authoritative guidance for business combinations. This revised guidance requires an acquiring company to measure all assets acquired and liabilities assumed, including contingent considerations and all contractual contingencies, at fair value as of the acquisition date. In addition, an acquiring company is required to capitalize in-process research and development and either amortize it over the life of the product, or write it off if the project is abandoned or impaired. Previously, post-acquisition adjustments related to business combination deferred tax asset valuation allowances and liabilities for uncertain tax positions were generally required to be recorded as an increase or decrease to Goodwill. The revised guidance does not permit this accounting and, generally, requires any such changes to be recorded in current period income tax expense. Thus, all changes to valuation allowances and liabilities for uncertain tax positions established in acquisition accounting, regardless of the guidance used to initially account for the business combination, will be recognized in current period income tax expense. The adoption of the revised guidance will have an impact on our consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions consummated after the effective date of January 1, 2009.

Effective January 1, 2009, we implemented FASB s revised authoritative guidance for consolidation, which addresses the accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent s ownership interest, and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. The guidance also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. The adoption of the revised guidance is expected to impact our consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the investments made after the effective date of January 1, 2009. We will apply the provisions of this revised guidance when we have such noncontrolling interests.

On January 1, 2009, we adopted the FASB s revised authoritative guidance for determining the useful life of intangible assets. The guidance is intended to improve the consistency between the useful life of a recognized intangible asset and the period of expected cash flows used to measure the fair value of the asset under other U.S. generally accepted accounting principles. The application of this guidance did not have a material impact on our consolidated financial position, results of operations or cash flows.

Results of Operations

Revenue

(dollars in thousands)	September 30, 2009	2008	$ Change	% Change
Three months ended	$ 94,916	$ 66,915	$28,001	41.8%
Nine months ended	$263,405	$175,501	$87,904	50.1%

20

Table of Contents

Revenues have increased over time due primarily to continued market acceptance of our products within our MAS® platform, including NeuroVision® and MaXcess ® disposables, our Biologics offering, and our specialized implants such as our XLP® lateral plate, SpheRx® pedicle screw systems, and CoRoent® suite of products. The continued adoption of minimally invasive procedures for spine has led to the continued expansion of our innovative lateral procedure known as eXtreme Lateral Interbody Fusion, or XLIF®, in which surgeons access the spine for a fusion procedure from the side of the patient s body, rather than from the front or back. The execution of our strategy of expanding our product offering for the lumbar region and addressing broader indications further up the spine in the thoracic and cervical regions has contributed to strong revenue growth. We expect revenue to continue to increase, which can be attributed to the continued adoption of our XLIF procedure and deeper penetration into existing accounts as our sales force executes on the strategy of selling the full mix of our products.

Cost of Goods Sold

	September 30,			
(dollars in thousands)	**2009**	**2008**	**$ Change**	**% Change**
Three months ended	$18,417	$12,195	$ 6,222	51.0%
% of revenue	19.4%	18.2%		
Nine months ended	$49,901	$30,845	$19,056	61.8%
% of revenue	18.9%	17.6%		

Cost of goods sold consists of purchased goods and overhead costs, including depreciation expense for instruments.

The increase in cost of goods sold in total dollars in the three and nine months ended September 30, 2009 compared to the same periods in 2008, resulted primarily from (i) increased direct costs of $6.2 million and $15.6 million, respectively, primarily to support revenue growth; and (ii) increased depreciation expense of $1.0 million and $3.5 million, respectively, incurred on the increased amount of surgical instrument sets we hold for use in surgeries. We expect cost of goods sold, as a percentage of revenue, to remain at these levels for the remainder of 2009.

Operating Expenses

Sales, Marketing and Administrative.

	September 30,			
(dollars in thousands)	**2009**	**2008**	**$ Change**	**% Change**
Three months ended	$ 59,761	$ 54,557	$ 5,204	9.5%
% of revenue	63.0%	81.5%		
Nine months ended	$176,391	$135,975	$40,416	29.7%
% of revenue	67.0%	77.5%		

Sales, marketing and administrative expenses consist primarily of compensation, commission and training costs for personnel engaged in sales, marketing and customer support functions; distributor commissions; shipping costs; surgeon training costs; shareowner (employee) related expenses for our administrative functions; third party professional service fees; amortization of acquired intangible assets; and facilities and insurance expenses.

The increases in sales, marketing and administrative expenses principally result from growth in our revenue and the overall growth of the Company, including expenses that fluctuate with sales and expenses associated with investments in our infrastructure and headcount growth.

Increases in costs based on revenue, such as sales force compensation and other direct costs related to the sales force, royalty expense, and shipping costs, were $6.4 million and $21.4 million for the three and nine months ended September 30, 2009, respectively, compared to the same periods in 2008. The increases are consistent with our increased revenue growth of approximately 50% in the first nine months of 2009 as compared to the same period in 2008. Total costs related to our sales force, as a percent of revenue, decreased to 28.8% from 30.3% for the three

months ended September 30, 2009 compared to the same period in 2008. The decrease in costs as a percentage of revenue was primarily attributable to the increased revenues.

We also experienced increased costs as a result of overall Company growth and headcount additions in our marketing and administrative support functions. Marketing and administrative compensation and personnel costs increased $4.6 million and $12.4

Table of Contents

million for the three and nine months ended September 30, 2009, respectively, compared to the same periods in 2008. Facility, equipment and computer expenses increased by $0.9 million and $4.5 million for the three and nine months ended September 30, 2009, respectively, compared to the same periods in 2008, primarily as a result of continued headcount growth and increased facility costs to support the increasing number of shareowners (employees).

During the first quarter of 2009, we adopted the FASB s revised authoritative guidance for business combinations, which requires that acquisition related costs be expensed in the period in which the costs are incurred. This differs from previous accounting treatment in that the acquisition related expenses were included as part of the purchase price of the acquired company. We incurred approximately $2.3 million in acquisition related costs in connection with our investment in Progentix and acquisition of Cervitech in the nine months ended September 30, 2009 with no comparable expense during the same periods in 2008.

The increases in costs discussed above were offset by decreases in costs for the three and nine months ended September 30, 2009 compared to the same periods in 2008, related to charges totaling $7.4 million for vacating the Company s previous corporate headquarters and incremental transition costs related to our ERP system which were recorded in the three and nine months ended September 30, 2008. In August 2008, we relocated our corporate headquarters to a two-building campus style complex in San Diego. In connection with vacating our former corporate headquarters, we recorded a charge of approximately $4.8 million to sales, marketing, and administrative expenses for lease termination costs and other related items. In addition, during the three and nine months ended September 30, 2008, we incurred non-capitalizable expenses totaling $2.6 million related to the implementation of our new ERP system which was completed in the third quarter of 2008. During the third quarter of 2009, due to continued growth, we decided to reoccupy the former corporate headquarters facility. Accordingly, at August 31, 2009, the remaining liability related to lease termination costs of $2.0 million was reversed and is recorded as a reduction of sales, marketing, and administrative expenses for the three and nine months ended September 30, 2009.

The total capitalized costs of $10.9 million incurred in 2008 related to the ERP project are being amortized over a 7-year period which began in July 2008.

On a long-term basis, as a percentage of revenue, we expect total sales, marketing and administrative costs to continue to decrease over time as we continue to see the synergies of investments we have made.

Research and Development.

	September 30,			
(dollars in thousands)	**2009**	**2008**	**$ Change**	**% Change**
Three months ended	$10,654	$ 6,396	$ 4,258	66.6%
% of revenue	11.2%	9.6%		
Nine months ended	$30,047	$19,797	$10,250	51.8%
% of revenue	11.4%	11.3%		

Research and development expense consists primarily of product research and development, clinical trial and study costs, regulatory and clinical functions, and shareowner (employee) related expenses.

The increase in research and development costs in the periods presented are primarily due to expenses related to litigation support costs of $0.8 million and $3.4 million incurred during the three and nine months ended September 30, 2009, respectively, with no comparable expenses during the same periods in 2008. Compensation and other shareowner related expenses increased $1.4 million and $4.0 million, for the three and nine months ended September 30, 2009, respectively, including an increase in stock-based compensation of $1.2 million for the nine months ended September 30, 2009, compared to the same periods in 2008, primarily due to increased headcount to support our product development and enhancement efforts. We expect research and development costs to continue to increase in absolute dollars for the foreseeable future in support of our ongoing development activities and planned clinical trial activities.

In-Process Research and Development.

For the nine months ended September 30, 2008, we recorded in-process research and development (IPR&D) charges of $20.9 million related to the acquisitions of pedicle screw technology and Osteocel. As of the date of the

acquisitions, the projects associated with the IPR&D efforts had not yet reached technological feasibility and the research and development in-process had no alternative

Table of Contents

future uses. Accordingly, the amounts were charged to expense on the acquisition dates in accordance with the authoritative guidance in effect on the dates of acquisition.

During the first quarter 2009, we adopted the FASB s revised authoritative guidance for business combinations, which is applied prospectively for all new business acquisitions entered into after January 1, 2009 and provides that IPR&D acquired is no longer charged to expense on the acquisition date, but rather recorded as an asset on the balance sheet. Amounts recorded as IPR&D beginning after January 1, 2009, will begin being amortized upon first sales of the product over the estimated useful life of the technology. As of September 30, 2009, we have recorded approximately $46.0 million on our balance sheet related to IPR&D in conjunction with the Progentix Investment and acquisition of Cervitech, as described above. In accordance with this authoritative guidance, as the technology has not yet been approved, the amortization of the acquired IPR&D has not begun. In addition, there were no charges to the statement of operations during the first six months of 2009.

Interest and Other Income, Net

	September 30,			
(dollars in thousands)	**2009**	**2008**	**$ Change**	**% Change**
Three months ended:				
Interest income	$ 203	$ 1,460		
Interest expense	(1,609)	(1,719)		
Other income (expense), net	(242)	113		
Total interest and other income (expense), net	$ (1,648)	$ (146)	$ (1,502)	(1028.8%)
% of revenue	1.7%	0.2%		
Nine months ended:				
Interest income	$ 1,318	$ 4,373		
Interest expense	(5,439)	(3,816)		
Other income (expense), net	(729)	207		
Total interest and other income (expense), net	$ (4,850)	$ 764	$ (5,614)	(734.8%)
% of revenue	1.8%	0.4%		

Interest and other income (expense), net, consists primarily of interest income earned on marketable securities offset by interest expense incurred related to the Company s convertible debt offering signed in March 2008. The net change in these amounts in the periods presented is principally due to (i) an increase of $1.6 million in interest expense for the nine months ended September 30, 2009 related to the convertible debt offering due to having a full period of interest expense in the 2009 period as compared to only partial period during the same 2008 period, and (ii) lower balances in marketable securities in 2009, coupled with lower interest rates, resulting in a decrease of $1.3 million and $3.1 million in interest income for the three and nine months ended September 30, 2009, respectively.

Table of Contents

Stock-Based Compensation

(dollars in thousands)	Three Months Ended September 30, 2009	2008	Nine months ended September 30, 2009	2008
Sales, marketing and administrative expense	$ 4,265	$ 4,499	$ 14,748	$ 13,541
Research and development expense	901	922	3,417	2,178
Total stock-based compensation expense	$ 5,166	$ 5,421	$ 18,165	$ 15,719
% of revenue	5.4%	8.1%	6.9%	9.0%

We granted approximately 1.4 million and 1.8 million options in the first nine months of 2009 and 2008, respectively, with a per option grant date weighted average fair value of $13.17 and $14.49, respectively. In addition, in 2009 we granted approximately 260,500 restricted stock units with a weighted average grant date fair value of $36.49. We recognize stock-based compensation expense on an accelerated basis in accordance authoritative guidance, which effectively results in the recognition of approximately 60% of the total compensation expense for a particular option within 12 months of its grant date. The increase in stock-based compensation expense in the nine months ended September 30, 2009 compared to the same period in 2008 is due primarily to the amortization of prior year grants during the first nine months of 2009 and an increase due to the grant of restricted stock units during the first nine months of 2009 with no comparable grants during the same period in 2008. Restricted stock units tend to have a higher associated stock-based compensation expense as they are valued at the full market price on the day of grant. The decrease in stock-based compensation expense in the three months ended September 30, 2009 compared to the same period in 2008 is due primarily to a change in the estimate of the number of options expected to vest as a result of the resignation of one of our executive officers.

Liquidity and Capital Resources

Since our inception in 1997, we have incurred significant losses and as of September 30, 2009, we had an accumulated deficit of approximately $192.0 million. We expect our sales, marketing and administrative expense and research and development expense will continue to grow and, as a result, we will need to generate significant net sales to increase profitability. To date, our operations have been funded primarily with proceeds from the sale of our securities.

In March 2008, we issued $230.0 million principal amount of 2.25% Convertible Senior Notes due 2013 (the Notes). The net proceeds from the offering, after deducting the initial purchasers discount and costs directly related to the offering, were approximately $208.4 million. We pay 2.25% interest per annum on the principal amount of the Notes, payable semi-annually in arrears in cash on March 15 and September 15 of each year. The Notes mature on March 15, 2013.

Cash, cash equivalents and short-term and long-term marketable securities, was $200.2 million at September 30, 2009 and $223.4 million at December 31, 2008. The decrease was due primarily to the payments of $10.0 million related to our investment in Progentix, $10.0 million related to Osteocel milestones and $24.1 million related to our acquisition of Cervitech, offset by cash flow provided from achieving profitability in 2009.

Net cash provided by operating activities was $32.9 million for the first nine months of 2009 compared to $9.4 million used in operating activities in the same period in 2008, an increase of $42.3 million in net cash provided by operating activities. The increase in cash provided from operating activities is from our improved operating results in 2009 as compared to 2008, as well as improved collections from accounts receivable.

Net cash used in investing activities was $40.6 million in the first nine months of 2009 compared to $164.7 million in the same period in 2008. The decrease in net cash used in investing activities of $124.1 million is primarily due to the net change of $114.5 million in the cash provided by the activity in our investment portfolio and to a $12.9 million decrease in capital asset purchases, offset by an increase of $2.8 million used in cash payments for our acquisitions.

Net cash provided by financing activities was $9.6 million in the first nine months of 2009 compared to $216.6 million in the same period in 2008. The change in net cash provided by financing activities of $207.0 million is primarily due to the receipt of net proceeds of $208.4 million from the issuance of convertible debt in March 2008.

We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our working capital requirements and of our capital expenditures for additional loaner assets, our operating results, and cash used in any future acquisitions. In addition, we expect to incur additional capital expenditures for leasehold improvements for the new headquarters facility. We have sufficient cash and investments on hand to finance our operations for the foreseeable future.

Table of Contents

Contractual Obligations

In addition to the contractual obligations disclosed in our Annual Report on Form 10-K for the year ended December 31, 2008, the following obligations have been incurred during 2009:

Progentix Investment

On January 13, 2009 (the Investment Date), we completed the purchase of forty percent (40%) of the capital stock of Progentix Orthobiology, B.V., a company organized under the laws of the Netherlands (Progentix), from existing shareholders pursuant to a Preferred Stock Agreement for $10 million in cash. Additionally, we, Progentix and the shareholders of Progentix entered into an Option Purchase Agreement dated January 13, 2009 (the Option Agreement), whereby we may be obligated, upon the achievement of certain milestones by Progentix within two years, to purchase the remaining sixty percent (60%) of capital stock of Progentix for $45 million, payable in a combination of cash or NuVasive common stock at our sole discretion, subject to certain adjustments (the Remaining Shares). We may also be obligated in the event that Progentix achieves the milestones contemplated above within the requisite two year period to make additional payments to Progentix shareholders, excluding NuVasive, of up to an aggregate total of $25 million, payable in a combination of cash or stock at our sole discretion, upon completion of additional milestones and dependent on our sales success. We also have the right under the Option Agreement to purchase the Remaining Shares at any time between the second anniversary of the Option Agreement and the fourth anniversary of the Option Agreement (the Option Period) for $35 million, payable in a combination of cash or NuVasive common stock at our sole discretion, and in certain circumstances where we achieve in excess of a certain annual sales run rate on Progentix products during the Option Period, we may be required to purchase the Remaining Shares for $35 million. We also entered into a Distribution Agreement with Progentix dated January 13, 2009, whereby Progentix appointed us as its exclusive distributor for certain Progentix products. The Distribution Agreement shall remain in effect for a term of ten years unless earlier terminated in accordance with its terms.

We entered into a Senior Secured Facility Agreement with Progentix dated January 13, 2009 (the Facility Agreement) whereby Progentix may borrow up to $5 million from us to fund ongoing clinical and regulatory efforts (the Loan). The Loan accrues interest at a rate of six percent (6%) per year. The total amount of the Loan and any related accrued interest may be paid in cash or applied against any potential future purchase price of the Remaining Shares. We are not obligated to provide any additional funding to Progentix other than as stipulated in the Loan. Progentix has borrowed $2.0 million under the Loan at September 30, 2009.

Cervitech® Inc. Acquisition

On May 8, 2009, the Company completed the purchase of all of the outstanding shares of Cervitech, Inc., a Delaware corporation (Cervitech), pursuant to a Share Purchase Agreement dated April 22, 2009 (the Purchase Agreement) for an initial payment of approximately $48 million consisting of cash totaling approximately $24 million and the issuance of 638,261 shares of NuVasive common stock (the Shares) to certain stockholders of Cervitech. Cervitech, a New Jersey based company, is focused on the clinical approval of the PCM® cervical disc system, a motion preserving total disc replacement device.

NuVasive may also be obligated, in the event that Cervitech receives FDA approval of the device, to make an additional payment of $33 million, payable in either cash or a combination of cash and up to half in NuVasive s common stock, at the Company s election.

Osteocel Biologics Business Acquisition

In connection with the Asset Purchase Agreement and Manufacturing Agreement, each as amended, that were entered into in connection with the Osteocel Biologics Business Acquisition, we made an additional milestone-based contingent payment to Osiris in the amount of $15 million related to a sales performance milestone. This payment was made in NuVasive common stock, at our election.

Table of Contents

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our exposure to interest rate risk at September 30, 2009 is related to our investment portfolio which consists largely of debt instruments of high quality corporate issuers and the U.S. government and its agencies. Due to the short-term nature of these investments, we have assessed that there is no material exposure to interest rate risk arising from our investments. Fixed rate investments and borrowings may have their fair market value adversely impacted from changes in interest rates. At September 30, 2009, we did not hold any material asset-backed investment securities and in 2009 and 2008, we did not realize any losses related to asset-backed investment securities.

Interest Rate Risk. Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. The fair market value of fixed rate securities may be adversely impacted by fluctuations in interest rates while income earned on floating rate securities may decline as a result of decreases in interest rates. Under our current policies, we do not use interest rate derivative instruments to manage exposure to interest rate changes. We attempt to ensure the safety and preservation of our invested principal funds by limiting default risk, market risk and reinvestment risk. We mitigate default risk by investing in investment grade securities. We have historically maintained a relatively short average maturity for our investment portfolio, and we believe a hypothetical 10% adverse move in interest rates along the entire interest rate yield curve would not materially affect the fair value of our interest sensitive financial instruments.

Foreign Currency Exchange Risk. We have operated mainly in the United States of America, and the majority of our sales since inception have been made in U.S. dollars. Currently, a majority of our sales to international markets have been to independent distributors in transactions conducted in U.S. dollars; our other sales in international markets, currently the United Kingdom, Germany and Australia, are through local subsidiaries which sell directly to health care providers in local currencies. To date, we have not had any material exposure to foreign currency rate fluctuations.

Item 4. Controls and Procedures

Disclosure Controls and Procedures. We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized and reported within the timelines specified in the SEC s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of the effectiveness of the Company s disclosure controls and procedures (as such term is defined in Exchange Act Rules 13a 15(e) and 15d 15(e)) as of September 30, 2009. Based on such evaluation, our management has concluded that as of September 30, 2009, the Company s disclosure controls and procedures are effective.

Changes in Internal Control over Financial Reporting. There has been no change to our internal control over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1A. Risk Factors

An investment in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described under Item 1A of Part I of our Annual Report on Form 10-K filed with the Securities and Exchange Commission for the year ended December 31, 2008 (the Risk Factors), to which there have been no material changes, together with all other information contained or incorporated by reference in this report before you decide to invest in our common stock. If any of the risks described in this report or in our annual report actually occurs, our business, financial condition, results of operations and our future growth prospects could be materially and adversely affected. Under these circumstances, the trading price of our common stock could decline, and you may lose

all or part of your investment.

Table of Contents

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

On September 30, 2009 and November 6, 2009, NuVasive, Inc., issued 307,814 and 400,277 shares of its common stock (the Shares), respectively, to Osiris Therapeutics, Inc., a Delaware corporation, in connection with milestone payments pursuant to an Asset Purchase Agreement between the Company and Osiris dated May 8, 2008, as amended. The Shares were issued to Osiris in reliance on the exemption from registration under Section 4(2) of the Securities Act of 1933, as amended, and/or Rule 506 of Regulation D promulgated under the Securities Act.

Item 5. Other Information

Compensatory Arrangements with Certain Officers

On November 4, 2009, NuVasive, Inc. (the Company) entered into compensatory letter agreements with Pat Miles and Jeff Rydin, each a named executive officer (as defined in Item 402(a)(3) of Regulation S-K) of the Company, in association with their respective promotions, each to be effective January 1, 2010. Mr. Miles, currently the Company s Executive Vice President, Product Marketing and Development, was promoted to the position of President, Americas. Mr. Rydin, currently the Company s Senior Vice President, U.S. Sales, was promoted to the position of Executive Vice President, Americas Sales. The letter agreements set forth new base salaries, anticipated restricted stock unit grants and target performance bonus (upon the achievement of specified performance milestones) for Mr. Miles and Mr. Rydin as follows:

Name	2010 Base Salary	2010 RSU Grants (# of shares)	Target Bonus for Fiscal 2010
Patrick Miles	$ 450,000	85,000	75%
Jeffrey Rydin	$ 400,000	50,000	75%

Mr. Miles and Mr. Rydin will be eligible to receive a bonus in excess of the target bonus for over-achievement.

Other Events

Between September 9, 2009 and September 14, 2009, each of the following individuals, each an executive officer of NuVasive, Inc. (NuVasive), adopted a stock trading plan for trading in NuVasive s common stock in accordance with the guidelines specified by the Securities and Exchange Commission s Rule 10b5-1 under the Securities Exchange Act of 1934: Keith Valentine, NuVasive s President and Chief Operating Officer; Kevin C. O Boyle, NuVasive s Executive Vice President and Chief Financial Officer; Jeff Rydin, NuVasive s Senior Vice President, U.S. Sales; and Jason Hannon, Nuvasive s Senior Vice Present and General Counsel. Each of these individuals will file Forms 4 evidencing sales under their stock trading plan as required under Section 16 of the Securities Exchange Act of 1934. This type of trading plan allows a corporate insider to gradually diversify holdings of company stock while minimizing any market effects of such trades by spreading them out over an extended period of time and eliminating any market concern that such trades were made by a person while in possession of material nonpublic information. Consistent with Rule 10b5-1, NuVasive s insider trading policy permits personnel to implement Rule 10b5-1 trading plans provided that, among other things, such personnel are not in possession of any material nonpublic information at the time they adopt such plans.

Pursuant to the stock trading plan adopted by Mr. Valentine, between December 2009 and November 2010, he will sell 5,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 5,000 additional shares each month based on increasing price levels. Pursuant to the stock trading plan adopted by Mr. O Boyle: in December 2009 he will sell 42,977 shares if the stock is above a prearranged minimum price; in January 2010 he will sell 13,871 shares if the stock is above a prearranged minimum price, and may sell up to 68,750 additional shares based on increasing price levels; in February 2010 he will sell 6,848 shares if the stock is above a prearranged minimum price, and may sell any shares remaining unsold from the prior month sale; and in March 2009 he will sell 6,848 shares if the stock is above a prearranged minimum price and may sell any shares remaining unsold following the prior month s sale date. Pursuant to the stock trading plan adopted by Mr. Rydin: in December 2009 he will sell 4,274 shares if the stock is above a prearranged minimum price, and may sell up to 3,000 additional shares based on increasing price levels; between January and April 2010, he will sell 3,000 shares each month if the stock is above a

prearranged minimum price, and may sell up to 3,000 additional shares each month based on increasing price levels; in May 2010 he will sell 3,640 shares if the stock is above a prearranged minimum price, and may sell up to 3,000 additional shares based on increasing price levels; and between June and November 2010 he will sell 3,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 3,000 additional shares each month based on increasing price levels based on increasing price levels. Pursuant to the stock trading plan adopted by Mr. Hannon, between December 2009 and November 2010, he will 2,000 shares each month if the stock is above a prearranged minimum price, and may sell up to 6,000 additional shares each month based on increasing price levels.

Under each of these plans, the plan s agent will undertake to sell specified numbers of shares each month if the stock trades above certain prearranged minimum prices. The individual stockholder will have no control over the timing of any sales under the plan and there is no assurance that any shares will be sold. Sales under each of these trading plans will take effect in November 2009 upon the expiration of their existing Rule 10b5-1 trading plans. Mr. O Boyle s plan will expire in March 2010 while all other plans will expire in November 2010.

Table of Contents

Item 6. Exhibits

EXHIBIT INDEX

Exhibit No	Description
3.1 (1)	Restated Certificate of Incorporation
3.2 (2)	Restated Bylaws
10.1#	Separation Agreement, dated September 2, 2009, between NuVasive, Inc. and Kevin C. O Boyle
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
32 *	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(1) Incorporated by reference to our Quarterly Report on Form 10-Q filed with the Commission on August 13, 2004.

(2) Incorporated by reference to our Current Report on Form 8-K filed with the Commission on December 15, 2008.

# Indicates management contract or compensatory plan.

* These certifications are being furnished solely to accompany this

quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of NuVasive, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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.

NuVasive, Inc.

Date: November 6, 2009

By: /s/ Alexis V. Lukianov
Alexis V. Lukianov
Chairman and Chief Executive Officer

Date: November 6, 2009

By: /s/ Kevin C. O Boyle
Kevin C. O Boyle
Executive Vice President and Chief Financial Officer

Table of Contents

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