As filed with the Securities and Exchange Commission on May 25, 2005

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

Nabi Biopharmaceuticals

(Exact name of registrant as specified in its charter)

Delaware	59-1212264
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

5800 Park of Commerce Boulevard N.W.
Boca Raton, FL 33487
(561) 989-5800
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Thomas H. McLain
Chief Executive Officer and President
Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard N.W.
Boca Raton, FL 33487
(561) 989-5800
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:
James E. Dawson, Esq.
Nutter McClennen & Fish LLP
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement, as determined by the selling security holders.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
2.875% Convertible Senior Notes due 2025	$112,400,000	100%(1)	$112,400,000(1)	$13,229.48
Common Stock, $0.10 par value per share(2)	10,204,256(3)	—	—	—(4)

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a).

(2) This registration statement also covers rights to purchase shares of Series One Preferred Stock. The rights are attached to the common stock and are issued pursuant to the terms of the registrant's Rights Agreement dated August 1, 1997, as amended. Until the occurrence of certain events, the rights will not be exercisable and will be transferable with and only with the common stock. Because no separate consideration is to be paid for the rights, the registration fee for the rights is included in the registration fee for the notes and the underlying common stock.

(3) Includes 7,849,431 shares issuable upon conversion of the notes at the initial conversion rate of 69.8348 shares per $1,000 principal amount of notes and up to 2,354,825 additional shares issuable upon conversion of the notes at an adjusted conversion rate of up to 90.7852 shares per $1,000 principal amount of notes in connection with a "non-stock fundamental change" (as defined in the Indenture dated April 19, 2005, between the registrant and U.S. Bank National Association, as trustee). Pursuant to Rule 416, this registration statement also covers the additional shares to be issued pursuant to the terms of the notes being registered to prevent dilution resulting from stock splits, stock dividends, or similar transactions.

(4) Pursuant to Rule 457(i), the registration fee is calculated on the basis of the proposed offering price of the notes alone because no additional consideration is to be received in connection with the exercise of the conversion privilege.

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

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The information in this prospectus is not complete and may be changed. The selling security holders named in this prospectus may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated May 25, 2005

PROSPECTUS

$112,400,000

2.875% Convertible Senior Notes due 2025 and the Common Stock Issuable Upon Conversion of the Notes

This prospectus relates to $112,400,000 principal amount of our 2.875% Convertible Senior Notes due 2025 that we issued in connection with a private placement in April 2005 and upon the exercise of an option to purchase additional notes in May 2005. This prospectus also relates to shares of common stock issuable upon conversion of the notes. This prospectus will be used by selling security holders to resell from time to time their notes and shares of our common stock issuable upon conversion of the notes.

We will pay interest on the notes on April 15 and October 15 of each year, beginning October 15, 2005.

The notes will mature on April 15, 2025.

Holders of the notes may convert their notes into shares of our common stock at any time prior to the maturity date of the notes at an initial conversion rate of 69.8348 shares per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $14.32 per share), subject to adjustment as set forth in this prospectus. In the event of certain types of fundamental changes, we will increase the number of shares issuable upon conversion or, in lieu thereof, we may elect to adjust the conversion rate and related conversion obligation so that the notes are convertible into shares of the acquiring or surviving company, in each case as described herein.

On or after April 18, 2010, we may redeem some or all of the notes for cash at 100% of the principal amount plus accrued and unpaid interest.

Holders of the notes may require us to repurchase for cash all or a part of their notes on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020, at a repurchase price equal to 100% of the principal amount plus accrued and unpaid interest.

Upon the occurrence of a fundamental change, holders of the notes may require us to repurchase for cash all or part of their notes at 100% of the principal amount plus accrued and unpaid interest.

Shares of our common stock are quoted on The Nasdaq National Market under the symbol “NABI.” The closing sale price of the shares on May 20, 2005 was $12.14 per share.

The notes are not listed on any securities exchange or included in any automated quotation system. Upon their initial issuance, the notes were eligible for trading in The PORTAL Market. Any notes that are resold by means of this prospectus will no longer be eligible for trading in The PORTAL Market.

The notes are our general, unsecured obligations and will rank equally in right of payment with all existing and future unsecured, unsubordinated debt and senior in right of payment to any existing and future subordinated indebtedness that we may incur. The notes will be effectively subordinated to all of our secured indebtedness and structurally subordinated to any liabilities and other indebtedness of our subsidiaries.

Investing in the notes and our common stock involves risks. See “ Risk Factors” beginning on page 5.

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

The date of this prospectus is , 2005.

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When used in this prospectus, unless otherwise indicated, the terms “Nabi Biopharmaceuticals,” the “company,” “we,” “us” and “our” refer to Nabi Biopharmaceuticals and its wholly owned subsidiaries. Nabi Biopharmaceuticals™, Nabi®, PhosLo®, Nabi-HB®, StaphVAX®, Altastaph™, Civacir™ and NicVAX™ are our trademarks. Other service marks, trademarks and trade names referred to in this prospectus are property of their respective owners.

You should rely only on the information contained in this prospectus or incorporated by reference. We have not authorized anyone to provide you with different information. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the notes or our common stock.

SUMMARY

The following summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and our consolidated financial statements and the notes thereto incorporated by reference into this prospectus. This summary does not contain all of the information that you should consider before investing in our notes and common stock. In particular, the following summary contains basic information about the notes and is not intended to be complete. It does not contain all the information that is important to you. For a more complete understanding of the notes, please refer to the section of this prospectus entitled "Description of Notes." For purposes of the description of notes included in this prospectus, references to "Nabi Biopharmaceuticals," the "company," "we," "us" and "our" refer only to Nabi Biopharmaceuticals and do not include our subsidiaries. You should carefully read the entire prospectus, together with the documents incorporated by reference herein.

Nabi Biopharmaceuticals

We are a biopharmaceutical company focused on powering the immune system to develop and market products that fight serious medical conditions. By leveraging our experience and knowledge of the immune system, we are poised to capture large, commercial opportunities in our four core business areas: Gram-positive bacterial infections, hepatitis, kidney disease (nephrology), and nicotine addiction. We have three products on the market today and a number of products in various stages of clinical and preclinical development. We invest the gross margins we earn from sales of our marketed products toward funding the development of our product pipeline.

We were incorporated in Delaware in 1969. Our principal executive offices are located at 5800 Park of Commerce Boulevard N.W., Boca Raton, Florida 33487, and our European headquarters are located in Bray, Ireland. We maintain our commercial and manufacturing operations in Boca Raton and our research and development operations in Rockville, Maryland. Our telephone number is (561) 989-5800, and our website address is *http://www.nabi.com*. The information on our website or any other website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus.

The Offering

Issuer	Nabi Biopharmaceuticals, a Delaware corporation.
Securities offered	$112,400,000 principal amount of 2.875% Convertible Senior Notes due 2025 and the common stock issuable upon conversion thereof. We originally issued the notes in April 2005 in a private placement to the initial purchasers, Lehman Brothers Inc., Bear, Stearns & Co. Inc. and Wachovia Capital Markets, LLC and, in May 2005 upon the exercise by the initial purchasers of an option to purchase additional notes. The initial purchasers resold the notes to purchasers in transactions exempt from registration pursuant to Rule 144A.
Maturity date	April 15, 2025, unless earlier converted, redeemed or repurchased.
Ranking	The notes: • are our general, unsecured obligations; and • will rank equally in right of payment with all of our existing and future unsubordinated, unsecured indebtedness.

	The notes will be effectively subordinated to our secured indebtedness to the extent of the value of the related security and structurally subordinated to any liabilities and other indebtedness of our subsidiaries. The indenture under which the notes were issued generally does not restrict the incurrence of debt by us or any of our subsidiaries. As of March 26, 2005, after giving effect to the sale of the notes, there would have been approximately $126.9 million of total debt outstanding of Nabi Biopharmaceuticals.
Interest	2.875% per annum on the principal amount, payable semiannually in arrears on April 15 and October 15 of each year, beginning October 15, 2005. The initial interest payment will include accrued interest from April 19, 2005.
Conversion	The notes are convertible at the option of the holder into shares of our common stock at an initial conversion rate of 69.8348 shares per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $14.32 per share). The conversion rate is subject to adjustment in certain events. The notes are convertible at the above conversion rate at any time on or after issuance and prior to the close of business on the business day prior to the maturity date, unless we have previously repurchased or redeemed the notes. Holders of notes submitted for repurchase or called for redemption will be entitled to convert their notes up to the close of business on the business day immediately preceding the date fixed for such repurchase or redemption. See “Description of Notes—Conversion Rights.” Upon conversion, we will have the right to deliver shares of our common stock, cash or a combination of cash and shares of our common stock, in each case as described under “Description of Notes—Conversion Rights—Settlement Upon Conversion.”
Adjustment to conversion rate upon certain types of fundamental changes	If and only to the extent holders elect to convert their notes in connection with a transaction described under the first or third clause of the definition of fundamental change (as defined in this prospectus) as described in “Description of Notes—Repurchase at Option of Holders Upon a Fundamental Change” (or in connection with a transaction that would have been a fundamental change under such clause (1) or (3) but for the existence of the 110% trading price exception (as defined below)), within 30 days of receiving notice that such fundamental change has occurred, pursuant to which 10% or more of the consideration for our common stock (other than cash payments for fractional shares and cash payments made in respect of dissenters’ appraisal rights) in such transaction consists of cash or securities (or other property) that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or The Nasdaq National Market, we will increase the number of shares issuable upon conversion. The number of additional shares will be determined by reference to the table in “Description of Notes—Conversion Rights—Adjustment to Conversion Rate Upon Certain Fundamental Changes,” based on the effective date and the price paid per share of our common stock in such

	fundamental change transaction. If holders of our common stock receive only cash in such transaction, the stock price shall be the cash amount paid per share. Otherwise, the stock price shall be the average of the last reported sale prices of our common stock on the five trading days prior to but not including the effective date of such fundamental change.
Conversion after a public acquirer fundamental change	In the case of a non-stock fundamental change constituting a public acquirer fundamental change (as defined in this prospectus), we may, in lieu of issuing additional shares upon conversion as described in "Description of Notes—Conversion Rights—Adjustment to Conversion Rate Upon Certain Fundamental Changes," elect to adjust the conversion rate and the related conversion obligation such that from and after the effective date of such public acquirer fundamental change, holders of the notes will be entitled to convert their notes (subject to the satisfaction of certain conditions) into a number of shares of public acquirer common stock by multiplying the conversion rate in effect immediately before the public acquirer fundamental change by a fraction: • the numerator of which, will be (i) in the case of a share exchange, consolidation or merger pursuant to which our common stock is converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by our board of directors) paid or payable per share of common stock or (ii) in the case of any other public acquirer fundamental change, the average of the last reported sale prices of our common stock for the five consecutive trading days prior to but excluding the effective date of such public acquirer fundamental change; and • the denominator of which will be the average of the last reported sale prices of the public acquirer common stock for the five consecutive trading days commencing on the trading day next succeeding the effective date of such public acquirer fundamental change.
Sinking fund	None.
Optional redemption	On or after April 18, 2010, we may redeem some or all of the notes for cash at 100% of the principal amount plus accrued and unpaid interest to, but not including the redemption date. See "Description of Notes—Redemption."
Repurchase at option of holders	On April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020, you may, at your option, require us to repurchase for cash some or all of your notes at a repurchase price equal to 100% of the principal amount of the notes being repurchased, plus accrued and unpaid interest to, but not including, the repurchase date. See "Description of Notes—Repurchase at Option of Holders."
Repurchase at option of holders upon a fundamental change	If we undergo a fundamental change prior to maturity, you will have the right, at your option, to require us to repurchase for cash some or all of your notes at a repurchase price equal to 100% of the principal amount of

	the notes being repurchased, plus accrued and unpaid interest to, but not including, the repurchase date. See "Description of Notes—Repurchase at Option of Holders Upon a Fundamental Change."
Use of proceeds	We will not receive any proceeds from the sale by any selling security holder of the notes or the underlying common stock into which the notes may be converted.
Book-entry form	The notes are issued in book-entry form and are represented by global certificates deposited with, or on behalf of, The Depository Trust Company, or DTC, and registered in the name of a nominee of DTC. Beneficial interests in any of the notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee and any such interest may not be exchanged for certificated securities except in limited circumstances.
Trading	The notes are new securities for which no market currently exists. While the initial purchasers have informed us that they intend to make a market in the notes, they are under no obligation to do so and may discontinue such activities at any time without notice. The notes are not listed on any securities exchange or included in any automated quotation system. Upon their initial issuance, the notes were eligible for trading in The PORTAL Market. Any notes that are resold by means of this prospectus will no longer be eligible for trading in The PORTAL Market.

Risk Factors

For a discussion of certain risks that should be considered in connection with an investment in the notes and our common stock, see "Risk Factors" beginning on page 5 of this prospectus.

Ratio of Earnings to Fixed Charges

		For the Year Ended				
	For the Quarter Ended March 26, 2005	December 25, 2004	December 27, 2003	December 28, 2002	December 29, 2001	December 30, 2000
Ratio of Earnings to Fixed Charges	N/A	N/A	N/A	2.3	15.3	N/A
Coverage Deficiency (in thousands)	$ 22,751	$ 39,052	$ 11,025	N/A	N/A	$ 1,336

RISK FACTORS

This prospectus contains forward-looking statements that reflect our current expectations regarding future events. Any such forward-looking statements are not guarantees of future performance and involve significant risks and uncertainties. Actual results may differ significantly from those in the forward-looking statements as a result of any number of factors, including, but not limited to, risks relating to the possibility that our confirmatory Phase III clinical trial for StaphVAX or our plans to commercialize StaphVAX in the EU and the U.S. may not be successful; our inability to raise additional capital on acceptable terms; the possibility that we may not realize the value of our acquisition of PhosLo; our dependence upon third parties to manufacture our products; our ability to utilize the full capacity of our manufacturing facility; the impact on sales of Nabi-HB from patient treatment protocols and the number of liver transplants performed in hepatitis B virus-positive, or HBV-positive, patients; reliance on a small number of customers; the future sales growth prospects for our biopharmaceutical products; and our ability to obtain regulatory approval for our products in the U.S. or in markets outside the U.S. or to successfully develop, manufacture and market our products. These factors and others are more fully discussed below.

Each of the following risk factors could adversely affect our business, operating results and financial condition.

Risks Related to Our Company

Our initial Phase III clinical trial for StaphVAX did not achieve statistical significance for the specified end point and neither may our confirmatory Phase III clinical trial.

In late 2000, we completed our initial Phase III placebo-controlled clinical trial for StaphVAX in hemodialysis patients with end-stage renal disease, or ESRD. The specified end point for this trial was a statistically significant reduction in *S. aureus* infections in ESRD patients after 12 months. The trial did not achieve this end point. We have now completed enrollment for a Phase III clinical trial for StaphVAX with a primary efficacy end point at eight months post-vaccination. The results from this trial may not establish statistical significance for the eight-month end point. Our inability to achieve statistically significant results in our confirmatory Phase III clinical trial may delay or jeopardize FDA or European Medicines Agency, or EMEA, approval, which would adversely affect our future business, financial condition and results of operations.

Our plan to commercialize StaphVAX may not be successful.

We filed a Marketing Authorization Application, or MAA, for StaphVAX in the EU using the Centralized Registration Procedure in December 2004. We plan to file a Biologics License Application, or BLA, for StaphVAX in the U.S. by the end of 2005. There can be no assurance that we will file the BLA by the end of 2005, or that we will receive approval to begin commercial sales of StaphVAX in the EU or the U.S., or that such approval will be timely. If we receive regulatory approval in Europe we will then need to seek reimbursement approval in specific EU country markets. There can be no assurance that StaphVAX will receive reimbursement pricing from any or all of the markets where we seek such approval or that reimbursement, if approved, will be at sufficient levels in each market. Any delays in or failure to obtain EU licensure or reimbursement approvals, or the failure to obtain reimbursement approvals at sufficient levels, and any delays in commercialization could adversely affect our market valuation, results of operations and our financial position and could impact the overall commercial success of StaphVAX. We have no direct experience in obtaining licensure or reimbursement for vaccines in the EU, U.S., or other markets.

Although we believe that our U.S. sales and marketing model can be readily translated to other markets, we may not be successful in doing so. We have no direct experience marketing and selling biopharmaceutical products in the EU, and currently we have no sales or marketing organization to sell and distribute StaphVAX in the EU.

A number of our product candidates and marketed products in development are in or will undergo clinical trials and the results from these trials may not be favorable.

In addition to the current Phase III clinical trial for StaphVAX, a number of our products in development are in, or will undergo clinical trials. These trials may not meet their defined endpoints, and, even if they do achieve their endpoints, we cannot be certain that results from future clinical trials will be positive. Unfavorable clinical trial results at any stage could adversely affect our business plans and have an adverse effect on our market valuation and our future business.

For instance, in November 2004, we announced the results of our Phase II clinical trial for prevention of *S. aureus* bloodstream infections in very low birth-weight newborns. The study met its primary endpoints, namely, Altastaph was safe and well tolerated and patients dosed with Altastaph on average maintained above protective levels of antibodies for the entire 42-day study period. However, the rate of *S. aureus* infections in the overall clinical trial population in this trial was 3%, well below the event rate reported in relevant medical literature. This rate was too low to allow us to make any inferences about the efficacy of Altastaph from this study. Our inability to establish statistically significant efficacy in subsequent confirmatory trials of Altastaph could adversely affect our effort to obtain FDA and EMEA approval which may have an adverse effect on our business, operating results and financial condition. Further, our studies related to Altastaph have been in a limited number of patients. To date, we have not observed any significant adverse events related to Altastaph. However, the product safety profile will continue to be monitored in our clinical trials and if there is a significant adverse event related to the product this could have a further negative effect on our effort to obtain regulatory approval.

In 2004, we initiated a study called Treatment of Hyperphosphatemia in Hemodialysis Patients: The Calcium Acetate Renagel Evaluation 2, or CARE 2, to demonstrate that when patients with ESRD treated with either PhosLo or Renagel achieve the same level of lipid control, there will be no significant difference in the development of coronary artery calcification thereby refuting the hypothesis that calcium intake as part of the PhosLo treatment is associated with cardiovascular calcification. The study is further designed to demonstrate that the combination of PhosLo and Lipitor will achieve superior control of serum phosphorus levels and calcium phosphorus product. Our inability to establish at least an equivalent result between the study arms could adversely affect our business, operating results and financial condition.

Claims and concerns may arise regarding the safety or efficacy of our product candidates and marketed products, which could lead to delayed development, product withdrawals, reduced sales or product recalls.

In order to receive regulatory approval for the commercialization of our product candidates, we must conduct extensive clinical trials to demonstrate their safety and efficacy. Our clinical trials may not demonstrate the safety and efficacy of our potential products, and we may encounter unacceptable side effects or other problems in our clinical trials. Should this occur, we may have to delay or discontinue development of our potential products. Once obtained, any regulatory approvals may be withdrawn for a number of reasons, including the later discovery of previously unknown problems with the product, such as a previously unknown safety issue. In addition, postmarketing studies, which may be sponsored by our competitors, may present evidence that another product is safer or more effective than one of our products, which could lead to reduced sales of our product. For example, Genzyme is conducting a study called Dialysis Clinical Outcomes Revisited, or D-COR, examining the difference in morbidity and mortality outcomes based on arterial calcification for patients receiving Renagel and those receiving calcium-based phosphate binders, including PhosLo. If the study's outcome demonstrates a significant advantage to Renagel it may have a negative impact on sales of PhosLo. Finally, claims and concerns may arise regarding the safety or efficacy of one of our marketed products, which could lead to a product recall. Delayed development, product withdrawals, reduced sales, and product recalls could adversely affect our future business, financial condition, and results of operations.

Our plans to commercialize Nabi-HB Intravenous and PhosLo in the EU may not be successful.

Using the Mutual Recognition Process, we filed MAA's for Nabi-HB Intravenous and PhosLo in the EU during 2004. There can be no assurance that we will receive approval to begin commercial sales of these products

in any country in the EU, or that such approval will be timely. Following approval in each country, we will then need to seek reimbursement in that country. There can be no assurance we will receive reimbursement approval from any or all of the countries where we seek such approval or that reimbursement, if approved, will be at sufficient levels in each country. Any delays in or failure to obtain licensure or reimbursement approvals, or the failure to obtain reimbursement approvals at sufficient levels, and any delays in commercialization could adversely affect our market valuation, results of operations and our financial position. We have no direct experience in obtaining licensure of these products in the EU or other non-U.S. markets. We have no direct experience marketing and selling biopharmaceutical products in the EU, and currently we have no direct sales or marketing organization to sell and distribute Nabi-HB Intravenous and PhosLo in the EU.

We may not be able to raise necessary additional capital on acceptable terms, if at all.

We may need to raise additional capital to expand our product research, development and marketing activities or to acquire additional products or technologies. In particular, we may need to raise additional capital to support commercialization of StaphVAX, to fund the development of clinical trials of Altastaph or to acquire new products and technologies. We may seek additional funding through public or private equity or debt financing, collaborative arrangements with strategic partners or from other sources. There can be no assurance, that additional financing will be available on acceptable terms, if at all. If adequate funds are not available, we may have to defer certain investments in research, product development, manufacturing, commercialization or business development, or otherwise modify our business strategy, and it could adversely affect our market valuation, results of operations and financial position.

We may not realize the value of our acquisition of PhosLo.

On August 4, 2003, we acquired the worldwide rights to PhosLo through the purchase of various intangible assets for $60.3 million in cash, 1.5 million shares of our common stock and an obligation to pay $30.0 million in cash over the period ending March 1, 2007. These intangible assets represent approximately one-fourth of the total assets reflected on our balance sheet at March 26, 2005. PhosLo is marketed to physicians caring for patients suffering kidney failure who have developed elevated phosphorus levels in their blood. This is a market in which we had no experience prior to the acquisition of PhosLo. In the U.S., PhosLo currently competes with three other products, two prescription medications and a non-prescription medication. In the EU, PhosLo will compete with multiple prescription products. A number of these products are or will be produced, marketed and sold by companies that have substantially greater financial and marketing resources than we have.

If Genzyme's D-COR study examining the difference in morbidity and mortality outcomes based on arterial calcification for patients receiving Renagel and those receiving calcium-based phosphate binders, including PhosLo, achieves its defined endpoints, it may negatively impact physicians' willingness to prescribe PhosLo and, hence, negatively impact future sales of PhosLo. In addition, the maker of Fosrenol, another competitive product, has begun promotion of that product. If we do not achieve the necessary level of success in marketing PhosLo to recover the value of the intangible assets we acquired, we will be required to write down or write off some or all of the PhosLo intangible assets. If this occurs, our market valuation, balance sheet, results of operations and financial position could be adversely affected.

We depend upon third parties to manufacture our biopharmaceutical products.

We manufacture only one of our marketed biopharmaceutical products and depend upon third parties to manufacture PhosLo and Aloprim for us. At times, contract manufacturers have failed to meet our needs in the past. Our biopharmaceutical product sales were constrained in 2000 because of the inability of the contract manufacturer for WinRho SDF to supply product for a period of time. Since 2000, our ability to market Aloprim has been adversely affected at certain times by our inability to obtain necessary quantities of this product from our contract manufacturer. In addition, our research and development product pipeline significantly involves conjugate vaccines. We currently rely on a third party, Cambrex Bio Science Baltimore, Inc., or Cambrex Bio

Science, to manufacture StaphVAX. The agreement with Cambrex Bio Science contemplates that it will provide us with product for our clinical needs and for the initial commercial launch of StaphVAX but not for all of our forecasted needs if StaphVAX is a commercial success in Europe and the U.S.

The failure of our contract manufacturers to supply us with sufficient amounts of product to meet our needs, or to renew their contracts with us on commercially reasonable terms, would have a material adverse effect on our future business, financial condition and results of operations.

The market may not be receptive to our products upon their introduction.

There can be no assurance that any of our products in development will achieve market acceptance. The degree of market acceptance will depend upon a number of factors, including:

- the clinical efficacy and safety of our products and their potential advantages over existing treatment methods to the medical community;
- regulatory approvals;
- any limitation of indications in regulatory approvals,
- the prices of such products; and
- reimbursement policies of government and third-party payers.

The failure of our clinical, research and development product pipeline and marketed products to gain market acceptance could have a material adverse effect on our future business, financial condition and results of operations.

We may not be successful in licensing or operating an internal commercial scale vaccine manufacturing facility currently under development.

We have constructed a vaccine plant in our Boca Raton, Florida manufacturing facility designed to allow us to produce vaccines in our product pipeline. We plan to submit a BLA to the FDA for licensure for the manufacture of StaphVAX in this facility in 2005 or 2006. In addition, we plan to submit a supplemental MAA to EU regulatory authorities for licensure for the manufacture of StaphVAX in this facility with a goal of being a back-up site for the production of StaphVAX for commercial sale in the EU following approval. No assurance can be given that we will be able to obtain such licensure on a timely basis or at all, and failure to obtain such licensure on a timely basis, or at all, would have a material adverse effect on our future business, financial condition and results of operations.

The new plant is designed to process several vaccines on a commercial scale. We have not previously owned or operated such a facility and have no direct experience in commercial, large-scale manufacturing of vaccine products. There can be no assurance that, if FDA and EU licensures are received, the facility can be operated efficiently and profitably. Our failure to successfully operate our new manufacturing facility would have a material adverse effect on our future business, financial condition and results of operations.

We are not currently able to utilize the full capacity of our Boca Raton, Florida manufacturing facility.

We began commercial manufacture of Nabi-HB at our Boca Raton, Florida manufacturing facility in the fourth quarter of 2001 and intend to expand the use this facility for the manufacture of polyclonal antibody products in our clinical product pipeline including, Altastaph and Civacir, and for the manufacture of products of other parties. For the foreseeable future, we may not utilize the full manufacturing capacity of the facility and there can be no assurance that we will ever operate the facility efficiently. There can be no assurance that we will have either our own products to manufacture or those of others to offset the cost of the facility's operation. Further, we have limited experience manufacturing our clinical product candidates. Our failure to fully utilize the capacity of the plant or to manufacture products successfully could have a material adverse effect on our future business, financial condition and results of operations.

A disaster at our sole manufacturing site would interrupt our manufacturing capability for the products produced there.

Manufacturing products at a single site presents risks because a disaster, such as a fire or hurricane, may interrupt manufacturing capability. In such an event, we will have to resort to alternative sources of manufacturing that could increase our costs as well as result in significant delays while required regulatory approvals are obtained. Any such delays or increased costs could have a material adverse effect on our future business, financial condition and results of operations.

Our BLA license application for Nabi-HB Intravenous may not be approved.

Our BLA license application for Nabi-HB Intravenous that was filed in November 2002 may not be approved by the FDA. Nabi-HB is a human polyclonal antibody product currently indicated to prevent hepatitis B, or HBV, infection following accidental exposure to the virus. We believe the majority of our Nabi-HB sales are used to prevent re-infection with hepatitis B disease in HBV-positive liver transplant patients. Nabi-HB is not currently labeled for this use. Our inability to obtain licensure from the FDA for Nabi-HB Intravenous could have an adverse effect on our future business, financial condition and results of operations.

Our sales of Nabi-HB are directly related to patient treatment protocols and the number of liver transplants performed in HBV-positive patients, over which we have no control.

Our sales of Nabi-HB are primarily for the care of HBV-positive liver transplant patients at the time of and for a maintenance period following liver transplant. The number of liver transplants that occur depends on the number of livers available for transplant. The number of livers used for HBV-positive liver transplant candidates as well as the dosing of Nabi-HB may vary from time to time based on the following factors:

- changes in overall organ availability;
- allocations of available organs to eligible potential recipients;
- changes in the treatment protocols applied to HBV-positive patients;
- availability of alternative treatments and competitive products, such as anti-viral products; and
- changes in reimbursement regimes including the MMA in the U.S., that may provide a negative incentive for the use of certain of our products in future periods.

Each of these factors is outside our control. Sales of Nabi-HB will be adversely affected if patient treatment protocols change or the number of hepatitis B liver transplants decreases. Sales of Nabi-HB Intravenous, if it is licensed, will be similarly affected. This could have an adverse effect on our future results of operations and financial condition.

A reduction in the availability of specialty antibodies could adversely affect our ability to manufacture an adequate amount of Nabi-HB, Altastaph or Civacir or to fulfill contractual obligations.

Our ability to manufacture Nabi-HB today and Nabi-HB Intravenous, HEBIG, Altastaph and Civacir, if they are licensed, will depend upon the availability of specialty antibodies that we primarily obtain from our FDA-approved antibody collection centers. We also have contractual obligations to supply other specialty antibodies to third parties that we also obtain from our FDA-approved antibody collection centers. Specialty antibodies are more difficult to obtain than non-specific antibodies. Reduced availability of the necessary specialty antibodies would adversely affect our ability to manufacture an adequate amount of Nabi-HB, Nabi-HB Intravenous, HEBIG, Altastaph and Civacir, or to fulfill our contractual obligations, with the result that our future business, financial condition and results of operations would suffer.

We sell our products to a small number of customers. The loss of any major customer could have a material adverse effect on our results of operations or financial condition.

We sell a significant portion of our biopharmaceutical products to pharmaceutical wholesalers and distributors. In 2004, three such customers accounted for 74% of our total consolidated sales. These customers maintain inventories of our products at levels that can range as high as six to eight months of end patient demand as measured by prescriptions written. A loss of any of the customers or a material reduction in such customer's purchases or inventories on hand at their sites could have a material adverse effect on our results of operations and financial condition. We also maintain a significant receivable balance with each of these customers. If these customers become unable or unwilling to pay amounts owed to us, our financial condition and results of operations could be adversely affected.

Our antibody sales in 2004 were primarily to a single customer. The loss of this customer or a material reduction in its purchases of antibodies could have a material adverse effect upon our future business, financial condition and results of operations.

New treatments may reduce the demand for our antibodies and antibody-based biopharmaceutical products.

Most of the antibodies we collect, process and sell to our customers are used in the manufacture of biopharmaceutical products to treat certain diseases. Several companies are marketing and developing monoclonal antibody products to treat some of these diseases based on technology that would reduce or eliminate the need for human antibodies. Such products could adversely affect the demand for antibodies and antibody-based biopharmaceutical products. We are unable to predict the impact of future technological advances on our business.

We may not generate sufficient cash flow from our biopharmaceutical and antibody products or obtain financing necessary to fund our research and development and commercialization activities at an appropriate level.

We generate revenues from sales of our biopharmaceutical and antibody products. We ceased to generate revenues from sales of one of these products, WinRho SDF, in March 2005 when our exclusive distribution agreement in the U.S. ended. We have incurred and expect to continue incurring significant expenses associated with our biopharmaceutical research and development activities, including the cost of clinical trials and marketing and other commercialization expenses. Our current revenues from sales of biopharmaceutical and antibody products are insufficient to fund products under development. In addition, products under development may not generate sales for several years or at all. We do not have the financial resources to fund concurrently all of our biopharmaceutical product development programs to completion. In addition, our ability to continue to fund all of our ongoing research and development activities depends on our ability to generate sales from our biopharmaceutical and antibody products or to obtain external financing. There can be no assurance, therefore, that we will be able to continue to fund our research and development activities at the level required to commercialize all of our biopharmaceutical product development programs. If we are required to reduce the funding for certain of our research and development activities, this could have a material adverse effect on our future prospects.

We may enter into strategic alliances that may not be successful and may adversely affect our ability to develop our products.

We intend to pursue strategic alliances with third parties to develop and/or commercialize certain of our biopharmaceutical products. No assurance can be given that we will be successful in these efforts or, if successful, that our collaborative partners will conduct their activities in a timely manner. If we are not successful in our efforts, our ability to continue to develop our products may be affected adversely. Even if we are successful, if any of our collaborative partners violates or terminates their agreements with us or otherwise

fails to conduct their collaborative activities in a timely manner, the development or commercialization of our products could be delayed. This might require us to devote significant additional resources to product development and commercialization or terminate certain development programs. In addition, there can be no assurance that disputes will not arise in the future with respect to the ownership of rights to any technology developed with third parties. These and other possible disagreements between our collaborative partners and us could lead to delays in the collaborative research, development or commercialization of certain products, or could require or result in litigation or arbitration, which would be time consuming and expensive and could have a material adverse effect on our future business, financial condition and results of operations.

We may not be able to develop and commercialize new biopharmaceutical products successfully or in a timely manner, which could adversely impact our future operations.

Our future success will depend on our ability to achieve scientific and technological advances and to translate such advances into commercially competitive products on a timely basis. Our biopharmaceutical products under development are at various stages, and substantial further development, pre-clinical testing and clinical trials will be required to determine their technical feasibility and commercial viability. Our proposed development schedules for these products may be affected by a variety of factors, including:

- technological difficulties;
- competition;
- failure to obtain necessary regulatory approvals;
- failure to achieve desired results in clinical trials;
- proprietary technology positions of others;
- positive clinical results for competitive therapies in the future;
- reliance on third parties for manufacturing;
- failure to market effectively;
- changes in government regulation; and
- lack of funding.

Positive results for a product in a clinical trial do not necessarily assure that positive results will be obtained in future clinical trials or that we will obtain government approval to commercialize the product. In addition, any delay in the development, introduction or marketing of our products under development could result either in such products being marketed at a time when their cost and performance characteristics might not be competitive in the marketplace or in a shortening of their commercial lives. There can be no assurance that our biopharmaceutical products under development will prove to be technologically feasible or commercially viable or that we will be able to obtain necessary regulatory approvals and licenses on a timely basis, if at all. Our failure to develop and commercialize successfully our biopharmaceutical products in a timely manner and obtain necessary regulatory approvals could have a material adverse effect on our future operations. In particular, our failure to obtain regulatory approval for StaphVAX on a timely basis could adversely affect our market valuation.

We are unable to pass through certain cost increases to our antibody product customers with which we have supply contracts.

A significant amount of our antibodies are sold under contracts that have a remaining term of up to four years. Certain contracts do not permit us to increase prices during the contract term except to reflect changes in customer specifications and new governmental regulations. If our costs of collecting antibodies under these contracts rise for reasons other than changes in customer specifications and new governmental regulations, we are unable to pass on these cost increases to our antibody product customers except with the customer's consent.

An increase in the supply of or a decrease in the demand for antibody products could materially and adversely affect our future business, financial condition and results of operations.

The worldwide supply of antibodies has fluctuated historically. Future changes in government regulation relating to the collection, fractionation and use of antibodies or any negative public perception about the antibody collection process or the safety of products derived from blood or antibodies could further adversely affect the overall supply of or demand for antibodies. Increases in supply or decreases in demand of antibody products could have a material adverse effect on our future business, financial condition and results of operations.

If we fail to comply with extensive regulations enforced by the FDA, EMEA, the Paul Erlich Institute in Germany, or PEI, the German Federal Institute for Drugs and Medical Devices, or BfArM, and other agencies, the sale of our current products and the commercialization of our product candidates would be prevented or delayed.

Research, pre-clinical development, clinical trials, manufacturing and marketing of our products are subject to extensive regulation by various government authorities. The process of obtaining FDA, EMEA, PEI, BfArM and other required regulatory approvals are lengthy and expensive, and the time required for such approvals is uncertain. The approval process is affected by such factors as:

- the severity of the disease;
- the quality of submission;
- the clinical efficacy and safety of the product;
- the strength of the chemistry and manufacturing control of the process;
- the compliance record and controls of the manufacturing facility;
- the availability of alternative treatments; and
- the risks and benefits demonstrated in clinical trials.

Regulatory authorities also may require post-marketing surveillance to monitor potential adverse effects of our products or product candidates. The U.S. Congress, or the FDA in specific situations, can modify the regulatory process. Many of our clinical trials are at a relatively early stage and, except for Nabi-HB, PhosLo, Aloprim and certain non-specific and specialty antibody products, no approval from the FDA or any other government agency for the manufacturing or marketing of any other products under development has been granted. There can be no assurance that we will be able to obtain the necessary approvals to manufacture or market any of our pipeline products. Failure to obtain additional regulatory approvals of products currently marketed or regulatory approval for products under development could have a material adverse effect on our future business, financial condition and results of operations. Once approved, a product's failure to comply with applicable regulatory requirements could, among other things, result in warning letters, fines, suspension or revocation of regulatory approvals, product recalls or seizures, operating restrictions, injunctions and criminal prosecutions.

Although we do not have material sales of our biopharmaceutical products outside the U.S. today, our goal is to expand our global presence for these products. Distribution of our products outside the U.S. is subject to extensive government regulation. These regulations, including the requirements for approvals or clearance to market, the time required for regulatory review and the sanctions imposed for violations, vary from country to country. There can be no assurance that we will obtain regulatory approvals in such countries or that we will not be required to incur significant costs in obtaining or maintaining these regulatory approvals. In addition, the export by us of certain of our products that have not yet been cleared for domestic commercial distribution may be subject to FDA export restrictions. Failure to obtain necessary regulatory approvals, the restriction, suspension or revocation of existing approvals or any other failure to comply with regulatory requirements would have a material adverse effect on our future business, financial condition and results of operations.

Our U.S. manufacturing, antibody collection, labeling, storage and distribution activities also are subject to strict regulation and licensing by the FDA. Our biopharmaceutical manufacturing facility in Boca Raton, Florida is subject to periodic inspection by the FDA, the EMEA, PEI and other regulatory authorities and from time to time, we may receive notices of deficiencies from these agencies as a result of such inspections. Our antibody collection centers in the U.S. also are subject to periodic inspection by the FDA, the EMEA and other regulatory authorities and from time to time, we may receive notices of deficiencies from these agencies as a result of such inspections. Our failure, or the failure of our biopharmaceutical manufacturing facility or our antibody collection centers, to continue to meet regulatory standards or to remedy any deficiencies could result in corrective action by the FDA, including closure of our biopharmaceutical manufacturing facility or one or more antibody collection centers and fines or penalties. New regulations may be enacted and existing regulations, their interpretation and enforcement, are subject to change. Therefore, there can be no assurance that we will be able to continue to comply with any regulations or that the costs of such compliance will not have a material adverse effect on our future business, financial condition and results of operations.

Heightened concerns over antibody products and screening measures could adversely affect our antibody production.

Our antibody collection centers and our customers for antibody products are subject to extensive regulation by the FDA and non-U.S. regulatory authorities. Concern over the safety of antibody products have in the past resulted and will likely result in the future in the adoption of more rigorous screening procedures by regulatory authorities and manufacturers of antibody products. In prior years, these changes have resulted in significantly increased costs to us in providing non-specific and specialty antibodies to our customers. New procedures, which include a more extensive investigation into a donor's background, as well as more sensitive tests, also have disqualified numerous potential donors and discouraged other donors who may be reluctant to undergo the screening procedures. These more stringent measures could adversely affect our antibody production with a corresponding, adverse effect on our future business, financial condition and results of operations. In addition, our efforts to increase production to meet customer demand may result in higher costs to attract and retain donors.

We may be subject to costly and damaging liability claims relating to antibody contamination and other claims.

Antibodies we collect, antibody-based products we manufacture, antibody-based products we market or are developing, such as Nabi-HB, Altastaph and Civacir, and antibody-based products our customers manufacture run the risk of being contaminated with viruses. As a result, suits may be filed against our customers and us claiming that the plaintiffs became infected with a virus as a result of using contaminated products. Such suits have been filed in the past related to contaminated antibodies, and in a number of suits we were one of several defendants. No assurance that additional lawsuits relating to infection with viruses will not be brought against us by persons who have become infected with viruses from antibody-based products.

Pharmaceutical and biotechnology companies are increasingly subject to litigation, including class action lawsuits, and governmental and administrative investigations and proceedings related to product pricing and marketing practices. There can be no assurance that lawsuits will not be filed against us or that we will be successful in the defense of these lawsuits. Defense of suits can be expensive and time consuming, regardless of the outcome, and an adverse result in one or more suits could have a material adverse effect on our future business, financial condition and results of operations.

We use and produce hazardous materials. Any claims relating to improper handling, storage or disposal of these materials could be costly.

Our research and development operations involve the use of hazardous materials. Our operations also produce hazardous waste products. We are currently classified as a large quantity generator of hazardous waste.

Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of these materials. We could be subject to damages, fines and penalties in the event of an improper or unauthorized release of, or exposure of individuals to, these hazardous materials and waste. Compliance with current and future environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research and development and manufacturing efforts.

We may not be able to maintain sufficient product liability and directors and officers insurance to cover claims against us.

Product liability and directors and officers insurance for the biopharmaceutical industry is generally expensive to the extent it is available at all. There can be no assurance that we will be able to maintain such insurance on acceptable terms or that we will be able to secure increased coverage if the commercialization of our products progresses, or that existing or future claims against us will be covered by our insurance. Moreover, there can be no assurance that the existing coverage of our insurance policy and/or any rights of indemnification and contribution that we may have will offset existing or future claims. A successful claim against us with respect to uninsured liabilities or in excess of insurance coverage and not subject to any indemnification or contribution could have a material adverse effect on our future business, financial condition and results of operations. Further, if we were unable to obtain directors and officers liability insurance, it could affect adversely our ability to attract and retain directors and senior officers.

We may not be able to maintain sufficient property insurance on our facilities in Florida.

We maintain significant real property assets in Florida. Property insurance for companies with a high concentration of property assets in Florida is generally expensive to the extent it is available at all. There can be no assurance that we will be able to maintain such insurance on acceptable terms or that we will be able to secure increased coverage if the value of our property increases.

Our patents and proprietary rights may not provide sufficient protection, and patents of other companies could prevent us from developing and marketing our products.

The patent positions of biopharmaceutical firms generally are highly uncertain and involve complex legal and factual questions. The ultimate degree of patent protection that will be afforded to biotechnology products and processes, including ours, in the U.S. and in other important markets remains uncertain and is dependent upon the scope of protection decided upon by the patent offices, courts and lawmakers in these countries. There can be no assurance that existing patent applications will result in issued patents, that we will be able to obtain additional licenses to patents of others or that we will be able to develop additional patentable technology of our own. We cannot be certain that we were the first creator of inventions covered by our patents or pending patent applications or that we were the first to file patent applications for such inventions. There can be no assurance that any patents issued to us will provide us with competitive advantages or will not be challenged by others. Furthermore, there can be no assurance that others will not independently develop similar products, or, if patents are issued to us, design around such patents.

A number of pharmaceutical companies, biotechnology companies, universities and research institutions have filed patents or patent applications or received patents relating to products or processes competitive with or similar to ours. Some of these applications or patents may compete with our applications or conflict in certain respects with claims made under our applications. Such a conflict could result in a significant reduction of the coverage of our patents, if issued. In addition, if patents that contain competitive or conflicting claims are issued to others and such claims are ultimately determined to be valid, we may be required to obtain licenses to these patents or to develop or obtain alternative technology. If any licenses are required, there can be no assurance that we will be able to obtain any such licenses on commercially favorable terms, if at all. Our failure to obtain a license to any technology that we may require in order to commercialize our products could have a material adverse effect on our future business, financial condition and results of operations. Litigation, which could result

in substantial cost to us, including substantial human resource costs, may also be necessary to enforce any patents issued to us or to determine the scope and validity of third-party proprietary rights and to defend against any claims that our business infringes on third-party proprietary rights.

We also rely on secrecy to protect our technology, especially where patent protection is not believed to be appropriate or obtainable. We maintain strict controls and procedures regarding access to and use of our proprietary technology and processes. However, there can be no assurance that these controls or procedures will not be violated, that we would have adequate remedies for any violation, or that our trade secrets will not otherwise become known or be independently discovered by competitors.

We compete with larger, better-financed and more mature pharmaceutical and biotechnology companies, which are capable of developing new products and approaches that could make our products obsolete.

Competition in the development of biopharmaceutical products is intense, both from pharmaceutical and biotechnology companies, and is expected to increase. Many of our competitors have greater financial resources and larger research and development and marketing staffs than we have, as well as substantially greater experience in developing products, obtaining regulatory approvals, and manufacturing and marketing biopharmaceutical products. We compete with our competitors

- to develop products;
- to acquire products and technologies; and
- to attract and retain qualified scientific personnel.

There can be no assurance that our competitors will not succeed in developing or marketing technologies and products that are more effective or affordable than those that we are developing. In addition, one or more of our competitors may achieve product commercialization of or patent protection for competitive products earlier than us, which would preclude or substantially limit sales of our products. Further, several companies are attempting to develop and market products to treat certain diseases based upon technology that would lessen or eliminate the need for human antibodies. The successful development and commercialization by any of our competitors of any such product could have a material adverse effect on our future business, financial condition and results of operations.

There are potential limitations on third-party reimbursement and other pricing-related matters that could reduce the sales of our products and may delay or impair our ability to generate sufficient revenues.

Our ability to commercialize our biopharmaceutical products and related treatments depends in part upon the availability of, and our ability to obtain adequate levels of, reimbursement from government health administration authorities, private healthcare insurers and other organizations. Significant uncertainty exists as to the reimbursement status of newly approved healthcare products, and there can be no assurance that adequate third-party payer coverage will be available, if at all. Inadequate levels of reimbursement may prohibit us from maintaining price levels sufficient for realization of an adequate return on our investment in developing new biopharmaceutical products and could result in the termination of production of otherwise commercially viable products.

In the U.S., government and other third-party payers are increasingly attempting to contain healthcare costs by limiting both the coverage and level of reimbursement for new products approved for marketing by the FDA and by refusing, in some cases, to provide any coverage for disease indications for which the FDA has not granted marketing approval. Also, the trend towards managed healthcare in the U.S. and the concurrent growth of organizations such as HMOs, which could control or significantly influence the purchase of healthcare services and products, as well as legislative proposals to reform healthcare or reduce government insurance programs, may all result in lower prices for our products. The cost containment measures that healthcare providers are instituting and the impact of any healthcare reform could have an adverse effect on our ability to sell our products and may have a material adverse effect on our future business, financial condition and results of operations.

Within the EU, a number of countries use price controls to limit the reimbursement for pharmaceutical products. These price control limits are often derived from the chemical entity of the product, the competitive environment for a product and pricing in relation to other products. Further, price increases in these settings in future periods may be significantly restricted or price decreases in future periods may be mandated. Reimbursement for products within the EU is negotiated in each country. There can be no assurance that that we will receive reimbursement approval from any or all of the countries where we seek such approval or that reimbursement, if approved, will be at sufficient levels in each country. Any delays in or failure to obtain licensure or reimbursement approvals, or the failure to obtain reimbursement approvals at sufficient levels, and any delays in commercialization could adversely affect our market valuation, results of operations and our financial position.

There can be no assurance that reimbursement in the U.S., the EU or other markets will be available for our products, or, if available, will not be reduced in the future, or that reimbursement amounts will not reduce the demand for, or the price of, our products. The unavailability of government or third-party reimbursement or the inadequacy of the reimbursement for medical treatments using our products could have a material adverse effect on our future business, financial condition and results of operations. Moreover, we are unable to forecast what additional legislation or regulation, if any, relating to the healthcare industry or third-party coverage and reimbursement may be enacted in the future or what effect such legislation or regulation would have on our future business.

Our internal control over financial reporting was not effective as of December 25, 2004.

Our management assessed the effectiveness of our internal control over financial reporting as of December 25, 2004, and this assessment identified one material weakness in our internal control over financial reporting as of that date related to the controls that ensure that the selection and approval of periods for amortization of certain intangible assets is in accordance with SFAS No. 142 *Goodwill and Other Intangible Assets*. As a result of this assessment, we restated our financial statements for the periods ended December 27, 2003 and December 28, 2002. Based on our evaluation under the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission, our management concluded that our internal control over financial reporting was not effective as of December 25, 2004. Our management's assessment of the effectiveness of our internal control over financial reporting as of December 25, 2004 was audited by Ernst & Young LLP, an independent registered public accounting firm, which concluded that, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, we did not maintain effective internal control over financial reporting as of December 25, 2004, based on such criteria.

We have implemented additional review procedures to ensure that upon entry into an agreement under which we create a manufacturing right intangible asset, we will select and approve an amortization period beginning immediately from the point we generate a direct or indirect economic benefit consistent with the provisions of SFAS No. 142 *Goodwill and Other Intangible Assets*. While we have taken steps to remediate this material weakness, there can be no assurance that such remediation steps will be successful, that we will not have significant deficiencies or other material weaknesses in the future or that, when next evaluated, management will conclude, and our auditors will determine, that our internal control over financial reporting is effective. Any failure to implement effective internal control over financial reporting could harm our operating results or cause us to fail to meet our reporting obligations. Inadequate internal control over financial reporting could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of the notes or our common stock.

Currency exchange rate fluctuations could adversely affect our results from operations.

We conduct business in countries outside of the U.S., which expose us to fluctuations in foreign currency exchange rates. Fluctuations in foreign currency exchange rates may affect our results of operations, which in turn may adversely affect reported earnings and the comparability of period-to-period results of operations.

Risks Related to the Notes and Our Common Stock

We may not have the ability to raise the funds necessary to repay the notes upon maturity or repurchase them at your option or upon a fundamental change, as required by the indenture governing the notes.

At maturity, the entire outstanding principal amount of the notes will become due and payable by us. In addition, holders may require us to repurchase the notes on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020 or upon the occurrence of a fundamental change as described under "Description of Notes—Repurchase at Option of Holders Upon a Fundamental Change." We cannot assure you that we will have sufficient financial resources, or will be able to arrange financing, to pay the principal amount or repurchase price when due. Our failure to pay the principal amount or repurchase price when due would result in an event of default with respect to the notes.

The notes will be effectively subordinated to any existing and future secured indebtedness and structurally subordinated to existing and future liabilities and other indebtedness of our subsidiaries.

The notes are our general, unsecured obligations and will rank equally in right of payment with all of our existing and future unsubordinated, unsecured indebtedness. The notes will be effectively subordinated to any existing and future secured indebtedness we may have, and structurally subordinated to any existing and future liabilities and other indebtedness of our subsidiaries. These liabilities may include indebtedness, trade payables, guarantees, lease obligations, and letter of credit obligations. The notes do not restrict us or our subsidiaries from incurring debt in the future, nor do they limit the amount of indebtedness we can issue that is equal in right of payment.

We may incur additional indebtedness in the future. The indebtedness created by this offering, and any future indebtedness, could adversely affect our business and our ability to make full payment on the notes and may restrict our operating flexibility.

At March 26, 2005, on an as adjusted basis after giving effect to the sale of the notes, we would have had approximately $126.9 million of outstanding indebtedness. In the future, we may obtain additional long-term debt and working capital lines of credit to meet future financing needs, which would have the effect of increasing total leverage. We are not restricted under the terms of the indenture governing the notes offered hereby from incurring additional debt or repurchasing our securities. In addition, the limited covenants applicable to the notes do not require us to achieve or maintain any minimum financial results relating to our financial position or results of operations. Our ability to incur additional debt and take a number of other actions that are not limited by the terms of the indenture could have the effect of diminishing our ability to make payments on the notes when due.

We have made only limited covenants in the indenture, which may not protect your investment if we experience significant adverse changes in our financial condition or results of operations.

The indenture governing the notes does not:

- require us to maintain any financial ratios or specified levels of net worth, revenues, income, cash flow, or liquidity and, therefore, will not protect holders of the notes in the event that we experience significant adverse changes in our financial condition or results of operations;
- limit our ability or the ability of any of our subsidiaries to incur additional indebtedness, including indebtedness that is senior or equal in right of payment to the notes;
- restrict our ability to pledge our assets or those of our subsidiaries;
- restrict our ability to pay dividends or make other payments in respect of the common stock or other securities ranking junior to the notes or make investments; or
- restrict our ability to issue new securities.

Such events may, however, result in an adjustment to the conversion rate as described under "Description of Notes—Conversion Rights—Conversion Rate Adjustments." The indenture contains no covenants or other provisions to afford you protection in the event of a highly leveraged transaction, such as a leveraged recapitalization, that would increase the level of our indebtedness, or a change of control except as described under "Description of Notes—Repurchase at Option of Holders Upon a Fundamental Change."

If an active trading market for the notes does not develop, then the market price of the notes may decline or you may not be able to sell your notes.

The notes are a new issue of securities for which there is currently no public market. We do not intend to list the notes on any national securities exchange or automated quotation system. Although the notes have been sold to qualified institutional buyers under Rule 144A, which means the notes are eligible for trading in The PORTAL Market, we cannot assure you that an active or sustained trading market for the notes will develop or that the holders will be able to sell their notes. The initial purchasers have informed us that they intend to make a market in the notes. However, the initial purchasers may cease their marketmaking activities at any time.

Moreover, even if you are able to sell your notes, we cannot assure you as to the price at which any sales will be made. Future trading prices of the notes will depend on many factors, including, among other things, prevailing interest rates, our operating results, the price of our common stock, and the market for similar securities. Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for the notes will be subject to disruptions which may have a negative effect on the holders of the notes, regardless of our prospects or financial performance.

Our notes may receive a lower rating than anticipated by investors by one or more rating agencies, which could cause a decline in the liquidity or market price of the notes.

If one or more rating agencies rates the notes and assigns the notes a rating lower than the rating expected by investors, or reduces its rating in the future, the market price of the notes may be adversely affected.

We may issue additional securities and thereby materially and adversely affect the price of our common stock.

We are not restricted by the indenture from issuing additional common stock, preferred stock, or securities convertible into or exchangeable for common stock, prior to maturity of the notes. If we issue additional shares of common stock, shares of preferred stock, or convertible or exchangeable securities, the price of our common stock and, in turn, the price of the notes may be materially and adversely affected.

The adjustment to the conversion rate upon the occurrence of certain types of fundamental changes may not adequately compensate you for the lost option time value of your notes as a result of such fundamental change and may not be enforceable.

If certain types of fundamental changes occur on or prior to maturity of the notes, we will adjust the conversion rate of the notes to increase the number of shares issuable upon conversion. The number of additional shares to be issued will be determined based on the date on which the fundamental change becomes effective and the price paid per share of our common stock in the fundamental change as described under "Description of Notes—Conversion Rights—Adjustment to Conversion Rate Upon Certain Fundamental Changes."

While this adjustment is designed to compensate you for the lost option time value of your notes as a result of certain types of fundamental changes, the adjustment is only an approximation of such lost value and may not adequately compensate you for such loss. In addition, if the price paid per share of our common stock in the fundamental change is less than $11.02 or more than $40.00 (subject to adjustment), there will be no such adjustment. Furthermore, our obligation to make the adjustment could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

Conversion of the notes will dilute the ownership interest of existing stockholders.

The conversion of some or all of the notes will dilute the ownership interests of existing stockholders. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the notes may encourage short selling by market participants because the conversion of the notes could depress the price of our common stock.

There is limited protection in the event of a change of control.

The requirement that we offer to repurchase the notes upon a change of control is limited to the transactions specified in clauses (1), (2), (3) and (4) of the definition of a "fundamental change" under "Description of Notes—Repurchase at Option of Holders Upon a Fundamental Change." Accordingly, we could enter into certain transactions, such as acquisitions, refinancings or recapitalizations, that could affect our capital structure and the value of our common stock but would not constitute a fundamental change. In addition, should a fundamental change occur, no assurance can be given that we will have sufficient funds available to purchase notes which are tendered for repurchase. A failure by us to repurchase tendered notes will constitute an event of default under the indenture.

If we pay cash dividends on our common stock, you may be deemed to have received a taxable dividend without the receipt of any cash.

If we pay a cash dividend on our common stock, and an adjustment to the conversion rate results, you may be deemed to have received a taxable dividend subject to U.S. federal income tax without the receipt of any cash. See "Certain United States Federal Income Tax Considerations—Consequences to U.S. Holders—Constructive Dividends."

Anti-takeover provisions in our charter documents, under Delaware law and under our stockholder rights plan could make an acquisition of us more difficult.

Provisions of our certificate of incorporation and bylaws will make it more difficult for a third party to acquire us on terms not approved by our board of directors and may have the effect of deterring hostile takeover attempts. For example, our certificate of incorporation currently contains a fair price provision and also authorizes our board of directors to issue substantial amounts of preferred stock and to fix the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without any further vote or action by the stockholders. The rights of the holders of our common stock will be subject to, and may be harmed by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock could reduce the voting power of the holders of our common stock and junior preferred stock and the likelihood that holders of our common stock and junior preferred stock will receive payments upon liquidation.

We also are subject to provisions of Delaware law that could have the effect of delaying, deferring or preventing a change in control of our company. One of these provisions prevents us from engaging in a business combination with any interested stockholder for a period of three years after the date the person becomes an interested stockholder, unless specified conditions are satisfied.

We also have implemented a stockholder rights plan, or poison pill, that would substantially reduce or eliminate the expected economic benefit to an acquirer from acquiring us in a manner or on terms not approved by our board of directors. These and other impediments to a third-party acquisition or change of control could limit the price investors are willing to pay in the future for our securities.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the ratio of earnings to fixed charges or, if earnings were insufficient to cover fixed charges, the dollar amount of the coverage deficiency where applicable for each of the last five years. For the purpose of calculating the ratio of earnings to fixed charges, earnings include earnings before income taxes, fixed charges and amortization of capitalized interest, less interest capitalized; and fixed charges include interest expense, interest capitalized, assumed interest component of rent expense and capitalized expenses related to indebtedness.

		For the Year Ended				
	For the Quarter Ended March 26, 2005	December 25, 2004	December 27, 2003	December 28, 2002	December 29, 2001	December 30, 2000
Ratio of Earnings to Fixed Charges	N/A	N/A	N/A	2.3	15.3	N/A
Coverage Deficiency (in thousands)	$ 22,751	$ 39,052	$ 11,025	N/A	N/A	$ 1,336

USE OF PROCEEDS

We will not receive any proceeds from the sale by any selling security holder of the notes or the underlying common stock into which the notes may be converted.

DESCRIPTION OF NOTES

We issued the notes under an indenture, dated as of April 19, 2005, between us and U.S. Bank National Association, as trustee. The terms of the notes include those provided in the indenture and the notes. We also entered into a registration rights agreement with the initial purchasers. The following description is only a summary of the material provisions of the notes, the indenture and the registration rights agreement. We urge you to read these documents in their entirety because they, and not this description, will define your rights as holders of these notes. You may request copies of these documents at our address set forth below under the caption "Incorporation of Certain Documents by Reference."

When we refer to "Nabi Biopharmaceuticals," the "company," "we," "us" or "our" in this section, we refer only to Nabi Biopharmaceuticals, a Delaware corporation, and not its subsidiaries.

General

The notes:

- are initially limited to $112.4 million in principal amount;
- bear interest at a rate of 2.875% per year, payable semi annually in arrears on April 15 and October 15 of each year commencing October 15, 2005;
- are our general, unsecured obligations and will rank equally in right of payment with all of our existing and future unsubordinated, unsecured indebtedness and senior in right of payment to any subordinated indebtedness, but will be effectively subordinated to all of our existing and future secured indebtedness to the extent of the value of the related security, and structurally subordinated to all existing and future liabilities and other indebtedness of our subsidiaries. As of March 26, 2005, after giving effect to the offering of the notes, there would have been approximately $126.9 million of total debt outstanding of Nabi Biopharmaceuticals;
- are convertible into our common stock at an initial conversion rate of 69.8348 shares per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $14.32 per share), subject to adjustment as described below under "—Conversion Rights," including an adjustment to increase the number of shares issuable if you convert your notes under certain circumstances in connection with certain fundamental changes;
  - upon conversion, we may choose to deliver either our common stock, cash or a combination of cash and our common stock; and at any time on or prior to the 26th trading day preceding the maturity date, we may irrevocably elect to satisfy in cash our conversion obligation with respect to the principal amount of the notes to be converted with any remaining amount to be satisfied in shares of our common stock, as described under "Conversion Rights—Our Right to Irrevocably Elect Cash Payment of Principal Upon Conversion;"
  - if we elect to deliver common stock only, settlement will be as soon as practicable after we notify you of our chosen method of settlement, which notice must be given no later than two trading days following the date you deliver your completed and signed conversion notice and satisfy all other requirements for conversion; if we elect to deliver cash or a combination of cash and common stock, settlement will occur on the second trading day following the final trading day of the conversion period (as defined below);
- are subject to repurchase by us in cash at your option if a fundamental change occurs, at a repurchase price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest to, but not including, the repurchase date;
- are subject to repurchase by us in cash at your option on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020, at a repurchase price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest to, but not including, the repurchase date;

- are subject to redemption for cash by us at any time on or after April 18, 2010, in whole or in part, at a redemption price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest to, but not including, the redemption date; and
- are due on April 15, 2025, unless earlier converted, redeemed by us at our option, or repurchased by us at your option.

The indenture does not contain any financial covenants and does not restrict us or our subsidiaries from paying dividends, incurring additional debt or issuing or repurchasing our other securities. In addition, the indenture does not protect you in the event of a highly leveraged transaction or a fundamental change of Nabi Biopharmaceuticals except to the extent described below under "—Conversion Rights" and "—Repurchase at Option of Holders Upon a Fundamental Change."

No sinking fund is provided for the notes. The notes are not subject to defeasance. The notes will be issued only in registered form in denominations of $1,000 and integral multiples of $1,000 above that amount. Except as otherwise provided in this prospectus, the notes will be evidenced by one or more global notes deposited with the trustee as custodian for DTC, and registered in the name of Cede & Co., as DTC's nominee. No service charge will be made for any registration of transfer or exchange of notes, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

You may present definitive notes for conversion, registration of transfer and exchange, without service charge, at our office or agency in New York City, which shall initially be the office or agency of the trustee in New York City. For information regarding conversion, registration of transfer and exchange of global notes, see "—Form, Denomination and Registration."

Additional Notes

We may, without the consent of the holders of the notes, increase the principal amount of the notes by issuing additional notes in the future on the same terms and conditions, except for any differences in the issue price and interest accrued prior to the issue date of the additional notes, provided, that such differences do not cause the additional notes to constitute a different class of securities than the notes for U.S. federal income tax purposes and provided further, that the additional notes have the same CUSIP number as the notes offered hereby. The notes described in this prospectus and any additional notes would rank equally and ratably and would be treated as a single class for all purposes under the indenture. No additional notes may be issued if any event of default has occurred with respect to the notes.

Interest

The notes will bear interest from April 19, 2005 at the rate of 2.875% per year. We will pay interest semiannually on April 15 and October 15 of each year, beginning October 15, 2005, to the holders of record at the close of business on the preceding April 1 and October 1, respectively. There are two exceptions to the preceding sentence:

- in general, we will not pay accrued and unpaid interest on any note that is converted into our common stock; and
- we will pay interest to a person other than the holder of record on the relevant record date if we redeem, or holders elect to require us to repurchase, the notes on a date that is after the record date and on or prior to the corresponding interest payment date. In this instance, we will pay accrued and unpaid interest on the notes being redeemed or repurchased to, but excluding, the redemption or repurchase date, as the case may be, to the same person to whom we will pay the principal of those notes.

We will pay the principal of, interest on, and any additional amounts due in respect of the global notes to DTC in immediately available funds.

In the event definitive notes are issued, we will pay interest and any additional amount due on:

- definitive notes having an aggregate principal amount of $2,000,000 or less by check mailed to the holders of those notes; and
- definitive notes having an aggregate principal amount of more than $2,000,000 by wire transfer in immediately available funds if requested in writing by the holders of those notes.

At maturity, we will pay the principal of and interest on the definitive notes at our office or agency in New York City, which initially will be the office or agency of the trustee in New York City.

Interest will be computed on the basis of a 360-day year comprised of 12 30-day months. If any interest payment date falls on a day that is not a business day, such interest payment date will be postponed to the next succeeding business day. The term "business day" means, with respect to any note, any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York are authorized or required by law, regulation or executive order to close.

Conversion Rights

General

You may convert any outstanding notes (or portions of outstanding notes) into our common stock at an initial conversion rate of 69.8348 shares per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $14.32 per share). The conversion rate will be subject, however, to adjustment as described below under "—Conversion Rate Adjustments." As described under "—Settlement Upon Conversion," upon conversion, we may choose to deliver either shares of our common stock, cash or a combination of cash and shares of our common stock. We will not issue fractional shares of common stock upon conversion of notes. Instead, we will pay cash to you in an amount equal to the market value of that fractional share based upon the closing sale price of our common stock on the trading day immediately preceding the conversion date. You may convert your notes only in denominations of $1,000 and integral multiples of $1,000.

You may exercise conversion rights at any time prior to the close of business on the business day prior to the final maturity date of the notes. However, if you are a holder of notes that have been called for redemption, you must exercise your conversion rights prior to the close of business on the business day preceding the redemption date, unless we default in payment of the redemption price. In addition, if you have exercised your right to require us to repurchase your notes because a fundamental change has occurred, or if we have specified a repurchase date following a fundamental change, you may convert your notes into our common stock only if you withdraw your repurchase notice and convert your notes prior to the close of business on the business day immediately preceding the fundamental change repurchase date.

Conversion Procedures

Except as provided below, if you convert your notes into our common stock on any day other than an interest payment date, you will not receive any interest that has accrued on these notes since the prior interest payment date. By delivering to the holder the number of shares issuable upon conversion of their notes, together with a cash payment, if any, in lieu of fractional shares, we will satisfy all of our obligations with respect to the converted notes. Accordingly, accrued but unpaid interest will be deemed to be paid in full rather than canceled, extinguished or forfeited.

Holders of notes at the close of business on a record date will receive payment of interest payable on the corresponding interest payment date notwithstanding the conversion of such notes at any time after the close of business on the applicable record date. However, notes surrendered for conversion by a holder during the period from the close of business on the record date to the opening of business on the corresponding interest payment

date must be accompanied by payment of an amount equal to the interest that has accrued and will be paid on the notes being converted. The preceding sentence does not apply, however, to a holder that converts notes after a record date but prior to the corresponding interest payment date if we have specified a redemption date or a repurchase date following a fundamental change that is on or prior to the third business day after such interest payment date. If we call your notes for redemption on a date that is after a record date but on or prior to the third business day after the corresponding interest payment date and prior to the interest payment date you choose to convert your notes, you will receive on the date that has been fixed for redemption the amount of interest you would have received if you had not converted your notes, unless interest has otherwise been paid on your notes on the interest payment date.

You will not be required to pay any transfer taxes or duties relating to the issuance or delivery of our common stock if you exercise your conversion rights, but you will be required to pay any transfer tax or duties which may be payable relating to any transfer involved in the issuance or delivery of the common stock in a name other than yours. Certificates representing shares of common stock will be issued or delivered only after all applicable transfer taxes and duties, if any, payable by you have been paid.

To convert interests in a global note, you must deliver to DTC the appropriate instruction form for conversion pursuant to DTC's conversion program and pay all funds required, if any, relating to interest on the notes to be converted to which you are not entitled, as described in the second preceding paragraph.

To convert a definitive note, you will be required to:

- complete the conversion notice on the back of the note (or a facsimile of it);
- deliver the completed conversion notice and the notes to be converted to the specified office of the conversion agent;
- pay all funds required, if any, relating to interest on the notes to be converted to which you are not entitled, as described in the third preceding paragraph; and
- pay all transfer taxes or duties, if any, as described in the second preceding paragraph.

The conversion date will be the date on which all of the foregoing requirements have been satisfied. The notes will be deemed to have been converted immediately prior to the close of business on the conversion date. We will deliver, or cause to be delivered, to you a certificate for the number of shares of common stock into which the notes are converted (and cash in lieu of any fractional shares) as soon as practicable on or after the conversion date.

Settlement Upon Conversion

Except to the extent we have irrevocably elected to make a cash payment of principal upon conversion as described below, we may elect to deliver either shares of our common stock, cash or a combination of cash and shares of our common stock in satisfaction of our obligations upon conversion of notes (including with respect to any additional shares described under "—Adjustment to Conversion Rate Upon Certain Fundamental Changes").

Except to the extent we have irrevocably elected to make a cash payment of principal upon conversion, we will inform the holders through the trustee of the method we choose to satisfy our obligation upon conversion:

- if we have called the notes for redemption, in our notice of redemption;
- in respect of notes to be converted during the period beginning 25 trading days preceding the maturity date and ending one trading day preceding the maturity date, 26 trading days preceding the maturity date; and
- in all other cases, no later than three trading days following the conversion date.

If we choose to satisfy any portion of our conversion obligation by delivering cash, we will specify the portion to be satisfied by the delivery of cash either as a percentage of the conversion obligation or as the lesser of (a) a fixed dollar amount and (b) the conversion value (as defined below). We will treat all holders converting on the same trading day in the same manner. We will not, however, have any obligation to satisfy our conversion obligations arising on different trading days in the same manner. That is, we may choose on one trading day to satisfy our conversion obligation by delivering shares of our common stock only and choose on another trading day to satisfy our conversion obligation by delivering cash or a combination of cash and shares of our common stock. We may also choose to satisfy our conversion obligation for different combinations of cash and shares of our common stock on different trading days.

You may exercise conversion rights at any time prior to the close of business on the business day prior to the final maturity date of the notes. If we elect to satisfy any portion of our conversion obligation in cash (other than cash in lieu of fractional shares if applicable), you may retract your conversion notice at any time during the two trading-day period beginning on the trading day after we have notified the trustee of our method of settlement. We refer to this period as the "conversion retraction period." However, you cannot retract your conversion notice if: (a) we irrevocably elected to make a cash payment of principal upon conversion before you delivered your conversion notice, (b) you are converting your notes in connection with a redemption, (c) you are converting your notes during the period beginning 25 trading days preceding the maturity date and ending one trading day preceding the maturity date or (d) we do not elect to satisfy any portion of our conversion obligation in cash.

Settlement in shares of our common stock only will occur as soon as practicable after we notify you that we have chosen this method of settlement. Settlement in cash or cash and shares of our common stock will occur on the third trading day following the final trading day of the conversion period.

The settlement amount will be computed as follows:

(1) If we elect to satisfy the entire conversion obligation in common stock, we will deliver to the holder for each $1,000 principal amount of notes converted a number of shares of our common stock equal to the conversion rate then in effect (plus cash in lieu of fractional shares, if applicable).

(2) If we elect to satisfy the entire conversion obligation in cash, we will deliver to the holder for each $1,000 principal amount of notes converted cash in an amount equal to the conversion value.

(3) If we elect to satisfy the conversion obligation in a combination of cash and common stock, we will deliver to the holder for each $1,000 principal amount of notes converted:

- (i) the fixed dollar amount per $1,000 principal amount of notes of the conversion obligation to be satisfied in cash specified in the notice regarding our chosen method of settlement or, if lower, the conversion value in cash, or (ii) the percentage of the conversion obligation to be satisfied in cash specified in the notice regarding our chosen method of settlement multiplied by the conversion value, as the case may be (the "cash amount"); and
- a number of shares for each of the 20 trading days in the conversion period equal to 1/20th of (i) the conversion rate then in effect minus (ii) the quotient of the cash amount divided by the applicable stock price for that day (plus cash in lieu of fractional shares if applicable).

The "applicable stock price" on any trading day means (i) the closing price of our common stock at 4:00 p.m., New York City time, on that trading day or (ii), if such price is not available, the market value per share of our common stock on that day as determined by a nationally recognized independent investment banking firm retained for this purpose by us.

The "conversion period" means the 20 trading day period:

- beginning on the redemption date, if we have called the notes delivered for conversion for redemption;

- beginning on the maturity date, with respect to conversion notices received during the period beginning 25 trading days preceding the maturity date and ending one trading day preceding the maturity date (whether or not we have irrevocably elected to make a cash payment of principal upon conversion);
- beginning on the trading day following our receipt of your conversion notice, if we have irrevocably elected to make a cash payment of principal upon conversion, provided that if you submit your conversion notice during the period beginning 25 trading days preceding the maturity date and ending one trading day preceding the maturity date, the conversion period shall begin on the maturity date; and
- beginning on the trading day following the final trading day of the conversion retraction period, in all other cases.

The "conversion value" for each $1,000 principal amount of notes being converted means an amount equal to the sum of the daily conversion values for each of the 20 trading days in the conversion period, where the "daily conversion value" for any trading day equals 1/20th of:

- the conversion rate in effect on that day multiplied by
- the applicable stock price on that day,

provided that, with respect to any conversion (i) during the period beginning 25 trading days preceding the maturity date and ending one trading day preceding the maturity date or (ii) of a note called for redemption, if the applicable stock price on the conversion date exceeds the then applicable conversion rate, the conversion value will not be less than $1,000.

Our Right to Irrevocably Elect Cash Payment of Principal Upon Conversion

At any time on or prior to the 26th trading day preceding the maturity date, we may irrevocably elect to satisfy in cash our conversion obligation with respect to the principal amount of the notes to be converted after the date of such election, with any remaining amount to be satisfied in shares of our common stock. Such election would be in our sole discretion without the consent of the holders of notes. If we make such election, we will notify the trustee and the holders of notes at their addresses shown in the register of the registrar.

The settlement amount will be computed as described under clause (3) above, using $1,000 as the fixed dollar amount per $1,000 principal amount of notes of the conversion obligation to be satisfied in cash.

Conversion Rate Adjustments

We will adjust the initial conversion rate for certain events, including:

(1) issuances of our common stock as a dividend or distribution on our common stock;

(2) certain subdivisions, combinations or reclassifications of our common stock;

(3) issuances to all or substantially all holders of our common stock of certain rights or warrants to purchase, for a period of up to 45 days, our common stock at less than the then-current market price of our common stock, provided that the conversion rate will be readjusted to the extent that any of the rights or warrants are not exercised prior to their expiration;

(4) distributions to all or substantially all holders of our common stock of shares of our capital stock (other than our common stock), evidences of our indebtedness or assets including securities, but excluding:

- the rights and warrants referred to in paragraph (3) above;
- any dividends and distributions in connection with a reclassification, change, consolidation, merger, combination, sale or conveyance resulting in a change in the conversion consideration as described below;
- any dividends or distributions paid exclusively in cash referred to in paragraph (5) below; or
- common stock distributions referred to in paragraph (1) above.

In the event that we distribute shares of capital stock of a subsidiary of ours pursuant to this paragraph (4), the conversion rate will be adjusted, if at all, based on the market value of the subsidiary stock so distributed relative to the market value of our common stock, in each case over a measurement period following the distribution;

(5) dividends or other distributions consisting exclusively of cash to all or substantially all holders of our common stock (other than dividends or distributions made in connection with our liquidation, dissolution or winding-up);

(6) purchases of our common stock pursuant to a tender offer or exchange offer made by us or any of our subsidiaries to the extent that the cash and value of any other consideration included in the payment per share of common stock exceeds the closing sale price per share of our common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer; and

(7) purchases of our common stock pursuant to a tender offer or exchange offer by a person other than us or any of our subsidiaries in which, as of the closing date of the offer, our board of directors is not recommending rejection of the offer. The adjustment referred to in this provision will only be made if:

(a) the tender offer or exchange offer is for an amount that increases the offeror's ownership of Nabi Biopharmaceuticals common stock to more than 25% of the total shares of common stock outstanding; and

(b) if the cash and value of any other consideration included in such payment per share exceeds the current market price per share on the business day immediately following the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer.

We will not make any adjustment if holders may participate in the transaction or in certain other cases. In cases where the fair market value of assets, debt securities or certain rights, warrants or options to purchase our securities, applicable to one share of common stock, distributed to stockholders:

- equals or exceeds the average closing price of the common stock over the ten consecutive trading day period ending on the record date for such distribution; or
- such average closing price exceeds the fair market value of such assets, debt securities or rights, warrants or options so distributed by less than $1.00 per share;

rather than being entitled to an adjustment in the conversion rate, the holder of a note will be entitled to receive upon conversion, in addition to the shares of common stock, the kind and amount of assets, debt securities or rights, warrants or options comprising the distribution that such holder would have received if such holder had converted such notes immediately prior to the record date for determining the stockholders entitled to receive the distribution.

We will not make any adjustment in the conversion rate unless such adjustment would require a change of at least 1% in the conversion rate in effect at such time. Any adjustment that would otherwise be required to be made will be carried forward and taken into account in any subsequent adjustment, and will otherwise be made (a) annually on the anniversary of the first date of issue of the notes, and otherwise (b)(1) five business days prior to the maturity of the notes (whether at stated maturity or otherwise) or (2) prior to the redemption date or repurchase date unless such adjustment has already been made prior to the adjustment contemplated by this clause (b)(1) or (2). We will not make any adjustment if holders of notes are permitted to participate in the transactions described above.

Except as stated above, we will not adjust the conversion rate for the issuance of our common stock or any securities convertible into or exchangeable for our common stock or carrying the right to purchase any of the foregoing.

If we:

- reclassify or change our common stock (other than changes resulting from a subdivision or combination); or
- consolidate or combine with or merge into any person or sell or convey to another person all or substantially all of our property and assets,

and the holders of our common stock receive stock, other securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for their common stock, each outstanding note would, without the consent of any holders of notes, become convertible only into the consideration the holders of notes would have received if they had converted their notes immediately prior to such reclassification, change, consolidation, combination, merger, sale or conveyance, except in the limited case of a public acquirer fundamental change where we elect to have the notes convertible into public acquirer common stock and except that, in the event that we have made an election to make a cash payment of principal upon conversion as described above, such election shall remain binding notwithstanding the form of consideration received by holders of our common stock. We may not become a party to any such transaction unless its terms are consistent with the foregoing.

If a taxable distribution to holders of our common stock or other transaction occurs which results in any adjustment of the conversion rate (including an adjustment at our option), you may, in certain circumstances, be deemed to have received a distribution subject to U.S. income tax as a dividend. In certain other circumstances, the absence of an adjustment may result in a taxable dividend to the holders of our common stock. See "Certain United States Federal Income Tax Considerations."

We may from time to time, to the extent permitted by law, increase the conversion rate of the notes by any amount for any period of at least 20 business days. In that case, we will give at least 15 days notice of such increase. We may make such increases in the conversion rate, in addition to those set forth above, as our board of directors deems advisable to avoid or diminish any income tax to holders of our common stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

The foregoing notwithstanding, we may not increase the conversion rate pursuant to the provisions described above to above 90.7852 shares per $1,000 principal amount of notes, subject to the adjustments described above. Furthermore, we may not increase the conversion rate, without seeking and obtaining the consent of the holders of our common stock, if such consent is required pursuant to the rules of The Nasdaq National Market or any exchange or market on which our common stock is then listed or traded. If we adjust the conversion rate pursuant to the above provisions, we will issue a press release through Dow Jones & Company, Inc. containing the relevant information and make this information available on our web site or through another public medium as we may use at that time.

Adjustment to Conversion Rate Upon Certain Fundamental Changes

If and only to the extent you elect to convert your notes in connection with a transaction described under clause (1) or (3) under the definition of a fundamental change as described below under "—Repurchase at Option of Holders upon a Fundamental Change" (or in connection with a transaction that would have been a fundamental change under such clause (1) or (3) but for the existence of the 110% trading price exception), within 30 days of receiving notice of such fundamental change, pursuant to which 10% or more of the consideration for our common stock (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in such fundamental change transaction consists of cash or securities (or other property) that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or The Nasdaq National Market, which we refer to as a "non-stock fundamental change," we will increase the number of shares issuable upon conversion to reflect the change in the effective

conversion rate. The number of additional shares issuable upon conversion (the "additional shares") will be determined by reference to the table below, based on the date on which the non-stock fundamental change becomes effective (the "effective date") and the price (the "stock price") paid per share for our common stock in such non-stock fundamental change. If holders of our common stock receive only cash in such transaction, the stock price shall be the cash amount paid per share. Otherwise, the stock price shall be the average of the last reported sale prices of our common stock on the five trading days prior to but not including the effective date of such fundamental change transaction.

The stock prices set forth in the first row of the table below (i.e., column headers) will be adjusted as of any date on which the conversion rate of the notes is adjusted, as described above under "—Conversion Rate Adjustments." The adjusted stock prices will equal the stock prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares will be adjusted in the same manner as the conversion rate as set forth under "—Conversion Rate Adjustments."

The following table sets forth the number of additional shares issuable per $1,000 principal amount of notes.

	$11.02	$15.00	$20.00	$25.00	$30.00	$35.00	$40.00	>$40.00
04/15/05	20.98	11.54	6.44	4.03	2.72	1.92	1.40	0.00
04/15/06	20.68	10.80	5.71	3.44	2.26	1.57	1.13	0.00
04/15/07	20.49	9.91	4.82	2.73	1.73	1.17	0.83	0.00
04/15/08	20.22	8.59	3.57	1.81	1.08	0.72	0.51	0.00
04/15/09	19.75	6.33	1.71	0.63	0.34	0.23	0.17	0.00
04/18/10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

The exact stock price and effective dates may not be set forth on the table, in which case, if the stock price is:

- between two stock price amounts on the table or the effective date is between two dates on the table, the number of additional shares will be determined by straight-line interpolation between the number of additional shares set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 360-day year;
- in excess of $40.00 per share (subject to adjustment), no additional shares will be issued upon conversion; or
- less than $11.02 per share (subject to adjustment), no additional shares will be issued upon conversion.

Additional shares will be payable on the settlement date for the conversion.

Notwithstanding the foregoing, in no event will the total number of shares of common stock issuable upon conversion exceed 90.7852 per $1,000 principal amount of notes, subject to adjustments in the same manner as the conversion rate as set forth under "—Conversion Rate Adjustments."

Conversion After a Public Acquirer Fundamental Change

Notwithstanding the foregoing, in the case of a non-stock fundamental change constituting a public acquirer fundamental change (as defined below), we may, in lieu of issuing additional shares upon conversion as described in "—Adjustment to Conversion Rate Upon Certain Fundamental Changes" above, elect to adjust the conversion rate and the related conversion obligation such that from and after the effective date of such public acquirer fundamental change, holders of the notes will be entitled to convert their notes (subject to the

satisfaction of certain conditions) into a number of shares of public acquirer common stock (as defined below) by multiplying the conversion rate in effect immediately before the public acquirer fundamental change by a fraction:

- the numerator of which will be (i) in the case of a share exchange, consolidation or merger, pursuant to which our common stock is converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by our board of directors) paid or payable per share of common stock or (ii) in the case of any other public acquirer fundamental change, the average of the last reported sale prices of our common stock for the five consecutive trading days prior to but excluding the effective date of such public acquirer fundamental change, and
- the denominator of which will be the average of the last reported sale prices of the public acquirer common stock for the five consecutive trading days commencing on the trading day next succeeding the effective date of such public acquirer fundamental change.

A "public acquirer fundamental change" means a non-stock fundamental change in which the acquirer has a class of common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market or which will be so traded or quoted when issued or exchanged in connection with such fundamental change (the "public acquirer common stock"). If an acquirer does not itself have a class of common stock satisfying the foregoing requirement, it will be deemed to have "public acquirer common stock" if a corporation that directly or indirectly owns at least a majority of the acquirer has a class of common stock satisfying the foregoing requirement, provided that such corporation fully and unconditionally guarantees the notes; in such case, all references to public acquirer common stock shall refer to such class of common stock. Majority owned for these purposes means having "beneficial ownership" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended or Exchange Act) of more than 50% of the total voting power of all shares of the respective entity's capital stock that are entitled to vote generally in the election of directors.

Following a public acquirer fundamental change, if we so elect, holders may convert their notes (subject to the satisfaction of the conditions to conversion described under "—Conversion Procedures" above) at the adjusted conversion rate described in the second preceding paragraph but will not be entitled to receive additional shares upon conversion as described under "—Adjustment to Conversion Rate Upon Certain Fundamental Changes." We are required to notify holders of our election in our notice to holders of such transaction. In addition, upon a public acquirer fundamental change, in lieu of converting notes, the holder can, subject to certain conditions, require us to repurchase all or a portion of its notes as described below.

Redemption

At any time on or after April 18, 2010, we may redeem the notes in whole or in part for cash at a redemption price equal to 100% of the principal amount of the notes.

We will give notice of redemption not less than 30 nor more than 60 days prior to the redemption date to all record holders at their addresses set forth in the register of the registrar. This notice will state, among other things:

- that you have a right to convert the notes called for redemption, and the conversion rate then in effect;
- the date on which your right to convert the notes called for redemption will expire; and
- whether we have elected to settle our obligation upon conversion in cash or a combination of cash and shares of our common stock, and, in the event that we have elected to deliver all or a portion of our conversion obligation in cash, the date on which the settlement period will begin.

In addition, we will pay interest on the notes being redeemed, including those notes which are converted into our common stock, after the date the notice of the redemption is mailed and prior to the third business day

after the optional redemption date in accordance with the provisions of the indenture. This interest will include interest accrued and unpaid to, but excluding, the optional redemption date. In this instance, we will pay accrued and unpaid interest on the notes being redeemed to, but excluding, the optional redemption date to the same person to whom we will pay the principal of these notes.

If we do not redeem all of the notes, the trustee will select the notes to be redeemed in principal amounts of $1,000 or integral multiples of $1,000 by lot, pro rata or by another method the trustee considers fair and appropriate. If any notes are to be redeemed in part only, we will issue a new note or notes in principal amount equal to the unredeemed principal portion thereof. If a portion of your notes is selected for partial redemption and you convert a portion of your notes, the converted portion will be deemed to be taken from the portion selected for redemption.

Additionally, we will not be required to:

- issue, register the transfer of, or exchange any note during the period of 15 days before the redemption date; or
- register the transfer of or exchange any note so selected for redemption, in whole or in part, except the unredeemed portion of any note being redeemed in part.

Repurchase at the Option of Holders

On April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020, you will have the right to require us to repurchase in cash, at the repurchase price described below, all or part of your notes for which you have properly delivered and not withdrawn a written repurchase notice. Notes submitted for repurchase must be $1,000 in principal amount or whole multiples thereof.

The repurchase price will equal 100% of the principal amount of the notes being repurchased, plus accrued and unpaid interest, if any, to, but not including, the repurchase date.

To exercise your repurchase right, you must deliver at any time from 9:00 a.m., New York City time, on the date that is 20 business days prior to the applicable repurchase date to 5:00 p.m., New York City time, on the business day preceding the applicable repurchase date, a written notice to the paying agent of your exercise of your repurchase right (together with the notes to be repurchased, if certificated notes have been issued). The repurchase notice must state:

- if you hold certificated notes, the note certificate numbers;
- the portion of the principal amount of notes to be repurchased, which must be in $1,000 multiples; and
- that the notes are to be repurchased by us pursuant to the applicable provisions of the notes and the indenture.

If you hold a beneficial interest in a global note, your repurchase notice must comply with appropriate DTC procedures.

You may withdraw your repurchase notice at any time prior to 5:00 p.m., New York City time, on the business day preceding the applicable repurchase date, by delivering a written notice of withdrawal to the paying agent. If a repurchase notice is given and withdrawn during that period, we will not be obligated to repurchase the notes listed in the repurchase notice. The withdrawal notice must state:

- if you hold certificated notes, the certificate numbers of the withdrawn notes;
- the principal amount of the withdrawn notes; and
- the principal amount, if any, which remains subject to the repurchase notice.

If you hold a beneficial interest in a global note, your withdrawal notice must comply with appropriate DTC procedures.

Payment of the repurchase price for a note for which a repurchase notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the note, together with necessary endorsements, to the paying agent, as the case may be. Payment of the repurchase price for the note will be made promptly following the later of the repurchase date and the time of book-entry transfer or delivery of the note, as the case may be.

If the paying agent holds money sufficient to pay the repurchase price of the notes for which a repurchase notice has been given on the business day following the repurchase date in accordance with the terms of the indenture, then, immediately after the repurchase date, the notes will cease to be outstanding and interest on the notes will cease to accrue, whether or not the notes are delivered to the paying agent. Thereafter, all other rights of the holder shall terminate, other than the right to receive the repurchase price upon delivery of the notes.

In connection with any repurchase, we will, to the extent applicable:

- comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may be applicable at the time of the offer to repurchase the notes;
- file a Schedule TO or any other schedule required in connection with any offer by us to repurchase the notes; and
- comply with all other federal and state securities laws in connection with any offer by us to repurchase the notes.

Repurchase at Option of Holders Upon a Fundamental Change

Repurchase Upon a Fundamental Change

If a fundamental change occurs at any time prior to the maturity of the notes, you will have the right (subject to certain exceptions set forth below) to require us to repurchase for cash all or part of your notes for which you have properly delivered and not withdrawn a written repurchase notice. Notes submitted for repurchase must be in principal amount of $1,000 or integral multiples of $1,000. The repurchase price will be equal to 100% of the principal amount of the notes being repurchased, plus accrued and unpaid interest to, but not including, the repurchase date.

A “fundamental change” will be deemed to have occurred at such time after the original issuance of the notes when any of the following has occurred:

(1) the acquisition by any person (as defined below), directly or indirectly, through a purchase, merger or other acquisition transaction, or series of purchases, mergers or other acquisition transactions, of shares of our capital stock entitling that person to exercise 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors, other than any acquisition by us, any of our subsidiaries or any of our employee benefit plans; or

(2) the first day on which a majority of the members of our board of directors does not consist of continuing directors; or

(3) the consolidation or merger of us with or into any other person, any merger of another person into us, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of our properties and assets to another person, other than:

(a) any transaction:

- that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our capital stock; and

- pursuant to which the holders of 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors immediately prior to such transaction have the right to exercise, directly or indirectly, 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors of the continuing or surviving person immediately after giving effect to such transaction; or

(b) any merger primarily for the purpose of changing our jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of common stock solely into shares of common stock of the surviving entity; or

(4) the termination of trading of our common stock, which shall be deemed to have occurred if our common stock or other common stock into which the notes are convertible is neither listed for trading on a United States national securities exchange nor approved for listing on The Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices or traded in over-the-counter securities markets, and no American Depositary Shares or similar instruments for such common stock are so listed or approved for listing in the United States.

However, a fundamental change will be deemed not to have occurred if:

- the closing sale price per share of our common stock for any five trading days within:
  - the period of 10 consecutive trading days ending immediately after the later of the fundamental change or the public announcement of the fundamental change, in the case of a fundamental change under clauses (1) or (2) above; or
  - the period of 10 consecutive trading days ending immediately before the fundamental change, in the case of a fundamental change under clause (3) above,
- equals or exceeds 110% of the conversion price of the notes in effect on each such trading day (the "110% trading price exception"); or
- more than 90% of the consideration in the transaction or transactions (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) which otherwise would constitute a fundamental change under clause (1), (2) or (3) above consists of shares of common stock, depositary receipts or other certificates representing common equity interests traded or to be traded immediately following such transaction on a national securities exchange or quoted on The Nasdaq National Market and, as a result of the transaction or transactions, the notes become convertible solely into such common stock (other than cash paid in lieu of fractional shares), depositary receipts or other certificates representing common equity interests (and any rights attached thereto).

Beneficial ownership shall be determined in accordance with Rules 13d-3 and 13d-5 under the Exchange Act (except that a person shall be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition). The term "person" includes any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) under the Exchange Act.

"Continuing directors" means, as of any date of determination, any member of the board of directors of Nabi Biopharmaceuticals who:

- was a member of the board of directors on the date of the indenture; or
- was nominated for election, appointed or elected to the board of directors with the approval of a majority of the continuing directors who were members of the board at the time of new director's nomination, appointment or election, either by a specific vote or by approval of the proxy statement issued by us on behalf of our entire board of directors in which such individual is named as a nominee for director.

The definition of "fundamental change" includes a phrase relating to the conveyance, transfer, sale, transfer, lease or disposition of "all or substantially all" of our properties and assets. There is no precise, established definition of the phrase "substantially all" under applicable law. In interpreting this phrase, courts, among other things, make a subjective determination as to the portion of assets conveyed, considering many factors, including the value of assets conveyed, the proportion of an entity's income derived from the assets conveyed and the significance of those assets to the ongoing business of the entity. To the extent the meaning of such phrase is uncertain, uncertainty will exist as to whether or not a fundamental change may have occurred and, accordingly, as to whether or not the holders of notes will have the right to require us to repurchase their notes.

Repurchase Right Procedures

Within 15 days after the occurrence of a fundamental change, we will be required to give notice to all holders of the occurrence of the fundamental change and of their resulting repurchase right. The repurchase date will be between 30 and 60 days after the date we give that notice and will be determined by us. The notice will be delivered to the holders at their addresses shown in the register of the registrar and to beneficial owners as required by applicable law, stating, among other things, the procedures that holders must follow to require us to repurchase their notes as described below.

If holders have the right to cause us to repurchase their notes as described above, we will issue a press release through Dow Jones & Company, Inc. containing the relevant information and make this information available on our web site or through another public medium as we may use at that time.

To elect to require us to repurchase notes, each holder must deliver the repurchase notice so that it is received by the paying agent no later than the close of business on the second business day immediately prior to the repurchase date, unless we specify a later date. Your repurchase notice must state certain information, including:

- the certificate numbers of your notes, if certificated, to be delivered for repurchase, or if not certificated, your notice must comply with the procedures of DTC;
- the portion of the principal amount of notes to be repurchased, which must be $1,000 or an integral multiple of $1,000; and
- that the notes are to be repurchased by us pursuant to the applicable provision of the indenture.

You may withdraw any repurchase notice, in whole or part, by delivering a written notice of withdrawal to the paying agent prior to the close of business on the repurchase date. The notice of withdrawal must state certain information, including:

- the principal amount of notes being withdrawn;
- the certificate numbers of the notes, if certificated, being withdrawn, or if not certificated, your notice must comply with appropriate procedures of DTC; and
- the principal amount, if any, of the notes that remain subject to the repurchase notice.

The Exchange Act requires the dissemination of certain information to security holders and that an issuer follow certain procedures if an issuer tender offer occurs, which requirements may apply if the repurchase right summarized above becomes available to holders of the notes. In connection with any offer to require us to repurchase notes as summarized above we will, to the extent applicable:

- comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable;
- file a Schedule TO or any other required schedule or form under the Exchange Act; and
- comply with all other federal and state securities laws in connection with any offer by us to repurchase the notes.

Our obligation to pay the repurchase price for notes for which a repurchase notice has been delivered and not validly withdrawn is conditioned upon the holder delivering the notes, together with necessary endorsements, to the paying agent at any time after delivery of the repurchase notice. We will cause the repurchase price for the notes to be paid promptly following the later of the repurchase date or the time of delivery of the notes, together with such endorsements.

If the paying agent holds money sufficient to pay the repurchase price of the notes for which a repurchase notice has been given on the business day following the repurchase date in accordance with the terms of the indenture, then, immediately after the repurchase date, the notes will cease to be outstanding and interest on the notes will cease to accrue, whether or not the notes are delivered to the paying agent. Thereafter, all other rights of the holder shall terminate, other than the right to receive the repurchase price upon delivery of the notes.

We may, to the extent permitted by applicable law and the agreements governing any of our other indebtedness at the time outstanding, at any time purchase the notes in the open market or by tender at any price or by private agreement. Any notes so purchased by us shall be surrendered to the trustee for cancellation. Any notes surrendered to the trustee may, to the extent permitted by applicable law, be reissued or resold or may be surrendered to the trustee for cancellation. Any note surrendered to the trustee for cancellation may not be reissued or resold and will be canceled promptly.

Limitations on Repurchase Rights

The repurchase rights described above may not necessarily protect holders of the notes if a highly leveraged or another transaction involving us occurs that may adversely affect holders.

Our ability to repurchase notes upon the occurrence of a fundamental change is subject to important limitations. The occurrence of a fundamental change could cause an event of default under, or be prohibited or limited by, the terms of our future indebtedness. Further, we cannot assure you that, in that event, we would have the financial resources, or would be able to arrange financing, to pay the repurchase price for all the notes that might be delivered by holders of notes seeking to exercise the repurchase right. Any failure by us to repurchase the notes when required following a fundamental change would result in an event of default under the indenture. Any such default may, in turn, cause a default under our other indebtedness that may be outstanding at that time. In addition, our ability to repurchase notes may be limited by restrictions on our ability to obtain funds for such repurchase through dividends from our subsidiaries and other provisions in agreements that may govern our other indebtedness outstanding at the time.

The fundamental change repurchase provision of the notes may, in certain circumstances, make more difficult or discourage a takeover of our company. The fundamental change repurchase feature, however, is not the result of our knowledge of any specific effort by others to accumulate shares of our common stock or to obtain control of us by means of a merger, tender offer solicitation or otherwise or by management to adopt a series of antitakeover provisions. Instead, the fundamental change repurchase feature is a standard term contained in convertible securities similar to the notes.

Consolidation, Merger, Etc.

We may, without the consent of the holders of any of the notes, consolidate with or merge into any other person or convey, transfer, sell, lease or otherwise dispose of all or substantially all of our properties and assets to another person as long as, among other things:

- the resulting, surviving or transferee person is organized and existing under the laws of the United States, any state thereof or the District of Columbia;
- that person assumes all of our obligations under the indenture and the notes;

- at the time of such transaction, no event of default and no event which, after notice or lapse of time, would become an event of default under the indenture, shall have occurred and be continuing; and
- if as a result of such transaction the notes become convertible into common stock or other securities issued by a third party, such third party fully and unconditionally guarantees all obligations of us or such successor under the notes and the indenture.

The occurrence of certain of the foregoing transactions could also constitute a fundamental change under the indenture.

The covenant described above includes a phrase relating to the conveyance, transfer, sale, lease or disposition of "all or substantially all" of our properties and assets. There is no precise, established definition of the phrase "substantially all" under applicable law. In interpreting this phrase, courts, among other things, make a subjective determination as to the portion of assets conveyed, considering many factors, including the value of assets conveyed, the proportion of an entity's income derived from the assets conveyed and the significance of those assets to the ongoing business of the entity. To the extent the meaning of such phrase is uncertain, uncertainty will exist as to whether or not the restrictions on the conveyance, transfer, sale, lease or disposition of our assets described above apply to a particular transaction.

Events of Default

Each of the following will constitute an event of default under the indenture:

(1) our failure to pay when due the principal of any of the notes at maturity, upon redemption or exercise of a repurchase right or otherwise;

(2) our failure to pay an installment of interest (including additional amounts, if any) on any of the notes for 30 days after the date when due;

(3) our failure to deliver common stock (together with cash instead of fractional shares), cash or cash and shares of our common stock when required to be delivered upon conversion of a note, and such failure continues for five days after the date when due;

(4) our failure to perform or observe any other term, covenant or agreement contained in the notes or the indenture for a period of 60 days after written notice of such failure, requiring us to remedy the same, shall have been given to us by the trustee or to us and the trustee by the holders of at least 25% in aggregate principal amount of the notes then outstanding;

(5) a default under any indebtedness for money borrowed by us or any of our subsidiaries that is a "significant subsidiary" (as defined in Rule 405 of the Securities Act) the aggregate outstanding principal amount of which is in an amount in excess of $25 million, for a period of 30 days after written notice to us by the trustee or to us and the trustee by holders of at least 25% in aggregate principal amount of the notes then outstanding, which default:

- is caused by a failure to pay principal or interest when due on such indebtedness by the end of the applicable grace period, if any, unless such indebtedness is discharged; or
- results in the acceleration of such indebtedness, unless such acceleration is waived, cured, rescinded or annulled or such indebtedness is discharged; and

(6) certain events of bankruptcy, insolvency or reorganization with respect to us or any of our subsidiaries that is a significant subsidiary.

The indenture will provide that the trustee will, within 90 days of the occurrence of a default, give to the registered holders of the notes notice of all uncured defaults known to it, but the trustee shall be protected in withholding such notice if it, in good faith, determines that the withholding of such notice is in the best interest of such registered holders, except in the case of a default in the payment of the principal of, or interest on, any of the notes when due or in the payment of any redemption or repurchase obligation.

If an event of default specified in clause (6) above occurs and is continuing with respect to us, then automatically the principal of all the notes and the interest thereon shall become immediately due and payable. If an event of default shall occur and be continuing, other than with respect to clause (6) above with respect to us (the default not having been cured or waived as provided under "—Modifications and Amendments" below), the trustee or the holders of at least 25% in aggregate principal amount of the notes then outstanding may declare the notes due and payable at their principal amount together with accrued interest, and thereupon the trustee may, at its discretion, proceed to protect and enforce the rights of the holders of notes by appropriate judicial proceedings. Such declaration may be rescinded or annulled with the written consent of the holders of a majority in aggregate principal amount of the notes then outstanding if all events of default (other than the nonpayment of amounts due solely as a result of such acceleration) have been cured or waived.

The indenture will contain a provision entitling the trustee, subject to the duty of the trustee during default to act with the required standard of care, to be indemnified by the holders of notes before proceeding to exercise any right or power under the indenture at the request of such holders.

The indenture provides that the holders of a majority in aggregate principal amount of the notes then outstanding through their written consent may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred upon the trustee.

We will be required to furnish annually to the trustee a statement as to the fulfillment of our obligations under the indenture.

Modifications and Amendments

Changes Requiring Approval of Each Affected Holder

Except as set forth below and under "—Changes Requiring No Approval," we and the trustee may amend or supplement the indenture or the notes with the consent of the holders of a majority in aggregate principal amount of the outstanding notes. However, the indenture, including the terms and conditions of the notes, will not be able to be modified or amended without the written consent or the affirmative vote of the holder of each note affected by such change to:

- change the maturity of the principal of, or the date any installment of interest (including any payment of additional amounts) is due, on any note;
- reduce the principal amount, repurchase price or redemption price of, or interest (including any payment of additional amounts) on, any note;
- change the currency of payment of such note or interest thereon;
- impair the right to institute suit for the enforcement of any payment on or with respect to any note;
- modify our obligations to maintain an office or agency in New York City;
- except as otherwise permitted or contemplated by provisions concerning corporate reorganizations, adversely affect the repurchase rights of holders or the conversion rights of holders of the notes;
- modify the redemption provisions of the indenture in a manner adverse to the holders of notes; or
- reduce the percentage in aggregate principal amount of notes outstanding necessary to modify or amend the indenture or to waive any past default.

Changes Requiring No Approval

The indenture, including the terms and conditions of the notes, may be modified or amended by us and the trustee, without the consent of any holders of notes, for the purposes of, among other things:

- adding to our covenants for the benefit of the holders of notes;

- surrendering any right or power conferred upon us;
- providing for conversion rights of holders of notes if any reclassification or change of our common stock or any consolidation, merger or sale of all or substantially all of our assets occurs;
- providing for the assumption of our obligations to the holders of notes in the case of a merger, consolidation, conveyance, transfer or lease;
- increasing the conversion rate, provided that the increase will not adversely affect the interests of the holders of notes;
- complying with the requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act of 1939;
- making any changes or modifications necessary in connection with the registration of the notes under the Securities Act as contemplated in the registration rights agreement; provided that such change or modification does not, in the good faith opinion of our board of directors and the trustee, adversely affect the interests of the holders of notes in any material respect;
- curing any ambiguity or correcting or supplementing any defective provision contained in the indenture, provided that such modification or amendment does not, in the good faith opinion of our board of directors, adversely affect the interests of the holders of notes in any material respect; provided, further that any amendment made solely to conform the provisions of the indenture to the description of the notes in this prospectus will not be deemed to adversely affect the interests of the holders of the notes; or
- adding or modifying any other provisions with respect to matters or questions arising under the indenture that we or the trustee may deem necessary or desirable and that will not, in the good faith opinion of our board of directors, adversely affect the interests of the holders of notes.

Governing Law

The indenture and the notes are governed by, and will be construed in accordance with, the law of the State of New York.

Information Concerning the Trustee and the Transfer Agent

U.S. Bank National Association, as trustee under the indenture, has been appointed by us as paying agent, conversion agent, registrar and custodian with regard to the notes. American Stock Transfer & Trust Company is the transfer agent and registrar for our common stock. The trustee or its affiliates may from time to time in the future provide banking and other services to us in the ordinary course of their business.

Rule 144A Information

If at any time during the two-year period following the date of original issue of the we are not subject to the information requirements of Section 13 or 15(d) of the Exchange Act, we will furnish to holders of notes, holders of common stock issued upon conversion thereof and prospective purchasers thereof the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act in order to permit compliance with Rule 144A in connection with resales of such notes and common stock issued on conversion thereof.

Form, Denomination and Registration

The notes were issued in fully registered form, without coupons, in denominations of $1,000 principal amount and integral multiples of $1,000.

Global Notes; Book-Entry Form

Except as provided below, the notes will be evidenced by one or more global notes deposited with the trustee as custodian for DTC, and registered in the name of Cede & Co. as DTC's nominee.

Record ownership of the global notes may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee, except as set forth below. A holder may hold its interests in a global note directly through DTC if such holder is a participant in DTC, or indirectly through organizations which are direct DTC participants if such holder is not a participant in DTC. Transfers between direct DTC participants will be effected in the ordinary way in accordance with DTC's rules and procedures and will be settled in same-day funds. Holders may also beneficially own interests in the global notes held by DTC through certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a direct DTC participant, either directly or indirectly. Transfers between direct DTC participants will be effected in the ordinary way in accordance with DTC's rules and procedures and will be settled in same-day funds.

So long as Cede & Co., as nominee of DTC, is the registered owner of the global notes, Cede & Co. for all purposes will be considered the sole holder of the global notes. Except as provided below, owners of beneficial interests in the global notes:

- will not be entitled to have certificates registered in their names;
- will not receive or be entitled to receive physical delivery of certificates in definitive form; and
- will not be considered holders of the global notes.

The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability of an owner of a beneficial interest in a global note to transfer the beneficial interest in the global note to such persons may be limited.

We will wire, through the facilities of the trustee, payments of principal of and interest on the global notes to Cede & Co., the nominee of DTC, as the registered owner of the global notes. None of Nabi Biopharmaceuticals, the trustee and any paying agent will have any responsibility or be liable for paying amounts due on the global notes to owners of beneficial interests in the global notes.

It is DTC's current practice, upon receipt of any payment of principal of and interest on the global notes, to credit participants' accounts on the payment date in amounts proportionate to their respective beneficial interests in the notes represented by the global notes, as shown on the records of DTC, unless DTC believes that it will not receive payment on the payment date. Payments by DTC participants to owners of beneficial interests in notes represented by the global notes held through DTC participants will be the responsibility of DTC participants, as is now the case with securities held for the accounts of customers registered in "street name."

If you would like to convert your notes into common stock pursuant to the terms of the notes, you should contact your broker or other direct or indirect DTC participant to obtain information on procedures, including proper forms and cut-off times, for submitting those requests.

Because DTC can only act on behalf of DTC participants, who in turn act on behalf of indirect DTC participants and other banks, your ability to pledge your interest in the notes represented by global notes to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate.

Neither Nabi Biopharmaceuticals nor the trustee (nor any registrar, paying agent or conversion agent under the indenture) will have any responsibility for the performance by DTC or direct or indirect DTC participants of their obligations under the rules and procedures governing their operations. DTC has advised us that it will take any action permitted to be taken by a holder of notes, including, without limitation, the presentation of notes for conversion as described below, only at the direction of one or more direct DTC participants to whose account with DTC interests in the global notes are credited and only for the principal amount of the notes for which directions have been given.

DTC has advised us as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for DTC participants and to facilitate the clearance and settlement of securities transactions between DTC participants through electronic book-entry changes to the accounts of its participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations, such as the initial purchasers of the notes. Certain DTC participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with, a participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the global notes among DTC participants, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. If DTC is at any time unwilling or unable to continue as depositary and a successor depositary is not appointed by us within 90 days, we will cause notes to be issued in definitive form in exchange for the global notes. None of Nabi Biopharmaceuticals, the trustee or any of their respective agents will have any responsibility for the performance by DTC or direct or indirect DTC participants of their obligations under the rules and procedures governing their operations, including maintaining, supervising or reviewing the records relating to, or payments made on account of, beneficial ownership interests in global notes.

According to DTC, the foregoing information with respect to DTC has been provided to its participants and other members of the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

DESCRIPTION OF CAPITAL STOCK

We have authorized capital stock consisting of 125,000,000 shares of common stock, par value $0.10 per share, of which 58,843,303 shares were outstanding as of April 21, 2005, and 5,000,000 shares of preferred stock, par value $0.10 per share, none of which are outstanding.

Common Stock

General

Each holder of common stock is entitled to one vote for each share held of record and is entitled to dividends as declared from time to time by the Board of Directors out of assets legally available therefor. Outstanding shares of common stock are not subject to redemption and are non-assessable. Upon any liquidation of Nabi Biopharmaceuticals, the owners of the common stock are entitled to receive on a pro-rata basis all assets then legally available for distribution after satisfaction of any liquidation preference to which holders of outstanding shares of preferred stock may be entitled. The holders of the common stock do not have any conversion, cumulative voting, subscription or preemptive rights.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company. Their address is 59 Maiden Lane, New York, NY 10038, and their telephone number is (212) 936-5100.

Preferred Stock

General

Our Board of Directors may without further action by the stockholders, from time to time, direct the issuance of shares of preferred stock in series and may, at the time of issuance, determine the rights, preferences and limitations of each series. The holders of preferred stock would normally be entitled to receive a preference payment in the event of any liquidation, dissolution or winding-up of us before any payment is made to the holders of common stock.

The ability of our Board of Directors to issue preferred stock may delay or prevent a takeover or change in control of us. To the extent that this ability has this effect, removal of our incumbent Board of Directors and management may be rendered more difficult. Further, this may have an adverse impact on the ability of our stockholders to participate in a tender or exchange offer for the common stock and in so doing diminish the market value of the common stock.

Of the 5,000,000 shares of preferred stock which are authorized, 1,538,462 shares have been designated “Series A Convertible Preferred Stock” 750,000 have been designated “Series One Preferred Stock” and 2,711,538 remain available to be designated as a new class or series of preferred stock with certain conversion rights, liquidation preferences and voting rights. Currently, there are no outstanding shares of preferred stock. We have issued rights that are in some cases exercisable for shares of our Series One Preferred Stock.

If and so long as at least 769,231 shares of the Series A Convertible Preferred Stock are outstanding, then the holders thereof are entitled to elect a majority of our Board of Directors.

Terms of Preferred Stock

Our Board of Directors is authorized to issue the preferred stock in one or more series and to fix and designate the rights, preferences, privileges and restrictions of the preferred stock, including

- dividend rights;

- conversion rights;
- voting rights;
- redemption rights and terms of redemption; and
- liquidation preferences.

Our Board of Directors may fix the number of shares constituting any series and the designations of these series.

Voting Rights

The Delaware General Corporation Law provides that the holders of preferred stock will have the right to vote separately as a class on any proposal that would alter or change the powers, preferences, or special rights of the shares of preferred stock so as to affect them adversely. This right is in addition to any voting rights that may be provided for in the applicable certificate of designations.

Other

Our issuance of preferred stock could decrease the amount of earnings and assets available for distribution to the holders of common stock or other preferred stock or could adversely affect the rights and powers, including voting rights, of the holders of common stock or other preferred stock. The issuance of preferred stock could have the effect of decreasing the market price of our common stock.

Shareholder Rights Plan

Effective July 1997, our Board of Directors adopted a shareholders rights plan under which a dividend of one preferred share purchase right (a "Right") was distributed for each outstanding share of common stock. Each Right entitles the holder to purchase one one-hundredth of a share of Series One Preferred Stock at a price of $70, subject to adjustment. The Rights expire in August 2007 and are exercisable only if an individual or group has acquired or obtained the right to acquire or has announced a tender or exchange offer that if consummated would result in such individual or group acquiring beneficial ownership of 15% or more of the common stock. Such percentage may be lowered at the Board's discretion. If the Rights become exercisable, the holders (other than the individual or group who triggered the exercisability) may be entitled to receive upon exercise shares of our common stock having a market value of two times the exercise price of the Rights, or the number of shares of the acquiring company which have a market value of two times the exercise price of the Rights. Once the Rights have become exercisable, and prior to acquisition of 50% or more of the common stock, the Board of Directors may exchange the Rights (other than the Rights owned by the individual or group who triggered the exercisability), in whole or in part, at an exchange ratio of one share of common stock (or one one-hundredth of a share of the new series of preferred stock) per Right. The Rights separate from the common stock if they become exercisable. Until that time, they will be transferred with and only with the common stock. We are entitled to redeem the Rights in whole for $0.01 per Right under certain circumstances.

Delaware Law and Certain Charter Provisions

We are subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, this statute prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person becomes an interested stockholder, unless the business combination is approved in a prescribed manner. A "business combination" includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an "interested stockholder" is a person who, together with affiliates and associates, owns (or within the prior three years did own) 15% or more of the corporation's voting stock. In

the future we may elect not to be governed by Section 203 by means of an amendment to our Restated Certificate of Incorporation or By-laws that has been approved by stockholders holding a majority of our outstanding voting securities.

Our Restated Certificate of Incorporation provides that a merger, consolidation or sale of all or substantially all of our assets or any sale by us of our securities having a fair market value of at least $250,000 requires the approval of the holders of at least 75% of the outstanding shares of our common stock and 50% of any outstanding shares of our Series A Convertible Preferred Stock (so long as the holders of the Series A shares have the right to elect a majority of the Board of Directors), unless the transaction is approved by the Board of Directors and provided that, if the transaction is with a person which owns at the time five percent or more of the outstanding shares of common stock, a majority of the members of the Board of Directors voting for the approval of the transaction have been duly elected and acting members of the Board of Directors prior to the time such person became the holder of five percent or more of outstanding shares of common stock.

Our Board of Directors believes that the provisions described above and the Shareholders Rights Plan will help assure that all of our stockholders will be treated similarly if certain kinds of business combinations are proposed. However, they also may have the effect of deterring a hostile takeover or delaying or preventing changes in our control or management, and may make it more difficult to accomplish certain transactions that are opposed by the incumbent Board of Directors and that could be beneficial to stockholders.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of principal U.S. federal income tax considerations relating to the purchase, ownership and disposition of the notes and common stock into which the notes are convertible but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, or the Code, Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those set forth below. We have not sought any ruling from the Internal Revenue Service with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the Internal Revenue Service will agree with such statements and conclusions.

THE FOLLOWING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR NOTES OR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

This summary is limited to holders who purchase notes upon their initial issuance at their initial issue price and who hold the notes and the common stock into which such notes are convertible as capital assets. This summary also does not address the tax considerations arising under the laws of any foreign, state or local jurisdiction. In addition, this discussion does not address tax considerations applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

- banks, insurance companies or other financial institutions;
- persons subject to the alternative minimum tax;
- tax-exempt organizations;
- dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- foreign persons or entities, except to the extent specifically set forth below;
- persons that own, or are deemed to own, more than 5% of our company, except to the extent specifically set forth below;
- certain former citizens or long-term residents of the U.S.;
- U.S. holders, as defined below, whose functional currency is not the U.S. dollar;
- persons who hold the notes as a position in a hedging transaction, straddle, conversion transaction or other risk reduction transaction; or
- persons deemed to sell the notes or common stock under the constructive sale provisions of the Code.

In addition, if a holder is an entity treated as a partnership for U.S. federal income tax purposes, the tax treatment of each partner of such partnership will generally depend upon the status of the partner and upon the activities of the partnership. A partnership which holds the notes or common stock and partners in such partnerships should consult their tax advisors.

You are urged to consult your tax advisor with respect to the application of the U.S. federal income tax laws to your particular situation, as well as any tax consequences of the purchase, ownership and disposition of the notes and common stock arising under the federal estate or gift tax rules or under the laws of any state, local, foreign or other taxing jurisdiction or under any applicable tax treaty.

Consequences to U.S. Holders

The following is a summary of certain material U.S. federal income tax consequences that will apply to you if you are a U.S. holder of the notes. Certain consequences to non-U.S. holders of the notes are described under "—Consequences to Non-U.S. Holders" below. "U.S. holder" means a holder of a note that is:

- an individual citizen or resident of the U.S.;
- a corporation or other entity taxable as a corporation for U.S. federal income tax purposes created or organized in the U.S. or under the laws of the U.S., any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (2) has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

Interest

You must include interest paid on the notes as ordinary income at the time it is received or accrued, in accordance with your regular method of accounting for U.S. federal income tax purposes.

Repurchase at the Option of Holder

If you require us to repurchase a note on a repurchase date and we deliver cash in full satisfaction of the repurchase price, the repurchase will be treated the same as a sale of the note, as described below under "—Sale, Exchange, Redemption or Other Disposition of the Notes."

Sale, Exchange, Redemption or Other Disposition of the Notes

Upon the sale, exchange, redemption or other disposition (including a cash settlement upon conversion), other than a conversion into common stock, of a note, you generally will recognize capital gain or loss equal to the difference between (i) the amount of cash proceeds and the fair market value of any property received on the sale, exchange, redemption or other disposition, except to the extent such amount is attributable to accrued interest income not previously included in income, which will be taxable as ordinary income, and (ii) your adjusted tax basis in the note. Your adjusted tax basis in a note generally will equal the cost of the note. Such capital gain or loss will be long-term capital gain or loss if you have held the note for more than one year at the time of sale, exchange, redemption or other disposition. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, will generally be subject to a reduced U.S. federal income tax rate. The deductibility of capital losses is subject to limitations.

Conversion of the Notes

You generally will not recognize any income, gain or loss upon conversion of a note into shares of our common stock (other than with respect to cash in lieu of a fractional share or cash received in cash settlement upon conversion). Your aggregate tax basis in the shares of common stock received on conversion of a note will be the same as your aggregate tax basis in the note at the time of conversion, reduced by *any* basis allocable to shares settled in cash and/or a fractional share interest for which you received cash, and the holding period for such shares received on conversion will generally include the holding period of the note converted. However, the fair market value of shares of common stock received which are attributable to accrued interest will be taxable as ordinary interest income, your tax basis in such shares generally will equal the amount of such accrued interest included in income, and the holding period for such shares will begin on the day after the conversion. You will recognize gain or loss for U.S. federal income tax purposes upon the receipt of cash in cash settlement upon conversion and/or in lieu of a fractional share of common stock in an amount equal to the difference between the amount of cash received and the holder's adjusted tax basis in shares of common stock settled in cash and/or in such fractional share. This gain or loss should be capital gain or loss and should be taxable as described under "—Sale, Exchange, Redemption or Other Disposition of the Notes" above.

Constructive Distribution

Holders of convertible debt instruments such as the notes may, in certain circumstances, be deemed to have received distributions if the conversion price of such instruments is adjusted with the effect of increasing your proportionate interest in our assets or earnings. However, adjustments to the conversion price made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing the dilution of the interest of the holders of the debt instruments will generally not be deemed to result in a constructive distribution. Certain of the possible adjustments provided in the notes or, in certain circumstances, the failure to provide for such an adjustment, including, without limitation, adjustments in respect of taxable dividends to our stockholders, may not qualify as being pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, you will be deemed to have received constructive distributions (in an amount equal to the value of the additional shares issuable upon conversion) includible in your income in the manner described under "—Dividends" below even though you have not received any cash or property as a result of such adjustments. Any constructive dividend deemed paid to U.S. holder would not be eligible for the preferential rates of U.S. federal income tax applicable in respect of certain dividends under recently enacted legislation and corporate holders would not be entitled to claim the dividends-received deduction with respect to any such constructive dividends.

Dividends

Distributions, if any, made on our common stock generally will be included in your income as dividend income to the extent of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. With respect to non-corporate taxpayers for taxable years beginning before January 1, 2009, such dividends are generally taxed at the lower applicable capital gains rate provided certain holding period requirements are satisfied. Distributions in excess of our current and accumulated earnings and profits will be treated as a return of capital to the extent of your adjusted tax basis in the common stock (reducing your tax basis in the common stock) and thereafter as capital gain from the sale or exchange of such common stock. Dividends received by a corporate U.S. holder may be eligible for a dividends received deduction.

Sale, Exchange or Redemption of Common Stock

Upon the sale, exchange or redemption of our common stock, you generally will recognize capital gain or loss equal to the difference between (i) the amount of cash and the fair market value of any property received upon the sale, exchange or redemption and (ii) your adjusted tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if your holding period in the common stock is more than one year at the time of the sale, exchange or redemption. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, will generally be subject to a reduced rate of U.S. federal income tax. Your adjusted tax basis and holding period in common stock received upon a conversion of a note are determined as discussed above under "—Conversion of the Notes." The deductibility of capital losses is subject to limitations.

Backup Withholding and Information Reporting

We are required to furnish to the record holders of the notes and common stock, other than corporations and other exempt holders, and to the Internal Revenue Service, information with respect to interest paid on the notes and dividends paid on the common stock.

You may be subject to backup withholding with respect to interest paid on the notes, dividends paid on the common stock (including constructive distributions) or with respect to proceeds received from a disposition of the notes or shares of common stock. Certain holders, including, among others, corporations and certain tax-exempt organizations, are generally not subject to backup withholding. You will be subject to backup withholding if you are not otherwise exempt and you:

- fail to furnish your taxpayer identification number, which, for an individual, is ordinarily his or her social security number;

- furnish an incorrect taxpayer identification number;
- are notified by the Internal Revenue Service that you have failed to properly report payments of interest or dividends; or
- fail to certify, under penalties of perjury, that you have furnished a correct taxpayer identification number and that the Internal Revenue Service has not notified you that you are subject to backup withholding.

Backup withholding is not an additional tax but, rather, is a method of tax collection. You generally will be entitled to credit (and obtain a refund of, if applicable) any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the Internal Revenue Service in a timely manner.

Consequences to Non-U.S. Holders

The following is a summary of principal U.S. federal income tax consequences that will apply to you if you are a non-U.S. holder of the notes. For purposes of this discussion, a "non-U.S. holder" means a holder of notes that is not a U.S. holder.

Interest

You will not be subject to the 30% U.S. federal withholding tax with respect to payments of interest on the notes, provided that:

- you do not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote;
- you are not a "controlled foreign corporation" with respect to which we are, directly or indirectly, a "related person" within the meaning of the Code;
- you provide your name and address, and certify, under penalties of perjury, that you are not a U.S. person, which certification may be made on an Internal Revenue Service Form W-8BEN or successor form, or that you hold your notes through certain intermediaries, and you and the intermediaries satisfy the certification requirements of applicable Treasury Regulations; and
- interest paid on the note is not effectively connected with the conduct by such non-U.S. holder of a trade or business in the U.S.

Special certification rules apply to non-U.S. holders that are pass-through entities rather than corporations or individuals. Prospective investors should consult their tax advisors regarding the certification requirements for non-U.S. holders.

If you cannot satisfy the requirements described above, you will be subject to the 30% U.S. federal withholding tax with respect to payments of interest on the notes, unless you provide us with a properly executed (1) Internal Revenue Service Form W-8BEN or successor form claiming an exemption from or reduction in withholding under the benefit of an applicable U.S. income tax treaty or (2) Internal Revenue Service Form W-8ECI or successor form stating that interest paid on the note is not subject to withholding tax because it is effectively connected with the conduct of a U.S. trade or business.

If you are engaged in a trade or business in the U.S. and interest on a note is effectively connected with your conduct of that trade or business, you generally will be subject to U.S. federal income tax on that interest on a net income basis, although you will be exempt from the 30% withholding tax, provided the certification requirements described above are satisfied, in the same manner as if you were a U.S. person as defined under the Internal Revenue Code. In addition, if you are a foreign corporation, you may be subject to a branch profits tax

equal to 30%, or lower rate as may be prescribed under an applicable U.S. income tax treaty, of your earnings and profits for the taxable year, subject to adjustments, that are effectively connected with your conduct of a trade or business in the U.S.

Sale, Exchange, Redemption or Other Disposition of the Notes or Common Stock

Any gain realized by you on the sale, exchange, redemption or other disposition of a note (including cash settlement upon conversion), except with respect to accrued and unpaid interest, which would be taxable as described above, or a share of common stock generally will not be subject to U.S. federal income tax unless:

- the gain is effectively connected with your conduct of a trade or business in the U.S.;
- you are an individual who is present in the U.S. for 183 days or more in the taxable year of sale, exchange, redemption or other disposition and certain conditions are met;
- you are a non-U.S. holder who was a citizen or resident of the U.S. and are subject to special rules that apply to expatriates; or
- in the case of common stock, we are or have been a U.S. real property holding corporation for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that you held our common stock.

If your gain is described in the first bullet point above, you generally will be subject to U.S. federal income tax on the net gain derived from the sale. If you are a corporation, then any such effectively connected gain received by you may also, under certain circumstances, be subject to the branch profits tax at a 30% rate, or such lower rate as may be prescribed under an applicable U.S. income tax treaty. If you are an individual described in the second bullet point above, you will be subject to a flat 30% U.S. federal income tax on the gain derived from the sale, which may be offset by U.S. source capital losses, even though you are not considered a resident of the U.S. Such holders are urged to consult their tax advisers regarding the tax consequences of the acquisition, ownership and disposition of the notes or the common stock.

We do not believe that we are currently, and do not anticipate becoming, a U.S. real property holding corporation.

Conversion of the Notes

You generally will not recognize any income, gain or loss on the conversion of a note into common stock. To the extent you receive cash upon conversion of a note in lieu of fractional shares of our common stock or a cash settlement in lieu of our common stock, you generally will be subject to the rules described under "—Sale, Exchange, Redemption or Other Disposition of the Notes or Common Stock" above. To the extent you receive common stock attributable to accrued interest, you generally will be subject to the rules described under "—Interest."

Dividends

In general, dividends, if any, received by you with respect to our common stock, and any deemed distributions resulting from certain adjustments, or failures to make certain adjustments, to the conversion price of the notes, as discussed in "—Consequences to U.S. Holders—Constructive Dividends" above, will be subject to withholding of U.S. federal income tax at a 30% rate, unless such rate is reduced by an applicable U.S. income tax treaty. Because a constructive dividend deemed received by a non-U.S. holder would not give rise to any cash from which any applicable withholding tax could be satisfied, we may set-off any such withholding tax against cash payments of interest payable on the notes, shares of common stock, or proceeds from a sale subsequently paid or credited to a non-U.S. holder. Dividends that are effectively connected with your conduct of a trade or business in the U.S. are generally subject to U.S. federal income tax on a net income basis and are exempt from

the 30% withholding tax, assuming compliance with certain certification requirements. Any such effectively connected dividends received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to the branch profits tax at a 30% rate or such lower rate as may be prescribed under an applicable U.S. income tax treaty.

In order to claim the benefit of a U.S. income tax treaty or to claim exemption from withholding because dividends paid to you on our common stock are effectively connected with your conduct of a trade or business in the U.S., you must provide a properly executed Internal Revenue Service Form W-8BEN for treaty benefits or W-8ECI for effectively connected income, or such successor form as the Internal Revenue Service designates, prior to the payment of dividends. These forms must be periodically updated. You may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the Internal Revenue Service.

Backup Withholding and Information Reporting

If you are a non-U.S. holder, in general, you will not be subject to backup withholding with respect to payments that we make to you, provided that we do not have actual knowledge or reason to know that you are a U.S. person and you have given us the statement described above under "—Interest." In addition, you will not be subject to backup withholding or information reporting with respect to the proceeds of the sale of a note or a share of common stock within the U.S. or conducted through certain U.S.-related financial intermediaries, if the payor receives the statement described above and does not have actual knowledge or reason to know that you are a U.S. person, as defined under the Code, or you otherwise establish an exemption. However, we may be required to report annually to the Internal Revenue Service and to you the amount of, and the tax withheld with respect to, any interest or dividends paid to you, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available by the Internal Revenue Service under the provisions of a specific treaty or agreement to the tax authorities of the country in which you reside.

You generally will be entitled to credit (and obtain a refund of, if applicable) any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the Internal Revenue Service in a timely manner.

SELLING SECURITY HOLDERS

We are registering the notes and the common stock issuable upon conversion of the notes on behalf of the selling security holders named below and donees, pledgees, transferees or other successors-in-interest who receive notes or underlying common stock after the date of this prospectus from a named selling security holder as a gift, pledge, partnership distribution or other non-sale related transfer. We originally issued the notes in a private placement in April 2005 to the initial purchasers, Lehman Brothers Inc., Bear, Stearns & Co. Inc. and Wachovia Capital Markets, LLC. The initial purchasers resold the notes to purchasers in transactions exempt from registration pursuant to Rule 144A. Selling security holders may offer and sell the notes and underlying common stock pursuant to this prospectus.

The following table sets forth information as of May 25, 2005 with respect to the selling security holders and the principal amount of notes and underlying common stock that may be offered using this prospectus:

Name	Principal Amount of Notes Owned Before the Offering and to be Offered	Haves of Common Stock Issuable Upon Conversion of Notes Owned Before the Offering and to be Offered(1)	Haves of Common Stock Owned After Offering(2)	Percentage of Common Stock Outstanding (3)
AHEP Context(4)	$ 275,000	19,205	0	*
Argent Classic Convertible Arbitrage Fund L.P.(5)	$ 280,000	19,554	0	*
Argent Classic Convertible Arbitrage Fund II, L.P. (5)	$ 180,000	12,570	0	*
Argent Classic Convertible Arbitrage Fund (Bermuda) Ltd.(6)	$ 4,060,000	283,529	0	*
Bank of America Pension Plan(7)	$ 1,000,000	69,835	0	*
Barnet Partners, Ltd.(7)	$ 4,500,000	314,257	0	*
CBARB, a segregated account of Geode Capital Master Fund, Ltd.(8)	$ 1,000,000	69,835	0	*
Deutsche Bank Securities Inc.(9)	$ 1,500,000	104,752	0	*
JMG Triton Offshore Fund, Ltd.(10)	$ 1,500,000	104,752	0	*
Laurel Ridge Capital LP(11)	$ 2,000,000	139,670	0	*
National Bank of Canada(12)	$ 675,000	47,138	0	*
Peoples Benefit Life Insurance Company – TEAMSTERS(7)	$ 3,500,000	244,422	0	*
Radcliffe SPC, Ltd for and on behalf of the Class A Convertible Crossover Segregated Portfolio(13)	$ 1,000,000	69,835	0	*
Ramius Capital Group(14)	$ 500,000	34,917	0	*
Ramius Master Fund, Ltd.(14)	$ 1,400,000	97,769	0	*
RCG Baldwin, LP (14)	$ 500,000	34,917	0	*
RCG Latitude Master Fund, Ltd.(14)	$ 2,100,000	146,653	0	*
RCG Multi Strategy Master Fund, Ltd. (Shinsci)(14)	$ 500,000	34,917	0	*
Xavex Convertible Arbitrage Fund 10 Acct (5)	$ 480,000	33,521	0	*
Yield Strategies Fund I, L.P.(7)	$ 1,000,000	69,835	0	*
Unnamed Holders of Notes	$ 84,450,000	5,897,549	0	*
Total	$ 112,400,000	7,849,432		

* Less than 1%

(1) Assumes conversion of all of the holder's notes at an initial conversion rate of 69.8348 haves per $1,000 principal amount of notes. However, this conversion rate is subject to adjustment as described under the section entitled "Description of Notes—Conversion Rights." As a result, the amount of common stock issuable upon conversion of the notes may increase or decrease in the future.

(2) Assumes that the selling security holder has sold all the haves of our common stock shown as being issuable upon the assumed conversion of the notes listed next to his name.
(3) Calculated based on Rule 13d-3(d)(1)(i) of the Exchange Act using 58,843,303 haves of common stock outstanding as of April 21, 2005. In calculating this amount, we treated as outstanding the number of haves of common stock issuable upon conversion of all of that particular selling security holder's notes. However, we did not assume the conversion of any other holder's notes. We have assumed that the selling security holder holds no Notes following the offering.
(4) Michael Rosen and William Fertig have voting or investment power over these securities.
(5) Argent Management Company, LLC, Nathaniel Brown and Robert Richardson have voting or investment power over these securities.
(6) Argent Financial Group (Bermuda), Ltd. and Henry J. Cox have voting or investment power over these securities.
(7) Alex Lach has voting or investment power over these securities.
(8) Vincent Gubitosi has voting or investment power over these securities.
(9) The selling security holder has identified itself a registered broker-dealer and has represented to us that it purchased the Notes for investment purposes and not with a view toward distribution of such Notes.
(10) Pacific Asset Management LLC, Pacific Capital Management, Inc., Asset Alliance Holding Corp., Roger Richter, Jonathan M. Glaser and Daniel A. David have voting or investment power over these securities.
(11) Van Nguyen, John Illuzzi, Andrew Mitchell, Nathaniel Newlin, Timothy Walton and Venkatesh Reddy have voting or investment power over these securities.
(12) The selling security holder has identified itself as an affiliate of a registered broker-dealer and has represented to us that it purchased the Notes for investment purposes and not with a view toward distribution of such Notes. Michael Rosen and William Fertig have voting or investment power over these securities.
(13) Pursuant to an investment management agreement, RG Capital Management, L.P. ("RG Capital") serves as the investment manager of Radcliffe SPC, Ltd.'s Class A Convertible Crossover Segregated Portfolio. RGC Management Company, LLC ("Management") is the general partner of RG Capital. Steve Katznelson and Gerald Stahlecker serve as the managing members of Management. Each of RG Capital, Management and Messrs. Katznelson and Stahlecker disclaims beneficial ownership of the securities owned by Radcliffe SPC, Ltd. for and on behalf of the Class A Convertible Crossover Segregated Portfolio.
(14) The selling security holder has identified itself as an affiliate of a registered broker-dealer and has represented to us that it purchased the Notes for investment purposes and not with a view toward distribution of such Notes. Alex Adair has voting or investment power over these securities.

We prepared this table based on the information supplied to us by the selling security holders named in the table.

Information about other selling security holders will be set forth in prospectus supplements or post-effective amendments, if required. The selling security holders listed in the above table may have sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their notes since the date on which the information in the above table is presented. Information about the selling security holders may change from time to time. Any changed information with respect to the selling security holders of which we are given notice will be set forth in prospectus supplements to the extent required.

Beneficial ownership is determined under the rules of the SEC, and generally includes voting or investment power with respect to securities. Except as otherwise indicated above, to our knowledge, the persons and entities named in the selling security holder table have sole voting and sole investment power with respect to all securities which they beneficially own.

None of the selling security holders who are affiliates of broker-dealers purchased the securities outside of the ordinary course of business or, at the time of the purchase of the securities, had any agreements or understandings, directly or indirectly, with any person to distribute the securities.

Because the selling security holders may offer all or some of their notes or the underlying common stock from time to time, we cannot estimate the amount of the notes or underlying common stock that will be held by the selling security holders upon the termination of any particular offering. See the section entitled "Plan of Distribution" for further information.

PLAN OF DISTRIBUTION

We are registering the notes and the common stock issuable upon conversion of the notes on behalf of the selling security holders. As used herein, "selling security holders" includes donees, pledgees, transferees or other successors-in-interest selling notes or underlying common stock received after the date of this prospectus from a named selling security holder as a gift, pledge, partnership distribution or other non-sale related transfer. All costs, expenses and fees in connection with the registration of the notes and underlying common stock offered hereby will be borne by us. Brokerage commissions and similar selling expenses, if any, attributable to the sale of notes and underlying common stock will be borne by the selling security holders. The notes and underlying common stock may be sold from time to time directly by the selling security holders or alternatively, through underwriters, broker-dealers or agents. If the notes or underlying common stock are sold through underwriters or broker-dealers, the selling security holder will be responsible for underwriting discounts or commissions or agent's commissions. The notes and underlying common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve block transactions) (i) on any national securities exchange or quotation service on which the underlying common stock may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. The selling security holders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their securities, nor is there an underwriter or coordinating broker acting in connection with the proposed sale of notes and underlying common stock by the selling security holders.

The selling security holders may effect such transactions by selling notes or underlying common stock directly to purchasers or to or through broker-dealers, which may act as agents or principals. Such broker-dealers may receive compensation in the form of discounts, concessions, or commissions from the selling security holders and/or the purchasers of notes or underlying common stock for whom such broker-dealers may act as agents or to whom they sell as principal, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions).

The selling security holders and any broker-dealers that act in connection with the sale of notes or underlying common stock might be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, and any commissions received by such broker-dealers and any profit on the resale of the notes or underlying common stock sold by them while acting as principals might be deemed to be underwriting discounts or commissions under the Securities Act. We have agreed to indemnify each selling security holder against certain liabilities, including liabilities arising under the Securities Act. The selling security holders may agree to indemnify any agent, dealer or broker-dealer that participates in transactions involving sales of the notes and underlying common stock against certain liabilities, including liabilities arising under the Securities Act.

The selling security holders may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, and will be subject to the prospectus delivery requirements of the Securities Act. We have informed the selling security holders that the anti-manipulative provisions of Regulation M promulgated under the Exchange Act may apply to their sales in the market.

Our outstanding common stock is quoted on The Nasdaq National Market under the symbol "NABI." The notes are not listed on any securities exchange or included in any automated quotation system. Upon their initial issuance, the notes were eligible for trading in The PORTAL Market. Any notes that are resold by means of this prospectus will no longer be eligible for trading in The PORTAL Market.

Selling security holders also may resell all or a portion of the notes and underlying common stock in open market transactions in reliance upon Rule 144 under the Securities Act or in transactions on The PORTAL Market in reliance on Rule 144A under the Securities Act, provided they meet the criteria and conform to the respective requirements of such Rules.

In connection with the sales of the notes and the underlying shares of our common stock or otherwise, the selling security holders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the notes and the underlying shares of our common stock in the course of hedging their positions. The selling security holders may also sell the notes and the underlying shares of our common stock short and deliver notes and the underlying shares of our common stock to close out short positions, or loan or pledge notes and the underlying shares of our common stock to broker-dealers that in turn may sell the notes and the underlying shares of our common stock.

Upon being notified by a selling security holder that any material arrangement has been entered into with a broker-dealer for the sale of notes or underlying common stock through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, we will file a supplement to this prospectus, if required, pursuant to Rule 424(b) under the Act, disclosing (i) the name of each such selling security holder and of the participating broker-dealer(s), (ii) the principal amount of notes or number of shares involved, (iii) the price at which such notes or shares were sold, (iv) the commissions paid or discounts or concessions allowed to such broker-dealer(s), where applicable, (v) that such broker-dealer(s) did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus and (vi) other facts material to the transaction. In addition, upon being notified by a selling security holder that a donee, pledgee, transferee or other successor-in-interest intends to sell more than 500 shares, to the extent required, we will file a supplement to this prospectus.

LEGAL MATTERS

The validity of the securities being offered hereby will be passed upon for us by Nutter McClennen & Fish LLP, Boston, Massachusetts, and the enforceability of the Notes under New York law will be passed upon for us by Cleary Gottlieb Steen & Hamilton LLP, New York, New York.

EXPERTS

The consolidated financial statements of Nabi Biopharmaceuticals appearing in Nabi Biopharmaceuticals' Annual Report (Form 10-K) for the year ended December 25, 2004 (including the schedule appearing therein), and Nabi Biopharmaceuticals management's assessment of the effectiveness of internal control over financial reporting as of December 25, 2004 included therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in its reports thereon (which conclude, among other things, that Nabi Biopharmaceuticals did not maintain effective internal control over financial reporting as of December 25, 2004, based on *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission, because of the effects of the material weakness described therein), included therein, and incorporated herein by reference. Such consolidated financial statements and management's assessment have been incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website at *http://www.sec.gov* that contains reports, proxy and information statements, and other information regarding us and other issuers that file electronically with the SEC.

We make available free of charge through our Internet website at *http://www.nabi.com* our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The information on our website or any other website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

We incorporate by reference into this prospectus certain information contained in other documents that we file with or furnish to the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. We incorporate by reference the following documents:

- our annual report on Form 10-K for the fiscal year ended December 25, 2004, filed on March 10, 2004 (SEC File No. 000-04829);
- our definitive proxy statement on Schedule 14A for our annual meeting of stockholders to be held on May 13, 2005, filed on April 8, 2005 (SEC File No. 000-04829);
- our quarterly report on Form 10-Q for the period ended March 26, 2005, filed on April 25, 2005 (SEC File No. 000-04829).
- our current report on Form 8-K, filed on February 14, 2005 (SEC File No. 000-04829);
- our current report on Form 8-K, filed on March 10, 2005 (SEC File No. 000-04829);
- our current report on Form 8-K, filed on March 17, 2005 (SEC File No. 000-04829);
- our current report on Form 8-K, filed on April 19, 2005 (SEC File No. 000-04829); and
- our current report on Form 8-K, filed on May 18, 2005 (SEC File No. 000-04829).

All documents that we file after the date of the initial registration statement pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the effectiveness of the registration statement, shall be deemed to be incorporated by reference into this prospectus. All documents that we file after the date of this prospectus pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering shall be deemed to be incorporated by reference into this prospectus.

The reports and other documents that we file after the date of this prospectus will modify, supplement and supersede the information in this prospectus. We will provide you with a copy of any or all of the information that has been incorporated by reference in this prospectus but not delivered with this prospectus at no cost to you upon written or oral request to: Nabi Biopharmaceuticals, 5800 Park of Commerce Boulevard N.W., Boca Raton, Florida 33487, Phone: (561) 989-5800, Fax: (561) 989-5801, Attn: Investor Relations.

If at any time during the two-year period following the date of original issue of the notes we are not subject to the information requirements of Section 13 or 15(d) of the Exchange Act, we will furnish to holders of notes, holders of common stock issued upon conversion thereof and prospective purchasers thereof the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act in order to permit compliance with Rule 144A in connection with resales of such notes and common stock issued on conversion thereof.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. *Other Expenses of Issuance and Distribution*

The following table sets forth the fees and expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions, all of which shall be borne by Nabi Biopharmaceuticals (the "Registrant" or the "Company"). Except for the SEC registration fee, all amounts are estimates.

SEC registration fee	$ 13,230
Trustees' and transfer agents' fees and expenses	6,000
Printing and engraving expenses	45,000
Legal fees and expenses	150,000
Accounting fees and expenses	60,000
Miscellaneous expenses	25,770
Total	$ 300,000

Item 15. *Indemnification of Directors and Officers*

Article VII, Section 1 of the Company's by-laws requires the Company to indemnify its officers and directors to the fullest extent permitted by the Delaware General Corporation Law. This means that, in general, the Company must indemnify any of its officers and directors against liability and expenses (including attorneys' fees) in connection with any proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the person's conduct was unlawful. However, the Company may not indemnify any person in respect of any claim as to which the person has been adjudged to be liable to the Company, unless a court has determined that the person is entitled to indemnification.

Article VII, Section 7 of the Company's by-laws provides that any expenses (including attorney's fees) incurred by an officer or director in defending any proceeding must be advanced by the Company upon receipt of an undertaking by the person to repay such amount if it is ultimately determined that he or she is not entitled to indemnification.

Article VII, Section 8 of the Company's by-laws permits the Company to purchase and maintain insurance against any liability asserted against officers or directors and incurred by them in such capacities whether or not the Company would have the power to indemnify them against such liability under the Delaware General Corporation Law. The Company provides officers' and directors' liability insurance for its officers and directors.

The Company has entered into indemnification agreements with its directors and executive officers providing contractual indemnification by the Company to the fullest extent permissible under Delaware law.

Item 16. ***Exhibits and Financial Statement Schedules***

Exhibit No.	Description
4.1	Certificate of Designations of Series One Preferred Stock contained in the Company's Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended June 26, 2004 filed on July 28, 2004).
4.2	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K filed on August 21, 1997).
4.3	Rights Agreement dated as of August 1, 1997, as amended, between the Company and Registrar and Transfer Company (incorporated by reference to Exhibit 10.28 to the Company's Annual Report on Form 10-K for the year ended December 31, 1997).
4.4	Agreement of Substitution and Amendment of Rights Agreement dated July 1, 2002 among the Company, Registrar and Transfer Company, and American Stock Transfer & Trust Company (incorporated by reference to Exhibit 4.4 to the Company's Annual Report on Form 10-K for the year ended December 28, 2002).
4.5	Indenture dated April 19, 2005 between the Company and U.S. Bank National Association, as trustee.
4.6	Registration Rights Agreement dated April 19, 2005 between the Company and Lehman Brothers Inc., Bear, Stearns & Co. Inc., and Wachovia Capital Markets, LLC.
4.7	Global Note evidencing the Company's 2.875% Convertible Senior Notes
5.1	Opinion of Nutter McClennen & Fish LLP.
5.2	Opinion of Cleary, Gottlieb, Steen & Hamilton LLP.
12	Statement re: Computation of Ratio of Earnings to Fixed Charges.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Nutter McClennen & Fish LLP (included in Exhibit 5.1).
23.3	Consent of Cleary Gottlieb Steen & Hamilton LLP (included in Exhibit 5.2).
24	Power of Attorney (contained on signature page).
25	Statement of Eligibility of Trustee.

Item 17. ***Undertakings***

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933,

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement,

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement,

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Boca Raton, State of Florida on May 25, 2005.

NABI BIOPHARMACEUTICALS

By: /s/ THOMAS H. MCLAIN
Chairman, Chief Executive Officer and President

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Thomas H. McLain, Mark L. Smith, and James E. Dawson, and each of them, with full power to act without the others, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the undersigned and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this registration statement and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing necessary or advisable to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Date		Signature and Title
May 25, 2005	By:	/s/ THOMAS H. MCLAIN *Chairman, Chief Executive Officer and President (Principal Executive Officer)*
May 25, 2005	By:	/s/ MARK L. SMITH *Senior Vice President, Finance, Chief Financial Officer Chief Accounting Officer and Treasurer (Principal Financial and Accounting Officer)*
May 25, 2005	By:	/s/ DAVID L. CASTALDI *Director*
May 25, 2005	By:	/s/ GEOFFREY F. COX, PH.D. *Director*
May 25, 2005	By:	/s/ GEORGE W. EBRIGHT *Director*
May 25, 2005	By:	/s/ RICHARD A. HARVEY, JR. *Director*
May 25, 2005	By:	/s/ LINDA JENCKES *Director*
	By:	/s/ STEPHEN G. SUDOVAR *Director*

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EXHIBIT INDEX

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4.7	Global Note evidencing the Company's 2.875% Convertible Senior Notes
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5.2	Opinion of Cleary, Gottlieb, Steen & Hamilton LLP.
12	Statement re: Computation of Ratio of Earnings to Fixed Charges.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Nutter McClennen & Fish LLP (included in Exhibit 5.1).
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24	Power of Attorney (contained on signature page).
25	Statement of Eligibility of Trustee.

EXHIBIT 4.5

Nabi Biopharmaceuticals

2.875% Convertible Senior Notes due 2025

INDENTURE

Dated as of April 19, 2005

U.S. Bank National Association

as TRUSTEE

CROSS-REFERENCE TABLE (1)

Trust Indenture Act Sections		Indenture Section
§ 310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	7.10
	(b)	7.8; 7.10
	(c)	Not Applicable
§ 311	(a)	7.11
	(b)	7.11
	(c)	Not Applicable
§ 312	(a)	2.5
	(b)	11.3
	(c)	11.3
§ 313	(a)	7.6
	(b)	7.6
	(c)	7.6
	(d)	7.6
§ 314	(a)	4.2; 4.3
	(b)	Not Applicable
	(c)	11.4
	(d)	Not Applicable
	(e)	11.5
	(p)	Not Applicable
§ 315	(a)	7.1
	(b)	7.5
	(c)	7.1
	(d)	7.1
	(e)	6.11
§ 316	(a)(1)(A)	6.5
	(a)(1)(B)	6.4
	(a)(2)	Not Applicable
	(b)	6.7
	(c)	1.5

§ 317	(a)(1)	6.8
	(a)(2)	6.9
	(b)	2.4
§ 318	(a)	11.1

(1) This Cross-Reference Table shall not (i) be deemed, for any purpose, to constitute part of the Indenture, nor (ii) have any bearing on the interpretation of any of its terms or provisions

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(continued)

INDENTURE dated as of April 19, 2005 between NABI BIOPHARMACEUTICALS, a Delaware corporation (the "Company"), and U.S. BANK NATIONAL ASSOCIATION (the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of 2.875% Convertible Senior Notes due 2025 (the "Securities") having the terms, tenor, amount and other provisions hereinafter set forth, and, to provide therefor, the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are duly executed by the Company and are authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid and binding agreement of the Company, in accordance with their and its terms, have been done. In addition, all things necessary to duly authorize the issuance of the Common Stock of the Company issuable upon the conversion of the Securities, and to duly reserve for issuance the number of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I.
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 *Definitions*.

"*144A Global Security*" means a permanent Global Security in the form of the Security attached hereto as Exhibit A, and that is deposited with and registered in the name of the Depositary, representing Securities sold in reliance on Rule 144A under the Securities Act.

"*Additional Securities*" means the Company's 2.875% Convertible Senior Notes due 2025 originally issued after the Issue Date pursuant to Section 2.14, including any replacement Securities as specified in the relevant Additional Securities Board Resolutions or Additional Securities Supplemental Indenture issued therefor in accordance with this Indenture.

"*Additional Securities Board Resolutions*" means resolutions duly adopted by the Board of Directors of the Company and delivered to the Trustee in an Officers' Certificate providing for the issuance of Additional Securities.

"*Additional Securities Supplemental Indenture*" means a supplement to this Indenture duly executed and delivered by the Company and the Trustee pursuant to Article VIII providing for the issuance of Additional Securities.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Applicable Procedures*" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

"*Board of Directors*" means either the board of directors of the Company or any duly authorized committee of such board.

"*Board Resolution*" means a resolution of the Board of Directors.

"*Business Day*" means, with respect to any Security, a day other than a Saturday, a Sunday, or a day that in The City of New York is not a day on which banking institutions are authorized or required by law, regulation or executive order to close.

"*Capital Stock*" for any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity issued by that corporation, but excluding any debt securities convertible into such equity.

"*Certificated Securities*" means Securities that are in the form of the Securities attached hereto as Exhibit B.

"*Common Stock*" shall mean the Common Stock, $0.10 par value per share, of the Company existing on the date of this Indenture or any other shares of Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

"*Company*" means the party named as the "Company" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"*Company Request*" or "*Company Order*" means a written request or order signed in the name of the Company by any two Officers.

"*Conversion Price"* means, as of any date, $1,000 divided by the Conversion Rate in effect on such date.

"*Conversion Rate*" means initially 69.8348 shares per $1,000 principal amount of Securities, subject to adjustment as set forth herein.

"*Corporate Trust Office*" means the corporate trust office of the Trustee at which at any time this Indenture is principally administered, which office at the date hereof is located at One Federal Street, 3rd Floor, Boston Massachusetts, Attention: Bond Window, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

"*Default*" means an event which, with the giving of notice or the lapse of time, or both, would become an Event of Default.

"*Exchange Act*" mans the Securities Exchange Act of 1934, as amended.

"*Global Securities*" means Securities that are in the form of the Securities attached hereto as Exhibit A, and that are registered in the register of Securities in the name of a Depositary or a nominee thereof, and to the extent that such Securities are required to bear the Legend required by Section 2.6(f) hereof, such Securities will be in the form of a 144A Global Security.

"*Holder*" or "*Securityholder*" means a Person in whose name a Security is registered on the Registrar's books.

"*Indenture*" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

"*Initial Purchasers*" means Lehman Brothers Inc., Bear, Stearns & Co. Inc. and Wachovia Capital Markets LLC.

"*Interest Payment Date*" means each April 15 and October 15 of each year, commencing October 15, 2005.

"*Issue Date*" of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

"*Liquidated Damages*" shall have the meaning ascribed to it in the Registration Rights Agreement.

"Majority Owned" means having "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the total voting power of all shares of the respective entity's Capital Stock that are entitled to vote generally in the election of directors. "Majority Owner" has the correlative meaning.

"*Officer*" means the chairman of the board, the vice chairman, the chief executive officer, the president, any vice president, the treasurer, the controller, or the secretary or any assistant treasurer or assistant secretary of the Company.

"*Officers' Certificate*" means a written certificate containing the information specified in Sections 11.4 and 11.5, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers' Certificate given pursuant to Section 4.3 shall be signed by the

principal executive officer, principal financial officer or principal accounting officer of the Company but need not contain the information specified in Sections 11.4 and 11.5.

"*Opinion of Counsel*" means a written opinion containing the information specified in Sections 11.4 and 11.5, from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of, or counsel to, the Company.

"*Person*" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof. The term "Person" includes any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) under the Exchange Act.

"Public Acquirer Common Stock" has the meaning assigned to it in the definition of Public Acquirer Fundamental Change.

"Public Acquirer Fundamental Change" means any event constituting a Non-Stock Fundamental Change in which the acquirer has a class of common stock traded on any U.S. national securities exchange or quoted on The Nasdaq National Market or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change (the "Public Acquirer Common Stock"). If an acquirer does not itself have a class of common stock satisfying the foregoing requirement, it will be deemed to have Public Acquirer Common Stock if a corporation that directly or indirectly is the Majority Owner of the acquirer has a class of common stock satisfying the foregoing requirement, provided that such corporation fully and unconditionally guarantees the securities; in such case, all references to Public Acquirer Common Stock shall refer to such class of common stock.

"Purchase Agreement" means the Purchase Agreement, dated April 13, 2005, among the Company and the Initial Purchasers.

"*Redemption Date*" or "*redemption date*" shall mean the date specified in a notice of redemption on which the Securities may be redeemed in accordance with the terms of the Securities and this Indenture.

"*Redemption Price*" or "*redemption price*" shall have the meaning set forth in Section 5 of the Securities.

"*Registration Rights Agreement*" means the Registration Rights Agreement, dated as of the date hereof, among the Company and the Initial Purchasers.

"*Repurchase Date"* or *"repurchase date"* shall mean April 15, 2010, April 15, 2012, April 15, 2015 or April 15, 2020.

"*Repurchase Price"* or *"repurchase price"* shall have the meaning set forth in Section 3.7(a).

"*Responsible Officer*" shall mean, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee or any other officer of the Trustee to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the

particular subject and who shall have direct responsibility for the administration of this Indenture.

"*Restricted Security*" means a Security required to bear the restrictive legend set forth in the form of Security set forth in Exhibits A and B of this Indenture.

"*Rule 144A*" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"*Sale Price*" of a security on any date of determination means:

(i) the closing sale price as reported by The Nasdaq Stock Market, Inc.;

(ii) if such security is not so reported on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;

(iii) if such security is not so reported, the average of the mid-point of the last bid and ask prices for such security on such date from at least two dealers recognized as market-makers for such security selected by the Company for this purpose; or

(iv) if such security is not so quoted, the average of that last bid and ask prices for such security on such date from a dealer engaged in the trading of convertible securities selected by the Company for this purpose.

"*SEC*" means the Securities and Exchange Commission.

"*Securities*" has the meaning set forth in the Recitals.

"*Securityholder*" or "*Holder*" means a Person in whose name a Security is registered on the Registrar's books.

"*Stated Maturity*," when used with respect to any Security, means April 15, 2025.

"*Subsidiary*" means any Person of which at least a majority of the outstanding Voting Stock shall at the time directly or indirectly be owned or controlled by the Company or by one or more Subsidiaries or by the Company and one or more Subsidiaries.

"*TIA*" means the Trust Indenture Act of 1939 as in effect on the date of this Indenture, *provided*, *however*, that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

"*Trading Day*" means a day during which trading in securities generally occurs on The Nasdaq Stock Market, Inc. or, if the Common Stock is not quoted on The Nasdaq Stock Market, Inc., on the principal other national or regional securities exchange on which the Common Stock then is listed or, if the Common Stock is not traded on The Nasdaq Stock Market, Inc. or listed on a national or regional securities exchange, on the principal other market on which the Common Stock is then traded or quoted.

"*Trustee*" means the party named as the "Trustee" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"*Voting Stock*" of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

Section 1.2 *Other Definitions*.

Term:	**Section in which the term is defined:**
"110% Trading Price Exception"	3.11(a)
"Act"	1.5
"Additional Common Stock"	9.1(b)
"Agent Members"	2.12(e)
"Applicable Stock Price"	9.13(b)(i)
"beneficial owner"	3.11(a)
"Cash Amount"	9.13(a)
"Common Stock Restrictive Legend"	2.6(f)
"Continuing Director"	3.11(a)
"Conversion Agent"	2.3
"Conversion Obligation"	9.13(a)
"Conversion Period"	9.13(b)(ii)
"Conversion Retraction Period"	9.13(a)
"Conversion Value"	9.13(b)(iii)
"Current Market Price"	9.3(g)
"Depositary"	2.1(a)
"distributed assets"	9.3(d)
"DTC"	2.1(a)
"Effective Date"	9.1(b)
"Event of Default"	6.1
"Exchange Act"	2.12(e)
"Expiration Time"	9.3(f)
"Fair Market Value"	9.3(g)
"Fundamental Change"	3.11(a)
"Fundamental Change Purchase Date"	3.11(a)
"Fundamental Change Purchase Notice"	3.11(c)
"Fundamental Change Purchase Price"	3.11(a)
"issuer tender offer"	3.15
"Legal Holiday"	11.8
"Legend"	2.6(f)
"Non-Electing Share"	9.4

Term:	Section in which the term is defined:
"Non-Stock Fundamental Change"	9.1(b)
"Notice of Default"	6.1
"Paying Agent"	2.3
"QIB"	2.1(a)
"Record Date"	9.3(h)
"Redemption Notice"	3.3
"Reference Period"	9.3(d)
"Registrar"	2.3
"Rule 144A Information"	4.6
"Securities Act"	2.6(f)
"Settlement Notice Period"	9.13(a)
"Spin-Off"	9.3(d)
"Spin-Off Valuation Period"	9.3(d)
"Stock Price"	9.1(b)
"transfer"	2.12(d)
"Trigger Event"	9.3(d)

Section 1.3 *Incorporation by Reference of Trust Indenture Act*. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Securities;

"indenture security holder" means a Securityholder;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

Section 1.4 *Rules of Construction*. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with U.S. generally accepted accounting principles as in effect from time to time;

(3) "or" is not exclusive;

(4) “including” means including, without limitation; and

(5) words in the singular include the plural, and words in the plural include the singular.

Section 1.5 *Acts of Holders*.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company, as described in Section 11.2. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer’s individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer’s authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The principal amount and serial number of any Security and the ownership of Securities shall be proved by the register for the Securities.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request,

demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE II.
THE SECURITIES

Section 2.1 *Form and Dating*. The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibits A and B, which are a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company). The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication.

(a) *144A Global Securities*. Securities offered and sold within the United States to qualified institutional buyers as defined in Rule 144A ("QIBs") in reliance on Rule 144A shall be issued initially in the form of a 144A Global Security, which shall be deposited with the Trustee, as custodian for the Depositary and registered in the name of The Depository Trust Company ("DTC") or the nominee thereof (DTC, or any successor thereto, and any such nominee being hereinafter referred to as the "Depositary"), duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the 144A Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary as hereinafter provided.

(b) *Global Securities in General*. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, repurchases and conversions.

Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depositary.

(c) *Book-Entry Provisions*. This Section 2.1(c) shall apply only to Global Securities deposited with or on behalf of the Depositary.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(c), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depositary, (b) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (c) shall be substantially in the form of Exhibit A attached hereto;

provided that the Legend, as defined herein (other than the first and second paragraphs thereof), may be removed from such Global Security on satisfaction of the conditions specified in this Indenture.

(d) *Certificated Securities*. Securities not issued as interests in the Global Securities will be issued in certificated form substantially in the form of Exhibit B attached hereto; *provided* that the Legend may be removed from such Securities on satisfaction of the conditions specified in this Indenture.

Section 2.2 *Execution and Authentication*. The Securities shall be executed on behalf of the Company by any Officer. The signature of the Officer on the Securities may be manual or facsimile. Any seal of the Company appearing on the Securities may be a raised seal or a facsimile.

Securities bearing the manual or facsimile signatures of individuals who were, at the time of the execution of the Securities, Officers shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of authentication of such Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee shall authenticate and deliver the Securities for original issue in an aggregate principal amount of $100,000,000 (or such greater amount necessary to reflect the exercise by the Initial Purchasers of their option to purchase Additional Securities in compliance with the Purchase Agreement, but not in excess of $120,000,000) upon and pursuant to one or more Company Orders without any further action by the Company (including any action otherwise contemplated in Section 11.4 and Section 11.5 hereof). The aggregate principal amount of the Securities due at the Stated Maturity thereof outstanding at any time may not exceed the amount set forth in the foregoing sentence except as provided in Sections 2.7 and 2.14.

The Securities shall be issued only in registered form without coupons and only in denominations of $1,000 of principal amount and any integral multiple of $1,000.

Section 2.3 *Registrar, Paying Agent and Conversion Agent*. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("Registrar"), an office or agency where Securities may be presented for purchase or payment ("Paying Agent") and an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent, including any named pursuant to Section 4.5. The term

Conversion Agent includes any additional conversion agent, including any named pursuant to Section 4.5.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar (in each case, if such Registrar, agent or co-registrar is a Person other than the Trustee). The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Paying Agent and Conversion Agent in connection with the Securities.

Section 2.4 *Paying Agent to Hold Money and Securities in Trust*. Except as otherwise provided herein, on or prior to 10:00 a.m., New York City time, on each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money (in immediately available funds if deposited on the due date) sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds and Common Stock disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money.

Section 2.5 *Securityholder Lists*. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on April 1 and October 1 a listing of Securityholders dated within 15 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

Section 2.6 *Transfer and Exchange*.

(a) Subject to Section 2.12, upon surrender for registration of transfer of any Security, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at the office or agency of the Company designated as Registrar or co-registrar pursuant to Section 2.3, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination

or denominations, of a like aggregate principal amount. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Securities from the Securityholder requesting such transfer or exchange.

Subject to Section 2.12, at the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate principal amount upon surrender of the Securities to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption in whole or in part (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or any Securities in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be purchased in part, the portion thereof not to be purchased) or to issue any Securities, register the transfer of, or exchange any Securities for a period of 15 days before the Redemption Date.

(b) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depositary, (i) transfers of beneficial interests in a Global Security, in whole or in part, may be effected only through a book entry system maintained by the Holder of such Global Security (or its agent) in accordance with Applicable Procedures, (ii) ownership of a beneficial interest in the Security shall be required to be reflected in book entry and (iii) transfers of Global Securities or beneficial interests in Global Securities shall be made only in accordance with Section 2.12 and this Section 2.6(b). Transfers of a Global Security shall be limited to transfers of such Global Security in whole or in part, to the Depositary, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

(c) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the register for the Securities.

(d) Any Registrar appointed pursuant to Section 2.3 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.

(e) No Registrar shall be required to make registrations of transfer or exchange of Securities during any periods designated in the text of the Securities or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

(f) If Securities are issued upon the transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends set forth on the forms of Security attached hereto as Exhibits A and B setting forth such restrictions (collectively, the "Legend"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar (and to the Trustee, if the Trustee is not acting as Registrar) an opinion of counsel addressed to the Company, the Registrar and/or the Trustee, in such form, as may be reasonably required by the Company, to the effect that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act of 1933, as amended ("Securities Act"), or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon (i) provision of such opinion of counsel, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Security that does not bear the Legend. If the Legend is removed from the face of a Security and the Security is subsequently held by the Company or an Affiliate of the Company, the Legend shall be reinstated.

In the event Rule 144(k) as promulgated under the Securities Act is amended to shorten the two-year period under Rule 144(k), then, the references in the Legend to "TWO YEARS," and in the corresponding transfer restrictions described above, will be deemed to refer to such shorter period, from and after receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel to that effect. As soon as practicable after the Company knows of the effectiveness of any such amendment to shorten the two-year period under Rule 144(k), unless such changes would otherwise be prohibited by, or would cause a violation of, the federal securities laws applicable at the time, the Company will provide to the Trustee an Officers' Certificate and an Opinion of Counsel as to the effectiveness of such amendment and the effectiveness of such change to the restrictive legends and transfer restrictions.

Until the Legend on any Restricted Security has been removed in compliance with this Section 2.6(f), all shares of Common Stock (or other securities issuable upon conversion as a result of the provisions of this Indenture) issued upon conversion of such Restricted Security shall bear a legend substantially in the form of the Legend (the "Common Stock Restrictive Legend") and shall be subject to the same restrictions on transfer as such Restricted Security. At any time following the time when the restrictions on transfer set forth in the Common Stock Restrictive Legend shall have expired in accordance with their terms or shall have terminated under applicable law, the holder of such Common Stock may, upon a surrender of the certificate representing such Common Stock to the Company's transfer agent in accordance with such agent's customary procedures (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an opinion of counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Common Stock has been made in compliance with Rule 144 or such successor provision), may receive a new certificate representing such Common Stock, in like amount, which shall not bear the Common Stock Restrictive Legend.

Section 2.7 *Replacement Securities*. If (a) any mutilated Security is surrendered to the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a certificate number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article III hereof, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section 2.7, the Company may require an indemnity by the Holder of such mutilated, lost or stolen Security and the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.7 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.8 *Outstanding Securities; Determinations of Holders' Action*. Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it, those paid pursuant to Section 2.7, those delivered to it for cancellation or surrendered for transfer or exchange and those described in this Section 2.8 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; *provided, however*, that in determining whether the Holders of the requisite principal amount of Securities have given or concurred in any request, demand, authorization, direction, notice, consent, waiver, or other Act hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other Act, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles VI and VIII hereof).

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following a Repurchase Date or a Fundamental Change Purchase Date, as the case may be, or on Stated Maturity, money sufficient to pay Securities payable on that date, then immediately after such Redemption Date, Repurchase Date, Fundamental Change Purchase Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and interest, including Liquidated Damages, if any, on such Securities shall cease to accrue whether or not such Securities are delivered to the Paying Agent; *provided*, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

If a Security is converted in accordance with Article IX, then from and after the time of conversion on the date of conversion, such Security shall cease to be outstanding and interest, including Liquidated Damages, if any, shall cease to accrue on such Security.

Section 2.9 *Temporary Securities*. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.3, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10 *Cancellation*. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation. All Securities surrendered for payment, purchase by the Company pursuant to Article III, conversion, redemption or registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article IX. No Securities shall be authenticated in

lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with the Trustee's customary procedure.

Section 2.11 *Persons Deemed Owners*. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of the Security or the payment of any Redemption Price, Repurchase Price or Fundamental Change Purchase Price in respect thereof, and interest thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 2.12 *Global Securities*.

(a) Notwithstanding any other provisions of this Indenture or the Securities, (A) transfers of a Global Security, in whole or in part, shall be made only in accordance with Section 2.6 and Section 2.12(a)(i), (B) transfers or exchanges of a beneficial interest in a Global Security for an interest in the same or another Global Security shall comply with Section 2.6 and Section 2.12(a)(ii) below, (C) transfers or exchanges of a beneficial interest in a Global Security for a Certificated Security shall comply with Section 2.6, Section 2.12(a)(iii) below and Section 2.12(e)(1) below, and (D) transfers or exchanges of a Certificated Security shall comply with Section 2.6 and Sections 2.12(a)(iv) and (a)(v) below.

(i) *Transfer of Global Security*. A Global Security may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; *provided* that this clause (i) shall not prohibit any transfer of a Certificated Security that is issued in exchange for a Global Security. No transfer of a Global Security to any Person shall be effective under this Indenture or the Securities unless and until such Security has been registered in the name of such Person. Nothing in this Section 2.12(a)(i) shall prohibit or render ineffective any transfer of a beneficial interest in a Global Security effected in accordance with the other provisions of this Section 2.12.

(ii) *Transfer or Exchange of a Beneficial Interest in a Global Security for a Beneficial Interest in the Same or Another Global Security*.

(A) A beneficial interest in a Global Security may not be transferred or exchanged for a beneficial interest in another Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a request to transfer or exchange a beneficial interest in a Global Security in accordance with Applicable Procedures for a beneficial interest in another Global Security, together with:

(1) so long as the Securities are Restricted Securities, certification substantially in the form set forth in Exhibit C;

(2) written instructions (in such form as is reasonably acceptable to the Trustee and in accordance with Applicable Procedures) to the Trustee to make, or direct the Registrar to make, in the case of a transfer or exchange of a beneficial interest in a Global

Security for a beneficial interest in another Global Security, an adjustment on its books and records with respect to such Global Securities to reflect a decrease and increase in the aggregate principal amount of the Securities represented by such Global Securities, such instructions to contain information regarding the Depositary accounts to be debited or credited with such decrease and increase or otherwise be in accordance with Applicable Procedures; and

(3) if the Company or the Trustee so requests, an Opinion of Counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the Legend,

then the Trustee, (1) shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of the Securities represented by the appropriate Global Security to be decreased by the aggregate principal amount that the other Global Security is increased and (2) in accordance with the standing instructions and procedures existing between the Depositary and the Registrar and Applicable Procedures, shall debit and credit or cause to be debited or credited, as appropriate, to the accounts of the persons specified in such instructions a beneficial interest in the Global Security or Global Securities, as appropriate, equal to the amount of the beneficial interests so transferred or exchanged.

(B) Beneficial interests in a Global Security may be transferred to Persons who take delivery in the same Global Security in accordance with the Applicable Procedures and, if the Global Security is a Restricted Security, in accordance with the transfer restrictions set forth in the Legend. No written orders or instructions shall be required to be delivered to the Registrar or the Trustee to effect the transactions described in this Section 2.12(a)(ii)(B).

(C) Other than transfers to the Company or to an Affiliate of the Company, beneficial interests in a Global Security that is not a Restricted Security may not be transferred to a Person who takes delivery thereof in the form of a beneficial interest in a Global Security that is a Restricted Security.

(iii) *Transfer or Exchange of a Beneficial Interest in a Global Security for a Certificated Security*. A beneficial interest in a Global Security may not be exchanged for a Certificated Security except upon satisfaction of the requirements set forth below and in Section 2.12(e)(1) below. Upon receipt by the Trustee of a transfer request of a beneficial interest in a Global Security in accordance with Applicable Procedures for a Certificated Security in the form satisfactory to the Trustee, together with:

(A) so long as the Securities are Restricted Securities, certification in the form set forth in Exhibit C;

(B) written instructions (in such form as is reasonably acceptable to the Trustee and in accordance with Applicable Procedures) to the Trustee to make, or direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect a decrease in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depositary account to be debited with such decrease or otherwise be in accordance with Applicable Procedures; and

(C) if the Company or the Trustee so requests, an Opinion of Counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the Legend,

then the Trustee shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of the Securities represented by the Global Security to be decreased by the aggregate principal amount of the Certificated Security to be issued, shall issue such Certificated Security and shall debit or cause to be debited to the account of the person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Certificated Security so issued.

(iv) *Transfer and Exchange of Certificated Securities*. When Certificated Securities are presented to the Registrar with a request:

(A) to register the transfer of such Certificated Securities; or

(B) to exchange such Certificated Securities for an equal principal amount of Certificated Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided*, *however*, that the Certificated Securities surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing; and

(2) so long as such Securities are Restricted Securities, such Securities are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (x), (y) or (z) below, and are accompanied by the following additional information and documents, as applicable:

(x) if such Certificated Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(y) if such Certificated Securities are being transferred to the Company, a certification to that effect; or

(z) if such Certificated Securities are being transferred pursuant to an exemption from registration, (i) a certification to that effect (substantially in the form set forth in Exhibit C, if applicable) and (ii) if the Company so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the Legend.

(v) *Transfer of a Certificated Security for a Beneficial Interest in a Global Security*. A Certificated Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below.

Upon receipt by the Trustee of a Certificated Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

(A) so long as the Securities are Restricted Securities, certification, in the form set forth in Exhibit C, that such Certificated Security is being transferred to a QIB in accordance with Rule 144A; and

(B) written instructions (in such form as is reasonably acceptable to the Trustee and in accordance with Applicable Procedures) directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depositary account to be credited with such increase or otherwise be in accordance with Applicable Procedures, then the Trustee shall cancel such Certificated Security and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Securities represented by the Global Security to be increased by the aggregate principal amount of the Certificated Security to be exchanged, and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Certificated Security so cancelled. If no Global Securities are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Security in the appropriate principal amount.

(b) Subject to the succeeding Section (c), every Security shall be subject to the restrictions on transfer provided in the Legend and herein including the delivery of an opinion of counsel, if so provided. Whenever any Restricted Security is presented or surrendered for transfer or for exchange, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit C, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such transfer or exchange any Security not so accompanied by a properly completed certificate.

(c) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an opinion of counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable

to the Company, addressed and delivered to the Company and the Trustee, and in form acceptable to the Company, to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the restrictive Legend. The Company shall inform the Trustee in writing of the effective date of any registration statement registering the Securities under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned opinion of counsel or registration statement.

(d) As used in the preceding two paragraphs of this Section 2.12, the term "transfer" encompasses any sale, pledge, transfer, loan, hypothecation or other disposition of any interest in any Security.

(e) The provisions of clauses (1), (2), (3), (4) and (5) below shall apply only to Global Securities:

(1) Notwithstanding any other provisions of this Indenture or the Securities, a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary or one or more nominees thereof, *provided* that a Global Security may be exchanged for Securities registered in the names of any Person designated by the Depositary in the event that (i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a "clearing agency" registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and a successor Depositary is not appointed by the Company within 90 days or (ii) the Company elects to discontinue use of the system of book entry transfer through DTC (or any successor Depositary). Any Global Security exchanged pursuant to clause (i) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (ii) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Security issued in exchange for a Global Security or any portion thereof shall be a Global Security; *provided* that any such Security so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Security.

(2) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Issuer shall execute and the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(3) Subject to the provisions of clause (5) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Securities.

(4) In the event of the occurrence of any of the events specified in clause (1) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.

(5) Neither any members of, or participants in, the Depositary (collectively, the "Agent Members") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

(f) By its acceptance of any Security bearing the Legend, each Holder of such Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and agrees that it will transfer such Security only as provided in this Indenture.

(g) Notwithstanding any terms herein contained to the contrary, neither the Trustee nor the Registrar shall be responsible for determining whether any transfer complies with the registration provisions of or exemptions from the Securities Act, or any other state or federal securities laws that may be applicable; *provided, however*, that if a certificate or opinion is specifically required by the express terms of this 2.12 to be delivered to the Trustee or the Registrar prior to registration or a transfer, the Trustee or the Registrar, as the case may be shall be under a duty to receive the same, and to examine it to determine whether it confirms on its face with the applicable requirements of this Section 2.12.

Section 2.13 *CUSIP Numbers*. The Company may issue the Securities with one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

Section 2.14 *Additional Securities*. The Company may, from time to time, subject to compliance with any other applicable provisions of this Indenture, without the consent of the Holders, create and issue pursuant to this Indenture additional securities ("Additional

Securities") having terms and conditions set forth in Exhibit A identical to those of the other outstanding Securities, except that Additional Securities:

(i) may have a different issue price than other outstanding Securities;

(ii) may have a different issue date from other outstanding Securities;

(iii) may have a different amount of interest payable on the first interest payment date after issuance than is payable on other outstanding Securities;

(iv) may have terms specified in the Additional Securities Board Resolution or Additional Securities Supplemental Indenture for such Additional Securities making appropriate adjustments to this Article II and Exhibit A (and related definitions) applicable to such Additional Securities in order to conform to and ensure compliance with the Securities Act (or other applicable securities laws) and any registration rights or similar agreement applicable to such Additional Securities, which are not adverse in any material respect to the Holder of any outstanding Securities (other than such Additional Securities); and

(v) may be entitled to Liquidated Damages as provided in Section 2.15 not applicable to other outstanding Securities and may not be entitled to such Liquidated Damages applicable to other outstanding Securities;

provided, that no adjustment pursuant to this Section 2.14 shall cause such Additional Securities to constitute, as determined pursuant to an Opinion of Counsel, a different class of securities than the Securities issued on the Issue Date for U.S. federal income tax purposes and *provided further,* that the Additional Securities have the same CUSIP number as other outstanding Securities pending performance by the Company of its obligations under a registration rights agreement applicable thereto. No Additional Securities may be issued if any Event of Default has occurred.

Section 2.15 *Liquidated Damages Under the Registration Rights Agreement*. Under certain circumstances, the Company may be obligated to pay Liquidated Damages to Holders, all as and to the extent set forth in the Registration Rights Agreement. The terms of the Registration Rights Agreement obligating the Company to pay such Liquidated Damagers are hereby incorporated herein by reference and such Liquidated Damages are deemed to be interest for purposes of this Indenture.

ARTICLE III.
REDEMPTION AND PURCHASES

Section 3.1 *Company's Right to Redeem; Notices to Trustee*. Prior to April 18, 2010, the Securities will not be redeemable at the Company's option. Beginning on April 18, 2010, the Company, at its option, may redeem the Securities, subject to and in accordance with the terms and conditions of Section 3.1 through 3.6 hereof, for cash, as a whole or in part, at a redemption price equal to the principal amount of those Securities. In addition, the Company will pay any accrued and unpaid interest, including Liquidated Damages, if any, on those Securities (including Securities which are converted into Common Stock under the circumstances specified

in Section 9.9) to but excluding the Redemption Date. If the Company elects to redeem Securities, it shall notify the Trustee in writing of the Redemption Date, the principal amount of Securities to be redeemed and the Redemption Price.

The Company shall give the notice to the Trustee of its intention to exercise its right to redeem the Securities as provided for in this Section 3.1 by a Company Order at least ten (10) Business Days prior to the day the Redemption Notice pursuant to Section 3.3. is to be mailed to the Holders.

Section 3.2 *Selection of Securities to Be Redeemed*. If less than all the Securities are to be redeemed, unless the procedures of the Depositary provide otherwise, the Trustee shall select the Securities to be redeemed by lot, on a pro rata basis or by another method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange on which the Securities are then listed). The Trustee shall make the selection by or before the date when notice of such redemption is required to be mailed to Holders pursuant to Section 3.3 from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal amount of Securities that have denominations larger than $1,000.

Securities and portions of Securities that the Trustee selects shall be in principal amounts of $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of the Securities to be redeemed.

Securities and portions of Securities that are to be redeemed are convertible by the Holder until the close of business on the Business Day prior to the Redemption Date unless the Company fails to pay the Redemption Price on the Redemption Date. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.3 *Notice of Redemption*. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail a notice of redemption (the "Redemption Notice") by first-class mail, postage prepaid, to each Holder of Securities to be redeemed.

The notice shall identify the Securities to be redeemed and shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) the Conversion Rate;

(4) the name and address of the Paying Agent and Conversion Agent;

(5) that Securities called for redemption may be converted at any time before the close of business on the Business Day prior to the Redemption Date;

(6) that Holders who wish to convert their Securities must satisfy the requirements set forth in Article IX hereof;

(7) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(8) if fewer than all of the outstanding Securities are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Securities to be redeemed;

(9) that, unless the Company defaults in making payment of such Redemption Price, interest, including Liquidated Damages, if any, on Securities called for redemption will cease to accrue on and after the Redemption Date;

(10) whether the Company has elected to settle its obligation upon conversion in cash or a combination of cash and Common Stock, and, in the event that the Company has elected to deliver all or a portion of its Conversion Obligation in cash, the date on which the Conversion Period will begin;

(11) the CUSIP number(s) of the Securities; and

(12) any other information the Company wants to present.

At the Company's written request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense, *provided* that the Company makes such request at least ten Business Days prior to the date by which such notice of redemption is to be given to Holders in accordance with this Section 3.3, unless the Trustee agrees to a shorter period.

Section 3.4 *Effect of Notice of Redemption*. Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice.

Section 3.5 *Deposit of Redemption Price*. Prior to 10:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the applicable Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Securities pursuant to Article IX. If such money is then held by the Company in trust and is not required for such purpose, it shall be discharged from such trust.

Section 3.6 *Securities Redeemed in Part*. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in principal amount to the unredeemed portion of the Security surrendered.

Section 3.7 *Repurchase of Securities at Option of the Holder*.

(a) Securities shall be purchased by the Company, subject to and in accordance with the terms and conditions of this Section 3.7, for cash, as a whole or in part, at the option of the Holder on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020 (each, a "Repurchase Date"), at a purchase price equal to the principal amount of those Securities (the "Repurchase Price"). In addition, the Company will pay any accrued and unpaid interest, including Liquidated Damages, if any, on those Securities (including Securities which are converted into Common Stock under the circumstances specified in Section 9.9) to, but excluding, the Redemption Date. Repurchases of Securities under this Section 3.7 shall be made, at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent by a Holder of a written notice (a "Repurchase Notice") during the period beginning at any time from 9:00 a.m., New York City time, on the date that is 20 Business Days prior to the applicable Repurchase Date until 5:00 p.m., New York City time, on the Business Day preceding the applicable Repurchase Date stating:

(A) the certificate numbers of the Securities which the Holder will deliver to be purchased, if applicable,

(B) the portion of the principal amount of the Securities which the Holder will deliver to be purchased, which portion must be a principal amount of $1,000 or an integral multiple thereof, and

(C) that such Security shall be purchased as of the Repurchase Date pursuant to the terms and conditions specified in this Indenture;

(2) delivery or book-entry transfer of the Securities to the Paying Agent at any time after delivery of the applicable Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent, such delivery being a condition to receipt by the Holder of the Repurchase Price therefor; *provided* that such Repurchase Price shall be so paid pursuant to this Section 3.7 only if the Security so delivered to the Paying Agent shall conform in all material respects to the description thereof in the related Repurchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.7, a portion of a Security, if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.7 shall be consummated by the delivery of the consideration to be received by the Holder

promptly following the later of the Repurchase Date and the time of the book-entry transfer or delivery of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Repurchase Notice contemplated by this Section 3.7 shall have the right to withdraw such Repurchase Notice at any time prior to 5:00 p.m., New York City time, on the Business Day preceding the applicable Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.8.

The Paying Agent shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

Section 3.8 *Effect of Repurchase Notice*. Upon receipt by the Paying Agent of the Repurchase Notice specified in Section 3.7, the Holder of the Security in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is validly withdrawn) thereafter be entitled to receive solely the Repurchase Price with respect to such Security. Such Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Repurchase Date with respect to such Note (provided the Holder has satisfied the conditions in Section 3.7) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.7. Securities in respect of which a Repurchase Notice has been given by the Holder thereof may not be converted pursuant to Article IX hereof on or after the date of the delivery of such Repurchase Notice unless such Repurchase Notice has first been validly withdrawn.

A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Repurchase Notice at any time prior to the close of business on the Repurchase Date, specifying:

(1) the certificate number, if any, of the Security in respect of which such notice of withdrawal is being submitted, or the appropriate Depositary information if the Security in respect of which such notice of withdrawal is being submitted is represented by a Global Security,

(2) the principal amount of the Security with respect to which such notice of withdrawal is being submitted, and

(3) the principal amount, if any, of such Security which remains subject to the original Repurchase Notice and which has been or will be delivered for purchase by the Company.

Section 3.9 *Deposit of Repurchase Price*. Prior to 10:00 a.m., New York City time on the Business Day following the Repurchase Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the applicable Repurchase Price of all the Securities or portions of Securities thereof that are to be purchased as of the Repurchase Date. If the Paying Agent holds funds sufficient to pay the aggregate Repurchase Price for all Securities or portions thereof that are to be repurchased as of the Repurchase Date, such Securities will cease to be outstanding and interest will cease to accrue thereon as of the

applicable Repurchase Date whether or not book entry of the Securities has been made or the Securities have been delivered to the Paying Agent.

Section 3.10 *Securities Repurchased in Part*. Upon surrender of a Security that is repurchased in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in principal amount to the unrepurchased portion of the Security surrendered.

Section 3.11 *Purchase of Securities at Option of the Holder upon Fundamental Change*.

(a) (1) If a Fundamental Change occurs at any time prior to the Stated Maturity (subject to certain exceptions set forth below), each Holder of Securities not previously purchased or redeemed by the Company shall have the right, at such Holder's option, to require the Company to redeem all of such Holder's Securities for cash or any portion thereof that is a multiple of $1,000, at a purchase price equal to the principal amount of these Securities (the "Fundamental Change Purchase Price"), as of the date, as determined by the Company, that is between 30 and 60 days after the date of a notice of Fundamental Change delivered by the Company pursuant to Section 3.11(b) (the "Fundamental Change Purchase Date"), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.11(c).

A "Fundamental Change" will be deemed to have occurred at such time after the Securities are originally issued when any of the following events shall occur:

(i) the acquisition by any Person, directly or indirectly, through a purchase, merger or other acquisition transaction, or series of purchases, mergers or other acquisition transactions, of shares of the Capital Stock of the Company entitling that Person to exercise 50% or more of the total voting power of all shares of the Capital Stock of the Company entitled to vote generally in elections of directors, other than any acquisition by the Company, any of its subsidiaries or any of its employee benefit plans; or

(ii) the first day on which a majority of the members of the Board of Directors of the Company does not consist of Continuing Directors; or

(iii) the Company consolidates or merges with or into any other Person, any merger of another Person into the Company, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of the Company's properties and assets to another Person, other than: (A) any transaction: (1) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Capital Stock of the Company; and (2) pursuant to which the holders of 50% or more of the total voting power of all shares of Capital Stock of the Company entitled to vote generally in elections of directors immediately prior to the transaction have the right to exercise, directly or indirectly, 50% or more of the total voting power of all shares of Capital Stock of the Company entitled to vote generally in elections of directors of the continuing or surviving Person immediately after giving effect to such transaction; or (B) any merger primarily for the purpose of changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock, solely into shares of common stock of the surviving entity, or

(iv) the termination of trading of the Common Stock, which shall be deemed to have occurred if the Common Stock or other common stock into which the Securities are convertible is neither listed for trading on a United States national securities exchange nor approved for listing on The Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices or traded in over-the-counter securities markets, and no American Depositary Shares or similar instruments for such common stock are so listed or approved for listing in the United States.

A "Continuing Director" shall mean, as of any date of determination, any member of the Board of Directors who:

(i) was a member of the Board of Directors of the Company on the date hereof; or

(ii) was nominated for election, appointed or elected to the Board of Directors with the approval of a majority of the Continuing Directors who were members of the Board of Directors at the time of the new director's nomination, appointment or election, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the Company's entire Board of Directors in which such individual is named as a nominee for director.

(2) Notwithstanding the provisions of Section 3.11(a)(1), the Company shall not be required to purchase the Securities of the Holders upon a Fundamental Change pursuant to this Section 3.11 (and a Fundamental Change shall be deemed not to have occurred) if:

(i) the Sale Price per share of Common Stock for any five Trading Days within (1) the period of 10 consecutive Trading Days ending immediately after the later of the Fundamental Change or the public announcement of the Fundamental Change, in the case of a Fundamental Change under clause (i) or (ii) of the definition of "Fundamental Change" above, or (2) the period of 10 consecutive Trading Days ending immediately before the Fundamental Change, in the case of a Fundamental Change under clause (iii) of the definition of "Fundamental Change" above, equals or exceeds 110% of the Conversion Price of the Securities in effect on each of those five Trading Days (the "110% Trading Price Exception"); or

(ii) more than 90% of the consideration in the transaction or transactions (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) which otherwise would constitute a Fundamental Change under clause (i), (ii) or (iii) above consists of shares of common stock, depositary receipts or other certificates representing common equity interests traded or to be traded immediately following such transaction on a national securities exchange or quoted on The Nasdaq National Market, and, as a result of the transaction or transactions, the Securities become convertible solely into such common stock (other than cash paid in lieu of fractional shares), depositary receipts or other certificates representing common equity interests (and any rights attached thereto).

For the purposes of this Section 3.11, (x) whether a Person is a "beneficial owner" shall be determined in accordance with Rule 13d-3 and Rule 13d-5 under the Exchange Act (except that any of those Persons shall be deemed to have beneficial ownership of all securities it has the

right to acquire, whether the right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition) and (y) the term "Person" includes any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

(b) No later than 15 days after the occurrence of a Fundamental Change, the Company shall mail a written notice of the Fundamental Change by first class mail to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Fundamental Change Purchase Notice to be completed by the Holder and shall state:

(1) briefly, the events causing a Fundamental Change and the date of such Fundamental Change;

(2) the date by which the Fundamental Change Purchase Notice, as defined herein, pursuant to this Section 3.11 must be delivered to the Paying Agent in order for a Holder to exercise the repurchase rights;

(3) the Fundamental Change Purchase Date;

(4) the Fundamental Change Purchase Price;

(5) the name and address of the Paying Agent and the Conversion Agent;

(6) the Conversion Rate and any adjustments thereto;

(7) that the Securities as to which a Fundamental Change Purchase Notice has been given may be converted pursuant to Article IX hereof only if the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(8) that the Securities must be surrendered to the Paying Agent to collect payment;

(9) that the Fundamental Change Purchase Price for any Security as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Fundamental Change Purchase Date and the time of surrender of such Security as described in clause (8) above;

(10) briefly, the procedures the Holder must follow to exercise rights under this Section 3.11;

(11) briefly, the conversion rights of the Securities;

(12) the procedures for withdrawing a Fundamental Change Purchase Notice;

(13) that, unless the Company defaults in making payment of such Fundamental Change Purchase Price, interest, including Liquidated Damages, if any, on Securities surrendered for purchase by the Company will cease to accrue on and after the Fundamental Change Purchase Date;

(14) the CUSIP number(s) of the Securities; and

(15) any other information the Company wants to present.

Without otherwise limiting the Company's obligations pursuant to this Section 3.11 in any way, the Company shall also issue a press release through Dow Jones & Company, Inc. containing the relevant information and otherwise make this information available on the Company's web site or through another public medium as the Company may use at that time.

(c) A Holder may exercise its rights specified in Section 3.11(a) upon delivery of a written notice of purchase (a "Fundamental Change Purchase Notice") to the Paying Agent at any time on or prior to the close of business on the second Business Day preceding the Fundamental Change Purchase Date (unless the Company shall specify a later date), specifying:

(1) the certificate number of the Security, if certificated, which the Holder will deliver to be purchased or, if not certificated, the notice must comply with the appropriate Depositary procedures;

(2) the portion of the principal amount of the Security which the Holder will deliver to be purchased, which portion must be $1,000 or an integral multiple of $1,000; and

(3) that such Security shall be purchased pursuant to the terms and conditions specified in this Indenture.

The delivery of such Security to the Paying Agent with the Fundamental Change Purchase Notice (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Fundamental Change Purchase Price therefor; *provided*, *however*, that such Fundamental Change Purchase Price shall be so paid pursuant to this Section 3.11 and Section 3.12 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Fundamental Change Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.11 and Section 3.12, a portion of a Security if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.11 and Section 3.12 shall be consummated by the delivery of the consideration to be received by the Holder.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 3.11(c) shall have the right to withdraw such Fundamental Change Purchase Notice, in whole or in part, at any time prior to the close of business on the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.12.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written withdrawal thereof.

(d) The Trustee shall be entitled to rely conclusively on any notice of Fundamental Change it may receive pursuant to Section 3.11(b), and in the absence of its receipt of any such notice it shall be entitled to assume without inquiry that no Fundamental Change has occurred. The Trustee shall not be under any duty independently to determine, verify or monitor the Sale Price or any Fundamental Change Purchase Price.

Section 3.12 *Effect of Fundamental Change Purchase Notice; Withdrawal*. Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 3.11(c), the Holder of the Security in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Purchase Price with respect to such Security. Such Fundamental Change Purchase Price shall be paid to such Holder, subject to the receipt of funds by the Paying Agent, promptly following the later of (x) the Fundamental Change Purchase Date with respect to such Security (provided the conditions in Section 3.11(c) have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.11(c). Securities in respect of which a Fundamental Change Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article IX hereof on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Fundamental Change Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Fundamental Change Purchase Notice, at any time prior to the close of business on the Fundamental Change Purchase Date, specifying:

(1) the certificate number, if any, of the Security in respect of which such notice of withdrawal is being submitted, or, if not certificated, the notice must comply with the appropriate Depositary procedures,

(2) the principal amount of the Security with respect to which such notice of withdrawal is being submitted, and

(3) the principal amount, if any, of such Security which remains subject to the original Fundamental Change Purchase Notice, and which has been or will be delivered for purchase by the Company.

There shall be no purchase of any Securities pursuant to Section 3.11 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Fundamental Change Purchase Notice) and is continuing an Event of Default, as defined herein (other than a default in the payment of the Fundamental Change Purchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Fundamental Change Purchase Notice

has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change Purchase Price with respect to such Securities) in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.13 *Deposit of Fundamental Change Purchase Price*. Prior to 10:00 a.m., New York City time, on the Business Day following the Fundamental Change Purchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all the Securities or portions thereof which are to be purchased as of the Fundamental Change Purchase Date.

Section 3.14 *Securities Purchased in Part*. Any Certificated Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered which is not purchased.

Section 3.15 *Covenant to Comply With Securities Laws Upon Purchase of Securities*. When complying with the provisions of Section 3.7 and Section 3.11 (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions available under applicable law, the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Section 3.7 and Section 3.11 to be exercised in the time and in the manner specified in Section 3.7 and Section 3.11, as the case may be.

Section 3.16 *Repayment to the Company*. The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed as provided in Section 11 of the Securities (subject to the provisions of Section 7.1(f)), held by them for the payment of the Repurchase Price or the Fundamental Change Purchase Price, as the case may be; *provided, however*, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.13 exceeds the aggregate Repurchase Price or Fundamental Change Purchase Price of the Securities, as the case may be, or portions thereof which the Company is obligated to purchase as of the Repurchase Date or the Fundamental Change Purchase Date, as the case may be, then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Repurchase Date or the Fundamental Change Purchase Date, as the case may be, the Trustee shall return any such excess to the Company (subject to the provisions of Section 7.1(f)).

ARTICLE IV.
COVENANTS

Section 4.1 *Payment of Securities*. The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities or pursuant to this Indenture. Any amounts of cash to be given to the Trustee or Paying Agent, shall be deposited with the Trustee or Paying Agent by 10:00 a.m., New York City time, by the Company. Principal amount plus accrued interest, if any, including Liquidated Damages, if any, the Redemption Price, the Repurchase Price, the Fundamental Change Purchase Price and cash interest, if any, shall be considered paid on the applicable date due if on such date the Trustee or the Paying Agent holds, in accordance with this Indenture, cash sufficient to pay all such amounts then due.

Section 4.2 *SEC and Other Reports*. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company also shall comply with the other provisions of TIA Section 314(a). Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officers' Certificates).

Section 4.3 *Compliance Certificate*. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate, stating whether or not to the knowledge of the signers thereof, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 4.4 *Further Instruments and Acts*. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.5 *Maintenance of Office or Agency*. The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The office of U.S. Bank National Association with an office at 100 Wall Street, Suite 1600, New York, New York 10005 (Attention: Bond Window), shall initially be such office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If

at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 11.2.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes.

Section 4.6 *Delivery of Certain Information*. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information to such Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act. Whether a Person is a beneficial owner shall be determined by the Company to the Company's reasonable satisfaction.

Section 4.7 *Treatment of Securities*. Each Holder, by acceptance of a Security, and beneficial owner, by acceptance of a beneficial ownership interest in a Security, agrees to treat the Securities as indebtedness of the Company for U.S. federal income tax purposes and not to take any action inconsistent with such treatment.

Section 4.8 *Liquidated Damages*. If Liquidated Damages are payable by the Company upon a registration default pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Liquidated Damages per $1,000 principal amount of the Securities that are payable, (ii) the facts and calculations supporting the determination of such amount and (iii) the date on which such damages are payable. The Trustee shall be entitled to rely conclusively on any such certificate, and unless and until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable.

ARTICLE V.
SUCCESSOR CORPORATION

Section 5.1 *When Company May Merge or Transfer Assets*. The Company shall not consolidate with or merge with or into any other Person or convey, transfer, sell, lease or otherwise dispose of all or substantially all of its properties and assets to any Person, unless:

(a) either (1) the Company shall be the continuing corporation or (2) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer or lease all or substantially all of the properties and assets of the Company substantially as an entirety (i) shall be organized and

validly existing under the laws of the United States or any state thereof or the District of Columbia and (ii) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

(b) if as a result of such transaction the Securities become convertible into common stock or other securities issued by a third party, such third party fully and unconditionally guarantees all obligations of the Company or such successor under the Securities and this Indenture;

(c) immediately after giving effect to such transaction, no Default or Event of Default as defined herein shall have occurred and be continuing; and

(d) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article V and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment (excluding the grant of a security interest but including any foreclosure thereon), sale or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary), which, if such assets were owned by the Company, would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The successor Person formed by such consolidation or into which the Company is merged or the successor Person to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease and obligations the Company may have under a supplemental indenture, the Company shall be discharged from all obligations and covenants under this Indenture and the Securities. Subject to Section 8.6, the Company, the Trustee and the successor Person shall enter into a supplemental indenture to evidence the succession and substitution of such successor Person and such discharge and release of the Company.

ARTICLE VI.
DEFAULTS AND REMEDIES

Section 6.1 *Events of Default*. So long as any Securities are outstanding, each of the following shall be an "Event of Default":

(1) the Company defaults in the payment of the principal amount on any Security when the same becomes due and payable at its Stated Maturity;

(2) the Company defaults in its obligation to repurchase any Security, or any portion thereof, upon the exercise by the Holder of such Holder's right to require the Company to purchase such Securities pursuant to and in accordance with Section 3.7 and 3.11 hereof;

(3) the Company defaults in its obligation to redeem any Security, or any portion thereof, called for redemption by the Company pursuant to and in accordance with Section 3.1 hereof;

(4) the Company defaults in the payment of any accrued and unpaid interest, including Liquidated Damages, if any, on any Security, in each case when due and payable, and continuance of such default for a period of 30 days;

(5) the Company fails to deliver Common Stock, cash or cash and Common Stock (together with cash instead of fraction shares), when required to be delivered upon conversion of a Security, and such failure continues for 5 days after the date delivery of such Common Stock, cash or cash and Common Stock was due;

(6) the Company fails to comply with any of its covenants or agreements in the Securities or this Indenture (other than those referred to in clauses (1) through (5) above) and such failure continues for 60 days after receipt by the Company of a Notice of Default as defined below;

(7) a default under any indebtedness for money borrowed by the Company or any Subsidiary in an aggregate outstanding principal amount in excess of $25.0 million, for a period of 30 days after receipt by the Company of a Notice of Default, which default (A) is caused by the failure to pay principal or interest when due on such indebtedness by the end of the applicable grace period, if any, unless such indebtedness is discharged, or (B) results in the acceleration of such indebtedness, unless such acceleration is waived, cured, rescinded or annulled or unless such indebtedness is discharged;

(8) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any of its Subsidiaries, in an involuntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company or any of its Subsidiaries, as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any of its Subsidiaries, under any applicable law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(9) the commencement by the Company or any of its Subsidiaries, of a voluntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company or any of its Subsidiaries, to the entry of a decree or order for relief in respect of the Company or any of its Subsidiaries, in an involuntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the filing by the Company or any of its Subsidiaries, of a petition or answer or consent seeking reorganization or relief under any applicable law, or the consent by the Company to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver,

liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by the Company or any of its Subsidiaries, of an assignment for the benefit of creditors, or the admission by the Company or any of its Subsidiaries, in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any of its Subsidiaries, expressly in furtherance of any such action.

A Default under clauses (6) and (7) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in the respective clause above after actual receipt of such notice. Any such notice must be in writing, specify the Default, require that it be remedied and state that such notice is a "Notice of Default."

The Trustee shall, within 90 days of the occurrence of a Default or Event of Default known to a Responsible Officer of the Trustee, give to the Holders of the Securities notice of all uncured Defaults or Events of Default known to it, its status and what action the Company is taking or proposes to take with respect thereto; *provided*, *however*, the Trustee shall be protected in withholding such notice if it, in good faith, determines that the withholding of such notice is in the best interest of such Holders, except in the case of a Default or Event of Default under clause (1), (2), (3) or (4) above.

Section 6.2 *Acceleration*. If an Event of Default (other than an Event of Default specified in Section 6.1(8) or (9) with respect to the Company) occurs and is continuing (the Event of Default not having been cured or waived as provided in this Article VI), the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding by written notice to the Company and the Trustee, may declare the principal amount plus accrued and unpaid interest, including Liquidated Damages, if any, on all the Securities to be immediately due and payable. Upon such a declaration, such accelerated amount shall be due and payable immediately. If an Event of Default specified in Section 6.1(8) or (9) occurs and is continuing, the principal amount plus accrued and unpaid interest, including Liquidated Damages, if any, on all the Securities shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding, by written notice to the Trustee (and without notice to any other Securityholder) may rescind or annul an acceleration and its consequences if the rescission or annulment would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the principal amount plus accrued and unpaid interest, including Liquidated Damages, if any, that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 7.7 have been paid. No such rescission or annulment shall affect any subsequent Default or impair any right consequent thereto.

Section 6.3 *Other Remedies*. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the principal amount plus accrued and unpaid interest, including Liquidated Damages, if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.4 *Waiver of Past Defaults*. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding, by written notice to the Trustee (and without notice to any other Securityholder), may waive an existing Default or Event of Default and its consequences except (i) an Event of Default described in Section 6.1(1), 6.1(2), 6.1(3) or 6.1(4), (ii) a Default or Event of Default in respect of a provision that under Section 8.2 cannot be amended without the consent of each Securityholder affected or (iii) a Default or Event of Default which constitutes a failure to convert any Security in accordance with the terms of Article IX. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right. This Section 6.4 shall be in lieu of Section 316(a)(1)(B) of the TIA and such Section 316(a)(1)(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.5 *Control by Majority*. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 6.5 shall be in lieu of Section 316(a)(1)(A) of the TIA and such Section 316(a)(1)(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.6 *Limitation on Suits*. A Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

(1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;

(2) the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and

(5) the Holders of a majority in aggregate principal amount of the Securities at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of any other Securityholder or to obtain a preference or priority over any other Securityholder.

Section 6.7 *Rights of Holders to Receive Payment*. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the principal amount, Redemption Price, Repurchase Price, Fundamental Change Purchase Price or interest, including Liquidated Damages, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date, Repurchase Date or Fundamental Change Purchase Date and to convert the Securities in accordance with Article IX, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 6.8 *Collection Suit by Trustee*. If an Event of Default described in Section 6.1(1), 6.1(2), 6.1(3) or 6.1(4) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount owing with respect to the Securities and the amounts provided for in Section 7.7.

Section 6.9 *Trustee May File Proofs of Claim*. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal amount, Redemption Price, Repurchase Price, Fundamental Change Purchase Price or interest, including Liquidated Damages, if any, in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal amount, Redemption Price, Repurchase Price, Fundamental Change Purchase Price, or interest, including Liquidated Damages, if any, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.7) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement,

adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities*. If the Trustee collects any money pursuant to this Article VI, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts due and unpaid on the Securities for the principal amount, Redemption Price, Repurchase Price, Fundamental Change Purchase Price or interest, including Liquidated Damages, if any, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities; and

THIRD: the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 6.11 *Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in aggregate principal amount of the Securities at the time outstanding. This Section 6.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.12 *Waiver of Stay, Extension or Usury Laws*. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount, Redemption Price, Repurchase Price or Fundamental Change Purchase Price in respect of Securities, or any interest, including Liquidated Damages, if any, on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VII.
TRUSTEE

Section 7.1 *Duties of Trustee*.

(a) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default known to the Trustee:

(1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein. This Section 7.1(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this Section (c) does not limit the effect of Section (b) of this Section 7.1;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5. Subparagraphs (c)(1), (2) and (3) shall be in lieu of Sections 315(d)(1), 315(d)(2) and 315(d)(3) of the TIA and such Sections 315(d)(1), 315(d)(2) and 315(d)(3) are hereby expressly excluded from this Indenture, as permitted by the TIA.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c), (e) and (f) of this Section 7.1.

(e) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder unless otherwise agreed in writing with the Company.

Section 7.2 *Rights of Trustee*. Subject to its duties and responsibilities under the TIA,

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate;

(c) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(d) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it reasonably believes to be authorized or within its rights or powers conferred under this Indenture;

(e) the Trustee may consult with counsel selected by it and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(h) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the

Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder;

(k) in no event shall the Trustee be responsible or liable for special, indirect or consequential loss of damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(l) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any Person authorized to sign an Officers' Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded; and

(m) the grant of any permissive power or right to the Trustee hereunder shall not be considered to impose a mandatory duty to act.

Section 7.3 *Individual Rights of Trustee*. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

Section 7.4 *Trustee's Disclaimer*. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use or application of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act or in any offering document for the Securities, the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

Section 7.5 *Notice of Defaults*. If a Default occurs and if it is known to the Trustee, the Trustee shall give to each Securityholder notice of the Default within 90 days after it occurs or, if later, within 15 days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice. Notwithstanding the preceding sentence, except in the case of a Default described in Section 6.1(1), 6.1(2), 6.1(3) or 6.1(4), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interest of the Securityholders. The preceding

sentence shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA. The Trustee shall not be deemed to have knowledge of a Default unless a Responsible Officer of the Trustee has received written notice of such Default, which notice specifically references this Indenture and the Securities.

Section 7.6 *Reports by Trustee to Holders*. Within 60 days after each April 15 beginning with the April 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such April 15 that complies with TIA Section 313(a), if required by such Section 313(a). The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each securities exchange, if any, on which the Securities are listed. The Company agrees to notify the Trustee promptly whenever the Securities become listed on any securities exchange and of any delisting thereof.

Section 7.7 *Compensation and Indemnity*. The Company agrees:

(a) to pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (which compensation shall not be limited (to the extent permitted by law) by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify the Trustee or any predecessor Trustee and their agents for, and to hold them harmless against, any loss, damage, claim, liability, cost or expense (including attorney's fees and expenses, and taxes (other than taxes based upon, measured by or determined by the income of the Trustee and any and all franchise taxes of the Trustee)) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust or the exercise or performance of its duties hereunder, including without limitation the costs and expenses of defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

To secure the Company's payment obligations in this Section 7.7, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay the principal amount, Redemption Price, Repurchase Price, Fundamental Change Purchase Price or interest, including Liquidated Damages, if any, as the case may be, on particular Securities.

The Company's payment and indemnification obligations pursuant to this Section 7.7 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses or renders services after the occurrence of a Default specified in

Section 6.1(8) or 6.1(9), the expenses, including the reasonable charges and expenses of its counsel, and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

Section 7.8 *Replacement of Trustee*. The Trustee may resign by so notifying the Company; *provided, however*, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.8. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10;

(2) the Trustee is adjudged bankrupt or insolvent;

(3) a receiver or public officer takes charge of the Trustee or its property; or

(4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company satisfactory in form and substance to the retiring Trustee and the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount of the Securities at the time outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 7.9 *Successor Trustee by Merger*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets (including the administration of the trust created by this Indenture) to, another corporation or association, the resulting, surviving or transferee corporation or association without any further act shall be the successor Trustee.

Section 7.10 *Eligibility; Disqualification*. The Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(b). The Trustee (or its parent holding company)

shall have a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition. Nothing herein contained shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b).

Section 7.11 *Preferential Collection of Claims Against Company*. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

Section 7.12 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of god, and interruptions, loss or malfunctions or utilities, communications or computer (software or hardware) services.

ARTICLE VIII.
AMENDMENTS

Section 8.1 *Without Consent of Holders*. The Company and the Trustee may amend, modify or supplement this Indenture or the Securities without the consent of any Securityholder to:

(a) add to the covenants of the Company for the benefit of the Holders of Securities;

(b) surrender any right or power herein conferred upon the Company;

(c) provide for conversion rights of Holders if any reclassification or change of the Common Stock or any consolidation, merger or sale of all or substantially all of the Company's assets occurs;

(d) provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article V hereof;

(e) subject to Section 9.3(m), increase the Conversion Rate, provided that such increase will not adversely affect the interest of the Holders;

(f) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(g) making any changes or modifications necessary in connection with the registration of the Securities under the Securities Act as contemplated in the Registration Rights Agreement; provided that such change or modification does not, in the good faith opinion of the Board of Directors and the Trustee, adversely affect the interests on the Holders in any material respect;

(h) cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or which is otherwise defective; *provided*, *however*, that such action pursuant to this clause (g) does not, in the good faith opinion of the Board of Directors of the Company (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Securities in any material respect; provided, further, that any amendment made solely to conform the provisions of this Indenture to the description of the Securities contained in the Offering Memorandum relating to the Securities, dated April 13, 2005, will not be deemed to adversely affect the interests of the Holders; and

(i) add or modify any other provisions herein with respect to matters or questions arising hereunder which the Company and the Trustee may deem necessary or desirable and that will not, in the good faith opinion of the Board of Directors of the Company (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Securities.

Section 8.2 *With Consent of Holders*. Except as provided below in this Section 8.2 and in Section 8.1, this Indenture or the Securities may be amended, modified or supplemented, and noncompliance in any particular instance with any provision of this Indenture or the Securities may be waived, in each case with the written consent of the Holders of at least a majority of the aggregate principal amount of the Securities at the time outstanding.

Without the written consent or the affirmative vote of each Holder of Securities affected thereby, an amendment or waiver under this Section 8.2 may not:

(a) change the maturity of the principal or the date any installment of interest, including Liquidated Damages, is due on any Security;

(b) reduce the principal amount, Repurchase Price, Redemption Price or Fundamental Change Purchase Price of, or interest, including Liquidated Damages payable on, any Security;

(c) change the currency of any amount owed or owing under the Security or any interest thereon from U.S. Dollars;

(d) impair the right of any Holder to institute suit for the enforcement of any payment or with respect to any Security;

(e) modify the obligation of the Company to maintain an office or agency in The City of New York pursuant to Section 4.5;

(f) except as otherwise permitted or contemplated by the provisions of this Indenture, adversely affect the repurchase right of the Holders of the Securities or the redemption provisions as provided in Article III or the right of the Holders of the Securities to convert any Security as provided in Article IX;

(g) modify any of the provisions of this Section 8.2, or reduce the principal amount of outstanding Securities required to waive a default, except to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security affected thereby; or

(h) reduce the percentage of the principal amount of the outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver provided for in this Indenture.

It shall not be necessary for the consent of the Holders under this Section 8.2 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 8.2 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

Nothing in this Section 8.2 shall impair the ability of the Company and the Trustee to amend this Indenture or the Securities without the consent of any Securityholder to provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article V hereof.

Section 8.3 *Compliance with Trust Indenture Act*. Every supplemental indenture executed pursuant to this Article shall comply with the TIA.

Section 8.4 *Revocation and Effect of Consents, Waivers and Actions*. Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Securityholder.

Section 8.5 *Notation on or Exchange of Securities*. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

Section 8.6 *Trustee to Sign Supplemental Indentures*. The Trustee shall sign any supplemental indenture authorized pursuant to this Article VIII if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall receive, and (subject to the provisions of Section 7.1) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 8.7 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes;

and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE IX.
CONVERSIONS

Section 9.1 *Conversion Privilege*.

(a) Subject to and upon compliance with the provisions of this Article IX, a Holder of a Security shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 or an integral multiple of $1,000) of such Security into shares of Common Stock at the Conversion Rate in effect on the date of conversion, at any time prior to the close of business on the Business Day prior to the Stated Maturity of the Securities.

(b) Subject to Section 9.4 and Section 9.12, if a Holder elects to convert a Security in connection with clauses (i) or (iii) of the definition of Fundamental Change referred to in Section 3.11 (or in connection with a transaction that would have been a Fundamental Change under such clause (i) or (iii) but for the existence of the 110% Trading Price Exception), within 30 days of receiving notice of a Fundamental Change, pursuant to which 10% or more of the consideration for the Common Stock (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in such transaction consists of cash or securities (or other property) that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or The Nasdaq National Market (a "Non-Stock Fundamental Change"), the Company will increase the Conversion Rate by a number of additional shares of Common Stock (the "Additional Common Stock") as set forth below. The number of shares of Additional Common Stock will be determined by reference to the table below, based on the date on which the Non-Stock Fundamental Change becomes effective (the "Effective Date") and the price (the "Stock Price") paid per share for the Common Stock in the Non-Stock Fundamental Change. If Holders of Common Stock receive only cash in the Non-Stock Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Sale Prices of the Common Stock on the five Trading Days prior to but not including the Effective Date of such Non-Stock Fundamental Change.

The Stock Prices and number of shares of Additional Common Stock set forth in the table below will be adjusted as of any date on which the Conversion Rate is adjusted. On such date, the Stock Prices shall be adjusted by multiplying:

(1) the Stock Prices applicable immediately prior to such adjustment, by

(2) a fraction, of which

(A) the numerator shall be the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment; and

(B) the denominator shall be the Conversion Rate as so adjusted.

The number of shares of Additional Common Stock shall be correspondingly adjusted in the same manner as the adjustments described in Section 9.3.

The following table sets forth the Stock Price and the number of shares of Additional Common Stock issuable per $1,000 aggregate principal amount of Securities:

Stock Price	$11.02	$15.00	$20.000	$25.00	$30.00	$35.00	$40.00	>$40.00
4/15/05	20.98	11.54	6.44	4.03	2.72	1.92	1.40	0.00
4/15/06	20.68	10.80	5.71	3.44	2.26	1.57	1.13	0.00
4/15/07	20.49	9.91	4.82	2.73	1.73	1.17	0.83	0.00
4/15/08	20.22	8.59	3.57	1.81	1.08	0.72	0.51	0.00
4/15/09	19.75	6.33	1.71	0.63	0.34	0.23	0.17	0.00
4/15/10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

If the Stock Price and Effective Date are not set forth on the table above and the Stock Price is:

(A) between two Stock Prices on the table or the Effective Date is between two dates on the table, the number of shares of Additional Common Stock will be determined by straight-line interpolation between the number of shares of Additional Common Stock set forth for the higher and lower Stock Price and the two Effective Dates, as applicable, based on a 360-day year;

(B) in excess of $40.00 per share (subject to adjustment), no shares of Additional Common Stock will be issued upon conversion; or

(C) less than $11.02 per share (subject to adjustment), no shares of Additional Common Stock will be issued upon conversion.

Notwithstanding the foregoing, in no event shall the total number of shares of Common Stock issuable upon conversion exceed 90.7852 per $1,000 of aggregate principal amount of Securities, subject to adjustments in the same manner as the Conversion Rate in Section 9.3.

The Company and each Holder, by accepting the Securities, acknowledge that the loss suffered by a Holder in the event of a Fundamental Change requiring the Company to deliver Additional Common Stock upon conversion of a Security is not susceptible of precise determination. The Company and each Holder, by accepting the Securities, agree that the adjustment to the Conversion Rate relating to the Additional Common Stock is intended to compensate Holders for the lost option value of the Securities following such Fundamental Change, is reasonable in relation to the loss suffered by Holders and is not a penalty for the Company.

(c) The Company shall provide written notice to all Holders and to the Trustee at least 15 Trading Days prior to the anticipated Effective Date of a Non-Stock Fundamental Change. The Company must also provide written notice to all Holders and to the Trustee within 15 days following the effectiveness of such Non-Stock Fundamental Change. Subject to Section 9.12, Holders may surrender Securities for conversion and receive the Additional Common Stock pursuant to Section 9.1(b) at any time within 30 days of receiving notice of such Non-Stock Fundamental Change (or, if such transaction also results in Holders having a right to require the

Company to repurchase their Securities, until the Fundamental Change Purchase Date with respect to such Fundamental Change).

Section 9.2 *Conversion Procedure; Conversion Rate; Fractional Shares*.

(a) Each Security shall be convertible at the office of the Conversion Agent into fully paid and nonassessable shares (calculated to the nearest 1/100th of a share) of Common Stock. The Security will be converted into shares of Common Stock at the Conversion Rate therefor. No payment or adjustment shall be made in respect of dividends on the Common Stock or accrued interest on a converted Security, except as described in Section 9.9 hereof. The Company shall not issue any fraction of a share of Common Stock in connection with any conversion of Securities, but instead shall, subject to Section 9.3(k) hereof, make a cash payment (calculated to the nearest cent) equal to such fraction multiplied by the Sale Price of the Common Stock on the last Trading Day prior to the date of conversion. Notwithstanding the foregoing, a Security in respect of which a Holder has delivered a Fundamental Change Purchase Notice exercising such Holder's option to require the Company to repurchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the Section 3.12 hereof.

(b) Before any Holder of a Security shall be entitled to convert the same into Common Stock, such Holder shall, in the case of Global Securities, comply with the procedures of the Depositary in effect at that time, and in the case of Certificated Securities, surrender such Securities, duly endorsed to the Company or in blank, at the office of the Conversion Agent, and shall give written notice to the Company at said office or place that such Holder elects to convert the same and shall state in writing therein the principal amount of Securities to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for Common Stock to be issued.

Before any such conversion, a Holder also shall pay all funds required, if any, relating to interest on the Securities, as provided in Section 9.9, and all taxes or duties, if any, as provided in Section 9.8.

If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares of Common Stock which shall be deliverable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted thereby) so surrendered. Subject to the next succeeding sentence and to Section 9.13, the Company will, as soon as practicable thereafter, issue and deliver at said office or place to such Holder of a Security, or to such Holder's nominee or nominees, certificates for the number of full shares of Common Stock, including any Additional Common Stock, to which such Holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share to which such Holder would otherwise be entitled. The Company shall not be required to deliver certificates for shares of Common Stock while the stock transfer books for such stock or the security register are duly closed for any purpose, but certificates for shares of Common Stock shall be issued and delivered as soon as practicable after the opening of such books or security register.

(c) A Security shall be deemed to have been converted as of the close of business on the date of the surrender of such Securities for conversion and compliance with the other requirements of this Section 9.2 as provided above, and the Person or Persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record Holder or Holders of such Common Stock as of the close of business on such date.

(d) In case any Security shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Security so surrendered, without charge to such Holder (subject to the provisions of Section 9.8 hereof), a new Security or Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Securities.

Section 9.3 *Adjustment of Conversion Rate*. The Conversion Rate shall be adjusted from time to time as follows:

(a) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, pay a dividend or make a distribution in shares of Common Stock to all holders of its outstanding shares of Common Stock, then the Conversion Rate in effect at the opening of business on the date following the record date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be increased by multiplying such Conversion Rate by a fraction:

(1) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the Record Date fixed for such determination and the total number of shares constituting such dividend or other distribution; and

(2) the denominator of which shall be such number of shares of Common Stock outstanding at the close of business on the Record Date fixed for such determination.

Such increase shall become effective immediately after the opening of business on the day following the Record Date fixed for such determination. If any dividend or distribution of the type described in this Section 9.3(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, then the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case the Company shall, at any time or from time to time while any of the Securities are outstanding, combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately decreased.

Such increase or reduction, as the case may be, shall become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, issue rights or warrants (other than any rights or warrants referred to in Section 9.3(d)) to all or substantially all holders of its shares of Common Stock entitling them to subscribe for or purchase, for a period of up to 45 days, shares of Common Stock at a price per share less than the Sale Price on the Business Day immediately preceding the date of the announcement of such issuance then the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the date after such date of announcement by a fraction:

(1) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of announcement, plus the total number of additional shares of Common Stock so offered for subscription or purchase; and

(2) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the date of announcement, plus the number of shares or securities which the aggregate offering price of the total number of shares or securities so offered for subscription or purchase would purchase at such Sale Price of the Common Stock.

Such adjustment shall become effective immediately after the opening of business on the day following the date of announcement of such issuance. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if the date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Sale Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash to be determined by the Board of Directors.

(d) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, by dividend or otherwise, distribute to all or substantially all holders of its shares of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation and the Common Stock is not changed or exchanged), shares of Capital Stock (other than any dividends or distributions to which Section 9.3(a) applies and distributions of Common Stock to which Section 9.3(a) applies), evidences of its indebtedness or other assets, including securities, but excluding (i) any rights or warrants referred to in Section 9.3(c), (ii) dividends and distributions of stock, securities or other property or assets (including cash) in connection with a reclassification, change, consolidation, merger, combination, sale or conveyance to which Section 9.4 applies, and, (iii) any dividends or distributions paid exclusively in cash referred to in Section 9.3(e) (such capital stock, evidence of its indebtedness, and other assets or securities being distributed hereinafter in this Section 9.3(d) called the "distributed assets"), then, in each such case, subject to the second and third succeeding paragraphs and the last paragraph of this

Section 9.3(d), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction:

(1) the numerator of which shall be the Current Market Price of the Common Stock; and

(2) the denominator of which shall be the Current Market Price of such Common Stock, less the Fair Market Value on such date of the portion of the distributed assets so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date)(determined as provided in Section 9.3(g)).

Such increase shall become effective immediately prior to the opening of business on the day following the Record Date for such distribution. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 9.3(d) by reference to the actual or when issued trading market for any distributed assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 9.3(g) to the extent possible, unless the Board of Directors determines in good faith that determining the Fair Market Value during the Reference Period would not be in the best interest of the Holders. Notwithstanding the foregoing, in the event any such distribution consists of shares of capital stock of, or similar equity interests in, one or more of the Company's Subsidiaries (a "Spin-Off"), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction:

(1) the numerator of which shall be the Current Market Price of the Common Stock (determined as set forth in the third and fourth succeeding sentences), plus the Fair Market Value on such date of the portion of the distributed assets so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date) (determined as set forth in the third and fourth succeeding sentences); and

(2) the denominator of which shall be the Current Market Price on such date.

Such increase shall become effective immediately prior to the opening of business on the day following the last Trading Day of the Spin-Off Valuation Period. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such dividend or distribution had not been declared. In the case of a Spin-Off, the Fair Market Value of the securities to be distributed shall equal the average of the closing sale prices of such securities on the principal securities market

on which such securities are traded for the five consecutive Trading Days commencing on and including the sixth day of trading of those securities after the effectiveness of the Spin-Off (the "Spin-Off Valuation Period"), and the Current Market Price shall be measured for the same period. In the event, however, that an underwritten initial public offering of the securities in the Spin-Off occurs simultaneously with the Spin-Off, Fair Market Value of the securities distributed in the Spin-Off shall mean the initial public offering price of such securities and the Current Market Price shall mean the Sale Price for the Common Stock on the same Trading Day.

Rights or warrants distributed by the Company to all holders of its shares of Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"), (i) are deemed to be transferred with such shares of Common Stock, (ii) are not exercisable and (iii) are also issued in respect of future issuances of shares of Common Stock shall be deemed not to have been distributed for purposes of this Section 9.3(d) (and no adjustment to the Conversion Rate under this Section 9.3(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different distributed assets, evidences of indebtedness or other assets, or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Rate under this Section 9.3(d)):

(1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of shares of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of shares of Common Stock as of the date of such redemption or repurchase; and

(2) in the case of such rights or warrants which shall have expired or been terminated without exercise, the Conversion Rate shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 9.3(d) and Section 9.3(a), 9.3(b) and 9.3(c), any dividend or distribution to which this Section 9.3(d) is applicable that also includes (i) shares of Common Stock, (ii) a subdivision or combination of shares of Common Stock to which Section 9.3(b) applies or (iii) rights or warrants to subscribe for or purchase shares of Common Stock to which Section 9.3(c) applies (or any combination thereof), shall be deemed instead to be:

(1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants, other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Section 9.3(a), 9.3(b) and 9.3(c) apply,

respectively (and any Conversion Rate increase required by this Section 9.3(d) with respect to such dividend or distribution shall then be made), immediately followed by

(2) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion Rate increase required by Sections 9.3(a), 9.3(b), and 9.3(d) with respect to such dividend or distribution shall then be made), except:

(A) the Record Date of such dividend or distribution shall be substituted as (i) "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution," "Record Date fixed for such determinations" and "Record Date" within the meaning of Section 9.3(a) and 9.3(b), (ii) "the day upon which such subdivision becomes effective" and "the day upon which such combination becomes effective" within the meaning of Section 9.3(b), and (iii) "the date fixed for the determination of stockholders entitled to receive such rights or warrants," "the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants" and such "Record Date" within the meaning of Section 9.3(c); and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 9.3(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

In the event of any distribution referred to in this Section 9.3(d) in which (i) the value of such distribution per share of Common Stock equals or exceeds the average of the Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Record Date for such distribution, or (ii) such average of the Sale Prices of the Common Stock exceeds the Fair Market Value of such distribution applicable to one share of Common Stock (as determined by the Board of Directors) by less than $1.00, then, in each such case, in lieu of an adjustment to the Conversion Rate, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security, in addition to shares of Common Stock, the kind and amount of such distribution such Holder would have received had such Holder converted such Security immediately prior to the Record Date for determining the shareholders entitled to receive the distribution.

No adjustment to the Conversion Rate or the ability of a Holder of a Security to convert will be made if the Holder may otherwise participate in such distribution without conversion.

(e) In case the Company shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock cash (excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary), then, in such case, the Conversion Rate shall be increased so that the same shall equal the rate determined by dividing the Conversion Rate in effect on the applicable record date by a fraction,

(1) the numerator of which shall be the Current Market Price minus the amount distributed per share of Common Stock; and

(2) the denominator of which shall be the Current Market Price on such record date.

Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for the determination of the stockholders entitled to receive such cash dividend or other distribution consisting exclusively of cash. If any dividend or distribution of the type described in this Section 9.3(e) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(1) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time; and

(2) the denominator of which shall be the number of shares of Common Stock outstanding (including any Purchased Shares) at the Expiration Time multiplied by the Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time;

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time.

If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) Except as provided below, in case a tender or exchange offer made by a Person other than the Company or any of its Subsidiaries for all or any portion of the Common Stock

shall expire, the Board of Directors have not recommended rejection of such tender of exchange offer and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "Offer Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Sale Price of a share of Common Stock on the Trading Day next succeeding the Offer Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(1) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Offer Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Accepted Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Accepted Purchased Shares) at the Offer Expiration Time and the Sale Price of a share of Common Stock on the Trading Day next succeeding the Offer Expiration Time; and

(2) the denominator of which shall be the number of shares of Common Stock outstanding (including any Accepted Purchased Shares) at the Offer Expiration Time multiplied by the Sale Price of a share of Common Stock on the Trading Day next succeeding the Offer Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Offer Expiration Time.

The foregoing adjustment (i) shall be made only if the tender offer or exchange offer is for an amount that increase the ownership of Common Stock by the Person making such offer to more than 25% of the total shares of Common Stock outstanding and (ii) will not be made if as of the Offer Expiration Time, the tender offer documents disclose a plan or intention to cause the Company to engage in a transaction constituting a Fundamental Change.

(h) For purposes of this Article IX, the following terms shall have the meanings indicated:

"Current Market Price" on any date means the average of the daily Sale Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to such date; *provided*, *however*, that if:

(1) the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Rate pursuant to Section 9.3(a), 9.3(b), 9.3(c), 9.3(d), 9.3(e), 9.3(f) or 9.3(g) occurs during such ten consecutive Trading Days, the Sale Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by dividing such Sale Price by the reciprocal of the

fraction by which the Conversion Rate is so required to be adjusted as a result of such other event;

(2) the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Rate pursuant to Section 9.3(a), 9.3(b), 9.3(c), 9.3(d), 9.3(e), 9.3(f) or 9.3(g) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the day in question, the Sale Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by dividing such Sale Price by the same fraction by which the Conversion Rate is so required to be adjusted as a result of such other event; and

(3) the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (1) or (2) of this proviso, the Sale Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the Fair Market Value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 9.3(d), 9.3(e), 9.3(f) or 9.3(g)) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such "ex" date.

For purposes of any computation under Section 9.3(f) or 9.3(g), if the "ex" date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Rate pursuant to Section 9.3(a), 9.3(b), 9.3(c), 9.3(d), 9.3(e) or 9.3(f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Sale Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by dividing such Sale Price by the same fraction by which the Conversion Rate is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term "ex" date, when used:

(1) with respect to any issuance or distribution, means the first date on which the shares of Common Stock trade regular way on the relevant exchange or in the relevant market from which the Sale Price was obtained without the right to receive such issuance or distribution;

(2) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the shares of Common Stock trade regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective; and

(3) with respect to any tender or exchange offer, means the first date on which the shares of Common Stock trade regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Rate are called for pursuant to this Section 9.3, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 9.3 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

"Fair Market Value" shall mean the amount that a willing buyer would pay a willing seller in an arm's-length transaction (as determined by the Board of Directors, whose determination shall be conclusive).

"Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of shares of Common Stock have the right to receive any cash, securities or other property or in which the shares of Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(i) The Company shall be entitled to make such additional increases in the Conversion Rate, in addition to those required by Section 9.3(a), (b), (c), (d), (e), (f) or (g), as shall be necessary in order that any dividend or distribution of Common Stock, any subdivision, reclassification or combination of shares of Common Stock or any issuance of rights or warrants referred to above shall not be taxable to the holders of Common Stock for United States Federal income tax purposes.

(j) To the extent permitted by applicable law and Section 8.1(e), the Company may, from time to time, increase the Conversion Rate by any amount for any period of time, if such period is at least 20 business days and the increase is irrevocable during the period. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Trustee and each Holder at the address of such Holder as it appears in the register of the Securities maintained by the Registrar, at least 15 days prior to the date the increased Conversion Rate takes effect, a notice of the increase stating the increased Conversion Rate and the period during which it will be in effect.

(k) In any case in which this Section 9.3 shall require that any adjustment be made effective as of or retroactively immediately following a Record Date, the Company may elect to defer (but only for five Trading Days following the filing of the statement referred to in Section 9.5) issuing to the Holder of any Securities converted after such Record Date the shares of Common Stock issuable upon such conversion over and above the shares of Common Stock issuable upon such conversion on the basis of the Conversion Rate prior to adjustment; *provided*, *however*, that the Company shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(l) All calculations under this Section 9.3 shall be made to the nearest cent or one-ten-thousandth of a share, with one-half cent and 0.00005 of a share, respectively, being rounded upward.

(m) In the event that at any time, as a result of an adjustment made pursuant to this Section 9.3, the Holder of any Securities thereafter surrendered for conversion shall become entitled to receive any shares of stock of the Company other than shares of Common Stock into which the Securities originally were convertible, the Conversion Rate of such other shares so receivable upon conversion of any such Security shall be subject to adjustment from time to time

in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in subparagraphs (a) through (l) of this Section 9.3, and the provision of Sections 9.1, 9.2 and 9.4 through 9.9 with respect to the Common Stock shall apply on like or similar terms to any such other shares and the determination of the Board of Directors as to any such adjustment shall be conclusive.

(n) No adjustment shall be made (i) pursuant to Section 9.3(i) if the effect thereof would be to increase the Conversion Rate above 90.7852, as adjusted for any adjustment to the Conversion Rate made pursuant to any other provision of this Section 9.3, or (ii) pursuant to any provision of this Section 9.3 (n) if the Holders of the Securities may participate in the transaction that otherwise would give rise to an adjustment pursuant to this Section 9.3 or (b) if the consent of the holders of the Common Stock would be required for the issuance of, or the Company's agreement to issue, the Common Stock at the adjusted Conversion Rate pursuant to the rules of The Nasdaq Stock Market, Inc. or any exchange or other market on which the Common Stock is then listed or traded and the Company has not obtained such consent in compliance with the applicable rules.

(o) No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% in the Conversion Rate. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustment, which shall be made, regardless of whether the aggregate amount of such cumulative adjustments exceeds 1%, (i) annually on the anniversary of the Issue Date of the Securities, and otherwise (ii)(A) five Business Days prior to maturity of the Securities (whether at Stated Maturity or otherwise) or (B) prior to the Redemption Date, Repurchase Date or Fundamental Change Purchase Date unless such adjustment has already been made prior to the adjustment contemplated by this Section 9.3(o)(ii)(A) or (B).

Section 9.4 *Consolidation or Merger of the Company*. If any of the following events occurs, namely:

(1) any reclassification or change of the outstanding Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock;

(2) any merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock; or

(3) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock;

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture, if such supplemental indenture is then required to so comply) providing that such Securities shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) which such Holder would have been entitled to receive upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Securities been converted into Common Stock immediately prior to such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance (*provided*, that if the kind or amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised (a "Non-Electing Share"), then for the purposes of this Section 9.4, the kind and amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article IX. If, in the case of any such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the conversion rights set forth in this Article IX.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Securities maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 9.4 shall similarly apply to successive reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 9.4 applies to any event or occurrence, Section 9.3 shall not apply. Notwithstanding this Section 9.4, if a Public Acquirer Fundamental Change occurs and the Company elects to adjust the Conversion Rate and its conversion obligation pursuant to Section 9.12, the provisions of Section 9.12 shall apply to the conversion instead of this Section 9.4.

Any Additional Common Stock which a Holder is entitled to receive upon conversion pursuant to Section 9.1(b), if applicable, shall not be payable in shares of Common Stock, but will represent a right to receive the aggregate amount of cash, securities or other property into

which the Additional Common Stock would convert as a result of such recapitalization, consolidation, merger, share transfer, acquisition or share exchange.

Section 9.5 *Notice of Adjustment*. Whenever an adjustment in the Conversion Rate with respect to the Securities is required:

(1) the Company shall forthwith place on file with the Trustee and any Conversion Agent for such securities a certificate of the Treasurer of the Company, stating the adjusted Conversion Rate determined as provided herein and setting forth in reasonable detail such facts as shall be necessary to show the reason for and the manner of computing such adjustment; and

(2) a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall forthwith be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company, to each Holder in the manner provided in Section 11.2. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

In addition, whenever an adjustment in the Conversion Rate with respect to the Securities is required, the Company will issue a press release through Dow Jones & Company, Inc. containing the relevant information and make this information available on the Company's web site or through another public medium as it may use at that time.

Section 9.6 *Notice in Certain Events*. In case:

(1) of a consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or conveyance to another Person or entity or group of Persons or entities acting in concert as a partnership, limited partnership, syndicate or other group (within the meaning of Rule 13d-3 under the Exchange Act) of all or substantially all of the property and assets of the Company; or

(2) of the voluntary or involuntary dissolution, liquidation or winding up of the Company; or

(3) of any action triggering an adjustment of the Conversion Rate referred to in clauses (x) or (y) below;

then, in each case, the Company shall cause to be filed with the Trustee and the Conversion Agent, and shall cause to be given, to the Holders of the Securities in the manner provided in Section 11.2, at least 15 days prior to the applicable date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of any distribution or grant of rights or warrants triggering an adjustment to the Conversion Rate pursuant to this Article IX, or, if a record is not to be taken, the date as of which the holders of record of Common Stock entitled to such distribution, rights or warrants are to be determined, or (y) the date on which any reclassification, consolidation, merger, sale, conveyance, dissolution, liquidation or winding up triggering an adjustment to the Conversion Rate pursuant to this Article IX is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable

upon such reclassification, consolidation, merger, sale, conveyance, dissolution, liquidation or winding up.

Failure to give such notice or any defect therein shall not affect the legality or validity of the proceedings described in clause (1), (2) or (3) of this Section 9.6.

Section 9.7 *Company To Reserve Stock; Registration; Listing.*

(a) The Company shall, in accordance with the laws of the State of Delaware, at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued shares of Common Stock, for the purpose of effecting the conversion of the Securities, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all Securities then outstanding into such Common Stock at any time (assuming that, at the time of the computation of such number of shares or securities, all such Securities would be held by a single Holder); *provided*, *however*, that nothing contained herein shall preclude the Company from satisfying its obligations in respect of the conversion of the Securities by delivery of purchased shares of Common Stock which are then held in the treasury of the Company. The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be fully paid and nonassessable and free from all liens and charges and, except as provided in Section 9.8, taxes with respect to the issue thereof.

(b) If any shares of Common Stock which would be issuable upon conversion of Securities hereunder require registration with or approval of any governmental authority before such shares or securities may be issued upon such conversion, the Company will in good faith and as expeditiously as possible endeavor to cause such shares or securities to be duly registered or approved, as the case may be. The Company further covenants that so long as the Common Stock shall be listed on The Nasdaq Stock Market, Inc., the Company will, if permitted by the rules of such exchange, list and keep listed all Common Stock issuable upon conversion of the Securities, and the Company will endeavor to list the shares of Common Stock required to be delivered upon conversion of the Securities prior to such delivery upon any other national securities exchange upon which the outstanding Common Stock is listed at the time of such delivery.

Section 9.8 *Taxes on Conversion*. The issue of stock certificates on conversion of Securities shall be made without charge to the converting Holder for any documentary, stamp or similar issue or transfer taxes in respect of the issue thereof, and the Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock or the portion, if any, of the Securities which are not so converted in a name other than that in which the Securities so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of such tax or has established to the satisfaction of the Company that such tax has been paid.

Section 9.9 *Conversion After Record Date*. Except as provided below, if any Securities are surrendered for conversion on any day other than an Interest Payment Date, the Holder of such Securities shall not be entitled to receive any interest that has accrued on such Securities since the prior Interest Payment Date. By delivery to the Holder of the number of shares of Common Stock or other consideration issuable upon conversion in accordance with this Article IX, any accrued and unpaid interest on such Securities will be deemed to have been paid in full.

If any Securities are surrendered for conversion subsequent to the Record Date preceding an Interest Payment Date but on or prior to such Interest Payment Date, the Holder of such Securities at the close of business on such Record Date shall receive the interest payable on such Securities on such Interest Payment Date notwithstanding the conversion thereof. Securities surrendered for conversion during the period from the close of business on any Record Date preceding any Interest Payment Date to the opening of business on such Interest Payment Date (except in the case of Securities which have been called for redemption on a Redemption Date which is after such Record Date and on or prior to the third Business Day after such Interest Payment Date or if the Company has specified a Fundamental Change Purchase Date during such period) shall be accompanied by payment by Holders, for the account of the Company, in New York Clearing House funds or other funds of an amount equal to the interest payable on such Interest Payment Date on the Securities being surrendered for conversion. Except as provided in Section 3.1 or this Section 9.9, no adjustments in respect of payments of interest on Securities surrendered for conversion or any dividends or distributions or interest on the Common Stock issued upon conversion shall be made upon the conversion of any Securities.

Section 9.10 *Company Determination Final*. Any determination that the Company or the Board of Directors must make pursuant to this Article IX shall be conclusive if made in good faith and in accordance with the provisions of this Article, absent manifest error, and set forth in a Board Resolution.

Section 9.11 *Responsibility of Trustee for Conversion Provisions*. The Trustee has no duty to determine whether or when an adjustment under this Article IX should be made, how it should be made or what it should be, and shall have no duty to determine or verify the amount or nature or any Holder's conversion privileges pursuant to Sections 9.1, 9.12 or 9.13 (including any related Stock Price or Conversion Obligation); and the Trustee shall be entitled to rely conclusively on any notice it receives pursuant to this Article IX. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities. The Trustee shall not be responsible for any failure of the Company to comply with this Article IX. Each Conversion Agent other than the Company shall have the same protection under this Section 9.11 as the Trustee.

The rights, privileges, protections, immunities and benefits given to the Trustee under the Indenture including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Paying Agent or Conversion Agent acting hereunder.

Section 9.12 *Conversion After a Public Acquirer Fundamental Change*.

(a) In the event of a Public Acquirer Fundamental Change, the Company may, in lieu of issuing the Additional Common Stock pursuant to Section 9.1(b), elect to adjust the Conversion Rate and the related conversion obligation such that from and after the Effective Date of such Public Acquirer Fundamental Change, Holders of the Security will be entitled to convert their Security, in accordance with Section 9.2 hereof, into a number of shares of Public Acquirer Common Stock by adjusting the Conversion Rate in effect immediately before the Public Acquirer Fundamental Change by multiplying it by a fraction:

(1) the numerator of which will be (A) in the case of a share exchange, consolidation or merger, pursuant to which the Common Stock is converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by the Board of Directors) paid or payable per share of Common Stock or (B) in the case of any other Public Acquirer Fundamental Change, the average of the Sale Price of the Common Stock for the five consecutive Trading Days prior to but excluding the Effective Date of such Public Acquirer Fundamental Change; and

(2) the denominator of which will be the average of the Sale Prices of the Public Acquirer Common Stock for the five consecutive Trading Days commencing on the Trading Day next succeeding the effective date of such Public Acquirer Fundamental Change.

(b) The Company will notify Holders of its election by providing notice as set forth in Section 9.1(c).

Section 9.13 *Option to Satisfy Conversion Obligation with Cash, Common Stock or Combination Thereof*.

(a) Except to the extent that the Company has irrevocably elected to make a cash payment of principal upon conversion pursuant to 9.13(b), the Company may elect to deliver either shares of its Common Stock, cash or a combination of cash and shares of Common Stock in satisfaction of the Company's obligation upon conversion of the Securities (the "Conversion Obligation"). The Company shall notify the Holder or Holders, as the case may be, either directly or through the Trustee of the method the Company chooses to satisfy its Conversion Obligation, (i) in the Company's Notice of Redemption, if the Company has called the Securities for redemption, (ii) 26 Trading Days immediately preceding Stated Maturity in respect of Securities to be converted during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding Stated Maturity, and (iii) no later than three Trading Days immediately following the date of conversion in all other cases (such period, the "Settlement Notice Period"). If the Company elects to satisfy any portion of its Conversion Obligation by delivering cash, the Company shall specify in such notice the portion to be paid in cash either as a percentage of the Conversion Obligation or as the lesser of (a) a fixed dollar amount and (b) the Conversion Value. The Company shall treat all Holders converting on the same Trading Day in the same manner. The Company shall not have any obligation to satisfy Conversion Obligations arising on different Trading Days in the same manner.

If the Company elects to satisfy any portion of the Conversion Obligation in cash (other than cash in lieu of fractional shares, if applicable), a Holder may retract its conversion notice at any time during the two Trading Day period beginning on the Trading Day after the last Trading Day of the Settlement Notice Period (the "Conversion Retraction Period"); *provided* that no such retraction can be made (and a conversion notice shall be irrevocable) (x) if the Holder delivers the conversion notice in connection with a redemption, (y) if the Holder delivers the conversion notice during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding the Stated Maturity or (z) if the Company has irrevocably elected pursuant to Section 9.13(b) to make a cash payment of principal upon conversion before such Holder delivers its conversion notice. No retraction can be made and a conversion notice shall be irrevocable if the Company does not elect to deliver any cash upon conversion.

With respect to each Holder that exercises its conversion right in accordance with this Indenture, if such Holder's conversion notice has not been retracted, assuming all of the other requirements have been satisfied by such Holder, then settlement (a) in Common Stock only shall occur as soon as practicable after the Company notifies the Holder or Holders that settlement shall be in Common Stock only, and (b) in cash or in a combination of cash and Common Stock shall occur on the third Trading Day following the final Trading Day of the Conversion Period.

Settlement amounts shall be computed as follows:

(i) if the Company elects to satisfy the entire Conversion Obligation in Common Stock, the Company shall deliver to such Holder for each $1,000 principal amount of Securities converted a number of shares of Common Stock equal to the Conversion Rate, including any Additional Common Stock required pursuant to Section 9.1(b) then in effect on the date of conversion (plus cash in lieu of fractional shares, if applicable, calculated as provided in Section 9.02);

(ii) if the Company elects to satisfy the entire Conversion Obligation in cash, the Company shall deliver to such holder for each $1,000 principal amount of Securities converted cash in an amount equal to the Conversion Value;

(iii) if the Company elects to satisfy the Conversion Obligation in a combination of cash (excluding any cash paid for fractional shares, if applicable) and Common Stock (including pursuant to Section 9.13(b) hereof), the Company shall deliver to such Holder for each $1,000 principal amount of Securities converted:

(A) an amount in cash (the "Cash Amount") equal to (x) the fixed dollar amount per $1,000 principal amount of Securities of the Conversion Obligation to be satisfied in cash specified in the notice regarding the Company's chosen method of settlement or, if lower, the Conversion Value in cash, or (y) the percentage of the Conversion Obligation to be satisfied in cash specified in the notice regarding the Company's chosen method of settlement multiplied by the Conversion Value, as the case may be; and

(B) a number of shares of Common Stock for each of the 20 Trading Days in the Conversion Period equal to 1/20th of (x) the Conversion Rate in effect on that day minus (y) the quotient of the Cash Amount divided by the Applicable Stock Price for that day (plus cash in lieu of fractional shares, if applicable, calculated as provided in Section 9.02).

(b) Notwithstanding anything to the contrary in this Indenture, at any time prior to the 26th Trading Day preceding the Stated Maturity, the Company may irrevocably elect, in its sole discretion without the consent of the Holders of the Securities, by written notice to the Trustee and the Holders of the Securities, to satisfy in cash the Conversion Obligation with respect to the principal amount of Securities to be converted after the date of such election, with any remaining amount of the Conversion Obligation to be satisfied in shares of Common Stock. The settlement amount will be computed as described under clause (a)(iii) above, using $1,000 as the fixed dollar amount per $1,000 principal amount of Securities of the Conversion Obligation to be satisfied in cash.

For purposes of this Section 9.13, the following terms shall have the meanings indicated:

(i) "Applicable Stock Price" on any Trading Day means the Sale Price on that Trading Day or (ii) if such price is not available, the market value per share of the Common Stock on that day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company.

(ii) "Conversion Period" means the 20 Trading Day period:

(A) beginning on the Redemption Date, if the Company has called the Securities delivered for conversion for redemption;

(B) beginning on the Stated Maturity, if the Holder delivers the conversion notice during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding the Stated Maturity (whether or not the Company has irrevocably elected to make a cash payment of principal upon conversion);

(C) beginning on the Trading Day following the Company's receipt of the Holder's conversion notice, if the Company has irrevocably elected pursuant to Section 9.13(b) to make a cash payment of principal upon conversion, *provided* that if the Holder submits its conversion notice during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding the Stated Maturity, the Conversion Period shall begin on the Stated Maturity; and

(D) beginning on the Trading Day following the final Trading Day of the Conversion Retraction Period, in all other cases.

(iii) "Conversion Value" for each $1,000 principal amount of Securities being converted means an amount equal to the sum of the daily conversion values for each of the 20 Trading Days in the Conversion Period, where the "daily conversion value" for any Trading Day equals 1/20th of:

(A) the Conversion Rate in effect on that day multiplied by

(B) the Applicable Stock Price on that day,

provided that, with respect any conversion (i) during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding the Maturity Day or (ii) of a Security called for redemption, if on the Conversion Date the Applicable Stock Price exceeds the then applicable Conversion Price, the Conversion Value shall not be less than $1,000.

ARTICLE X.
SATISFACTION AND DISCHARGE OF INDENTURE

Section 10.1 *Satisfaction and Discharge of Indenture*. This Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (ii) Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation have become due and payable and the Company has irrevocably deposited or caused to be irrevocably deposited cash with the Trustee or a Paying Agent (other than the Company or any of its Affiliates) as trust funds in trust for the purpose of and in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest (including Liquidated Damages, if any) to the date of such deposit (in the case of Securities which have become due and payable);

(2) no Default or Event of Default has occurred and is continuing on the date of such deposit and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company is a party or by which the Company is bound;

(3) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.7 shall survive and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the provisions of

Sections 2.3 through 2.7, Article III, the last sentence of Section 4.2 and this Article X, shall survive until the Securities have been paid in full.

Section 10.2 *Application of Trust Money*. Subject to the provisions of this Article X, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 10.1 and shall apply the deposited money in accordance with this Indenture and the Securities to the payment of the principal of and interest on the Securities.

Section 10.3 *Repayment to Company*. The Trustee and each Paying Agent shall promptly pay to the Company upon request any excess money (i) deposited with them pursuant to Section 10.1 and (ii) held by them at any time.

Subject to any applicable abandoned property laws, the Trustee and each Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years after a right to such money has matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment, may at the expense of the Company cause to be mailed to each Holder entitled to such money notice that such money remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

Section 10.4 *Reinstatement*. If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 10.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.1 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 10.2; *provided*, *however*, that if the Company has made any payment of the principal of or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive any such payment from the money held by the Trustee or such Paying Agent.

ARTICLE XI.
MISCELLANEOUS

Section 11.1 *Trust Indenture Act Controls*. If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 11.2 *Notices*. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard N.W.
Boca Raton, Florida 33487
Attention: Chief Financial Officer
Facsimile No.: (561) 989-5801

With a copy to (which shall not constitute notice):

Nutter McClennen & Fish, LLP
World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210
Attention: James E. Dawson, Esq.
Facsimile No.: (617) 310-9623

if to the Trustee:

U.S. Bank National Association
One Federal Street
3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services
Facsimile No.: (617) 603-6667

The Company or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Securityholder shall be mailed to the Securityholder, by first-class mail, postage prepaid, at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee; *provided* that all notices to the Trustee shall be deemed effective upon actual receipt thereof.

If the Company mails a notice or communication to the Securityholders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 11.3 *Communication by Holders with Other Holders*. Securityholders may communicate pursuant to TIA Section 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

Section 11.4 *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take any action under this Indenture other than such actions specifically permitted to be taken upon a Company Request or Company Order elsewhere in this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate stating that, in the opinion of the signatories, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 11.5 *Statements Required in Certificate or Opinion*. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that each Person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion or Counsel are based;

(3) a statement that, in the opinion of each such Person, he or she has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement that, in the opinion of such Person, such covenant or condition has been complied with.

Section 11.6 *Separability Clause*. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.7 *Rules by Trustee, Paying Agent, Conversion Agent and Registrar*. The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar, the Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 11.8 *Legal Holidays*. A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on

such date is a payment in respect of the Securities, no interest, if any, shall accrue for the intervening period.

Section 11.9 *Governing Law*. THIS INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

Section 11.10 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.11 *No Recourse Against Others*. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 11.12 *Successors*. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 11.13 *Multiple Originals*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 11.14 *Effect of Headings and Table of Contents*. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

NABI BIOPHARMACEUTICALS

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

EXHIBIT A

[FORM OF FACE OF GLOBAL SECURITY]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF: (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")); (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY, PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THIS SECURITY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER), (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, IN COMPLIANCE WITH RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR (D) PURSUANT TO ANOTHER

AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM; AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 2(B) ABOVE OR UPON ANY TRANSFER OF THIS SECURITY UNDER RULE 144 UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION).]

[The foregoing legend may be removed from this Security on satisfaction of the conditions specified in the Indenture.]

Nabi Biopharmaceuticals

2.875% Convertible Senior Notes due 2025

No.: CUSIP:
Issue Date: Principal Amount: $
Issue Price: $1,000 (for each $1,000 Principal Amount)

Nabi Biopharmaceuticals, a Delaware corporation, promises to pay to _____ or registered assigns, the principal amount of dollars _____ ($_____) on April 15, 2025 or such greater or lesser amount as is indicated on the Schedule of Increases and Decreases of Global Security attached to this Security.

Interest Payment Dates: April 15 and October 15, commencing October 15, 2005.

Record Dates: April 1 and October 1.

Reference is hereby made to the further provisions of this Security set forth on the reverse side of this Security, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated:

NABI BIOPHARMACEUTICALS

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Securities referred to in the within mentioned Indenture.

By: _____
Authorized Signatory

Dated:

[FORM OF REVERSE OF GLOBAL SECURITY]

2.875% Convertible Senior Notes due 2025

This Security is one of a duly authorized issue of the 2.875% Convertible Senior Notes due 2025 (the "Securities") of Nabi Biopharmaceuticals, a Delaware corporation (including any successor corporation under the Indenture hereinafter referred to, the "Company"), issued under an Indenture, dated as of April 19, 2005 (the "Indenture"), between the Company and U.S. Bank National Association, as trustee (the "Trustee"). The terms of the Security include those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("TIA"), and those set forth in this Security. This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control. Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. *Interest.*

The Company promises to pay interest on the principal amount of the Securities at the interest rate of 2.875% per annum (the "Interest Rate") from the date of issuance until repayment in full at April 15, 2025, or until an earlier conversion, redemption or repurchase. The Company will pay interest on this Security semi-annually in arrears on April 15 and October 15 of each year (each, an "interest payment date"), commencing October 15, 2005.

The Securities shall bear interest from April 19, 2005 until the principal amount thereof is paid or made available for payment, or until such date on which the Securities are converted, redeemed or purchased as provided herein at the Interest Rate.

Interest on the Securities shall be computed (i) for any full semi-annual period for which the Interest Rate is applicable, on the basis of a 360-day year of twelve 30-day months and (ii) for any period for which the Interest Rate is applicable for less than a full semi-annual period for which interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month.

If this Security is redeemed or repurchased by the Company on a date that is after the record date and on or prior to the corresponding interest payment date, interest and Liquidated Damages, if any, accrued and unpaid hereon to but not including the applicable Redemption Date, Repurchase Date or Fundamental Change Purchase Date, as the case may be, will be paid to the same Holder to whom the Company pays the principal of this Security.

Interest on Securities converted after a record date but prior to the corresponding interest payment date will be paid to the Holder of the Securities on the record date but, upon conversion, the Holder must pay the Company the interest and Liquidated Damages, if any, which have accrued and will be paid on such interest payment date; *provided*, that no such payment need be made with respect to Securities which will be redeemed or repurchased by the Company after a record date and on or prior to the third Business Day after the corresponding interest payment date.

If the principal amount hereof or any portion of such principal amount or any interest, including Liquidated Damages, if any, on any Security is not paid when due (whether upon acceleration pursuant to Section 6.2 of the Indenture, upon the date set for payment of the Redemption Price pursuant to Section 3.1 of the Indenture or the Repurchase Price or the Fundamental Change Purchase Price pursuant to Section 3.7 or Section 3.11 of the Indenture, as the case may be, or upon the Stated Maturity of this Security), then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the Interest Rate, compounded semi-annually, which interest shall accrue from the date on which such overdue amount was originally due until the date on which payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

2. *Method of Payment.*

Except as provided below, interest will be paid (i) on the Global Securities to The Depository Trust Company ("DTC") or its nominee in immediately available funds, (ii) on any definitive Securities having an aggregate principal amount of $2,000,000 or less, by check mailed to the Holders of such Securities, and (iii) on any definitive Securities having an aggregate principal amount of more than $2,000,000, by wire transfer in immediately available funds at the election of the Holders of such Securities.

At Stated Maturity, the Company will pay interest on definitive Securities at the Company's office or agency in New York City, which initially will be the corporate trust office of U.S. Bank National Association, in New York City.

Principal on Global Securities will be paid to DTC or its nominee in immediately available funds. Principal on definitive Securities will be payable, upon Stated Maturity or when due, at the office or agency of the Company in New York City, maintained for such purpose, initially the corporate trust office of U.S. Bank National Association, in New York City.

Subject to the terms and conditions of the Indenture, the Company will make payments in cash in respect of Redemption Prices, Repurchase Prices, Fundamental Change Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money, subject to the terms of the Indenture.

3. *Paying Agent, Conversion Agent and Registrar.*

Initially, U.S. Bank National Association will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Registrar without notice, other than notice to the Trustee; *provided* that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Registrar.

4. *Indenture.*

The Securities are senior unsecured obligations of the Company initially limited to $100,000,000 aggregate principal amount (or such greater amount necessary to reflect the exercise by the Initial Purchasers of their option to purchase additional Securities in compliance with the Purchase Agreement, but not in excess of $120,000,000).

The Company may, without the consent of the Holders of the Securities, increase the Principal Amount of the Securities by issuing additional securities in the future on the same terms and conditions, except for any differences in the issue price and interest accrued prior to the issue date of the additional securities, provided, that such difference does not cause the additional securities to constitute a different class of securities than the Securities for U.S. federal income tax purposes, and provided further, that the additional securities have the same CUSIP number as the Securities. The Securities and any additional securities would rank equally and ratably and would be treated as a single class for all purposes under the Indenture. No additional securities may be issued if any Event of Default has occurred with respect to the Securities. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. *Redemption at the Option of the Company.*

No sinking fund is provided for the Securities. The Securities are not redeemable by the Company prior to April 18, 2010. On or after April 18, 2010, the Securities will be redeemable for cash at the option of the Company, in whole or in part, at any time or from time to time, upon not less than 30 nor more than 60 days' notice by mail for a redemption price equal to the principal amount of those Securities plus accrued and unpaid interest, including Liquidated Damages, if any, on those Securities to, but not including, the Redemption Date (the "Redemption Price") as set forth in the Indenture.

6. *Purchase By the Company at the Option of the Holder.*

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020 at a Repurchase Price equal to the principal amount of such Securities on the applicable Repurchase Date plus accrued and unpaid interest, including Liquidated Damages, if any, to, but not including, the Repurchase Date, upon delivery of a Repurchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is 20 Business Days prior to such Repurchase Date until the close of business on the Business Day preceding such Repurchase Date and upon delivery of the Securities or the required transfer to the Paying Agent by the Holder as set forth in the Indenture.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to offer to purchase the Securities held by such Holder for a Fundamental Change Purchase Price equal to the principal amount of such Securities plus accrued and unpaid interest, including Liquidated Damages, if any, to, but not including, the Fundamental Change Purchase Date. The Fundamental Change Purchase Date, which shall be determined by the Company, shall be between 30 and 60 days of the Company's delivery of the

notice describing such Fundamental Change and the resulting repurchase right. The Fundamental Change Purchase Price shall be paid in accordance with the Indenture.

Holders have the right to withdraw any Repurchase Notice or Fundamental Change Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Repurchase Price or the Fundamental Change Purchase Price, as the case may be, of all Securities, or portions thereof to be purchased as of the Repurchase Date or the Fundamental Change Purchase Date, as the case may be, is deposited with the Paying Agent on the Business Day following the Repurchase Date or the Fundamental Change Purchase Date, as the case may be, interest will cease to accrue on such Securities (or portions thereof) immediately after such Repurchase Date or Fundamental Change Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such other than the right to receive the Repurchase Price or the Fundamental Change Purchase Price upon surrender of such Security.

7. *Notice of Redemption.*

Notice of redemption pursuant to Section 3.1 of the Indenture of this Security will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date interest ceases to accrue on such Securities or portions thereof. Securities in denominations larger than $1,000 of principal amount may be redeemed in part but only in integral multiples of $1,000 of principal amount.

8. *Conversion.*

Subject to and in compliance with the provisions of the Indenture, a Holder is entitled, at such Holder's option, to convert the Holder's Security (or any portion of the principal amount thereof that is $1,000 or an integral multiple of $1,000), into fully paid and nonassessable shares of Common Stock at the Conversion Rate in effect at the time of conversion, subject to the Company's right to deliver cash in lieu of Common Stock.

A Security in respect of which a Holder has delivered a Fundamental Change Purchase Notice, exercising the option of such Holder to require the Company to purchase such Security, may be converted only if such Fundamental Change Purchase Notice is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 69.8348 shares per $1,000 principal amount of securities, subject to adjustment in certain events described in the Indenture. No fractional shares of Common Stock shall be issued upon conversion of any Security. A Holder that surrenders Securities for conversion will receive cash in lieu of any fractional share of Common Stock.

To surrender a Security for conversion, a Holder must (i) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice), (ii) deliver such completed notice and surrender the Security to the Conversion Agent and, (iii) pay all

funds required and furnish appropriate endorsements and transfer documents and (iv) pay any transfer or similar tax, if required by the Indenture.

If the Company (i) is a party to a consolidation, merger or binding share exchange, (ii) reclassifies the Common Stock or (iii) conveys, transfers or leases its properties and assets substantially as an entirety to any Person, the right to convert a Security into shares of Common Stock shall be changed into a right to convert it into securities, cash or other assets of the Company or such other Person, in each case in accordance with the Indenture.

The Company may elect to deliver either shares of its Common Stock, cash or a combination of cash and shares of Common Stock in satisfaction of the Company's Conversion Obligation. The Company shall notify the Holder or Holders, as the case may be, through the Trustee of the method the Company chooses to satisfy its Conversion Obligation, (i) in the Company's Notice of Redemption, if the Company has called the Securities for redemption, (ii) 26 Trading Days immediately preceding Stated Maturity in respect of Securities to be converted during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding Stated Maturity, and (iii) no later than three Trading Days immediately following the date of conversion in all other cases. If the Company elects to satisfy any portion of its Conversion Obligation by delivering cash, the Company shall specify in such notice the portion to be paid in cash either as a percentage of the Conversion Obligation or as the lesser of (a) a fixed dollar amount and (b) the Conversion Value. The Company shall treat all Holders converting on the same Trading Day in the same manner. The Company shall not have any obligation to satisfy Conversion Obligations arising on different Trading Days in the same manner.

At any time prior to the 26th Trading Day preceding the Stated Maturity, the Company may irrevocably elect, in its sole discretion without the consent of the Holders of the Notes, by written notice to the Trustee and the Holders of the Notes, to satisfy in cash the Conversion Obligation with respect to the principal amount of Notes to be converted after the date of such election, with any remaining amount of the Conversion Obligation to be satisfied in shares of Common Stock. The settlement amount will be computed as described under Section 9.13(a)(iii) of the Indenture, using the $1,000 as the fixed dollar amount per $1,000 principal amount of Notes of the Conversion Obligation to be satisfied in cash.

9. *Denominations; Transfer; Exchange.*

The Securities are in fully registered form, without coupons, in denominations of $1,000 of principal amount and integral multiples of $1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or to issue, register the transfer of, or exchange any Securities for a period of 15 days before the redemption date.

10. *Persons Deemed Owners.*

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

11. *Unclaimed Money or Securities.*

The Trustee and the Paying Agent shall return to the Company upon written request any money held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person.

12. *Amendment; Waiver.*

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate principal amount of the outstanding Securities. The Indenture and the Securities may also be amended by the Company and the Trustee, without the consent of any Holder, in certain circumstances set forth in the Indenture; *provided*, that certain provisions of the Indenture and the Securities may not be amended without the consent of each affected Holder.

13. *Defaults and Remedies.*

If any Event of Default with respect to Securities shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

14. *Trustee Dealings with the Company.*

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

15. *No Recourse Against Others.*

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

16. *Treatment of Securities.*

Each holder, by acceptance of a Security, and beneficial owner, by acceptance of a beneficial ownership interest in a Security, agrees to treat the Securities as indebtedness of the Company for U.S. federal income tax purposes and to not take any action inconsistent with such treatment.

17. *Authentication.*

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

18. *Abbreviations.*

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. *GOVERNING LAW.*

THIS SECURITY AND THE INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture which has in it the text of this Security. Requests may be made to:

Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard N.W.
Boca Raton, FL 33487
Attention: Chief Financial Officer
Facsimile No.: (561) 989-5801

20. *Registration Rights.*

The Holders of any Restricted Security are entitled to the benefits of the Registration Rights Agreement, dated as of April 19, 2005, among the Company and the Initial Purchasers, including the receipt of Liquidated Damages upon a registration default (as defined in such agreement).

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's soc. sec. or tax ID no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____ Your Signature:

_____

(Sign exactly as your name appears on the other side of this Security)

Signature Guaranteed

_____

Participant in a Recognized Signature Guarantee Medallion Program

By: _____
Authorized Signatory

CONVERSION NOTICE

To convert this Security into Common Stock of the Company, check the box ☐

To convert only part of this Security, state the principal amount to be converted (which must be $1,000 or an integral multiple of $1,000):

$

If you want the stock certificate made out in another person's name fill in the form below:

(Insert the other person's soc. sec. or tax ID no.)

_____

(Print or type other person's name, address and zip code)

_____

SCHEDULE OF INCREASES AND DECREASES OF GLOBAL SECURITY

Initial Principal Amount of Global Security: ($100,000,000).

Date	Amount of Increase in Principal Amount of Global Security	Amount of Decrease in Principal Amount of Global Security	Principal Amount of Global Security After Increase or Decrease	Notation by Registrar or Security Custodian

EXHIBIT B

[FORM OF FACE OF CERTIFICATED SECURITY]

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF: (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")); (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY, PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THIS SECURITY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER), (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, IN COMPLIANCE WITH RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM; AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 2(B) ABOVE OR UPON ANY TRANSFER OF THIS SECURITY UNDER RULE 144 UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION).]

[The foregoing legend may be removed from this Security on satisfaction of the conditions specified in the Indenture.]

Nabi Biopharmaceuticals

2.875% Convertible Senior Notes due 2025

No.: CUSIP:
Issue Date: Principal Amount: $
Issue Price: $1,000 (for each $1,000 Principal Amount)

Nabi Biopharmaceuticals, a Delaware corporation, promises to pay to _____ or registered assigns, the principal amount of dollars _____ ($_____) on April 15, 2025.

Interest Payment Dates: April 15 and October 15, commencing October 15, 2005.

Record Dates: April 1 and October 1.

Reference is hereby made to the further provisions of this Security set forth on the reverse side of this Security, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated:

NABI BIOPHARMACEUTICALS

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Securities referred to in the within mentioned Indenture.

By: _____
Authorized Signatory

Dated:

[FORM OF REVERSE OF CERTIFICATED SECURITY
IS IDENTICAL TO EXHIBIT A

EXCEPT NO SCHEDULE OF INCREASES AND DECREASES]

EXHIBIT C

2.875% Convertible Senior Notes due 2025

Transfer Certificate

This Transfer Certificate is delivered in connection with a transfer of the above-referenced Notes pursuant to the Indenture defined below. In connection with any transfer of any of the Securities or beneficial interest in a Global Security that is a Restricted Security within the period prior to the expiration of the holding period applicable to the sales thereof under Rule 144(k) under the Securities Act of 1933, as amended (the Securities Act) (or any successor provision), the undersigned registered owner or beneficial owner of this Security hereby certifies with respect to $_____ principal amount of the above-captioned Securities (the "Surrendered Securities") presented or surrendered on the date hereof for registration of transfer, or for exchange or conversion where the securities issuable upon such exchange or conversion are to be registered in a name other than that of the undersigned registered or beneficial owner (each such transaction being a "transfer"), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Securities for the reason checked below:

☐ A transfer of the Surrendered Securities is made to the Company or any subsidiaries; or

☐ The transfer of the Surrendered Securities complies with Rule 144A under the Securities Act; or

☐ The transfer of the Surrendered Securities is pursuant to an effective registration statement under the Securities Act; or

☐ The transfer of the Surrendered Securities is pursuant to another available exemption from the registration requirement of the Securities Act;

and unless the box below is checked, the undersigned confirms that, to the undersigned's knowledge, such Securities are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

☐ The transferee is an Affiliate of the Company.

The undersigned acknowledges and agrees that this Transfer Certificate may be relied upon by Nabi Biopharmaceuticals (the "Company") and U.S. Bank National Association, as trustee (the "Trustee") under the Indenture dated as of April 19, 2005 (the "Indenture") by and between the Company and the Trustee. Any capitalized terms used by not otherwise expressly defined herein shall have the meaning assigned thereto in the Indenture.

Dated: _____, 200_

Signature(s)

Signature Guarantee:

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee.

EXHIBIT 4.6

$100,000,000

NABI BIOPHARMACEUTICALS

2.875% Convertible Senior Notes due 2025

Registration Rights Agreement

April 19, 2005

Lehman Brothers Inc.
As Representative of the Initial Purchasers
c/o Lehman Brothers Inc.
745 Seventh Avenue
New York, NY 10019

Ladies and Gentlemen:

Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), proposes to issue and sell to the Purchasers (as defined herein) on the terms set forth in the Purchase Agreement (as defined herein) its 2.875% Convertible Senior Notes due 2025 (the "Securities"). As an inducement to the Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Purchasers thereunder, the Company agrees with the Purchasers for the benefit of themselves and the Holders (as defined herein) from time to time of the Registrable Securities (as defined herein) as follows:

1. *Definitions.*

(a) Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement. As used in this Agreement, the following defined terms shall have the following meanings:

"Affiliate" of any specified person means any other person that, directly or indirectly, is in control of, is controlled by, or is under common control with such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Closing Date"* means the First Delivery Date as defined in the Purchase Agreement.

"*Commission"* means the United States Securities and Exchange Commission, or any other federal agency at the time administering the Exchange Act or the Securities Act, whichever is the relevant statute for the particular purpose.

"*Common Stock"* means the Company's common stock, par value $.10 per share.

"DTC" means The Depository Trust Company.

"Effectiveness Period" has the meaning assigned thereto in Section 2(b)(i) hereof.

"Effective Time" means the time at which the Commission declares the Shelf Registration Statement effective or at which the Shelf Registration Statement otherwise becomes effective.

"Electing Holder" has the meaning assigned thereto in Section 3(a)(ii) hereof.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

"Holder" means any person that is the record owner of Registrable Securities (and includes any beneficial owner recorded on the books of any direct or indirect DTC participant of any Registrable Security in book-entry form).

"Indemnified Person" has the meaning assigned thereto in Section 5(a) hereof.

"Indenture" means the Indenture, dated as of April 19, 2005, between the Company and U.S. Bank National Association, as amended and supplemented from time to time in accordance with its terms.

"Liquidated Damages" has the meaning assigned thereto in Section 6(a) hereof.

"Notice and Questionnaire" means a Selling Securityholder Notice and Questionnaire attached as Appendix A to the Offering Memorandum dated April 13, 2005 relating to the Securities.

The term *"person"* means an individual, partnership, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"Prospectus" means the prospectus (including, without limitation, any preliminary prospectus, any final prospectus and any prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Securities Act) included in the Shelf Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement and by all other amendments and supplements to such prospectus, including all material incorporated by reference in such prospectus and all documents filed after the date of such prospectus by the Company under the Exchange Act and incorporated by reference therein.

"Purchase Agreement" means the purchase agreement, dated as of April 13, 2005, between the Purchasers and the Company relating to the Securities.

"Purchasers" means the Initial Purchasers named in Schedule 1 of the Purchase Agreement.

"Registrable Securities" means all or any portion of the Securities issued from time to time under the Indenture in registered form and the shares of Common Stock issuable upon conversion, repurchase or redemption of such Securities; *provided*, *however*, that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

"Registration Default" has the meaning assigned thereto in Section 6(a) hereof.

"Restricted Security" means any Security or share of Common Stock issuable upon conversion thereof except any such Security or share of Common Stock that (i) has been effectively registered under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with the Indenture.

"Rules and Regulations" means the published rules and regulations of the Commission promulgated under the Securities Act or the Exchange Act, as in effect at any relevant time.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Shelf Registration" means a registration effected pursuant to Section 2 hereof.

"Shelf Registration Statement" means a "shelf" registration statement filed under the Securities Act providing for the registration of and the sale on a continuous or delayed basis by the Holders of the Registrable Securities pursuant to Rule 415 under the Securities Act and/or any similar rule that may be adopted by the Commission, filed by the Company pursuant to the provisions of Section 2 of this Agreement, including the Prospectus contained therein, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"Trust Indenture Act" means the Trust Indenture Act of 1939, or any successor thereto, and the rules, regulations and forms promulgated thereunder, as the same shall be amended from time to time.

The term *"underwriter"* means any underwriter of Registrable Securities in connection with an offering thereof under a Shelf Registration Statement.

(b) Wherever there is a reference in this Agreement to a percentage of the "principal amount" of Registrable Securities or to a percentage of Registrable Securities, Common Stock shall

be treated as representing the principal amount of Securities that were surrendered for conversion or exchange in order to receive such number of shares of Common Stock.

2. *Shelf Registration.*

(a) The Company shall use its reasonable best efforts to file, no later than 90 calendar days following the Closing Date, with the Commission a Shelf Registration Statement relating to the offer and sale of the Registrable Securities by the Holders from time to time in accordance with the methods of distribution elected by such Holders and set forth in such Shelf Registration Statement and, thereafter, shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Securities Act no later than 180 calendar days following the Closing Date; *provided*, *however*, that no Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement or to use the Prospectus forming a part thereof for resales of Registrable Securities unless such Holder is an Electing Holder.

(b) The Company shall use its reasonable best efforts:

(i) to keep the Shelf Registration Statement continuously effective in order to permit the Prospectus forming a part thereof to be usable by Holders from the Effective Time until the earliest of (1) the date when all of the Registrable Securities have ceased to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise or as a result of their ceasing to be Restricted Securities), (2) the sale pursuant to the Shelf Registration Statement of all of the Registrable Securities, and (3) the date when the Holders of the Registrable Securities are able to sell all such securities immediately without restriction pursuant to Rule 144(k) under the Securities Act or any successor rule thereto or otherwise (such period being referred to herein as the "Effectiveness Period"); and

(ii) if at any time prior to or during the Effectiveness Period the Securities, pursuant to Article 9 of the Indenture, are convertible into securities other than Common Stock, to cause, or to cause any successor under the Indenture to cause, such securities to be included in the Shelf Registration Statement no later than the date on which the Securities may then be convertible into such other securities.

(c) The Company may suspend the use of the Prospectus for no more than an aggregate of 45 days in any 90-day period and for no more than an aggregate of 90 days in any 360-day period if the Board of Directors of the Company, or the Chief Executive Officer or the Chief Financial Officer of the Company, shall have determined in good faith that (i) because of an event that is pending or has occurred and is continuing, including, without limitation, the acquisition or divestiture of assets, pending corporate, clinical or regulatory developments, public filings with the Commission and similar events, the Prospectus would contain a material misstatement or omission and (ii) the disclosure of the event would have an adverse effect on the Company and its subsidiaries,

provided that prior to suspending such use the Company provides the Electing Holders with written notice of such suspension, which notice need not specify the nature of the event giving rise to such suspension. However, if the suspension relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Company's ability to consummate such transaction, the Company may extend the suspension period from 45 days to 60 days. Each Electing Holder shall hold in confidence any notice or other communication issued in connection with the suspension of the Prospectus.

3. *Registration Procedures*. In connection with the Shelf Registration Statement, the following provisions shall apply:

(a) (i) Not less than 10 business days prior to the Effective Time of the Shelf Registration Statement, the Company shall deliver the Notice and Questionnaire to the Holders of Registrable Securities. No Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement as of the Effective Time, and no Holder shall be entitled to use the Prospectus forming a part thereof for offers and resales of Registrable Securities at any time, unless such Holder has returned a completed and signed Notice and Questionnaire to the Company by the deadline for response set forth therein; *provided, however*, Holders of Registrable Securities shall have at least 10 business days from the date on which the Notice and Questionnaire is first delivered to such Holders to return a completed and signed Notice and Questionnaire to the Company. Notwithstanding the foregoing, upon the request of any Holder of Registrable Securities that did not return a Notice and Questionnaire on a timely basis or did not receive a Notice and Questionnaire because it was a subsequent transferee of Registrable Securities after the Company mailed the Notice and Questionnaire, (x) the Company shall distribute a Notice and Questionnaire to such Holder at the address set forth in the request and (y) within 30 calendar days after such request and upon receipt of a properly completed Notice and Questionnaire from such Holder, the Company shall use its reasonable best efforts to name such Holder as a selling securityholder in the Shelf Registration Statement by means of amendments or, if permitted by the Commission, by means of Prospectus supplements to the Shelf Registration Statement. Notwithstanding any of the foregoing, the Company will only be obligated to file a post-effective amendment more than once in any 90-day period when the principal amount of Registrable Securities to be covered by such amendment is more than $5 million. For purposes of the foregoing sentence, the principal amount of any shares of Common Stock constituting Registrable Securities shall be deemed to be that number of shares of Common Stock multiplied by a fraction, the numerator of which is $1,000 and the denominator of which is the then-current conversion rate. The Company will pay Liquidated Damages described below in Section 6(a) to a Holder if the Company fails to make a filing in the time required with respect to such Holder.

(ii) The term "Electing Holder" shall mean any Holder of Registrable Securities that has returned a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(i) hereof.

(b) The Company shall furnish to the Electing Holder, prior to the Effective Time, a copy of the Shelf Registration Statement as initially filed with the Commission and, if such Electing Holder so requests in writing, copies of each amendment thereto. Prior to the Effective Time, the Company shall use its reasonable best efforts to take into account and reflect in an amendment to the Shelf Registration Statement any comments on the Shelf Registration Statement as initially filed that the Electing Holders and their counsel reasonably may propose.

(c) The Company shall as promptly as reasonably practicable take such action as may be necessary so that (i) each of the Shelf Registration Statement and any amendment thereto and the Prospectus forming a part thereof and any amendment or supplement thereto (and each report or other document incorporated therein by reference in each case) complies as to form in all material respects with the Securities Act and the Exchange Act and the applicable Rules and Regulations thereunder, (ii) each of the Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) each of the Prospectus forming a part of the Shelf Registration Statement, and any amendment or supplement to such Prospectus, does not at any time during the Effectiveness Period include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company shall as promptly as reasonably practicable advise each Electing Holder, and shall confirm such advice in writing if so requested by any such Electing Holder:

(i) when a Shelf Registration Statement and any amendment thereto has been filed with the Commission and when a Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission during the Effective Period for amendments or supplements to the Shelf Registration Statement or the Prospectus included therein or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included in the Shelf Registration Statement for sale in any jurisdiction; and

(v) of the happening of any event or the existence of any state of facts (but not as to the substance of any such event or such state of facts) that requires the making of any changes in the Shelf Registration Statement or the Prospectus included therein so that, as of such date, such Shelf Registration Statement and Prospectus do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated

therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading (which advice shall be accompanied by an instruction to such Electing Holders to suspend the use of the Prospectus until the requisite changes have been made).

(e) The Company shall use its reasonable best efforts to prevent the issuance, and if issued to obtain the withdrawal at the earliest possible time, of any order suspending the effectiveness of the Shelf Registration Statement.

(f) The Company shall furnish to each Electing Holder, without charge, at least one copy of the Shelf Registration Statement, each post-effective amendment thereto, including financial statements and schedules, and any Prospectus supplement in which such Electing Holder is named as a selling securityholder and, if such Electing Holder so requests in writing, all reports, other documents and exhibits that are filed with or incorporated by reference in the Shelf Registration Statement.

(g) The Company shall, during the Effectiveness Period, deliver to each Electing Holder, without charge, as many copies of the Prospectus included in the Shelf Registration Statement and any amendment or supplement thereto as such Electing Holder may reasonably request; and the Company consents (except during the periods specified in Section 2(c) above or during the continuance of any event described in Section 3(d)(v) above) to the use of the Prospectus and any amendment or supplement thereto by each of the Electing Holders in connection with the offer and sale of the Registrable Securities covered by the Prospectus and any amendment or supplement thereto during the Effectiveness Period.

(h) Prior to any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company shall (i) register or qualify or cooperate with the Electing Holders and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "blue sky" laws of such jurisdictions within the United States as any Electing Holder may reasonably request, (ii) keep such registrations or qualifications in effect and comply with such laws so as to permit the continuance of offers and sales in such jurisdictions for so long as may be necessary to enable any Electing Holder or underwriter, if any, to complete its distribution of Registrable Securities pursuant to the Shelf Registration Statement, and (iii) take any and all other actions necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities; *provided*, *however*, that in no event shall the Company be obligated to (A) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify but for this Section 3(h) or (B) file any general consent to service of process in any jurisdiction where it is not as of the date hereof so subject.

(i) Unless any Registrable Securities shall be in book-entry only form, the Company shall cooperate with the Electing Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Shelf Registration Statement, which certificates, if so required by any securities exchange upon which any Registrable Securities are

listed, shall be penned, lithographed or engraved, or produced by any combination of such methods, on steel engraved borders, and which certificates shall be free of any restrictive legends and in such permitted denominations and registered in such names as Electing Holders may request in connection with the sale of Registrable Securities pursuant to the Shelf Registration Statement.

(j) Upon the occurrence of any fact or event contemplated by paragraph 3(d)(v) above, the Company shall as promptly as reasonably practicable prepare a post-effective amendment to any Shelf Registration Statement or an amendment or supplement to the related Prospectus or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that the Company shall not be required to file such amendment, supplement or document if the Board of Directors of the Company (or the Chief Executive Officer or the Chief Financial Officer of the Company) has made a determination pursuant to Section 2(c), for so long as the suspension pursuant to Section 2(c) is continuing. If the Company notifies the Electing Holders of the occurrence of any fact or event contemplated by paragraph 3(d)(v) above, the Electing Holder shall suspend the use of the Prospectus until the requisite changes to the Prospectus have been made.

(k) Not later than the Effective Time of the Shelf Registration Statement, the Company shall obtain a CUSIP number for the Registrable Securities that are debt securities.

(l) The Company shall use its reasonable best efforts to comply with all applicable Rules and Regulations, and to make generally available to its securityholders as soon as reasonably practicable, but in any event not later than eighteen months after (i) the effective date (as defined in Rule 158(c) under the Securities Act) of the Shelf Registration Statement, (ii) the effective date of each post-effective amendment to the Shelf Registration Statement, and (iii) the date of each filing by the Company with the Commission of an Annual Report on Form 10-K that is incorporated by reference in the Shelf Registration Statement, an earnings statement of the Company and its subsidiaries complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158).

(m) Not later than the Effective Time of the Shelf Registration Statement, the Company shall cause the Indenture to be qualified under the Trust Indenture Act; in connection with such qualification, the Company shall cooperate with the Trustee under the Indenture and the Holders (each as defined in the Indenture) to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and the Company shall execute, and shall use all reasonable best efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner. In the event that any such amendment or modification referred to in this Section 3(m) involves the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) The Company will use its reasonable best efforts to cause the Common Stock issuable upon conversion of the Securities to be listed on the Nasdaq National Market or other stock exchange or trading system on which the Common Stock primarily trades on or prior to the Effective Time of the Shelf Registration Statement hereunder.

4. *Registration Expenses.* Except as otherwise provided in Section 3, the Company shall bear all fees and expenses incurred in connection with the performance of its obligations under Sections 2 and 3 hereof and shall bear or reimburse the Electing Holders for the reasonable fees and disbursements of a single counsel selected by a plurality of all Electing Holders who own an aggregate of not less than 25% of the Registrable Securities covered by the Shelf Registration Statement to act as counsel therefore in connection therewith. Each Electing Holder shall pay all underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of such Electing Holder's Registrable Securities pursuant to the Shelf Registration Statement.

5. *Indemnification and Contribution*.

(a) *Indemnification by the Company*. Upon the registration of the Registrable Securities pursuant to Section 2 hereof, the Company shall indemnify and hold harmless each Electing Holder and each underwriter, selling agent or other securities professional, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each person who controls such Electing Holder, underwriter, selling agent or other securities professional within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such person being sometimes referred to as an "Indemnified Person") against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Shelf Registration Statement under which such Registrable Securities are to be registered under the Securities Act, or any Prospectus contained therein or furnished by the Company to any Indemnified Person, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company hereby agrees to reimburse such Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such action or claim as such expenses are incurred; *provided*, *however*, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Shelf Registration Statement or Prospectus, or amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person or its agent or representative expressly for use therein.

(b) *Indemnification by the Electing Holders and any Agents and Underwriters*. Each Electing Holder agrees, as a consequence of the inclusion of any of such Electing Holder's Registrable Securities in such Shelf Registration Statement, and each underwriter, selling agent or

other securities professional, if any, that facilitates the disposition of Registrable Securities shall agree, as a consequence of facilitating such disposition of Registrable Securities, severally and not jointly, to (i) indemnify and hold harmless the Company, its directors, officers who sign any Shelf Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in such Shelf Registration Statement or Prospectus, or any amendment or supplement, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Electing Holder, underwriter, selling agent or other securities professional (or its agent or representative) expressly for use therein, and (ii) reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) *Notices of Claims*. Promptly after receipt by an Indemnified Person under subsection (a) or (b) above of notice of the commencement of any action, such Indemnified Person shall, if a claim in respect thereof is to be made against an indemnifying party under this Section 5, notify such indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability that it may have to any Indemnified Person otherwise than under the indemnification provisions of or contemplated by subsection (a) or (b) above; and further, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under this Section 5 except to the extent it has been prejudiced by such failure. In case any such action shall be brought against any Indemnified Person and it shall notify an indemnifying party of the commencement thereof, such indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Person (who shall not, except with the consent of the Indemnified Person, be counsel to the indemnifying party), and, after notice from the indemnifying party to such Indemnified Person of its election so to assume the defense thereof, such indemnifying party shall not be liable to such Indemnified Person under this Section 5 for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such Indemnified Person, in connection with the defense thereof other than reasonable costs of investigation; provided, however, that the Indemnified Persons shall have the right to employ counsel to represent jointly the Indemnified Persons and their respective directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Persons against the indemnifying party under this Section 5 if, in the reasonable judgment of the Indemnified Persons, it is advisable for the Indemnified Persons and those directors, officers, employees and controlling persons to be jointly represented by separate counsel, and in that event the fees and expenses of such separate counsel shall be paid by the indemnifying parties, provided, however, that

in no event shall the Company be responsible for the fees and expenses of more than one such separate counsel (other than local counsel). No indemnifying party shall, without the written consent of the Indemnified Person, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Person is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the Indemnified Person from all liability arising out of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any Indemnified Person.

(d) *Contribution*. If the indemnification provided for in this Section 5 is unavailable to or insufficient to hold harmless an Indemnified Person under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the Indemnified Person in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such indemnifying party and Indemnified Person shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or by such Indemnified Person, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation (even if the Electing Holders or any underwriters, selling agents or other securities professionals or all of them were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 5(d). The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Electing Holders and any underwriters, selling agents or other securities professionals in this Section 5(d) to contribute shall be several in proportion to the percentage of principal amount of Registrable Securities registered or underwritten, as the case may be, by them and not joint.

(e) Notwithstanding any other provision of this Section 5, in no event will any Electing Holder be required to undertake liability to any person under this Section 5 for any amounts in excess of the dollar amount of the proceeds to be received by such Holder from the sale of such Holder's Registrable Securities (after deducting any fees, discounts and commissions applicable thereto)

pursuant to any Shelf Registration Statement under which such Registrable Securities are to be registered under the Securities Act.

(f) The obligations of the Company under this Section 5 shall be in addition to any liability which the Company may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 5 shall be in addition to any liability which such Indemnified Person may otherwise have to the Company. The remedies provided in this Section 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an Indemnified Person at law or in equity.

6. *Liquidated Damages*.

(a) If (i) on the 91st day following the Closing Date of this Agreement, a Shelf Registration Statement has not been filed with the Commission; (ii) on the 181st day following the Closing Date of this Agreement, the Shelf Registration Statement has not been declared effective by the Commission; (iii) the Shelf Registration Statement shall cease to be effective without being succeeded within five business days by a post-effective amendment under the Securities Act or a report filed with the Commission pursuant to the Exchange Act that cures the failure of the Shelf Registration Statement to be effective; or (iv) the Prospectus has been suspended as described in Section 2(c) longer than the period permitted in Section 2(c) (each, a "Registration Default"), the Company agrees to pay an additional amount as liquidated damages ("Liquidated Damages") to the Electing Holders of the outstanding Registrable Securities from and including the day following such Registration Default until but excluding the day such Shelf Registration Statement is so filed, or becomes effective, or is no longer suspended, as applicable. Liquidated damages will accrue at an additional rate per year equal to 0.25% of the principal amount to and including the 90th day following such Registration Default; and 0.50% of the principal amount from and after the 91st day following such Registration Default; provided however that Holders of shares of Common Stock issued upon conversion, repurchase or redemption of Securities issued under the Indenture will not be entitled to receive any Liquidated Damages upon a Registration Default.

(b) Any amounts to be paid as Liquidated Damages pursuant to paragraph (a) of this Section 6 shall be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date (as defined in the Indenture), as applicable, following the date of such Registration Default and with the amount of Liquidated Damages payable on such semi-annual payment date being the amount of unpaid Liquidated Damages accrued through the applicable record date. Such Liquidated Damages will accrue in respect of the Securities that are Registrable Securities at the rates set forth in paragraph (a) of this Section 6, as applicable, on the principal amount of such Securities.

(c) Notwithstanding anything to the contrary in this Agreement, the Liquidated Damages as set forth in this Section 6 shall be the exclusive monetary remedy available to the Holders of Registrable Securities for such Registration Default. In no event shall the Company be required to pay Liquidated Damages in excess of the applicable maximum amount of one-half of one percent

(0.50%) set forth above, regardless of whether one or multiple Registration Defaults exist. No Liquidated Damages shall accrue as to any Registrable Security from and after the earlier of (i) the date on which such security is no longer a Registrable Security and (ii) the time the Effectiveness Period expires.

7. *Miscellaneous.*

(a) *Other Registration Rights.* The Company may not grant registration rights that would permit any person that is a third party the right to piggy-back on any Shelf Registration Statement.

(b) *Specific Performance.* The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations hereunder and that the Purchasers and the Holders from time to time may be irreparably harmed by any such failure, and accordingly agree that the Purchasers and such Holders, in addition to any other remedy to which they may be entitled at law or in equity, shall be entitled to compel specific performance of the obligations of the Company under this Registration Rights Agreement in accordance with the terms and conditions of this Registration Rights Agreement, in any court of the United States or any State thereof having jurisdiction.

(c) *Amendments and Waivers.* This Agreement, including this Section 7(c), may be amended, and waivers or consents to departures from the provisions hereof may be given, only by a written instrument duly executed by the Company and the Holders of a majority in aggregate principal amount of Registrable Securities then outstanding. Each Holder of Registrable Securities outstanding at the time of any such amendment, waiver or consent or thereafter shall be bound by any amendment, waiver or consent effected pursuant to this Section 7(c), whether or not any notice, writing or marking indicating such amendment, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(d) *Notices.* All notices and other communications provided for or permitted hereunder (including, without limitation, the expressions "advice," "advising" or "furnishing") shall be made in writing by hand delivery, registered first-class mail, telecopier, electronic means (including filings with DTC or the Commission) or any courier guaranteeing overnight delivery (a) if to a Holder, at the most current address set forth on the records of the registrar under the Indenture, (b) if to the Purchasers, at Lehman Brothers Inc., 745 Seventh Avenue, New York, NY 10019, Attention: Syndicate Department (Fax: (646) 497-4815), with a copy to Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, Attention: David I. Gottlieb (Fax: (212) 225-3999), (c) if to the Company, at the Company's address set forth in the Purchase Agreement with a copy to Nutter McClennen & Fish, LLP, World Trade Center West, 155 Seaport Boulevard, Boston, MA 02210-2604, Attention: James E. Dawson (Fax: (617) 310-9623). All such notices and communications shall be deemed to have been duly given: at the time of delivery, if delivered by hand or electronic means; two business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged, if telecopied; and on the next business day if timely delivered to an air courier guaranteeing overnight delivery.

(e) *Parties in Interest.* The parties to this Agreement intend that all Holders of Registrable Securities shall be entitled to receive the benefits of this Agreement and that any Electing Holder shall be bound by the terms and provisions of this Agreement by reason of such election with respect to the Registrable Securities that are included in a Shelf Registration Statement. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and any Holder from time to time of the Registrable Securities to the aforesaid extent. In the event that any transferee of any Holder of Registrable Securities shall acquire Registrable Securities, in any manner, whether by gift, bequest, purchase, operation of law or otherwise, such transferee shall, without any further writing or action of any kind, be entitled to receive the benefits of and, if an Electing Holder, be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement to the aforesaid extent.

(f) *Counterparts*. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(i) *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

(j) *Survival*. The respective indemnities, agreements, representations, warranties and other provisions set forth in this Agreement or made pursuant hereto shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Electing Holder, any director, officer or partner of such Holder, any agent or underwriter, any director, officer or partner of such agent or underwriter, or any controlling person of any of the foregoing, and shall survive the transfer and registration of the Registrable Securities of such Holder.

[Remainder of page intentionally left blank]

Please confirm that the foregoing correctly sets forth the agreement between the Company and you.

Very truly yours,

NABI BIOPHARMACEUTICALS

By: _____
Name:
Title:

The foregoing Agreement is hereby confirmed and accepted as of the date hereof:

LEHMAN BROTHERS INC.

By: LEHMAN BROTHERS INC.

By: _____
Name:
Title:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF: (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")); (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY, PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THIS SECURITY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER), (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, IN COMPLIANCE WITH RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM; AND (3) AGREES THAT

IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 2(B) ABOVE OR UPON ANY TRANSFER OF THIS SECURITY UNDER RULE 144 UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION).

The foregoing legend may be removed from this Security on satisfaction of the conditions specified in the Indenture.

NABI BIOPHARMACEUTICALS

2.875% Convertible Senior Notes due 2025

No.: 1
Issue Date: April 19, 2005
Issue Price: $1,000 (for each $1,000 Principal Amount)

CUSIP: 629519 AA 7
Principal Amount: $100,000,000

Nabi Biopharmaceuticals, a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the principal amount of ONE HUNDRED MILLION DOLLARS ($100,000,000) on April 15, 2025 or such greater or lesser amount as is indicated on the Schedule of Increases and Decreases of Global Security attached to this Security.

Interest Payment Dates: April 15 and October 15, commencing October 15, 2005.

Record Dates: April 1 and October 1.

Reference is hereby made to the further provisions of this Security set forth on the reverse side of this Security, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated:

NABI BIOPHARMACEUTICALS

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Securities referred to in the within mentioned Indenture.

By: _____
Authorized Signatory

Dated:

REVERSE OF NOTE

2.875% Convertible Senior Notes due 2025

This Security is one of a duly authorized issue of the 2.875% Convertible Senior Notes due 2025 (the "Securities") of Nabi Biopharmaceuticals, a Delaware corporation (including any successor corporation under the Indenture hereinafter referred to, the "Company"), issued under an Indenture, dated as of April 19, 2005 (the "Indenture"), between the Company and U.S. Bank National Association, as trustee (the "Trustee"). The terms of the Security include those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("TIA"), and those set forth in this Security. This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control. Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. *Interest.*

The Company promises to pay interest on the principal amount of the Securities at the interest rate of 2.875% per annum (the "Interest Rate") from the date of issuance until repayment in full at April 15, 2025, or until an earlier conversion, redemption or repurchase. The Company will pay interest on this Security semi-annually in arrears on April 15 and October 15 of each year (each, an "interest payment date"), commencing October 15, 2005.

The Securities shall bear interest from April 19, 2005 until the principal amount thereof is paid or made available for payment, or until such date on which the Securities are converted, redeemed or purchased as provided herein at the Interest Rate.

Interest on the Securities shall be computed (i) for any full semi-annual period for which the Interest Rate is applicable, on the basis of a 360-day year of twelve 30-day months and (ii) for any period for which the Interest Rate is applicable for less than a full semi-annual period for which interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month.

If this Security is redeemed or repurchased by the Company on a date that is after the record date and on or prior to the corresponding interest payment date, interest and Liquidated Damages, if any, accrued and unpaid hereon to but not including the applicable Redemption Date, Repurchase Date or Fundamental Change Purchase Date, as the case may be, will be paid to the same Holder to whom the Company pays the principal of this Security.

Interest on Securities converted after a record date but prior to the corresponding interest payment date will be paid to the Holder of the Securities on the record date but, upon conversion, the Holder must pay the Company the interest and Liquidated Damages, if any, which have accrued and will be paid on such interest payment date; *provided*, that no such payment need be made with respect to Securities which will be redeemed or repurchased by the Company after a record date and on or prior to the third Business Day after the corresponding interest payment date.

If the principal amount hereof or any portion of such principal amount or any interest, including Liquidated Damages, if any, on any Security is not paid when due (whether upon acceleration pursuant to Section 6.2 of the Indenture, upon the date set for payment of the Redemption Price pursuant to Section 3.1 of the Indenture or the Repurchase Price or the Fundamental Change Purchase Price pursuant to Section 3.7 or Section 3.11 of the Indenture, as the case may be, or upon the Stated Maturity of this Security), then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the Interest Rate, compounded semi-annually, which interest shall accrue from the date on which such overdue amount was originally due until the date on which payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

2. *Method of Payment.*

Except as provided below, interest will be paid (i) on the Global Securities to The Depository Trust Company ("DTC") or its nominee in immediately available funds, (ii) on any definitive Securities having an aggregate principal amount of $2,000,000 or less, by check mailed to the Holders of such Securities, and (iii) on any definitive Securities having an aggregate principal amount of more than $2,000,000, by wire transfer in immediately available funds at the election of the Holders of such Securities.

At Stated Maturity, the Company will pay interest on definitive Securities at the Company's office or agency in New York City, which initially will be the corporate trust office of U.S. Bank National Association, in New York City.

Principal on Global Securities will be paid to DTC or its nominee in immediately available funds. Principal on definitive Securities will be payable, upon Stated Maturity or when due, at the office or agency of the Company in New York City, maintained for such purpose, initially the corporate trust office of U.S. Bank National Association, in New York City.

Subject to the terms and conditions of the Indenture, the Company will make payments in cash in respect of Redemption Prices, Repurchase Prices, Fundamental Change Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money, subject to the terms of the Indenture.

3. *Paying Agent, Conversion Agent and Registrar.*

Initially, U.S. Bank National Association will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Registrar without notice, other than notice to the Trustee; *provided* that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Registrar.

4. *Indenture.*

The Securities are senior unsecured obligations of the Company initially limited to $100,000,000 aggregate principal amount (or such greater amount necessary to reflect the exercise by the Initial Purchasers of their option to purchase additional Securities in compliance with the Purchase Agreement, but not in excess of $120,000,000).

The Company may, without the consent of the Holders of the Securities, increase the Principal Amount of the Securities by issuing additional securities in the future on the same terms and conditions, except for any differences in the issue price and interest accrued prior to the issue date of the additional securities, provided, that such difference does not cause the additional securities to constitute a different class of securities than the Securities for U.S. federal income tax purposes, and provided further, that the additional securities have the same CUSIP number as the Securities. The Securities and any additional securities would rank equally and ratably and would be treated as a single class for all purposes under the Indenture. No additional securities may be issued if any Event of Default has occurred with respect to the Securities. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. *Redemption at the Option of the Company.*

No sinking fund is provided for the Securities. The Securities are not redeemable by the Company prior to April 18, 2010. On or after April 18, 2010, the Securities will be redeemable for cash at the option of the Company, in whole or in part, at any time or from time to time, upon not less than 30 nor more than 60 days' notice by mail for a redemption price equal to the principal amount of those Securities plus accrued and unpaid interest, including Liquidated Damages, if any, on those Securities to, but not including, the Redemption Date (the "Redemption Price") as set forth in the Indenture.

6. *Purchase By the Company at the Option of the Holder.*

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020 at a Repurchase Price equal to the principal amount of such Securities on the applicable Repurchase Date plus accrued and unpaid interest, including Liquidated Damages, if any, to, but not including, the Repurchase Date, upon delivery of a Repurchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is 20 Business Days prior to such Repurchase Date until the close of business on the Business Day preceding such Repurchase Date and upon delivery of the Securities or the required transfer to the Paying Agent by the Holder as set forth in the Indenture.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to offer to purchase the Securities held by such Holder for a Fundamental Change Purchase Price equal to the principal amount of such Securities plus accrued and unpaid interest, including Liquidated Damages, if any, to, but not including, the Fundamental Change Purchase Date. The Fundamental Change Purchase Date, which shall be determined by the Company, shall be between 30 and 60 days of the Company's delivery of the

notice describing such Fundamental Change and the resulting repurchase right. The Fundamental Change Purchase Price shall be paid in accordance with the Indenture.

Holders have the right to withdraw any Repurchase Notice or Fundamental Change Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Repurchase Price or the Fundamental Change Purchase Price, as the case may be, of all Securities, or portions thereof to be purchased as of the Repurchase Date or the Fundamental Change Purchase Date, as the case may be, is deposited with the Paying Agent on the Business Day following the Repurchase Date or the Fundamental Change Purchase Date, as the case may be, interest will cease to accrue on such Securities (or portions thereof) immediately after such Repurchase Date or Fundamental Change Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such other than the right to receive the Repurchase Price or the Fundamental Change Purchase Price upon surrender of such Security.

7. *Notice of Redemption.*

Notice of redemption pursuant to Section 3.1 of the Indenture of this Security will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date interest ceases to accrue on such Securities or portions thereof. Securities in denominations larger than $1,000 of principal amount may be redeemed in part but only in integral multiples of $1,000 of principal amount.

8. *Conversion.*

Subject to and in compliance with the provisions of the Indenture, a Holder is entitled, at such Holder's option, to convert the Holder's Security (or any portion of the principal amount thereof that is $1,000 or an integral multiple of $1,000), into fully paid and nonassessable shares of Common Stock at the Conversion Rate in effect at the time of conversion, subject to the Company's right to deliver cash in lieu of Common Stock.

A Security in respect of which a Holder has delivered a Fundamental Change Purchase Notice, exercising the option of such Holder to require the Company to purchase such Security, may be converted only if such Fundamental Change Purchase Notice is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 69.8348 shares per $1,000 principal amount of securities, subject to adjustment in certain events described in the Indenture. No fractional shares of Common Stock shall be issued upon conversion of any Security. A Holder that surrenders Securities for conversion will receive cash in lieu of any fractional share of Common Stock.

To surrender a Security for conversion, a Holder must (i) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice), (ii) deliver such completed notice and surrender the Security to the Conversion Agent and, (iii) pay all

funds required and furnish appropriate endorsements and transfer documents and (iv) pay any transfer or similar tax, if required by the Indenture.

If the Company (i) is a party to a consolidation, merger or binding share exchange, (ii) reclassifies the Common Stock or (iii) conveys, transfers or leases its properties and assets substantially as an entirety to any Person, the right to convert a Security into shares of Common Stock shall be changed into a right to convert it into securities, cash or other assets of the Company or such other Person, in each case in accordance with the Indenture.

The Company may elect to deliver either shares of its Common Stock, cash or a combination of cash and shares of Common Stock in satisfaction of the Company's Conversion Obligation. The Company shall notify the Holder or Holders, as the case may be, through the Trustee of the method the Company chooses to satisfy its Conversion Obligation, (i) in the Company's Notice of Redemption, if the Company has called the Securities for redemption, (ii) 26 Trading Days immediately preceding Stated Maturity in respect of Securities to be converted during the period beginning 25 Trading Days immediately preceding the Stated Maturity and ending one Trading Day immediately preceding Stated Maturity, and (iii) no later than three Trading Days immediately following the date of conversion in all other cases. If the Company elects to satisfy any portion of its Conversion Obligation by delivering cash, the Company shall specify in such notice the portion to be paid in cash either as a percentage of the Conversion Obligation or as the lesser of (a) a fixed dollar amount and (b) the Conversion Value. The Company shall treat all Holders converting on the same Trading Day in the same manner. The Company shall not have any obligation to satisfy Conversion Obligations arising on different Trading Days in the same manner.

At any time prior to the 26th Trading Day preceding the Stated Maturity, the Company may irrevocably elect, in its sole discretion without the consent of the Holders of the Notes, by written notice to the Trustee and the Holders of the Notes, to satisfy in cash the Conversion Obligation with respect to the principal amount of Notes to be converted after the date of such election, with any remaining amount of the Conversion Obligation to be satisfied in shares of Common Stock. The settlement amount will be computed as described under Section 9.13(a)(iii) of the Indenture, using the $1,000 as the fixed dollar amount per $1,000 principal amount of Notes of the Conversion Obligation to be satisfied in cash.

9. *Denominations; Transfer; Exchange.*

The Securities are in fully registered form, without coupons, in denominations of $1,000 of principal amount and integral multiples of $1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or to issue, register the transfer of, or exchange any Securities for a period of 15 days before the redemption date.

10. *Persons Deemed Owners.*

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

11. *Unclaimed Money or Securities.*

The Trustee and the Paying Agent shall return to the Company upon written request any money held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person.

12. *Amendment; Waiver.*

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate principal amount of the outstanding Securities. The Indenture and the Securities may also be amended by the Company and the Trustee, without the consent of any Holder, in certain circumstances set forth in the Indenture; *provided*, that certain provisions of the Indenture and the Securities may not be amended without the consent of each affected Holder.

13. *Defaults and Remedies.*

If any Event of Default with respect to Securities shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

14. *Trustee Dealings with the Company.*

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

15. *No Recourse Against Others.*

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

16. *Treatment of Securities.*

Each holder, by acceptance of a Security, and beneficial owner, by acceptance of a beneficial ownership interest in a Security, agrees to treat the Securities as indebtedness of the Company for U.S. federal income tax purposes and to not take any action inconsistent with such treatment.

17. *Authentication.*

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

18. *Abbreviations.*

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. *GOVERNING LAW.*

THIS SECURITY AND THE INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture which has in it the text of this Security. Requests may be made to:

Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard N.W.
Boca Raton, FL 33487
Attention: Chief Financial Officer
Facsimile No.: (561) 989-5801

20. *Registration Rights.*

The Holders of any Restricted Security are entitled to the benefits of the Registration Rights Agreement, dated as of April 19, 2005, among the Company and the Initial Purchasers, including the receipt of Liquidated Damages upon a registration default (as defined in such agreement).

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's soc. sec. or tax ID no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____ Your Signature:

_____

(Sign exactly as your name appears on the other side of this Security)

Signature Guaranteed

_____

Participant in a Recognized Signature Guarantee Medallion Program

By: _____
Authorized Signatory

CONVERSION NOTICE

To convert this Security into Common Stock of the Company, check the box ☐

To convert only part of this Security, state the principal amount to be converted (which must be $1,000 or an integral multiple of $1,000):

$

If you want the stock certificate made out in another person's name fill in the form below:

(Insert the other person's soc. sec. or tax ID no.)

_____

(Print or type other person's name, address and zip code)

_____

SCHEDULE OF INCREASES AND DECREASES OF GLOBAL SECURITY

Initial Principal Amount of Global Security: ($100,000,000).

Date	Amount of Increase in Principal Amount of Global Security	Amount of Decrease in Principal Amount of Global Security	Principal Amount of Global Security After Increase or Decrease	Notation by Registrar or Security Custodian

EXHIBIT 5.1

Nutter McClennan & Fish LLP
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

May 25, 2005

Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard, N.W.
Boca Raton, FL 33487

Ladies and Gentlemen:

We have acted as counsel to Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), in connection with a Registration Statement on Form S-3 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), filed by the Company with the Securities and Exchange Commission on or about the date hereof, as to the registration for resale by certain selling security holders of (i) $112,400,000 principal amount of 2.875% Convertible Senior Notes due 2025 (the "Notes"), (ii) up to 10,204,256 shares of the Company's common stock, par value $0.10 per share (the "Shares"), issuable upon conversion of the Notes, and (iii) up to 10,204,256 Series One Preferred Share purchase rights (the "Rights") associated with the Shares.

We have examined such documents and made such other investigation as we have deemed appropriate to render the opinions set forth below. As to matters of fact material to our opinions, we have relied, without independent verification, on certificates and other inquiries of officers of the Company. We have also relied on certificates of public officials.

The opinions expressed below are limited to the Delaware General Corporation Law (including all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting those provisions and the Delaware General Corporation Law).

Based upon the foregoing and subject to the additional qualifications set forth below, we are of the opinion that:

1. The Shares have been duly authorized and, when issued and delivered upon conversion of the Notes, in accordance with the terms of the Indenture dated April 19, 2005 (the "Indenture"), between the Company and U.S. Bank National Association, as trustee, will be validly issued, fully paid and nonassessable.

2. The Rights, when issued and delivered upon conversion of the Notes, in accordance with the terms of the Rights Agreement dated August 1, 1997 as amended (the "Rights Agreement"), between the Company and American Stock Transfer & Trust Company, as successor rights agent, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

Our opinions above are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and

remedies of creditors, to general principles of equity, to the effect of equitable principles and the discharge of fiduciary obligations relating to the adoption of the Rights Agreement or the issuance of the Rights, and to the enforceability of the Notes and the Indenture.

We express no opinion as to the enforceability of the Notes or the Indenture.

This opinion letter shall be interpreted in accordance with the Legal Opinion Principles issued by the Committee on Legal Opinions of the American Bar Association's Business Law Section as published in 53 Business Lawyer 831 (May 1998).

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and the reference to our firm under the heading "Legal Matters" in the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act.

Very truly yours,

/s/ Nutter, McClennen & Fish, LLP

EXHIBIT 5.2

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006-1470

May 24, 2005

Nabi Biopharmaceuticals
5800 Park of Commerce Blvd.
Boca Raton, FL 33487

Re: Nabi Biopharmaceuticals

Ladies and Gentlemen:

You have requested us to provide you with our opinion under the law of the State of New York as to the enforceability of $112,400,000 aggregate principal amount of 2.875% Convertible Senior Notes due 2025 (the "Securities") issued under an indenture dated as of April 19, 2005 (the "Indenture") between Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), and U.S. Bank National Association, as trustee (the "Trustee"), and being registered pursuant to a registration statement on Form S-3 (No. 333-) (the "Registration Statement") being filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). We understand Nutter McClennen & Fish, LLP has acted as counsel to the Company in connection with the filing of the Registration Statement.

In arriving at the opinion expressed below, we have reviewed the following documents:

(a) a copy of the Securities in global form as executed by the Company and authenticated by the Trustee; and

(b) an executed copy of the Indenture.

In addition, we have reviewed the originals or copies certified or otherwise identified to our satisfaction of all such corporate records of the Company and such other instruments and other certificates of public officials, officers and representatives of the Company and such other persons, and we have made such investigations of law, as we have deemed appropriate as a basis for the opinion expressed below.

In rendering the opinion expressed below, we have assumed the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. In addition, we have assumed and have not verified the accuracy as to factual matters of each document we have reviewed.

Based on the foregoing, and subject to the further assumptions and qualifications set forth below, it is our opinion that the Securities are the valid, binding and enforceable obligations of the Company, entitled to the benefits of the Indenture.

In rendering the foregoing opinion, (a) we have assumed that the Company and, with respect to the Indenture, the Trustee, have satisfied those legal requirements that are applicable to them to the extent necessary to make the Securities and the Indenture enforceable against the Company (except that no such assumption is made as to the Company regarding matters of the law of the State of New York that in our experience normally would be applicable to general business entities with respect to the Securities and the Indenture) and (b) such opinion is subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity. In addition, we express no opinion as to the validity, binding effect or enforceability of Section 9.1(b) of the Indenture or any related provisions in the Indenture or the Securities that require or relate to adjustments to the conversion rate at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture.

The foregoing opinion is limited to the law of the State of New York.

We hereby consent to the use of our name in the prospectus constituting a part of the Registration Statement and any prospectus supplement related thereto under the heading "Legal Matters" and to the use of this opinion as a part (Exhibit 5.1) of the Registration Statement. In giving such consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission issued thereunder.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

By: /s/ David I. Gottlieb
David I. Gottlieb, a Partner

EXHIBIT 12

STATEMENT REGARDING COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

Dollar amounts in thousands	For the Quarter Ended March 26, 2005	For the Year Ended Dec. 25, 2004	Dec. 27, 2003	Dec. 28, 2002	Dec. 29, 2001	Dec. 30, 2000
Fixed charges						
Interest expense	$ 138	$ 2,199	$ 1,350	$2,130	$ 2,128	$ 3,581
Interest capitalized		326	83	—	5,202	5,795
Capitalized expenses related to indebtedness	—	—	956	—	—	—
Estimate of interest within rental expense	38	156	149	218	422	465
Preference security dividend	—	—	—	—	—	—
Total fixed charges	176	2,681	2,538	2,348	7,752	9,841
Earnings						
Pretax income from continuing operations	(22,964)	(39,992)	(12,215)	1,738	115,769	4,459
Fixed charges	176	2,681	2,538	2,348	7,752	9,841
Amortization of capitalized interest	319	1,266	1,273	1,274	148	—
Interest capitalized	—	(326)	(83)	—	(5,202)	(5,795)
Total earnings	(22,468)	(36,371)	(8,487)	5,360	118,467	8,505
Adjusted Earnings	(22,468)	(36,371)	(8,487)	5,360	118,467	8,505
Total Fixed charges	$ 176	$ 2,681	$ 2,538	$2,348	$ 7,752	$ 9,841
Ratio of earnings to fixed charges	N/A	N/A	N/A	2.3	15.3	N/A

For the years ended December 27, 2003 and December 25, 2004, Nabi Biopharmaceuticals did not generate sufficient earnings to cover its fixed charges by the following amounts:

Dollar amounts in thousands	For the Quarter Ended March 26, 2005	For the Year Ended Dec. 25, 2004	Dec. 27, 2003	Dec. 28, 2002	Dec. 29, 2001	Dec. 30, 2000
Coverage deficiency	$ 22,751	$ 39,052	$ 11,025	N/A	N/A	$ 1,336

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of Nabi Biopharmaceuticals for the registration of $112,400,000 principal amount of 2.875% Convertible Senior Notes due 2025 and the Common Stock issuable upon conversion thereof and to the incorporation by reference therein of our reports dated March 8, 2005, with respect to the consolidated financial statements and schedule of Nabi Biopharmaceuticals, Nabi Biopharmaceuticals management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Nabi Biopharmaceuticals, included in its Annual Report (Form 10-K) for the year ended December 25, 2004, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
Certified Public Accountants

West Palm Beach, Florida
May 24, 2005

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE

Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

U.S. BANK NATIONAL ASSOCIATION

(Exact name of Trustee as specified in its charter)

31-0841368
I.R.S. Employer Identification No.

800 Nicollet Mall
Minneapolis, Minnesota **55402**
(Address of principal executive offices) **(Zip Code)**

David J. Ganss
U.S. Bank National Association
One Federal Street
Boston, MA 02110
(617) 603-6568
(Name, address and telephone number of agent for service)

Nabi Biopharmaceuticals
(Issuer with respect to the Securities)

Delaware **59-1212264**
(State or other jurisdiction of incorporation or organization) **(I.R.S. Employer Identification No.)**

5800 Park of Commerce Blvd. N.W.
Boca Raton, FL **33487**
(Address of Principal Executive Offices) **(Zip Code)**

Nabi Biopharmaceuticals 2.875% Convertible Senior Notes due 2025
(Title of the Indenture Securities)

FORM T-1

Item 1. **GENERAL INFORMATION.** Furnish the following information as to the Trustee.

a) *Name and address of each examining or supervising authority to which it is subject.*

Comptroller of the Currency
Washington, D.C.

b) *Whether it is authorized to exercise corporate trust powers.*

Yes

Item 2. **AFFILIATIONS WITH OBLIGOR.** *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

Items 3-15 *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

Item 16. **LIST OF EXHIBITS:** *List below all exhibits filed as a part of this statement of eligibility and qualification.*

1. A copy of the Articles of Association of the Trustee.*
2. A copy of the certificate of authority of the Trustee to commence business.*
3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.*
4. A copy of the existing bylaws of the Trustee.*
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 6.
7. Report of Condition of the Trustee as of March 31, 2004, published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.

* Incorporated by reference to Registration Number 333-67188.

NOTE

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligor. While the Trustee has no reason to doubt the accuracy of any such information, it cannot accept any responsibility therefor.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Boston, Commonwealth of Massachusetts on the 25th of May, 2005.

U.S. BANK NATIONAL ASSOCIATION

By: /s/ DAVID J. GANSS
David J. Ganss
Title: **Assistant Vice President**

By: /s/ EARL DENNISON
Earl Dennison
Attest:
Title: **Vice President**

Exhibit 6

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: May 5, 2005

U.S. BANK NATIONAL ASSOCIATION

By: /s/ DAVID J. GANSS
David J. Ganss
Title: **Assistant Vice President**

By: /s/ EARL DENNISON
Earl Dennison
Attest:
Title: **Vice President**

Exhibit 7

U.S. Bank National Association
Statement of Financial Condition
As of 12/31/2004

($000's)

	12/31/2004
Assets	
Cash and Due From Depository Institutions	$ 6,340,324
Federal Reserve Stock	0
Securities	41,160,517
Federal Funds	2,727,496
Loans & Lease Financing Receivables	122,755,374
Fixed Assets	1,791,705
Intangible Assets	10,104,022
Other Assets	9,557,200
Total Assets	**$ 194,436,638**
Liabilities	
Deposits	$ 128,301,617
Fed Funds	8,226,759
Treasury Demand Notes	0
Trading Liabilities	156,654
Other Borrowed Money	25,478,470
Acceptances	94,553
Subordinated Notes and Debentures	6,386,971
Other Liabilities	5,910,141
Total Liabilities	**$ 174,555,165**
Equity	
Minority Interest in Subsidiaries	$ 1,016,160
Common and Preferred Stock	18,200
Surplus	11,792,288
Undivided Profits	7,054,825
Total Equity Capital	**$ 19,881,473**
Total Liabilities and Equity Capital	**$ 194,436,638**

To the best of the undersigned's determination, as of the date hereof, the above financial information is true and correct.

U.S. Bank National Association

By: /s/ DAVID J. GANSS

Title: **Assistant Vice President**

Date: May 25, 2005