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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark
One)

ANNUAL REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED: DECEMBER 31, 2009

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

For the transition period from _____ to _____

Commission File Number: 333-131722

SYNERGY PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Florida	20-3823853
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

420 Lexington Avenue, Suite 1609, New York, New York 10170

(Address of principal executive offices) (Zip Code)

(212) 297-0020

(Registrant's telephone number)

(Former Name, Former Address and Former Fiscal Year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
None	

Securities registered pursuant to section 12(g) of the Act:

Title of class: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") during the preceding 12 months (or for such shorter period that the registrant was required to file

such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant was \$215,194,087 on June 30, 2009

As of March 12, 2010 the registrant had 88,423,359 shares of Common Stock outstanding.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

FORM 10-K

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PART I

This Report on Form 10-K for Synergy Pharmaceuticals, Inc. may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements are characterized by future or conditional verbs such as "may," "will," "expect," "intend," "anticipate," "believe," "estimate" and "continue" or similar words. You should read statements that contain these words carefully because they discuss future expectations and plans, which contain projections of future results of operations or financial condition or state other forward-looking information. Such statements are only predictions and our actual results may differ materially from those anticipated in these forward-looking statements. We believe that it is important to communicate future expectations to investors. However, there may be events in the future that we are not able to accurately predict or control. Factors that may cause such differences include, but are not limited to, those discussed under Item 1A. Risk Factors and elsewhere in this Form 10-K for the year ended December 31, 2009, as filed with the Securities and Exchange Commission, including the uncertainties associated with product development, the risk that products that appeared promising in early clinical trials do not demonstrate safety and efficacy in larger-scale clinical trials, the risk that we will not obtain approval to market our products, the risks associated with dependence upon key personnel and the need for additional financing. We do not assume any obligation to update forward-looking statements as circumstances change.

ITEM 1. BUSINESS.

GENERAL

We are a biopharmaceutical company focused primarily on the development of drugs to treat gastrointestinal, or GI, disorders and diseases. Our lead drug candidate is SP-304, a guanylyl cyclase C, or GC-C, receptor agonist, to treat GI disorders, primarily chronic constipation, or CC, and constipation-predominant irritable bowel syndrome, or IBS-C. CC and IBS-C are functional gastrointestinal disorders that afflict millions of sufferers worldwide. CC is primarily characterized by constipation symptoms but a majority of these patients report experiencing bloating and abdominal discomfort as among their most bothersome symptoms. IBS-C is characterized by frequent and recurrent abdominal pain and/or discomfort associated with chronic constipation.

In December 2008, we completed a Phase 1 clinical trial of SP-304 which showed that SP-304 was well tolerated at all doses studied (0.1 mg to 48.6 mg) and exhibited gastrointestinal pharmacodynamic activity in healthy volunteers with no detectable systemic absorption of SP-304 in the blood. The data obtained from this trial supported advancing SP-304 for further clinical studies in patients with CC and IBS-C. In February, 2010, a Phase 2a 14-day, repeated-oral-dose trial of SP-304 in CC patients opened for enrollment and is currently actively recruiting patients.

SP-304 is an analog of uroguanylin, a natural GI hormone secreted in the gut, which is a key regulator of intestinal function. Uroguanylin works by activating GC-C receptors on intestinal cells. The GC-C receptor promotes fluid and ion transport in the GI tract. Under normal conditions, the receptor is activated by the natural hormones uroguanylin and guanylin. Activation of the receptor leads to the transport of chloride and bicarbonate into the intestinal lumen, and water is carried with these ions into the lumen of the intestine, thereby softening stool, and producing other pharmacologic, beneficial effects that could potentially benefit patients with CC and IBS-C.

SP-304 has been demonstrated to surpass uroguanylin in its biological activity, protease stability and pH characteristics. SP-304 acts in an identical manner as the natural hormone—as an agonist (i.e. activator) of the GC-C receptor found on the epithelial cells of the colon. Upon activation, the GC-C receptor promotes intracellular synthesis of cyclic guanosine monophosphate which in turn activates the cystic fibrosis transmembrane conductance regulator, or CFTR, within the epithelial cells. Activation of CFTR leads to secretion of salts and water into the intestine, resulting in a more liquid

and watery intestine content that is more easily transported through the bowel. Recent animal studies performed with SP-304 have demonstrated the drug's potential to enhance intestinal motility.

Overview

The gastrointestinal tract has many roles in human physiology, including the intake, breakdown and absorption of vital nutrients and fluids as well as the elimination of waste. In healthy individuals, waste is formed into stools and eliminated by the process of bowel movements. Bowel movements in healthy individuals cause minimal pain or discomfort and occur at various frequencies ranging from three times daily to three times weekly. IBS-C and CC are functional gastrointestinal disorders that afflict millions of sufferers worldwide. IBS-C is characterized by frequent and recurrent abdominal pain and/or discomfort and constipation symptoms (*e.g.* infrequent bowel movements, hard/lumpy stools, straining during defecation). CC is primarily characterized by constipation symptoms, but a majority of these patients report experiencing bloating and abdominal discomfort as among their most bothersome symptoms. Available treatment options primarily improve constipation, leading healthcare providers to diagnose and manage IBS-C and CC based on stool frequency. However, patients view these conditions as multi-symptom disorders, and while laxatives can be effective at relieving constipation symptoms, they do not necessarily improve abdominal pain, discomfort or bloating, and can often exacerbate these symptoms. This disconnect between patients and physicians, amplified by patients' embarrassment to discuss all of their gastrointestinal symptoms, often delays diagnosis and may compromise treatment, possibly causing additional suffering and disruption to patients' daily activities.

Proposed Products

SP-304 to treat GI disorders

We are currently developing SP-304, a synthetic hexadecapeptide designed to mimic the actions of the GI hormone uroguanylin, for the treatment of CC and IBS-C. SP-304 is an agonist of GC-C. The endogenous agonists of GC-C receptor are uroguanylin and guanylin, which were discovered as natriuretic hormones based on their structural similarity to bacterial enterotoxin, the peptide secreted by pathogenic *Escherichia coli* (*E.coli*) bacteria responsible for traveler's diarrhea.

SP-304 is a new member of a novel class of non-systemic drugs for treatment of CC, IBS-C and other GI disorders and diseases. SP-304 was developed by our scientists based on structure-function studies performed in-house. SP-304 is an analog of uroguanylin, a natural peptide hormone produced in the gut that is a key regulator of intestinal function. Uroguanylin works by activating the GC-C receptor on intestinal cells which promotes fluid and ion transport in the GI tract. Under normal conditions, this receptor is activated by the natural hormone uroguanylin and/or by a similar natural hormone guanylin.

Preclinical Studies on SP-304

SP-304 has been demonstrated to surpass uroguanylin in its biological activity, protease stability and pH characteristics. SP-304 acts in an identical manner as the natural hormone—as an agonist (*i.e.* activator) of the GC-C receptor found on the epithelial cells of the colon. Upon activation, the GC-C receptor promotes intracellular synthesis which in turn eventually activates the CFTR within the epithelial cells. Activation of CFTR leads to secretion of salts and water into the intestine, resulting in a liquid and watery intestine content that is more easily transported through the bowel.

Water secretion into the lumen of intestine is essential for normal bowel movement. In addition, water secretion in lumen is essential for uniform coating of mucin, which protects gastric mucosa from mechanical damage and from the harmful effects of acidity in the GI tract. A balance must be maintained between the pathway that controls mucin secretion and the pathway that controls water secretion. To demonstrate the potential therapeutic utility of SP-304 in treatment of CC and IBS-C, we

conducted and/or sponsored several *in vitro* studies in T84 cells and *in vivo* studies in preclinical animal models. In these animal studies, oral administration of SP-304 promoted intestinal secretion of fluid, thereby softening stool, and producing other pharmacologic effects that could potentially benefit patients with CC and IBS-C. Thus, one of the major physiological functions of uroguanylin and guanylin is the regulation of fluid and electrolyte transport in the lumen of the GI tract by a cGMP-mediated mechanism. Therefore, agonists of GC-C might be physiologically involved in normal bowel movement and be useful in patients suffering from CC and IBS-C. Importantly, the animal model and non-clinical safety pharmacology and toxicology studies also indicated potential therapeutic activity of SP-304 as an oral and safe drug candidate.

Clinical Studies of SP-304

On June 4, 2008, we initiated a Phase 1 clinical trial of SP-304 in volunteers. This first study was a double-blind, placebo-controlled, randomized single, oral, ascending-dose trial performed in 71 healthy male and female volunteers. The primary objective of the clinical trial was to characterize the safety, tolerability, pharmacokinetic and pharmacodynamic effects of the drug in healthy volunteers.

On December 9, 2008, we announced the completion of the Phase 1 clinical trial of SP-304 in healthy volunteers. Cohorts of volunteers were administered a single, oral dose of SP-304—ranging in dose from 0.1, 0.3, 0.9, 2.7, 5.4, 8.1, 16.2, 24.3 and 48.6 mg, respectively—or given a matching placebo dose. No detectable SP-304 was observed in the plasma of any subject administered SP-304 throughout the range from 0.1-48.6 mg. Pharmacodynamic effects of SP-304 related to the frequency and consistency of bowel movements after SP-304 administration were studied, and trends were observed related to greater increases in the number of bowel movements and looser stools for SP-304 in comparison to placebo. These findings suggested a positive pharmacodynamic effect for SP-304 administration compared to placebo.

Overall, SP-304 was safe and well tolerated throughout the single-dose range from 0.1-48.6 mg. A maximum tolerated dose, or MTD, was not established in this study based on the protocol definition. Although the final dose level tested in this study (48.6 mg SP-304) did not result in adverse events rising to the level of an MTD, the study was stopped because further dose escalation and exposure of additional subjects was not warranted based on the development plans for SP-304.

SP-333 to treat Ulcerative Colitis

A second generation GC-C receptor agonist, SP-333, is now in pre-clinical development to treat gastrointestinal inflammatory diseases such as UC. We plan to file an IND for SP-333 to treat UC in the fourth quarter of 2010. We previously showed that GC-C receptor agonists are efficacious in animal models of UC. In addition, we evaluated GC-C receptor agonists in two different animal models of UC, demonstrating that oral treatment of GC-C receptor agonists were effective in ameliorating GI inflammation in mouse models of experimental colitis. GC-C receptor agonists appear to produce anti-inflammatory activity via a novel cGMP-mediated mechanism that downregulates pro-inflammatory cytokines.

Development Plan

Our plan of operations for the next twelve months is to focus primarily on the clinical trial development of SP-304 to treat CC, and SP-333 to treat UC.

In February, 2010, a Phase 2a 14-day, repeated-oral-dose trial of SP-304 in CC patients opened for enrollment and is currently actively recruiting patients. We expect to obtain meaningful topline data from this trial in 2010, and use those data to establish doses for follow-up Phase 2b clinical trials in CC and IBS-C. Our plan is to begin a Phase 2b 28-day repeated-oral-dose, placebo-controlled trial in

SP-304 in CC patients in early 2011 and a Phase 2b 90-day repeated-oral-dose, placebo-controlled trial of SP-304 in IBS-C patients in the second quarter of 2011.

We also plan to initiate a Phase I clinical trial of SP-333 in volunteers in the fourth quarter of 2010. We expect to follow this trial in 2011 with a Phase 1b single-dose trial in UC patients to evaluate safety and pharmacokinetics of orally administered SP-333 in UC patients.

Manufacturing of our Product Candidates

We do not have manufacturing capabilities. We currently use contract manufacturers for the manufacturing of SP-304, SP-333 and our other product candidates. Accordingly, unless or until we develop or acquire sufficient manufacturing capabilities, we will depend on third parties to manufacture SP-304, SP-333 and any future products that we may develop or acquire. We are in the process of seeking long-term commercial supply contracts with active pharmaceutical ingredient manufacturers, and we anticipate that we will be able to negotiate these third-party agreements on commercially reasonable terms. We are in the process of working with third-party manufacturers to develop the ability to produce SP-304 in accordance with current good manufacturing practices, or GMP, on a sufficient scale to meet our future commercial needs. It is a fundamental part of our commercial strategy to maintain two or more active pharmaceutical ingredient suppliers to ensure continuity in our supply chain.

At present we have 1.5 kg of SP-304 in production under GMP conditions that will be used for non-clinical work to support further human studies. We also have sufficient supplies of GMP-grade SP-304 for our Phase 2 clinical trials in CC. Additionally, we have over 400 grams of non-GMP SP-333 available to support the non-clinical work needed for filing an IND on SP-333 in the third quarter of 2010. Manufacturing of GMP-scale SP-333 is currently underway. This material is needed for the clinical trial of SP-333 in healthy volunteers scheduled to begin in 2010.

Government Regulation

In the United States, pharmaceutical products are subject to extensive regulation by the FDA. The Federal Food, Drug, and Cosmetic Act and other federal and state statutes and regulations, govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, approval, labeling, promotion and marketing, distribution, post-approval monitoring and reporting, sampling, and import and export of pharmaceutical products. The FDA has very broad enforcement authority and failure to abide by applicable regulatory requirements can result in administrative or judicial sanctions being imposed on us, including warning letters, refusals of government contracts, clinical holds, civil penalties, injunctions, restitution, disgorgement of profits, recall or seizure of products, total or partial suspension of production or distribution, withdrawal of approval, refusal to approve pending applications, and criminal prosecution.

FDA Approval Process

We believe that our product candidates will be regulated by the FDA as drugs. No manufacturer may market a new drug until it has submitted an NDA to the FDA, and the FDA has approved it. The steps required before the FDA may approve an NDA generally include:

- preclinical laboratory tests and animal tests conducted in compliance with FDA's good laboratory practice requirements;
- development, manufacture and testing of active pharmaceutical product and dosage forms suitable for human use in compliance with current good manufacturing practices, or GMP;
- the submission to the FDA of an investigational new drug application, or IND, for human clinical testing, which must become effective before human clinical trials may begin;

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- adequate and well-controlled human clinical trials to establish the safety and efficacy of the product for its specific intended use(s);
- the submission to the FDA of an NDA; and
- FDA review and approval of the NDA.

Preclinical tests include laboratory evaluation of the product candidate, as well as animal studies to assess the potential safety and efficacy of the product candidate. The conduct of the pre-clinical tests must comply with federal regulations and requirements including good laboratory practices. We must submit the results of the preclinical tests, together with manufacturing information, analytical data and a proposed clinical trial protocol to the FDA as part of an IND, which must become effective before we may commence human clinical trials. The IND will automatically become effective 30 days after its receipt by the FDA, unless the FDA raises concerns or questions before that time about the conduct of the proposed trials. In such a case, we must work with the FDA to resolve any outstanding concerns before clinical trials can proceed. We cannot be sure that submission of an IND will result in the FDA allowing clinical trials to begin, or that, once begun, issues will not arise that suspend or terminate such trials. The study protocol and informed consent information for patients in clinical trials must also be submitted to an institutional review board for approval. An institutional review board may also require the clinical trial at the site to be halted, either temporarily or permanently, for failure to comply with the institutional review board's requirements or may impose other conditions.

Clinical trials involve the administration of the product candidate to humans under the supervision of qualified investigators, generally physicians not employed by or under the trial sponsor's control. Clinical trials are typically conducted in three sequential phases, though the phases may overlap or be combined. In Phase 1, the initial introduction of the drug into healthy human subjects, the drug is usually tested for safety (adverse effects), dosage tolerance and pharmacologic action, as well as to understand how the drug is taken up by and distributed within the body. Phase 2 usually involves studies in a limited patient population (individuals with the disease under study) to:

- evaluate preliminarily the efficacy of the drug for specific, targeted conditions;
- determine dosage tolerance and appropriate dosage as well as other important information about how to design larger Phase 3 trials; and
- identify possible adverse effects and safety risks.

Phase 3 trials generally further evaluate clinical efficacy and test for safety within an expanded patient population. The conduct of the clinical trials is subject to extensive regulation, including compliance with good clinical practice regulations and guidance.

The FDA may order the temporary or permanent discontinuation of a clinical trial at any time or impose other sanctions if it believes that the clinical trial is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial patients. We may also suspend clinical trials at any time on various grounds.

The results of the preclinical and clinical studies, together with other detailed information, including the manufacture and composition of the product candidate, are submitted to the FDA in the form of an NDA requesting approval to market the drug. FDA approval of the NDA is required before marketing of the product may begin in the U.S. If the NDA contains all pertinent information and data, the FDA will "file" the application and begin review. The FDA may "refuse to file" the NDA if it does not contain all pertinent information and data. In that case, the applicant may resubmit the NDA when it contains the missing information and data. Once the submission is accepted for filing, the FDA begins an in-depth review. The FDA has agreed to certain performance goals in the review of new drug applications. Most such applications for non-priority drug products are reviewed within 10 months. The review process, however, may be extended by FDA requests for additional information, preclinical or

clinical studies, clarification regarding information already provided in the submission, or submission of a risk evaluation and mitigation strategy. The FDA may refer an application to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions. Before approving an NDA, the FDA will typically inspect the facilities at which the product candidate is manufactured and will not approve the product candidate unless GMP compliance is satisfactory. FDA also typically inspects facilities responsible for performing animal testing, as well as clinical investigators who participate in clinical trials. The FDA may refuse to approve an NDA if applicable regulatory criteria are not satisfied, or may require additional testing or information. The FDA may also limit the indications for use and/or require post-marketing testing and surveillance to monitor the safety or efficacy of a product. Once granted, product approvals may be withdrawn if compliance with regulatory standards is not maintained or problems are identified following initial marketing.

The testing and approval process requires substantial time, effort and financial resources, and our product candidates may not be approved on a timely basis, if at all. The time and expense required to perform the clinical testing necessary to obtain FDA approval for regulated products can frequently exceed the time and expense of the research and development initially required to create the product. The results of preclinical studies and initial clinical trials of our product candidates are not necessarily predictive of the results from large-scale clinical trials, and clinical trials may be subject to additional costs, delays or modifications due to a number of factors, including difficulty in obtaining enough patients, investigators or product candidate supply. Failure by us to obtain, or any delay in obtaining, regulatory approvals or in complying with requirements could adversely affect the commercialization of product candidates and our ability to receive product or royalty revenues.

Other Regulatory Requirements

After approval, drug products are subject to extensive continuing regulation by the FDA, which include company obligations to manufacture products in accordance with GMP, maintain and provide to the FDA updated safety and efficacy information, report adverse experiences with the product, keep certain records and submit periodic reports, obtain FDA approval of certain manufacturing or labeling changes, and comply with FDA promotion and advertising requirements and restrictions. Failure to meet these obligations can result in various adverse consequences, both voluntary and FDA-imposed, including product recalls, withdrawal of approval, restrictions on marketing, and the imposition of civil fines and criminal penalties against the NDA holder. In addition, later discovery of previously unknown safety or efficacy issues may result in restrictions on the product, manufacturer or NDA holder.

We and any manufacturers of our products are required to comply with applicable FDA manufacturing requirements contained in the FDA's GMP regulations. GMP regulations require among other things, quality control and quality assurance as well as the corresponding maintenance of records and documentation. The manufacturing facilities for our products must meet GMP requirements to the satisfaction of the FDA pursuant to a pre-approval inspection before we can use them to manufacture our products. We and any third-party manufacturers are also subject to periodic inspections of facilities by the FDA and other authorities, including procedures and operations used in the testing and manufacture of our products to assess our compliance with applicable regulations.

With respect to post-market product advertising and promotion, the FDA imposes a number of complex regulations on entities that advertise and promote pharmaceuticals, which include, among others, standards for direct-to-consumer advertising, promoting drugs for uses or in patient populations that are not described in the drug's approved labeling (known as "off-label use"), industry-sponsored scientific and educational activities, and promotional activities involving the internet. Failure to comply with FDA requirements can have negative consequences, including adverse publicity, enforcement letters from the FDA, mandated corrective advertising or communications with doctors, and civil or

criminal penalties. Although physicians may prescribe legally available drugs for off-label uses, manufacturers may not market or promote such off-label uses.

Changes to some of the conditions established in an approved application, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of a new NDA or NDA supplement before the change can be implemented. An NDA supplement for a new indication typically requires clinical data similar to that in the original application, and the FDA uses the same procedures and actions in reviewing NDA supplements as it does in reviewing NDAs.

Adverse event reporting and submission of periodic reports is required following FDA approval of an NDA. The FDA also may require post-marketing testing, known as Phase 4 testing, risk minimization action plans, and surveillance to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product.

Outside the United States, our ability to market a product is contingent upon receiving marketing authorization from the appropriate regulatory authorities. The requirements governing marketing authorization, pricing and reimbursement vary widely from jurisdiction to jurisdiction. At present, foreign marketing authorizations are applied for at a national level, although within the European Union registration procedures are available to companies wishing to market a product in more than one European Union member state.

Competition

The biopharmaceutical industry is characterized by rapidly evolving technology and intense competition. Our competitors include major pharmaceutical and biotechnology companies focusing on GI such as Ironwood Pharmaceuticals, Inc., Forest Laboratories, Inc., Takeda Pharmaceuticals America, Inc., Sucampo Pharmaceuticals, Inc., Salix Pharmaceuticals, Inc. and Movetis NV. Most of our competitors have financial, technical and marketing resources significantly greater than our resources. Academic institutions, governmental agencies and other public and private research organizations are also conducting research activities and seeking patent protection and may commercialize products on their own or through joint ventures. We are aware of certain development projects for products to prevent or treat certain diseases targeted by us. The existence of these potential products or other products or treatments of which we are not aware, or products or treatments that may be developed in the future, may adversely affect our ability to market the products we develop.

Research and Development Expenses

Research and development expenses consist primarily of costs associated with (i) clinical development team salaries and staff costs, (ii) application and filing for regulatory approval of our proposed products, (iii) regulatory and scientific consulting fees, (iv) clinical and patient costs for product candidates in on-going trials, (v) sponsored pre-clinical research, (vi) legal and professional fees associated with filing and maintaining our patent and license rights to our proposed products and (vii) clinical drug substance. We expense all research and development costs as they are incurred and we expect our research and development expenses to increase significantly in the future as we develop our product candidates. Research and development expenses were \$4,257,285 for the twelve months ended December 31, 2009, compared to \$1,909,226 and \$0 for the twelve months ended December 31, 2008 and 2007, respectively.

Patents and Proprietary Rights

We are able to protect our technology from unauthorized use by third parties only to the extent that it is covered by valid and enforceable patents or is effectively maintained as a trade secret or is protected by confidentiality agreements. Accordingly, patents or other proprietary rights are an essential element of our business. As of March 12, 2010, we own one issued United States patent and

three issued foreign patents. We have seven pending United States patent applications and seventeen pending foreign patent applications. We seek patent protection of inventions originating from our ongoing research and development activities that are commercially important to our business. Our United States composition-of-matter and use patent on SP-304 was issued on May 9, 2006.

Patents extend for varying periods according to the date of patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country.

While trade secret protection is an essential element of our business and we have taken security measures to protect our proprietary information and trade secrets, we cannot give assurance that our unpatented proprietary technology will afford us significant commercial protection. We seek to protect our trade secrets by entering into confidentiality agreements with third parties, employees and consultants. Our employees and consultants also sign agreements requiring that they assign to us their interests in intellectual property arising from their work for us. All employees sign an agreement not to engage in any conflicting employment or activity during their employment with us and not to disclose or misuse our confidential information. However, it is possible that these agreements may be breached or invalidated, and if so, there may not be an adequate corrective remedy available. Accordingly, we cannot ensure that employees, consultants or third parties will not breach the confidentiality provisions in our contracts, infringe or misappropriate our trade secrets and other proprietary rights or that measures we are taking to protect our proprietary rights will be adequate.

In the future, third parties may file claims asserting that our technologies or products infringe on their intellectual property. We cannot predict whether third parties will assert such claims against us or against the licensors of technology licensed to us, or whether those claims will harm our business. If we are forced to defend ourselves against such claims, whether they are with or without merit and whether they are resolved in favor of, or against, our licensors or us, we may face costly litigation and the diversion of management's attention and resources. As a result of such disputes, we may have to develop costly non-infringing technology or enter into licensing agreements. These agreements, if necessary, may be unavailable on terms acceptable to us, or at all.

Employees

As of March 12, 2010, we had 6 full-time and 3 part-time employees. We believe our employee relations are satisfactory.

Our Website

Our website address is www.synergypharma.com; Information found on our website is not incorporated by reference into this report. We make available free of charge through our website our Securities and Exchange Commission, or SEC, filings 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.

ITEM 1A. RISK FACTORS.

You should carefully consider the following risk factors and the other information included in this annual report on Form 10-K, as well as the information included in other reports and filings made with the SEC, before investing in our common stock. If any of the following risks actually occurs, our business, financial condition or results of operations could be harmed. The trading price of our common stock could decline due to any of these risks, and you may lose part or all of your investment.

Risks Related to Our Business

We are at an early stage of development as a company, currently have no source of revenue and may never become profitable.

We are a development stage biopharmaceutical company. Currently, we have no products approved for commercial sale and, to date, we have not generated any revenue. Our ability to generate revenue depends heavily on:

- demonstration in Phase 2a, Phase 2b and Phase 3 clinical trials that our product candidate, SP-304 for the treatment of GI disorders, is safe and effective;
- our ability to seek and obtain regulatory approvals, including with respect to the indications we are seeking;
- the successful commercialization of our product candidates; and
- market acceptance of our products.

All of our existing product candidates will require extensive additional clinical evaluation, regulatory review, significant marketing efforts and substantial investment before they could provide us with any revenue. As a result, if we do not successfully develop and commercialize SP-304, we will be unable to generate any revenue for many years, if at all. We do not anticipate that we will generate revenue for several years, at the earliest, or that we will achieve profitability for at least several years after generating material revenue, if at all. If we are unable to generate revenue, we will not become profitable, and we may be unable to continue our operations.

Our independent registered public accounting firm has expressed doubt about our ability to continue as a going concern, which may hinder our ability to obtain future financing.

Our consolidated financial statements as of December 31, 2009 were prepared under the assumption that we will continue as a going concern for the next twelve months. Our independent registered public accounting firm has issued a report that included an explanatory paragraph referring to our recurring losses from operations and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. Our ability to continue as a going concern is dependent upon our ability to obtain additional equity or debt financing, attain further operating efficiencies, reduce expenditures, and, ultimately, to generate revenue. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We do not have any products that are approved for commercial sale and therefore do not expect to generate any revenues from product sales in the foreseeable future, if ever.

To date, we have funded our operations primarily from sales of our securities. We have not received, and do not expect to receive for at least the next several years, if at all, any revenues from the commercialization of our product candidates. To obtain revenues from sales of our product candidates, we must succeed, either alone or with third parties, in developing, obtaining regulatory approval for, manufacturing and marketing drugs with commercial potential. We may never succeed in

these activities, and we may not generate sufficient revenues to continue our business operations or achieve profitability.

We have incurred significant losses since inception and anticipate that we will incur continued losses for the foreseeable future.

As of December 31, 2009 and 2008 we had an accumulated deficit of \$39,920,541 and \$31,795,441, respectively. We expect to incur significant and increasing operating losses for the next several years as we expand our research and development, continue our clinical trials of SP-304 for the treatment of GI disorders, acquire or license technologies, advance other product candidates into clinical development, including SP-333, seek regulatory approval and, if we receive FDA approval, commercialize our products. Because of the numerous risks and uncertainties associated with our product development efforts, we are unable to predict the extent of any future losses or when we will become profitable, if at all. If we are unable to achieve and then maintain profitability, the market value of our common stock will likely decline.

We will need to raise substantial additional capital within the next year to fund our operations, and our failure to obtain funding when needed may force us to delay, reduce or eliminate our product development programs or collaboration efforts.

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts to:

- continue clinical development of SP-304 to treat GI disorders;
- continue development of other product candidates, including SP-333;
- finance our general and administrative expenses;
- prepare regulatory approval applications and seek approvals for SP-304 and other product candidates, including SP-333;
- license or acquire additional technologies;
- launch and commercialize our product candidates, if any such product candidates receive regulatory approval; and
- develop and implement sales, marketing and distribution capabilities.

We will be required to raise additional capital within the next year to complete the development and commercialization of our current product candidates and to continue to fund operations at the current cash expenditure levels. Our future funding requirements will depend on many factors, including, but not limited to:

- the rate of progress and cost of our clinical trials and other development activities;
- any future decisions we may make about the scope and prioritization of the programs we pursue;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the costs and timing of regulatory approval;
- the costs of establishing sales, marketing and distribution capabilities;
- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish; and

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- general market conditions for offerings from biopharmaceutical companies.

Worldwide economic conditions and the international equity and credit markets have recently significantly deteriorated and may remain depressed for the foreseeable future. These developments could make it more difficult for us to obtain additional equity or credit financing, when needed.

We cannot be certain that funding will be available on acceptable terms, or at all. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants that impact our ability to conduct our business. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue the development and/or commercialization of one or more of our product candidates. We also may be required to:

- seek collaborators for our product candidates at an earlier stage than otherwise would be desirable and on terms that are less favorable than might otherwise be available; and/or
- relinquish license or otherwise dispose of rights to technologies, product candidates or products that we would otherwise seek to develop or commercialize ourselves on unfavorable terms.

We are largely dependent on the success of our lead product candidate, SP-304, and we cannot be certain that this product candidate will receive regulatory approval or be successfully commercialized.

We currently have no products for sale, and we cannot guarantee that we will ever have any drug products approved for sale. The research, testing, manufacturing, labeling, approval, selling, marketing and distribution of drug products are subject to extensive regulation by the FDA and comparable regulatory authorities in other countries. We are not permitted to market any of our product candidates in the United States until we receive approval of a new drug application, or NDA, for a product candidate from the FDA or its foreign equivalent from a foreign regulatory authority. Obtaining FDA approval is a lengthy, expensive and uncertain process. We currently have one lead product candidate, SP-304 for the treatment of GI disorders, and the success of our business currently depends on its successful development and commercialization. This product candidate has not completed the clinical development process; therefore, we have not submitted an NDA or foreign equivalent or received marketing approval for this product candidate.

The clinical development program for SP-304 may not lead to commercial products for a number of reasons, including if we fail to obtain necessary approvals from the FDA or similar foreign regulatory authorities because our clinical trials fail to demonstrate to their satisfaction that this product candidate is safe and effective. We may also fail to obtain the necessary approvals if we have inadequate financial or other resources to advance our product candidates through the clinical trial process. Any failure or delay in completing clinical trials or obtaining regulatory approval for SP-304 in a timely manner would have a material and adverse impact on our business and our stock price.

We will need to obtain FDA approval of any proposed product names, and any failure or delay associated with such approval may adversely impact our business.

Any names we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office, or the PTO. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. The FDA may also object to a product name if it believes the name inappropriately implies medical claims. If the FDA objects to any of our proposed product names, we may be required to adopt an alternative name for our product candidates. If we adopt an alternative name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product name that would qualify under applicable trademark laws, not

infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;
- addition or termination of clinical trials;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting our product candidates;
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements; and
- if SP-304 receives regulatory approval, the level of underlying demand for that product and wholesalers' buying patterns.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially.

A majority of our common stock is owned by a single stockholder, and it may therefore be able to control our management and affairs.

Callisto Pharmaceuticals, Inc. currently owns approximately 50.4% of our outstanding common stock. Therefore, Callisto Pharmaceuticals will be able to elect all of our directors and maintain control of our board of directors and our operations. It should also be noted that for the most part, authorization to modify our Articles of Incorporation, as amended, requires only majority stockholder consent and approval to modify our amended and restated By-Laws requires authorization of only a majority of the board of directors. This concentration of ownership could also have the effect of delaying or preventing a change in our control.

Our management overlaps substantially with the management and beneficial owners of our principal stockholder, which may give rise to potential conflicts of interest.

Several of our executive officers and directors are also officers and/or directors of our principal stockholder, Callisto Pharmaceuticals, and certain of such executive officers and directors are, in turn, the principal stockholders of Callisto Pharmaceuticals. Accordingly, there may be inherent, albeit non-specific, potential conflicts involved in the participation by members of each company's management, audit committee, compensation committee, nominating committee and other applicable board committees which will oversee questions of possible conflicts of interest and compensation, notwithstanding an effort to appoint independent directors that do not have these inherent conflicts. In addition, as a matter of practicality, efficiency and appropriate accounting, the costs of certain services (including salaries of executive officers) are allocated, which creates inter-company obligations.

Clinical trials involve a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.

In order to receive regulatory approval for the commercialization of our product candidates, we must conduct, at our own expense, extensive clinical trials to demonstrate safety and efficacy of these

product candidates. Clinical testing is expensive, can take many years to complete and its outcome is uncertain. Failure can occur at any time during the clinical trial process.

The results of preclinical studies and early clinical trials of our product candidates do not necessarily predict the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through initial clinical testing. The data collected from clinical trials of our product candidates may not be sufficient to support the submission of a new drug application or to obtain regulatory approval in the United States or elsewhere. Because of the uncertainties associated with drug development and regulatory approval, we cannot determine if or when we will have an approved product for commercialization or achieve sales or profits.

Delays in clinical testing could result in increased costs to us and delay our ability to generate revenue.

We may experience delays in clinical testing of our product candidates. We do not know whether planned clinical trials will begin on time, will need to be redesigned or will be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays in obtaining regulatory approval to commence a trial, in reaching agreement on acceptable clinical trial terms with prospective sites, in obtaining institutional review board approval to conduct a trial at a prospective site, in recruiting patients to participate in a trial or in obtaining sufficient supplies of clinical trial materials. Many factors affect patient enrollment, including the size of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, competing clinical trials and new drugs approved for the conditions we are investigating. Prescribing physicians will also have to decide to use our product candidates over existing drugs that have established safety and efficacy profiles. Any delays in completing our clinical trials will increase our costs, slow down our product development and approval process and delay our ability to generate revenue.

We may be required to suspend or discontinue clinical trials due to unexpected side effects or other safety risks that could preclude approval of our product candidates.

Our clinical trials may be suspended at any time for a number of reasons. For example, we may voluntarily suspend or terminate our clinical trials if at any time we believe that they present an unacceptable risk to the clinical trial patients. In addition, regulatory agencies may order the temporary or permanent discontinuation of our clinical trials at any time if they believe that the clinical trials are not being conducted in accordance with applicable regulatory requirements or that they present an unacceptable safety risk to the clinical trial patients.

Administering any product candidates to humans may produce undesirable side effects. These side effects could interrupt, delay or halt clinical trials of our product candidates and could result in the FDA or other regulatory authorities denying further development or approval of our product candidates for any or all targeted indications. Ultimately, some or all of our product candidates may prove to be unsafe for human use. Moreover, we could be subject to significant liability if any volunteer or patient suffers, or appears to suffer, adverse health effects as a result of participating in our clinical trials.

If we fail to comply with healthcare regulations, we could face substantial penalties and our business, operations and financial condition could be adversely affected.

As a developer of pharmaceuticals, even though we do not and will not control referrals of healthcare services or bill directly to Medicare, Medicaid or other third-party payors, certain federal and state healthcare laws and regulations pertaining to fraud and abuse and patients' rights are and will be applicable to our business. We could be subject to healthcare fraud and abuse and patient privacy

regulation by both the federal government and the states in which we conduct our business. The regulations include:

- the federal healthcare program anti-kickback law, which prohibits, among other things, persons from soliciting, receiving or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing or ordering of a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;
- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, and which may apply to entities like us which provide coding and billing advice to customers;
- the federal Health Insurance Portability and Accountability Act of 1996, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters and which also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information;
- the Federal Food, Drug, and Cosmetic Act, which among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

If our operations are found to be in violation of any of the laws described above or any governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security and fraud laws may prove costly.

If we are unable to satisfy regulatory requirements, we may not be able to commercialize our product candidates.

We need FDA approval prior to marketing our product candidates in the United States. If we fail to obtain FDA approval to market our product candidates, we will be unable to sell our product candidates in the United States and we will not generate any revenue.

This regulatory review and approval process, which includes evaluation of preclinical studies and clinical trials of a product candidate as well as the evaluation of our manufacturing process and our contract manufacturers' facilities, is lengthy, expensive and uncertain. To receive approval, we must, among other things, demonstrate with substantial evidence from well-controlled clinical trials that the product candidate is both safe and effective for each indication where approval is sought. Satisfaction of these requirements typically takes several years and the time needed to satisfy them may vary substantially, based on the type, complexity and novelty of the pharmaceutical product. We cannot predict if or when we might submit for regulatory review any of our product candidates currently under

development. Any approvals we may obtain may not cover all of the clinical indications for which we are seeking approval. Also, an approval might contain significant limitations in the form of narrow indications, warnings, precautions, or contra-indications with respect to conditions of use.

The FDA has substantial discretion in the approval process and may either refuse to file our application for substantive review or may form the opinion after review of our data that our application is insufficient to allow approval of our product candidates. If the FDA does not file or approve our application, it may require that we conduct additional clinical, preclinical or manufacturing validation studies and submit that data before it will reconsider our application. Depending on the extent of these or any other studies, approval of any applications that we submit may be delayed by several years, or may require us to expend more resources than we have available. It is also possible that additional studies, if performed and completed, may not be considered sufficient by the FDA to make our applications approvable. If any of these outcomes occur, we may be forced to abandon our applications for approval, which might cause us to cease operations.

We will also be subject to a wide variety of foreign regulations governing the development, manufacture and marketing of our products. Whether or not FDA approval has been obtained, approval of a product by the comparable regulatory authorities of foreign countries must still be obtained prior to manufacturing or marketing the product in those countries. The approval process varies from country to country and the time needed to secure approval may be longer or shorter than that required for FDA approval. We cannot assure you that clinical trials conducted in one country will be accepted by other countries or that approval in one country will result in approval in any other country.

If our product candidates are unable to compete effectively with marketed drugs targeting similar indications as our product candidates, our commercial opportunity will be reduced or eliminated.

We face competition generally from established pharmaceutical and biotechnology companies, as well as from academic institutions, government agencies and private and public research institutions. Many of our competitors have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. Our commercial opportunity will be reduced or eliminated if our competitors develop and commercialize GI drugs that are safer, more effective, have fewer side effects or are less expensive than our product candidates. These third parties compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies and technology licenses complementary to our programs or advantageous to our business.

If approved and commercialized, SP-304 will compete with one existing prescription therapy for the treatment of CC and IBS-C, Amitiza. In addition, over-the-counter products are also used to treat certain symptoms of CC and IBS-C. We believe certain companies are developing other products which could compete with SP-304 should they be approved by the FDA. Currently, there are at least two compounds in late stage development. One compound, linclootide, is being developed by Ironwood Pharmaceuticals, Inc. This compound is being co-developed with Forest Laboratories, Inc. and has completed Phase 3 trials for CC and is expecting to have data from Phase 3 trials for IBS-C in the second half of 2010. Another compound, velusetrag, is being developed by Theravance, Inc. and has completed Phase 2 trials for CC. To our knowledge, other potential competitors are in earlier stages of development. If our potential competitors are successful in completing drug development for their drug candidates and obtain approval from the FDA, they could limit the demand for SP-304.

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We expect that our ability to compete effectively will depend upon our ability to:

- successfully and rapidly complete clinical trials and submit for and obtain all requisite regulatory approvals in a cost-effective manner;
- maintain a proprietary position for our products and manufacturing processes and other related product technology;
- attract and retain key personnel;
- develop relationships with physicians prescribing these products; and
- build an adequate sales and marketing infrastructure for our product candidates.

Because we will be competing against significantly larger companies with established track records, we will have to demonstrate to physicians that based on experience, clinical data, side-effect profiles and other factors, our products are preferable to existing GI drugs. If we are unable to compete effectively in the GI drug market and differentiate our products from currently marketed GI drugs, we may never generate meaningful revenue.

We currently have no sales and marketing organization. If we are unable to establish a direct sales force in the United States to promote our products, the commercial opportunity for our products may be diminished.

We currently have no sales and marketing organization. If any of our product candidates are approved by the FDA, we intend to market that product directly to hospitals and other pharmaceutical distribution channels in the United States through our own sales force. We will incur significant additional expenses and commit significant additional management resources to establish this sales force. We may not be able to establish these capabilities despite these additional expenditures. We will also have to compete with other pharmaceutical and biotechnology companies to recruit, hire and train sales and marketing personnel. If we elect to rely on third parties to sell our product candidates in the United States, we may receive less revenue than if we sold our products directly. In addition, we may have little or no control over the sales efforts of those third parties. In the event we are unable to develop our own sales force or collaborate with a third party to sell our product candidates, we may not be able to commercialize our product candidates which would negatively impact our ability to generate revenue.

We may need others to market and commercialize our product candidates in international markets.

In the future, if appropriate regulatory approvals are obtained, we intend to commercialize our product candidates in international markets. However, we have not decided how to commercialize our product candidates in those markets. We may decide to build our own sales force or sell our products through third parties. Currently, we do not have any plans to enter international markets. If we decide to sell our product candidates in international markets through a third party, we may not be able to enter into any marketing arrangements on favorable terms or at all. In addition, these arrangements could result in lower levels of income to us than if we marketed our product candidates entirely on our own. If we are unable to enter into a marketing arrangement for our product candidates in international markets, we may not be able to develop an effective international sales force to successfully commercialize those products in international markets. If we fail to enter into marketing arrangements for our products and are unable to develop an effective international sales force, our ability to generate revenue would be limited.

If the manufacturers upon whom we rely fail to produce SP-304 and our product candidates, including SP-333, in the volumes that we require on a timely basis, or fail to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of our product candidates.

We do not currently possess internal manufacturing capacity. We currently utilize the services of contract manufacturers to manufacture our clinical supplies. With respect to the manufacturing of SP-304, we are currently pursuing long-term commercial supply agreements with multiple manufacturers. Any curtailment in the availability of SP-304 could result in production or other delays with consequent adverse effects on us. In addition, because regulatory authorities must generally approve raw material sources for pharmaceutical products, changes in raw material suppliers may result in production delays or higher raw material costs.

We may be required to agree to minimum volume requirements, exclusivity arrangements or other restrictions with the contract manufacturers. We may not be able to enter into long-term agreements on commercially reasonable terms, or at all. If we change or add manufacturers, the FDA and comparable foreign regulators must approve these manufacturers' facilities and processes prior to use, which would require new testing and compliance inspections, and the new manufacturers would have to be educated in or independently develop the processes necessary for the production of our product candidates. Peptide manufacturing is a highly specialized manufacturing business. While we believe we will have long term arrangements with a sufficient number of contract manufacturers, if we lose a manufacturer, it would take us a substantial amount of time to identify and develop a relationship with an alternative manufacturer.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, particularly in scaling up production. These problems include difficulties with production costs and yields, quality control, including stability of the product and quality assurance testing, shortages of qualified personnel, as well as compliance with federal, state and foreign regulations. In addition, any delay or interruption in the supply of clinical trial supplies could delay the completion of our clinical trials, increase the costs associated with conducting our clinical trials and, depending upon the period of delay, require us to commence new trials at significant additional expense or to terminate a trial.

Each of our contract manufacturers would need to comply with GMP requirements enforced by the FDA through its facilities inspection program. These requirements include, among other things, quality control, quality assurance and the maintenance of records and documentation. Manufacturers of SP-304 and other product candidates, including SP-333, may be unable to comply with these GMP requirements and with other FDA and foreign regulatory requirements. We have little control over our manufacturers' compliance with these regulations and standards. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of SP-304 or other product candidates is compromised due to a manufacturers' failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for or successfully commercialize SP-304 or other product candidates, and we may be held liable for any injuries sustained as a result. Any of these factors could cause a delay of clinical trials, regulatory submissions, approvals or commercialization of SP-304 or other product candidates, entail higher costs or result in our being unable to effectively commercialize SP-304 or other product candidates. Furthermore, if our manufacturers fail to deliver the required commercial quantities on a timely basis and at commercially reasonable prices, we may be unable to meet demand for any approved products and would lose potential revenues.

We may not be able to manufacture our product candidates in commercial quantities, which would prevent us from commercializing our product candidates.

To date, our product candidates have been manufactured in small quantities for preclinical studies and clinical trials. If any of our product candidates is approved by the FDA or comparable regulatory authorities in other countries for commercial sale, we will need to manufacture such product candidate in larger quantities. We may not be able to increase successfully the manufacturing capacity for any of our product candidates in a timely or economic manner, or at all. Significant scale-up of manufacturing may require additional validation studies, which the FDA must review and approve. If we are unable to increase successfully the manufacturing capacity for a product candidate, the regulatory approval or commercial launch of that product candidate may be delayed or there may be a shortage in supply. Our product candidates require precise, high quality manufacturing. Our failure to achieve and maintain these high manufacturing standards in collaboration with our third-party manufacturers, including the incidence of manufacturing errors, could result in patient injury or death, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could harm our business, financial condition and results of operations.

Materials necessary to manufacture our product candidates may not be available on commercially reasonable terms, or at all, which may delay the development and commercialization of our product candidates.

We rely on the third-party manufacturers of our product candidates to purchase from third-party suppliers the materials necessary to produce the bulk active pharmaceutical ingredients, or API, and product candidates for our clinical trials, and we will rely on such manufacturers to purchase such materials to produce the API and finished product for any commercial distribution of our products if we obtain marketing approval. Suppliers may not sell these materials to our manufacturers at the time they need them in order to meet our required delivery schedule or on commercially reasonable terms, if at all. We do not have any control over the process or timing of the acquisition of these materials by our manufacturers. Moreover, we currently do not have any agreements for the production of these materials. If our manufacturers are unable to obtain these materials for our clinical trials, testing of the affected product candidate would be delayed, which may significantly impact our ability to develop the product candidate. If we or our manufacturers are unable to purchase these materials after regulatory approval has been obtained for one of our products, the commercial launch of such product would be delayed or there would be a shortage in supply of such product, which would harm our ability to generate revenues from such product and achieve or sustain profitability.

Our product candidates, if approved for sale, may not gain acceptance among physicians, patients and the medical community, thereby limiting our potential to generate revenues.

If one of our product candidates is approved for commercial sale by the FDA or other regulatory authorities, the degree of market acceptance of any approved product by physicians, healthcare professionals and third-party payors and our profitability and growth will depend on a number of factors, including:

- Demonstration of efficacy;
- Changes in the standard of care for the targeted indication;
- Relative convenience and ease of administration;
- The prevalence and severity of any adverse side effects;
- Availability, cost and potential advantages of alternative treatments, including less expensive generic drugs;
- Pricing and cost effectiveness, which may be subject to regulatory control;

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- Effectiveness of our or any of our partners' sales and marketing strategies;
- The product labeling or product insert required by the FDA or regulatory authority in other countries; and
- The availability of adequate third-party insurance coverage or reimbursement.

If any product candidate that we develop does not provide a treatment regimen that is as beneficial as, or is perceived as being as beneficial as, the current standard of care or otherwise does not provide patient benefit, that product candidate, if approved for commercial sale by the FDA or other regulatory authorities, likely will not achieve market acceptance. Our ability to effectively promote and sell any approved products will also depend on pricing and cost-effectiveness, including our ability to produce a product at a competitive price and our ability to obtain sufficient third-party coverage or reimbursement. If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, patients and third-party payors, our ability to generate revenues from that product would be substantially reduced. In addition, our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may never be successful.

Guidelines and recommendations published by various organizations can reduce the use of our products.

Government agencies promulgate regulations and guidelines directly applicable to us and to our products. In addition, professional societies, practice management groups, private health and science foundations and organizations involved in various diseases from time to time may also publish guidelines or recommendations to the health care and patient communities. Recommendations of government agencies or these other groups or organizations may relate to such matters as usage, dosage, route of administration and use of concomitant therapies. Recommendations or guidelines suggesting the reduced use of our products or the use of competitive or alternative products that are followed by patients and health care providers could result in decreased use of our proposed products.

If product liability lawsuits are successfully brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability lawsuits related to the testing of our product candidates, and will face an even greater risk if we sell our product candidates commercially. Currently, we are not aware of any anticipated product liability claims with respect to our product candidates. In the future, an individual may bring a liability claim against us if one of our product candidates causes, or merely appears to have caused, an injury. If we cannot successfully defend ourselves against the product liability claim, we may incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for our product candidates;
- injury to our reputation;
- withdrawal of clinical trial participants;
- costs of related litigation;
- initiation of investigations by regulators;
- substantial monetary awards to patients or other claimants;
- distraction of management's attention from our primary business;
- product recalls;
- loss of revenue; and

- the inability to commercialize our product candidates.

We have clinical trial liability insurance with a \$5,000,000 aggregate limit for up to 60 patients participating at the same time in our clinical trials. We intend to expand our insurance coverage to include the sale of commercial products if marketing approval is obtained for our product candidates. Our current insurance coverage may prove insufficient to cover any liability claims brought against us. In addition, because of the increasing costs of insurance coverage, we may not be able to maintain insurance coverage at a reasonable cost or obtain insurance coverage that will be adequate to satisfy any liability that may arise.

Our failure to successfully discover, acquire, develop and market additional product candidates or approved products would impair our ability to grow.

As part of our growth strategy, we intend to develop and market additional products and product candidates. We are pursuing various therapeutic opportunities through our pipeline. We may spend several years completing our development of any particular current or future internal product candidate, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. In addition, because our internal research capabilities are limited, we may be dependent upon pharmaceutical and biotechnology companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products. Failure of this strategy would impair our ability to grow.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate key employees of any acquired businesses.

Further, any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign

regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities.

Even if our product candidates receive regulatory approval, they may still face future development and regulatory difficulties.

Even if U.S. regulatory approval is obtained, the FDA may still impose significant restrictions on a product's indicated uses or marketing, or impose ongoing requirements for potentially costly post-approval studies. SP-304 and other product candidates, including SP-333, would also be subject to ongoing FDA requirements governing the labeling, packaging, storage, advertising, promotion, recordkeeping and submission of safety and other post-market information. In addition, manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current good manufacturing practices, or GMP, regulations. If we or a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions on that product or the manufacturer, including requiring withdrawal of the product from the market or suspension of manufacturing. If we, our product candidates or the manufacturing facilities for our product candidates fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters or untitled letters;
- impose civil or criminal penalties;
- suspend regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve pending applications or supplements to applications filed by us;
- impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require us to initiate a product recall.

Even if our product candidates receive regulatory approval in the U.S., we may never receive approval to commercialize them outside of the U.S.

In the future, we or our collaborators, if any, may seek to commercialize SP-304 and/or other product candidates, including SP-333, in foreign countries outside of the United States. In order to market any products outside of the U.S., we must establish and comply with numerous and varying regulatory requirements of other jurisdictions regarding safety and efficacy. Approval procedures vary among jurisdictions and can involve product testing and administrative review periods different from, and greater than, those in the U.S. The time required to obtain approval in other jurisdictions might differ from that required to obtain FDA approval. The regulatory approval process in other jurisdictions may include all of the risks detailed above regarding FDA approval in the U.S. as well as other risks. Regulatory approval in one jurisdiction does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory processes in others. Failure to obtain regulatory approvals in other jurisdictions or any delay or setback in obtaining such approvals could have the same adverse effects detailed above regarding FDA approval in the U.S. As described above, such effects include the risks that SP-304 or other product candidates may not be approved for all indications requested, which could limit the uses of SP-304 or other product candidates and have an adverse effect on our products' commercial potential or require costly post-marketing studies.

We rely on third parties to conduct our clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to seek or obtain regulatory approval for or commercialize our product candidates.

We have agreements with third-party contract research organizations, or CROs, to provide monitors and to manage data for our clinical programs. We and our CROs are required to comply with current Good Clinical Practices, or GCPs, regulations and guidelines enforced by the FDA for all of our products in clinical development. The FDA enforces GCPs through periodic inspections of trial sponsors, principal investigators and trial sites. In the future, if we or our CROs fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA will determine that any of our clinical trials for products in clinical development comply with GCPs. In addition, our clinical trials must be conducted with product produced under cGMP regulations, and will require a large number of test subjects. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

If any of our relationships with these third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. As a result, our financial results and the commercial prospects for our product candidates would be harmed, our costs could increase, and our ability to generate revenue could be delayed.

If we fail to attract and keep senior management and key scientific personnel, we may be unable to successfully develop our product candidates, conduct our clinical trials and commercialize our product candidates.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management, clinical and scientific personnel and on our ability to develop and maintain important relationships with leading academic institutions, clinicians and scientists. We are highly dependent upon our senior management and scientific staff, particularly Gary S. Jacob, Ph.D., our President and Chief Executive Officer and Kunwar Shailubhai, Ph.D., our Chief Scientific Officer. The loss of services of Dr. Jacob or one or more of our other members of senior management could delay or prevent the successful completion of our planned clinical trials or the commercialization of our product candidates.

The competition for qualified personnel in the biotechnology and pharmaceuticals field is intense. We will need to hire additional personnel as we expand our clinical development and commercial activities. We may not be able to attract and retain quality personnel on acceptable terms given the competition for such personnel among biotechnology, pharmaceutical and other companies.

We will need to increase the size of our organization, and we may experience difficulties in managing growth.

We are a small company with 6 full-time and 3 part-time employees as of March 12, 2010. To continue our clinical trials and commercialize our product candidates, we will need to expand our employee base for managerial, operational, financial and other resources. Future growth will impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees. Over the next 12 months depending on the progress of our planned clinical trials, we plan to add additional employees to assist us with our clinical programs.

Our future financial performance and our ability to commercialize our product candidates and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we must be able to:

- manage development efforts effectively;
- manage our clinical trials effectively;
- integrate additional management, administrative, manufacturing and sales and marketing personnel;
- maintain sufficient administrative, accounting and management information systems and controls; and
- hire and train additional qualified personnel.

We may not be able to accomplish these tasks, and our failure to accomplish any of them could harm our financial results and impact our ability to achieve development milestones.

Reimbursement may not be available for our product candidates, which would impede sales.

Market acceptance and sales of our product candidates may depend on reimbursement policies and health care reform measures. The levels at which government authorities and third-party payors, such as private health insurers and health maintenance organizations, reimburse patients for the price they pay for our products could affect whether we are able to commercialize these products. We cannot be sure that reimbursement will be available for any of these products. Also, we cannot be sure that reimbursement amounts will not reduce the demand for, or the price of, our products. We have not commenced efforts to have our product candidates reimbursed by government or third party payors. If reimbursement is not available or is available only to limited levels, we may not be able to commercialize our products.

In recent years, officials have made numerous proposals to change the health care system in the United States. These proposals include measures that would limit or prohibit payments for certain medical treatments or subject the pricing of drugs to government control. In addition, in many foreign countries, particularly the countries of the European Union, the pricing of prescription drugs is subject to government control. If our products are or become subject to government regulation that limits or prohibits payment for our products, or that subject the price of our products to governmental control, we may not be able to generate revenue, attain profitability or commercialize our products.

As a result of legislative proposals and the trend towards managed health care in the United States, third-party payers are increasingly attempting to contain health care costs by limiting both coverage and the level of reimbursement of new drugs. They may also refuse to provide any coverage of uses of approved products for medical indications other than those for which the FDA has granted market approvals. As a result, significant uncertainty exists as to whether and how much third-party payers will reimburse patients for their use of newly-approved drugs, which in turn will put pressure on the pricing of drugs.

Healthcare reform measures could hinder or prevent our product candidates' commercial success.

The U.S. government and other governments have shown significant interest in pursuing healthcare reform. Any government-adopted reform measures could adversely impact the pricing of healthcare products and services in the U.S. or internationally and the amount of reimbursement available from governmental agencies or other third party payors. The continuing efforts of the U.S. and foreign governments, insurance companies, managed care organizations and other payors of health care services to contain or reduce health care costs may adversely affect our ability to set prices for our

products which we believe are fair, and our ability to generate revenues and achieve and maintain profitability.

New laws, regulations and judicial decisions, or new interpretations of existing laws, regulations and decisions, that relate to healthcare availability, methods of delivery or payment for products and services, or sales, marketing or pricing, may limit our potential revenue, and we may need to revise our research and development programs. The pricing and reimbursement environment may change in the future and become more challenging due to several reasons, including policies advanced by the current executive administration in the U.S., new healthcare legislation or fiscal challenges faced by government health administration authorities. Specifically, in both the U.S. and some foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the health care system in ways that could affect our ability to sell our products profitably. In the U.S., changes in federal health care policy are being considered by Congress this year. Some of these proposed reforms could result in reduced reimbursement rates for our product candidates, which would adversely affect our business strategy, operations and financial results.

In addition, the Medicare Prescription Drug Improvement and Modernization Act of 2003 reforms the way Medicare will cover and reimburse for pharmaceutical products. This legislation could decrease the coverage and price that we may receive for our proposed products. Other third-party payors are increasingly challenging the prices charged for medical products and services. It will be time consuming and expensive for us to go through the process of seeking reimbursement from Medicare and private payors. Our proposed products may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our proposed products on a profitable basis. Further federal and state proposals and health care reforms are likely which could limit the prices that can be charged for the product candidates that we develop and may further limit our commercial opportunity. Our results of operations could be materially adversely affected by the proposed healthcare reforms, by the Medicare prescription drug coverage legislation, by the possible effect of such current or future legislation on amounts that private insurers will pay and by other health care reforms that may be enacted or adopted in the future.

In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk evaluations and mitigation strategies approved by the FDA. The FDA's exercise of this authority could result in delays or increased costs during product development, clinical trials and regulatory review, increased costs to assure compliance with post-approval regulatory requirements, and potential restrictions on the sale and/or distribution of approved products.

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

Generally, a change of more than 50% in the ownership of a company's stock, by value, over a three-year period constitutes an ownership change for U.S. federal income tax purposes. An ownership change may limit a company's ability to use its net operating loss carryforwards attributable to the period prior to the change. As a result, if we earn net taxable income, our ability to use our pre-change net operating loss carryforwards to offset U.S. federal taxable income may become subject to limitations, which could potentially result in increased future tax liability for us. At December 31, 2009, we had net operating loss carryforwards aggregating approximately \$30 million. We have determined that an ownership change occurred pursuant to Section 382 of the Internal Revenue Code. As a result of this ownership change, our ability to utilize our net operating loss carryforward is limited.

Risks Related to Our Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our product candidates, and the methods used to manufacture them, as well as successfully defending these patents against third-party challenges. We will only be able to protect our product candidates from unauthorized making, using, selling, offering to sell or importation by third parties to the extent that we have rights under valid and enforceable patents or trade secrets that cover these activities.

As of March 12, 2010, we own one issued United States patent and three issued foreign patents. We have seven pending United States patent applications and seventeen pending foreign patent applications. We may file additional patent applications and extensions. Our issued patents and patent applications primarily deal with composition of matter and use related to SP-304; and composition-of-matter and use of other analogs of the class of GC-C receptor agonists.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in biotechnology patents has emerged to date in the United States. The biotechnology patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our licensed patents or in third-party patents.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to make compounds that are competitive with our product candidates but that are not covered by the claims of our patents;
- we might not have been the first to make the inventions covered by our pending patent applications;
- we might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies;
- it is possible that our pending patent applications will not result in issued patents;
- we may not develop additional proprietary technologies that are patentable; or
- the patents of others may have an adverse effect on our business.

We also may rely on trade secrets to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. While we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or use, our technology.

If we choose to go to court to stop someone else from using the inventions claimed in our patents, that individual or company has the right to ask the court to rule that these patents are invalid and/or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, there is a risk that the court will decide that these patents are not valid and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that such other party's activities do not infringe our rights to these patents.

Furthermore, a third party may claim that we are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our product candidates. These lawsuits are costly and could affect our results of operations and divert the attention of managerial and technical personnel. There is a risk that a court would decide that we are infringing the third party's patents and would order us to stop the activities covered by the patents. In addition, there is a risk that a court will order us to pay the other party damages for having violated the other party's patents. The biotechnology industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods of use either do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid, and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, patent applications in the United States and many foreign jurisdictions are typically not published until eighteen months after filing, and publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our issued patents or our pending applications or that we were the first to invent the technology. Our competitors may have filed, and may in the future file, patent applications covering technology similar to ours. Any such patent application may have priority over our patent applications and could further require us to obtain rights to issued patents covering such technologies. If another party has filed a United States patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the United States Patent and Trademark Office, or the PTO, to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful, resulting in a loss of our United States patent position with respect to such inventions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

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

The PTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent

application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

We have not yet registered trademarks for SP-304 in our potential markets, and failure to secure those registrations could adversely affect our ability to market our product candidate and our business.

We have not yet registered trademarks for SP-304 in any jurisdiction. Our trademark applications in the U.S., when filed, and any other jurisdictions where we may file may not be allowed for registration, and our registered trademarks may not be maintained or enforced. During trademark registration proceedings, we may receive rejections. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in the PTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. Failure to secure such trademark registrations in the U.S. and in foreign jurisdictions could adversely affect our ability to market our product candidates and our business.

Confidentiality agreements with employees and others may not adequately prevent disclosure of our trade secrets and other proprietary information and may not adequately protect our intellectual property, which could limit our ability to compete.

Because we operate in the highly technical field of research and development of small molecule drugs, we rely in part on trade secret protection in order to protect our proprietary trade secrets and unpatented know-how. However, trade secrets are difficult to protect, and we cannot be certain that others will not develop the same or similar technologies on their own. We have taken steps, including entering into confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors, to protect our trade secrets and unpatented know-how. These agreements generally require that the other party keep confidential and not disclose to third parties all confidential information developed by the party or made known to the party by us during the course of the party's relationship with us. We also typically obtain agreements from these parties which provide that inventions conceived by the party in the course of rendering services to us will be our exclusive property. However, these agreements may not be honored and may not effectively assign intellectual property rights to us. Enforcing a claim that a party illegally obtained and is using our trade secrets or know-how is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States may be less willing to protect trade secrets or know-how. The failure to obtain or maintain trade secret protection could adversely affect our competitive position.

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

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Risks Related to the Securities Markets and Investment in Our Common Stock

There is no existing active trading market for our common stock.

Our common stock is quoted on the OTC Bulletin Board under the symbol "SGYP." There is no active trading market for any of our securities. Accordingly, there can be no assurance as to the liquidity of any markets that may develop for the securities, the ability of holders of the securities to sell their securities, or the prices at which holders may be able to sell their securities.

The market price of the common stock may be volatile and adversely affected by several factors.

The market price of our common stock could fluctuate significantly in response to various factors and events, including:

- our ability to integrate operations, technology, products and services;
- our ability to execute our business plan;
- operating results below expectations;
- our issuance of additional securities, including debt or equity or a combination thereof, which will be necessary to fund our operating expenses;
- announcements of technological innovations or new products by us or our competitors;
- loss of any strategic relationship;
- industry developments, including, without limitation, changes in healthcare policies or practices or third-party reimbursement policies;
- economic and other external factors; and
- period-to-period fluctuations in our financial results.

In addition, the securities markets have from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. These market fluctuations may also materially and adversely affect the market price of our common stock.

We have not paid cash dividends in the past and do not expect to pay cash dividends in the future. Any return on investment may be limited to the value of our common stock.

We have never paid cash dividends on our capital stock and do not anticipate paying cash dividends on our capital stock in the foreseeable future. The payment of dividends on our capital stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as the board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if the common stock price appreciates.

In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to remedy the material weaknesses identified as of December 31, 2009 could result in material misstatements in our financial statements.

Our management is responsible for establishing and maintain adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934. Our management identified five material weaknesses in our internal control over financial reporting as of December 31, 2009. A material weakness is defined as a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material

misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The material weaknesses identified by management as of December 31, 2009 consisted of:

- Ineffective control environment;
- Ineffective monitoring of internal control over financial reporting;
- Ineffective controls over period end financial close and reporting;
- Ineffective controls to ensure the correct application of GAAP related to equity transactions;
- Ineffective controls to adequately segregate the duties over cash management.

As a result of these material weaknesses, our management concluded as of December 31, 2009 that our internal control over financial reporting was not effective based on criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—An Integrated Framework* (September 1992).

We have begun to implement and continue to implement remedial measures designed to address these material weaknesses. If these remedial measures are insufficient to address these material weaknesses, or if additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, we may fail to meet our future reporting obligations on a timely basis, our consolidated financial statements may contain material misstatements, we could be required to restate our prior period financial results, our operating results may be harmed, we may be subject to class action litigation, and if we gain a listing on a national stock exchange, our common stock could be delisted from that exchange. Any failure to address the identified material weaknesses or any additional material weaknesses in our internal control could also adversely affect the results of the periodic management evaluations regarding the effectiveness of our internal control over financial reporting that is required to be included in our annual report on Form 10-K. Internal control deficiencies could also cause investors to lose confidence in our reported financial information. We can give no assurance that the measures we plan to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, in the future those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our consolidated financial statements.

A sale of a substantial number of shares of the common stock may cause the price of our common stock to decline.

If our stockholders sell, or the market perceives that our stockholders intend to sell for various reasons, including the ending of restriction on resale, substantial amounts of our common stock in the public market, including shares issued upon the exercise of outstanding options or warrants, the market price of our common stock could fall. Approximately 21,203,000 shares of our common stock are subject to lock-up agreements with us that expire on August 15, 2010. Sales of a substantial number of shares of our common stock may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate.

We may become involved in securities class action litigation that could divert management's attention and harm our business.

The stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the common stock of biotechnology and biopharmaceutical companies. These broad market fluctuations may cause the market price of our common stock to

decline. In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies have experienced significant stock price volatility in recent years. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None

ITEM 2. PROPERTIES.

Our corporate headquarters totals approximately 5,500 square feet, in two suites 1609 and 1701, located at 420 Lexington Avenue, New York, NY. This facility is provided to us under a space sharing arrangement with Callisto Pharmaceuticals, our majority stockholder. The term of the leases at 420 Lexington Avenue expire on June 30, 2011 and September 30, 2010. We also occupy a small laboratory and several offices, totaling approximately 1,000 square feet, in the Bucks County Biotechnology Center in Doylestown, Pennsylvania under a lease expiring August 31, 2010.

ITEM 3. LEGAL PROCEEDINGS.

On December 22, 2009, we through our subsidiary, Synergy Advanced Pharmaceuticals, Inc., filed a complaint in the Supreme Court of the State of New York against Capebio, LLC, CombiMab Inc. and Per Lindell alleging that defendants intentionally breached certain non-disclosure provisions and non-compete provisions of agreements previously entered into with us. We are requesting that the defendants be permanently restrained and enjoined from breaching such agreements and disgorging all compensation and any and all profits. In addition, we are requesting an assignment of all patents and other intellectual property rights defendants currently hold relating to any inventions obtained in breach of the agreements as well as compensatory, consequential and punitive damages.

ITEM 4. RESERVED.

PART II**ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUERS PURCHASES OF EQUITY SECURITIES.****Market Prices**

Our common stock has been quoted on the Over the Counter Bulletin Board under the symbol "SGYP.OB" since August 11, 2008, prior to which date our securities were not traded on any public market. The following table shows the reported high and low closing prices per share for our common stock as reported on the Over the Counter Bulletin Board since that date.

	High	Low
Year ended December 31, 2008		
Third quarter (since August 11, 2008)	\$ 0.95	\$ 0.75
Fourth quarter	\$ 2.48	\$ 0.99
Year ended December 31, 2009		
First quarter	\$ 2.65	\$ 2.55
Second quarter	\$ 2.95	\$ 2.62
Third quarter	\$ 3.08	\$ 2.95
Fourth quarter	\$ 5.60	\$ 3.06
Year ending December 31, 2010		
First quarter (through March 12, 2010)	\$ 7.20	\$ 5.60

Holders of Common Stock

As of March 12, 2010, we had 75 holders of record of our common stock.

Dividends

Historically, we have not declared or paid any cash dividends to the holders of our common stock and we do not expect to pay any such dividends in the foreseeable future as we expect to retain our future earnings for use in the operation and expansion of our business.

Equity Compensation Information

The following table summarizes information about our equity compensation plans as of December 31, 2009.

Plan Category	Number of Shares of Common Stock to be Issued upon Exercise of Outstanding Options (a)	Weighted- Average Exercise Price of Outstanding Options	Number of Options Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)
Equity Compensation Plans Approved by Stockholders	4,214,016	\$ 0.30	3,285,984
Equity Compensation Plans Not Approved by Stockholders	—		—
Total	4,214,016	\$ 0.30	3,285,984

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As of December 31, 2009 there were 4,214,016 stock options outstanding under the 2008 Equity Compensation Incentive Plan, or Plan, and no options outstanding under the 2009 Directors Option Plan, or Directors Plan, with 2,285,984 stock options available for future issuance under the Plan and 1,000,000 stock options available for future issuance under the Directors Plan. On March 1, 2010, a majority of our shareholders acting by written consent approved an amendment to the Plan increasing the number of shares reserved under the Plan to 15,000,000 shares.

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth our selected consolidated financial data and has been derived from our audited consolidated financial statements. Consolidated balance sheets as of December 31, 2009 and 2008, as well as consolidated statements of operations for the years ended December 31, 2009, 2008 and 2007, and the reports thereon are included elsewhere in this Annual Report on Form 10-K. The information below should be read in conjunction with our audited consolidated financial statements and the notes to such statements and "Managements Discussion and Analysis of Financial Condition and Results of Operations" included below in Item 7. Historical results are not necessarily indicative of the results to be expected in the future. We had no operations for the year ended December 31, 2005.

<u>Consolidated Statement of Operations Data:</u>	<u>Year ended December 31,</u>			
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in thousands except for weighted average shares)			
Revenues	\$ —	\$ —	\$ —	\$ —
Costs and Expenses:				
Research and development	4,257	1,909	—	—
Purchased in-process research and development	—	28,157	—	—
General and administrative	3,943	1,663	—	—
Loss from Operations	(8,200)	(31,729)	—	—
Interest and investment income	75	5	—	—
Loss from Continuing Operations	(8,125)	(31,724)	—	—
Net Loss from Discontinued Operations	—	(32)	(20)	(20)
Net Loss	(8,125)	(31,756)	(20)	(20)
Net Loss per common share, basic and diluted	(0.11)	(0.27)	—	—
Weighted Average Common Shares Outstanding	73,281,327	73,281,327	165,081,215	165,081,215

<u>Consolidated Balance Sheet Data:</u>	<u>December 31,</u>			
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in thousands)			
Cash and cash equivalents	7,153	216	2	2
Working capital	6,487	(1,172)	(14)	(3)
Total assets	9,211	922	4	5
Total stockholder's equity	7,484	(1,156)	(11)	—

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our consolidated financial statements and other financial information appearing elsewhere in this Annual Report on Form 10-K. In addition to historical information, the following discussion and other parts of this Annual Report contain forward-looking information that involves risks and uncertainties.

FINANCIAL OPERATIONS OVERVIEW

From inception through December 31, 2009, we have sustained cumulative net losses available to common stockholders of \$ 39,920,541. From inception through December 31, 2009, we have not generated any revenue from operations and expect to incur additional losses to perform further research and development activities and do not currently have any commercial biopharmaceutical products. We do not expect to have such for several years, if at all.

Our product development efforts are thus in their early stages and we cannot make estimates of the costs or the time they will take to complete. The risk of completion of any program is high because of the many uncertainties involved in bringing new drugs to market including the long duration of clinical testing, the specific performance of proposed products under stringent clinical trial protocols, the extended regulatory approval and review cycles, our ability to raise additional capital, the nature and timing of research and development expenses and competing technologies being developed by organizations with significantly greater resources.

HISTORY

On July 14, 2008, Pawfect Foods Inc. ("Pawfect"), a Florida corporation incorporated on November 15, 2005, acquired 100% of the common stock of Synergy Pharmaceuticals, Inc. and its wholly-owned subsidiary, Synergy Advanced Pharmaceuticals, Inc. (collectively "Synergy-DE"), a Delaware corporation incorporated on September 11, 1992, under the terms of an Exchange Transaction among Pawfect, Callisto Pharmaceuticals, Inc. ("Callisto"), Synergy-DE, and certain other holders of Synergy-DE common stock ("Exchange Transaction"). For a more detailed discussion of this exchange transaction, see Item 8. Financial Statements—Note 4 *Acquisitions and Stockholders' Equity (Deficit)*.

On July 21, 2008, Pawfect amended its articles of incorporation to effect the actions necessary to complete the transactions contemplated by the Exchange Transaction and changed its name to Synergy Pharmaceuticals, Inc.

Immediately following the Exchange Transaction Synergy discontinued its pet food business and is now exclusively focused on the development of drugs to treat GI disorders and diseases. Synergy acquired the GI drugs and related technology in connection with the Exchange Transaction.

CRITICAL ACCOUNTING POLICIES

Financial Reporting Release No. 60 requires all companies to include a discussion of critical accounting policies or methods used in the preparation of financial statements. Our accounting policies are described in Item 8. Financial Statements—Note 3 *Summary of Significant Accounting Policies and New Accounting Pronouncements*. The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates. We believe that the following discussion represents our critical accounting policies.

Research and Development

We do not currently have any commercial biopharmaceutical products, and do not expect to have such for several years, if at all and therefore our research and development costs are expensed as incurred. These include expenditures in connection with an in-house research and development laboratory, salaries and staff costs, application and filing for regulatory approval of our proposed products, purchase of in-process research and development, regulatory and scientific consulting fees, contract research payments to outside suppliers, facilities and universities as well as legal and professional fees associated with filing and maintaining our patent and license rights to our proposed products. While certain of our research and development costs may have future benefits, our policy of expensing all research and development expenditures is predicated on the fact that we have no history of successful commercialization of biopharmaceutical products to base any estimate of the number of future periods that would be benefited.

In June 2007, the EITF of the FASB reached a consensus on ASC Topic 730, *Research and Development* ("ASC Topic 730"). This guidance requires that non-refundable advance payments for goods or services that will be used or rendered for future research and development activities should be deferred and capitalized. As the related goods are delivered or the services are performed, or when the goods or services are no longer expected to be provided, the deferred amounts would be recognized as an expense. We adopted ASC Topic 730 on January 1, 2008 and the adoption did not have a material effect on our consolidated financial position, results of operations or cash flows.

Stock-Based Compensation

We rely heavily on incentive compensation in the form of stock options to recruit, retain and motivate directors, executive officers, employees and consultants. Incentive compensation in the form of stock options and restricted stock units is designed to provide long-term incentives, develop and maintain an ownership stake and conserve cash during our development stage. Since inception through December 31, 2009 stock-based compensation expense has totaled \$1,434,445.

ASC Topic 718 "*Compensation—Stock Compensation*" requires companies to measure the cost of employee services received in exchange for the award of equity instruments based on the estimated fair value of the award at the date of grant. The expense is to be recognized over the period during which an employee is required to provide services in exchange for the award. We did not issue stock options until the year ended December 31, 2008.

Upon adoption of ASC Topic 718 "*Compensation—Stock Compensation*", we selected the Black-Scholes option pricing model as the most appropriate model for determining the estimated fair value for stock-based awards. Use of a valuation model requires management to make certain assumptions with respect to selected model inputs. Expected volatility and option term were based on the historical volatility of similar public entities. The risk-free interest rate is based on observed interest rate appropriate for the expected term of our employee stock options. Forfeitures are estimated, based on our historical experience, at the time of grant.

RESULTS OF OPERATIONS

On July 14, 2008, we completed the acquisition of Synergy-DE. The results of operations of Synergy-DE are included in the accompanying consolidated financial statements from July 14, 2008. As a result of the acquisition of Synergy-DE on July 14, 2008, we decided to discontinue our pet food business and accordingly, amounts in the consolidated statements of operations and related notes for all historical periods have been restated to reflect these operations as discontinued. Pet food business net loss for the six months ended June 30, 2008, pre-acquisition of Synergy-DE, totaled \$31,560. As a result of this mid year 2008 acquisition the comparative results discussed below for continuing operations are for the twelve months ended December 31, 2009 as compared to the period of approximately 5.5 months from July 14, 2008 to December 31, 2008.

YEARS ENDED DECEMBER 31, 2009 AND DECEMBER 31, 2008

We had no revenues during the twelve months ended December 31, 2009 and 2008 because we do not have any commercial biopharmaceutical products and we do not expect to have such products for several years, if at all.

For the twelve months ended December 31, 2009, research and development expenses totaled \$ 4,257,285 as compared to \$1,909,226 during the twelve months ended December 31, 2008. This increase in research and development expenses was entirely attributable to continuing the development of our SP-304 product candidate for the full 12 months ended December 31, 2009 as compared to the 5.5 months ended December 31, 2008. These expenses included (i) procurement of drug substance, totaling approximately \$910,000 to move our clinical trials into Phase II, as compared to \$523,470 during the 5.5 months ended December 31, 2008, (ii) program expenses including animal studies, analytical testing and clinical trial insurance of approximately \$1,956,000, as compared to \$540,312 during the 5.5 months ended December 31, 2008, (iii) scientific and regulatory advisory fees and expenses of approximately \$224,000, as compared to \$261,808 during the 5.5 months ended December 31, 2008, (iv) in-house staff salaries and wages, stock based compensation and employee benefits of approximately \$643,000, as compared to \$276,124 during the 5.5 months ended December 31, 2008, and (v) patent related legal fees of approximately \$523,000, as compared to \$137,112 during the 5.5 months ended December 31, 2008.

The fair value of the 45,464,760 shares issued in connection with the Exchange Transaction, totaled \$27,278,855 on July 14, 2008, based on a per share value of \$0.60, which was the per share price of our 5,000,000 common shares sold in a private placement on that date. In addition, the net assets and liabilities of Synergy-DE, primarily cash and accounts payable, were stated at their fair value, which totaled net liabilities acquired of \$877,647. The total remaining consideration was allocated to research and development projects which had not yet reached technological feasibility and, having no alternative use, this total amount of \$28,156,502 was charged to purchased in-process research and development expense during the 5.5 months ended December 31, 2008. There were no such expenses during the twelve months ended December 31, 2009. In addition, the purchase of all the assets and liabilities of Synergy-DE was treated as an asset acquisition.

For the twelve months ended December 31, 2009, general and administrative expenses were \$3,942,738, as compared to \$1,662,885 during the 5.5 months ended December 31, 2008. These expenses primarily include (i) non-scientific salaries and wages, stock based compensation and related employee benefits of approximately \$1,697,000, as compared to \$718,000 during the 5.5 months ended December 31, 2008. (ii) facilities cost of approximately \$707,000 as compared to \$277,953 during the 5.5 months ended December 31, 2008. (iii) Independent public accounting, corporate legal and tax services of approximately \$436,000, as compared to \$344,224 during the 5.5 months ended December 31, 2008, (iv) consultants and advisors of approximately \$963,000, as compared to \$253,754 during the 5.5 months ended December 31, 2008 and (v) travel of approximately \$138,000, as compared to \$64,494 during the 5.5 months ended December 31, 2008.

Net loss for the twelve months ended December 31, 2009 was \$8,125,100 compared to a net loss of \$ 31,755,180 incurred for the twelve months ended December 31, 2008 for the reasons discussed above. In addition we had higher interest income of \$74,923 on higher cash balances during the twelve months ended December 31, 2009, as compared to \$4,993 for the twelve months ended December 31, 2008.

YEARS ENDED DECEMBER 31, 2008 AND DECEMBER 31, 2007

We had no revenues during the twelve months ended December 31, 2008 and 2007 because we do not have any commercial biopharmaceutical products and we do not expect to have such products for several years, if at all.

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For the twelve months ended December 31, 2008, research and development expenses totaled \$1,909,226. These research and development expenses were primarily attributable to our SP-304 product candidate. These expenses include drug formulation of \$523,470, clinical program expenses of \$540,312, scientific and regulatory advisors of \$261,808, in-house staff salaries and employee benefits including stock based compensation expense of \$276,124 and patent prosecution costs of \$137,112. There were no such expenses during the twelve months ended December 31, 2007 because the SP-304 product was acquired in connection with the July 14, 2008 Exchange Transaction discussed above. In addition, our pet food business was discontinued on July 14, 2008 in connection with the Exchange Transaction.

The fair value of the 45,464,760 shares issued in connection with the Exchange Transaction, totaled \$27,278,855 on July 14, 2008, based on a per share value of \$0.60, which was the per share price of our 5,000,000 common shares sold in a private placement on that date. In addition, the assets and liabilities of Synergy-DE, primarily cash and accounts payable, were stated at their fair value, which totaled net liabilities acquired of \$877,647. The total remaining consideration was allocated to research and development projects which had not yet reached technological feasibility and, having no alternative use, this total amount of \$28,156,502 was charged to purchased in-process research and development expense during the twelve months ended December 31, 2008. There were no such expenses during the twelve months ended December 31, 2007. In addition, the purchase of all the assets and liabilities of Synergy-DE was treated as an asset acquisition.

In addition to purchased in-process research and development ("IPR&D"), we acquired four full time employees and a patent related to the technologies acquired. There were no other intangible assets acquired which required allocation of the purchase price. We did not assign a value to the acquired employees as all continuing research and development was being performed under the supervision of Callisto employees, nor to the patent since the technology was still in an early stage. Therefore, the full purchase price accordingly was allocated to purchased IPR&D and there was no value assigned to goodwill. The value of the IPR&D was based on the fair value of the consideration given which was the value most reliably measurable.

For the twelve months ended December 31, 2008, general and administrative expenses were \$1,662,885. These expenses primarily include non-scientific salaries and related employee benefits including stock based compensation expense of \$718,002, consultants and advisors of \$253,754, travel and entertainment of \$64,494, facilities cost of \$277,953, accounting and tax services of \$281,250 and corporate legal of \$62,974. Such expenses during the twelve months ended December 31, 2007 were exclusively devoted to our pet food business which was discontinued on July 14, 2008 and reported as "loss from discontinued operations" in the accompanying financial statements.

Net loss for the twelve months ended December 31, 2008 was \$31,755,180 compared to a net loss of \$20,043 incurred for the twelve months ended December 31, 2007.

LIQUIDITY AND CAPITAL RESOURCES

As of December 31, 2009 we had \$7,152,568 in cash and cash equivalents, compared to \$216,007 as of December 31, 2008. Net cash used in operating activities was \$8,491,318 for the twelve months ended December 31, 2009 as compared to \$1,878,744 during the twelve months ended December 31, 2008. Net cash provided by financing activities for the twelve months ended December 31, 2009 was \$15,710,098, principally the net result of the private placement of 22,814,425 shares of our common stock at \$0.70 per share during the twelve months ended December 31, 2009, net of \$260,002 of selling agent fees and other cost of capital.

As of December 31, 2009 we had working capital of \$ 6,487,466, as compared to a working capital deficit of \$1,171,893 on December 31, 2008.

Our working capital requirements will depend upon numerous factors including but not limited to the nature, cost and timing of pharmaceutical research and development programs. We will be required

to raise additional capital within the next twelve months to complete the development and commercialization of current product candidates, to fund the existing working capital deficit and to continue to fund operations at our current cash expenditure levels. To date, our sources of cash have been primarily limited to the sale of equity securities. We cannot be certain that additional funding will be available on acceptable terms, or at all. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants that impact our ability to conduct business. If we are unable to raise additional capital when required or on acceptable terms, we may have to (i) significantly delay, scale back or discontinue the development and/or commercialization of one or more of product candidates; (ii) seek collaborators for product candidates at an earlier stage than otherwise would be desirable and on terms that are less favorable than might otherwise be available; or (iii) relinquish or otherwise dispose of rights to technologies, product candidates or products that we would otherwise seek to develop or commercialize ourselves on unfavorable terms.

Our consolidated financial statements as of December 31, 2009 have been prepared under the assumption that we will continue as a going concern. Our independent registered public accounting firm has issued a report on our financial statements that included an explanatory paragraph referring to our recurring losses from operations and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. Our ability to continue as a going concern is dependent upon our ability to obtain additional equity or debt financing, attain further operating efficiencies and, ultimately, to generate revenue. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

CONTRACTUAL OBLIGATIONS AND COMMITMENTS

The following table is a summary of contractual cash obligations for the periods indicated that existed as of December 31, 2009, and is based on information appearing in the notes to Consolidated Financial Statements included elsewhere in this Annual Report on Form 10-K.

	<u>Total</u>	<u>Less than 1 Year</u>	<u>1-2 Years</u>	<u>3-5 Years</u>	<u>More than 5 Years</u>
Operating leases	\$ 375,656	\$ 241,821	\$ 133,835	\$ —	\$ —
Purchase obligations—principally employment and consulting services	2,409,750	803,250	1,606,500	—	—
Purchase Obligations—Major Vendors	<u>1,666,578</u>	<u>1,666,578</u>			
Total obligations	<u>\$ 4,451,984</u>	<u>\$ 2,711,649</u>	<u>\$ 1,740,335</u>	<u>\$ —</u>	<u>\$ —</u>

OFF-BALANCE SHEET ARRANGEMENTS

We had no off-balance sheet arrangements as of December 31, 2009.

RECENT ACCOUNTING PRONOUNCEMENTS

In August 2009, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2009-05, "Measuring Liabilities at Fair Value" ("ASU 2009-05"). ASU 2009-05 amends ASC Topic 820 and clarifies that, where a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using one or more of the following methods: 1) a valuation technique that uses a) the quoted price of the identical liability when traded as an asset or b) quoted prices for similar liabilities or similar liabilities when traded as assets and/or 2) a valuation technique that is consistent with the principles of ASC Topic 820. ASU 2009-05 also clarifies that, when estimating the fair value of a liability, a reporting entity is not required to adjust to include inputs relating to the existence of transfer restrictions on that liability. The adoption of ASU 2009-05 did not have a material impact on our financial statements.

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In June 2009, Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2009-01, "Generally Accepted Accounting Principles" (ASC Topic 105), by the Codification which establishes the FASB Accounting Standards Codification (the "Codification" or "ASC") as the single source of authoritative GAAP. All existing accounting standards in effect prior to the Codification were superseded. All other accounting guidance not included in the Codification will be considered non-authoritative. The Codification also includes all relevant SEC guidance organized using the same topical structure in separate sections within the Codification. The Codification does not change GAAP and did not impact our financial statements. Beginning with the financial statements and the notes thereto included in this quarterly report, all references to authoritative accounting literature (including references related to periods prior to the establishment of the Codification) will be referenced in accordance with the Codification.

In May 2009, the FASB issued guidance within ASC Topic 855, "Subsequent Events," amended by ASU 2010-09, relating to subsequent events. This guidance establishes principles and requirements for subsequent events. This guidance defines the period after the balance sheet date during which events or transactions that may occur would be required to be disclosed in a company's financial statements. Public entities are required to evaluate subsequent events through the date that financial statements are issued. This guidance also provides guidelines for evaluating whether or not events or transactions occurring after the balance sheet date should be recognized in the financial statements.

In April 2009, the FASB issued guidance within ASC Topic 825, "Financial Instruments—Overall," concerning interim disclosures about fair value instruments. This guidance requires that disclosures about the fair value of a company's financial instruments be made whenever summarized financial information for interim reporting periods is made. The provisions of this guidance are effective for interim periods ending after June 15, 2009. The adoption of this guidance did not have a material impact on our financial statements.

In October 2008, the FASB issued FASB Staff Position within ASC Topic 820, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, ("ASC Topic 820"). This guidance applies to financial assets within the scope of accounting pronouncements that require or permit fair value measurements in accordance with ASC Topic 820. This guidance clarifies the application of in determining the fair values of assets or liabilities in a market that is not active. This guidance is effective upon issuance, including prior periods for which financial statements have not been issued. The adoption of this FSP did not have a material impact on our consolidated financial statements.

In June 2008, the FASB ratified the consensus reached on guidance within ASC Topic 815, *Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock* ("ASC Topic 815"). This guidance clarifies the determination of whether an instrument (or an embedded feature) is indexed to an entity's own stock, which would qualify as a scope exception under ASC Topic 815, *Accounting for Derivative Instruments and Hedging Activities*. ASC Topic 815 is effective for financial statements issued for fiscal years beginning after December 15, 2008. The adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cash flow.

In February 2008, the FASB issued ASC Topic 820, *Partial Deferral of the Effective Date of Statement 157*, ("ASC Topic 820"). This guidance delays the effective date of *Fair Value Measurements* ("ASC Topic 820") for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually) to fiscal years beginning after November 15, 2008. The adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cash flow.

In December 2007, the FASB ratified ASC Topic 808, *Accounting for Collaborative Arrangements Related to the Development and Commercialization of Intellectual Property*, ("ASC Topic 808"), which provides guidance on how the parties to a collaborative agreement should account for costs incurred.

and revenue generated on sales to third parties, how sharing payments pursuant to a collaboration agreement should be presented in the income statement and certain related disclosure requirements. Asc Topic 808 is effective for fiscal years beginning after December 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, statement of operations or cash flow.

In December 2007, the FASB issued ASC Topic 805, *Business Combinations*. The revision is intended to simplify existing guidance and converge rulemaking under U.S. GAAP with international accounting rules. This statement applies prospectively to business combinations where the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008, and may affect the release of our valuation allowance against prior acquisition intangibles. Adoption of this statement did not have a material effect on our consolidated financial position, statement of operations or cash flow.

In December 2007, the FASB issued ASC Topic 810, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of Asc Topic 860*("Asc Topic 810"). This guidance requires all entities to report noncontrolling (minority) interests in subsidiaries as equity in the consolidated financial statements. Its intention is to eliminate the diversity in practice regarding the accounting for transactions between an entity and noncontrolling interests. This Statement is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, statement of operations or cash flow.

In June 2007, the EITF of the FASB reached a consensus on ASC Topic 730, *Accounting for Nonrefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities* ("ASC Topic 730"). This guidance requires that non-refundable advance payments for goods or services that will be used or rendered for future research and development activities should be deferred and capitalized. As the related goods are delivered or the services are performed, or when the goods or services are no longer expected to be provided, the deferred amounts would be recognized as an expense. We adopted ASC Topic 730 on January 1, 2008 and the adoption did not have a material effect on our consolidated financial position, results of operations or cash flows.

In February 2007, the FASB issued Statement of Financial Accounting Standards within ASC Topic 825, *The Fair Value Option for Financial Assets and Financial Liabilities, including an Amendment to ASC Topic 320* ("ASC Topic 320"). The fair value option established by ASC Topic 825 permits all entities to measure all eligible items at fair value at specified election dates. A business entity shall report all unrealized gains and losses on items for which the fair value option has been elected, in earnings at each subsequent reporting date. We adopted ASC Topic 825 on January 1, 2008 and the adoption did not have a material effect on our consolidated financial position, results of operations or cash flows as we did not elect this fair value option on any financial assets or liabilities.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

At December 31, 2009 and 2008, a substantial portion of our cash and cash equivalents consists of short term, highly liquid investments in a money market fund managed by a money center bank.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The full text of our audited consolidated financial statements as of December 31, 2009 and 2008 and for the fiscal years ended December 31, 2009, 2008 and 2007 and for the period from November 15, 2005 (inception) to December 31, 2009, begins on page F-1 of this Annual Report on Form 10-K.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A. CONTROLS AND PROCEDURES.

a) *Disclosure Controls and Procedures*

Our chief executive officer and chief financial officer evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2009. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2009, and due to the material weaknesses in our internal control over financial reporting described in our accompanying *Management's Report on Internal Control over Financial Reporting*, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were not effective.

b) *Management's Report on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for our company. Internal control over financial reporting is defined in Rule 13a-15(f) and 15d-15(f) promulgated under the Exchange Act, as a process designed by, or under the supervision of, a company's principal executive and principal financial officers and effected by the Company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;
- (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made in accordance with authorizations of management and directors of the company; and
- (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

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Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our chief executive officer and chief financial officer assessed the effectiveness of our internal control over financial reporting as of December 31, 2009. In connection with this assessment, we identified the following material weaknesses in internal control over financial reporting as of December 31, 2009. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—An Integrated Framework* (September 1992). Because of the material weaknesses described below, management concluded that, as of December 31, 2009, our internal control over financial reporting was not effective.

(1) *Control environment*—We did not maintain an effective control environment. The control environment, which is the responsibility of senior management, sets the tone of the organization, influences the control consciousness of its people, and is the foundation for all other components of internal control over financial reporting. Each of the following control environment material weaknesses also contributed to the material weaknesses discussed in items (2) through (5) below. Our control environment was ineffective because of the following material weaknesses:

(a) We did not maintain a sufficient complement of personnel with an appropriate level of accounting knowledge, experience, and training in the application of Generally Accepted Accounting Principles (GAAP) commensurate with our financial reporting requirements and business environment. This material weakness resulted in a material post closing adjustment which has been reflected in the financial statements for the year ended December 31, 2009. This adjustment caused changes in current assets, stockholders' equity, and expenses, specifically in prepaid expenses and drug substance expense which were not originally recorded in accordance with ASC Topic 730-10-55 *Research and Development*.

(b) We did not maintain an effective anti-fraud program designed to detect and prevent fraud relating to (i) an effective whistleblower program or other comparable mechanism and (ii) an ongoing program to manage identified fraud risks.

The control environment material weaknesses described above contributed to the material weaknesses related to our monitoring of internal control over financial reporting, period end financial close and reporting, accounting for stock compensation and equity transactions described in items (2) to (5) below.

(2) *Monitoring of internal control over financial reporting*—We did not maintain effective monitoring controls to determine the adequacy of our internal control over financial reporting and related policies and procedures because of the following material weaknesses:

(a) Our policies and procedures with respect to the review, supervision and monitoring of our accounting operations throughout the organization were either not designed and in place or not operating effectively.

(b) We did not maintain an effective internal control monitoring function. Specifically, there were insufficient policies and procedures to effectively determine the adequacy of our internal control over financial reporting and to monitoring the ongoing effectiveness thereof.

Each of these material weaknesses relating to the monitoring of our internal control over financial reporting contributed to the material weaknesses described in items (3) through (5) below.

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(3) *Period end financial close and reporting*—Due to a pervasive lack of proper segregation of duties within the finance department, we did not establish and maintain effective controls over certain of our period-end financial close and reporting processes because of the following material weaknesses:

(a) We did not maintain effective controls over the preparation and review of the interim and annual consolidated financial statements to ensure that we identified and accumulated all required supporting information to ensure the completeness and accuracy of the consolidated financial statements and that balances and disclosures reported in the consolidated financial statements reconciled to the underlying supporting schedules and accounting records.

(b) We did not maintain effective controls over the preparation, review and approval of account reconciliations. Specifically, we did not have effective controls over the completeness and accuracy of supporting schedules for substantially all financial statement account reconciliations.

(c) We did not maintain effective controls over the recording of either recurring or non-recurring journal entries. Specifically, effective controls were not designed and implemented to ensure that journal entries were properly prepared with sufficient support or documentation or were reviewed and approved to ensure the accuracy and completeness of the journal entries recorded.

(4) *Equity Transactions*—We did not establish and maintain effective controls to ensure the correct application of GAAP related to equity transactions. Specifically, we did not adequately review private placement agreements to identify potential derivative instruments.

(5) *Cash management*—We did not establish and maintain effective controls to adequately segregate the duties over cash management. Specifically, effective controls were not designed to prevent the misappropriation of cash.

BDO Seidman LLP, our independent registered public accounting firm, has audited our consolidated financial statements and the effectiveness of our internal control over financial reporting as of December 31, 2009. This report appears below.

c) *Changes in Internal Control Over Financial Reporting*

As previously reported in Item 9A(T) of our Annual Report on Form 10-K for the year ended December 31, 2008 we reported material weaknesses in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act). As a result of those material weaknesses in our internal control over financial reporting, our principal financial officer concluded that our internal controls over financial reporting were not effective as of December 31, 2008. Those material weaknesses included the following:

- Inadequate number of accounting, tax and finance professionals to perform adequate supervisory reviews and monitoring activities over financial reporting matters and controls and
- Insufficient personnel with an appropriate level of technical accounting knowledge, experience, and training who could execute appropriate monitoring and review controls particularly in situations where transactions were complex or non-routine or required specific application of appropriate GAAP.

During the quarter ended December 31, 2009, no changes other than those in conjunction with certain remediation efforts described below, were identified with respect to our internal control over financial reporting that materially affected, or were reasonably likely to materially affect, our internal control over financial reporting.

d) Remediation Plans

Management, in coordination with the input, oversight and support of our Audit Committee, has identified the following measures to strengthen our internal control over financial reporting and to address the material weaknesses described above. Prior to the filing of this Annual Report on Form 10-K, we hired a controller who will:

- Prepare annual and quarterly consolidated financial statements
- Prepare annual and quarterly account reconciliations
- Prepare annual and quarterly journal entries

This hire will allow for proper segregation of duties within our financial department. We are also considering the use of an independent GAAP advisor. While we expect these remedial actions to be essentially implemented in calendar year 2010, some may not be in place for a sufficient period of time to help us certify that material weaknesses have been fully remediated as of the end of calendar year 2010. We will continue to develop our remediation plans and implement additional measures during calendar year 2010 and possibly into calendar year 2011.

If the remedial measures described above are insufficient to address any of the identified material weaknesses or are not implemented effectively, or additional deficiencies arise in the future, material misstatements in our interim or annual financial statements may occur in the future and we may continue to be delinquent in our filings. We are currently working to improve and simplify our internal processes and implement enhanced controls, as discussed above, to address the material weaknesses in our internal control over financial reporting and to remedy the ineffectiveness of our disclosure controls and procedures. A key element of our remediation effort is the ability to recruit and retain qualified individuals to support our remediation efforts. While our Audit Committee and Board of Directors have been supportive of our efforts by supporting the hiring of various individuals in our finance department as well as funding efforts to improve our financial reporting system, improvement in internal control will be hampered if we can not recruit and retain more qualified professionals. Among other things, any unremediated material weaknesses could result in material post-closing adjustments in future financial statements. Furthermore, any such unremediated material weaknesses could have the effects described in "Item 1A. Risk Factors—In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to effectively remedy the material weaknesses identified as of December 31, 2009 could result in material misstatements in our financial statements" in Part I of this Form 10-K.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Synergy Pharmaceuticals, Inc.

We have audited Synergy Pharmaceuticals, Inc. and subsidiaries' (a development stage Company) (the "Company") internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting (Item 9A(b)). Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. Material weaknesses related to the following areas have been identified and included in management's assessment:

- *Control environment*—The Company did not maintain an effective control environment.
- *Monitoring of internal control over financial reporting*—The Company did not maintain effective monitoring controls to determine the adequacy of its internal control over financial reporting and related policies and procedures.
- *Period end financial close and reporting*—Due to a pervasive lack of proper segregation of duties within the finance department, the Company did not establish and maintain effective controls over certain of its period-end financial close and reporting processes.

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- *Equity Transactions*—The Company did not establish and maintain effective controls to ensure the correct application of GAAP related to equity transactions.
- *Cash management*—The Company did not establish and maintain effective controls to adequately segregate the duties over cash management.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended December 31, 2009 and this report does not affect our report dated March 15, 2010 on those financial statements.

Each of the control deficiencies described in items (1) through (5) above could result in a misstatement of the financial statement balances or disclosures that would not be prevented or detected on a timely basis.

In our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on the COSO criteria.

We do not express an opinion or any other form of assurance on management's statements referring to any corrective actions taken by the Company after the date of management's assessment.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) the consolidated balance sheets of Synergy Pharmaceuticals, Inc. and subsidiaries as of December 31, 2009 and 2008, the related consolidated statements of operations and cash flows for each of the three years in the period ended December 31, 2009 and for the period from November 15, 2005 (inception) to December 31, 2009 and the related consolidated statement of stockholder's equity (deficit) for the period from November 15, 2005 (inception) to December 31, 2009 and our report dated March 15, 2010 expressed an unqualified opinion thereon.

/s/ BDO SEIDMAN, LLP

BDO Seidman, LLP
New York, New York
March 15, 2010

ITEM 9B. OTHER INFORMATION.

None.

PART III**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.**

The following table sets forth certain information regarding the directors and executive officers of Synergy Pharmaceuticals, Inc. as of March 12, 2010:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Gary S. Jacob	62	President, Chief Executive Officer and Director
Kunwar Shailubhai	52	Chief Scientific Officer
Bernard F. Denoyer	62	Senior Vice President, Finance, Secretary
Gabriele M. Cerrone	37	Chairman, Director
Melvin K. Spigelman	61	Director
John P. Brancaccio	62	Director
Thomas H. Adams	67	Director
Christopher McGuigan	51	Director
Alan F. Joslyn	51	Director

Gary S. Jacob, Ph.D. has served as our President, Chief Executive Officer and a Director of the Company since July 2008 and as Chairman of Synergy DE from October 2003 until July 2008. Dr. Jacob currently serves as Chief Executive Officer and a director of Callisto Pharmaceuticals, Inc., a principal stockholder of our company, and a director of TrovaGene, Inc. (formerly Xenomics, Inc.), a diagnostics company. Dr. Jacob served as Chief Scientific Officer of Synergy DE from 1999 to 2003. Dr. Jacob has over twenty-five years of experience in the pharmaceutical and biotechnology industries across multiple disciplines including research & development, operations and business development. Prior to 1999, Dr. Jacob served as a Monsanto Science Fellow, specializing in the field of glycobiology, and from 1997 to 1998 was Director of Functional Genomics, Corporate Science & Technology, at Monsanto Company. Dr. Jacob also served from 1990 to 1997 as Director of Glycobiology at G.D. Searle Pharmaceuticals Inc. During the period of 1986 to 1990, he was Manager of the G.D. Searle Glycobiology Group at Oxford University, England. Dr. Jacob's broad management expertise in the pharmaceutical and biotechnology industries provides relevant experience in a number of strategic and operational areas and led to the Board's conclusion that he should serve as a director of our company.

Kunwar Shailubhai, Ph.D., has served as our Chief Scientific Officer since July 2008. From March 2004 until July 2008 he served as Senior Vice President, Drug Discovery, of Synergy DE. From May 2003 until March 2004, Dr. Shailubhai served as Executive Vice President, Research and Development. From 2001 to April 2003, Dr. Shailubhai held the position of Vice President, Drug Discovery at Synergy DE where he was chiefly responsible for the preclinical development of our GC-C agonist program for drugs to treat colon cancer and GI inflammation. Between 1993 and 2000, he was with Monsanto Company, serving as Group Leader of the cancer chemoprevention group. Dr. Shailubhai previously served as a Senior Staff Fellow at the National Institutes of Health, and as an Assistant Professor at the University of Maryland. Dr. Shailubhai received his Ph.D. in microbiology in 1984 from the University of Baroda, India, and his M.B.A. in 2001 from the University of Missouri, St. Louis.

Bernard F. Denoyer, CPA has served as our Senior Vice President, Finance and Secretary since July 2008. Since December 2007, Mr. Denoyer has been Senior Vice President, Finance and Secretary of Callisto Pharmaceuticals, Inc. and from January 2004 to November 2007 Mr. Denoyer has served as Callisto's Vice President, Finance and Secretary. From October 2000 to December 2003, Mr. Denoyer was an independent consultant providing interim CFO and other services to emerging technology companies, including Callisto and certain portfolio companies of Marsh & McLennan Capital, LLC. From October 1994 until September 2000, Mr. Denoyer served as Chief Financial Officer and Senior

Vice President at META Group, Inc., a public information technology research company, where he was instrumental in their 1995 IPO. From 1990 to 1993 he served as Vice President Finance of Environetics, Inc., a pharmaceutical water diagnostic test business, acquired by IDEXX Laboratories, Inc.

Gabriele M. Cerrone has served as our Chairman of the Board of Directors and a consultant since July 2008. From March 1999 to January 2005 Mr. Cerrone served as a Senior Vice President of Investments of Oppenheimer & Co. Inc., a financial services firm. In May 2001, Mr. Cerrone led the restructuring of SIGA Technologies, Inc., a biotechnology company, and served on its board of directors from May 2001 to May 2003. Mr. Cerrone co-founded TrovaGene, Inc. (formerly Xenomics, Inc.), a diagnostics company, and served as Co-Chairman from July 2005 until November 2006. Mr. Cerrone also co-founded FermaVir Pharmaceuticals, Inc., a biotechnology company, and served as Chairman from August 2005 to September 2007, when the company was acquired by Inhibitex, Inc., a biotechnology company. Mr. Cerrone currently serves as a director of Inhibitex, Inc. and a consultant and a director of TrovaGene, Inc. In addition, Mr. Cerrone is Chairman and a consultant to Callisto Pharmaceuticals, Inc. Mr. Cerrone is the managing partner of Panetta Partners Ltd.; a Colorado limited partnership that is a private investor in both public and private venture capital in the life sciences and technology arena as well as real estate. Mr. Cerrone's experience in finance and investment banking allows him to contribute broad financial and strategic planning expertise and led to the Board's conclusion that he should serve as a director of the company.

Melvin K. Spigelman, M.D. has served as a director of our company since August 2008. Since January 2009, Dr. Spigelman has served as President and CEO and from June 2003 to December 2008 as Director of Research and Development for the Global Alliance for TB Drug Development, a non-profit organization which seeks to accelerate the discovery and development of faster-acting and affordable drugs to fight tuberculosis.. Dr. Spigelman was President of Hudson-Douglas Ltd, a consulting company, from June 2001 to June 2003. From 2000 to 2001, Dr. Spigelman served as a Vice President, Global Clinical Centers at Knoll Pharmaceuticals, a pharmaceutical unit of BASF Pharma, and from 1992 to 2000, Dr. Spigelman was the Vice President of Research and Development at Knoll. Dr. Spigelman has been a director of The Medicines Company since September 2005. Dr. Spigelman received a B.A. in engineering from Brown University and an M.D. from The Mount Sinai School of Medicine. Dr. Spigelman's expertise in drug development and management qualifies him to serve as a director of our company.

John P. Brancaccio, a retired CPA, has served as a director of our company since July 2008. Since April 2004, Mr. Brancaccio has been the Chief Financial Officer of Accelerated Technologies, Inc., an incubator for medical device companies. From May 2002 until March 2004, Mr. Brancaccio was the Chief Financial Officer of Memory Pharmaceuticals Corp., a biotechnology company. From 2000 to 2002, Mr. Brancaccio was the Chief Financial Officer/Chief Operating Officer of Eline Group, an entertainment and media company. Mr. Brancaccio is currently a director of Alfacell Corporation as well as a director of TrovaGene, Inc. (formerly Xenomics, Inc.) and Callisto Pharmaceuticals, Inc. Mr. Brancaccio's chief financial officer experience provides him with valuable financial and accounting expertise which the Board believes qualifies him to serve as a director of our company.

Thomas H. Adams, Ph.D has served as a director of our company since July 2008. Since June 2005, Dr. Adams has served as a director of IRIS International, Inc., a diagnostics company, and as Chief Technology Officer of IRIS since April 2006. Dr. Adams served as Chairman and Chief Executive Officer of Leucadia Technologies, a privately held medical-device company, from 1998 to April 2006, when Leucadia was acquired by IRIS. In 1989, Dr. Adams founded Genta, Inc., a publicly held biotechnology company in the field of antisense technology, and served as its Chief Executive Officer until 1997. Dr. Adams founded Gen-Probe, Inc. in 1984 and served as its Chief Executive Officer and Chairman until its acquisition by Chugai Biopharmaceuticals, Inc. in 1989. Before founding Gen-Probe, Dr. Adams held management positions at Technicon Instruments and the Hyland Division of Baxter

Travenol. He has significant public-company experience serving as a director of Biosite Diagnostics, Inc., a publicly held medical research firm, from 1989 to 1998 and as a director of Invitrogen, a publicly held company that develops, manufactures and markets research tools and products, from 2000 to 2002. Dr. Adams currently serves as a director of Xifin, Inc., a private lab billing company and TrovaGene, Inc. (formerly Xenomics, Inc.) Dr. Adams holds a Ph.D. in Biochemistry from the University of California, at Riverside. Dr. Adam's executive leadership, particularly in the healthcare field, and the extensive healthcare expertise he has developed qualifies Dr. Adams to serve as a director of our company.

Christopher McGuigan, M.Sc., Ph.D. has served as a director of our company since July 2008. Since 1995, Dr. McGuigan has been Professor of Medicinal Chemistry, Welsh School of Pharmacy, Cardiff University, UK. He is also Deputy Pro Vice-Chancellor Cardiff University, with responsibility for research. Dr. McGuigan is immediate past president of the International Society for Antiviral Research. Dr. McGuigan has over 200 publications and 20 patents. Dr. McGuigan has Chairman of Departmental Research Committee and Director of Research, Head of Medicinal Chemistry. Dr. McGuigan experience in developing new drug agents from discovery to human clinical trials qualifies him to serve as a director of our company.

Alan F. Joslyn, Ph.D. has served as a director of our company since October 2009. Dr. Joslyn has been the Chief Executive Officer of Edusa Pharmaceuticals, a privately held biotechnology company, since August 2009. From 2007 to 2009, Dr. Joslyn served as President and Chief Executive Officer of Mt. Cook Pharma, and as Senior Vice President of Research & Development at Penwest Pharmaceuticals from 2004 to 2007. From 1995 to 2004, Dr. Joslyn held a number of leadership positions within Johnson & Johnson focusing on development of gastroenterology products including Propulsid®, Motilium®, Aciphex® and prucalopride. Dr. Joslyn received his B.S. in medicinal chemistry, B.A. in biology and Ph.D. in biochemical pharmacology from the State University of New York at Buffalo. Dr. Joslyn's extensive expertise in gastroenterology and product development qualifies Dr. Joslyn to serve as a director of our company.

Board Leadership Structure and Board's Role in Risk Oversight

Since July 2008, we have separated the roles of Chairman of the Board and Chief Executive Officer. Although the separation of roles has been appropriate for us during that time period, in the view of the board of directors, the advisability of the separation of these roles depends upon the specific circumstances and dynamics of our leadership.

As Chairman of the Board, Mr. Cerrone serves as the primary liaison between the CEO and the independent directors and provides strategic input and counseling to the CEO. With input from other members of the board of directors, committee chairs and management, he presides over meetings of the board of directors. Mr. Cerrone has developed an extensive knowledge of our company, its challenges and opportunities and has a productive working relationship with our senior management team.

The board of directors, as a unified body and through committee participation, organizes the execution of its monitoring and oversight roles and does not expect its Chairman to organize those functions. Our primary rationale for separating the positions of Board Chairman and the CEO is the recognition of the time commitments and activities required to function effectively as Chairman and as the CEO of a company with a relatively flat management structure. The separation of roles has also permitted the board of directors to recruit senior executives into the CEO position with skills and experience that meet the board of director's planning for the position who may not have extensive public company board experience.

The board of directors has three standing committees—Audit, Compensation and Corporate Governance/Nominating. The membership of each of the board committees is comprised of

independent directors, with each of the committees having a separate chairman, each of whom is an independent director. Our non-management members of the board of directors meet in executive session at each board meeting.

Risk is inherent with every business, and how well a business manages risk can ultimately determine its success. Management is responsible for the day-to-day management of risks the company faces, while the board of directors, as a whole and through its committees, has responsibility for the oversight of risk management. In its risk oversight role, the board of directors has the responsibility to satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as designed.

The board of directors believes that establishing the right "tone at the top" and that full and open communication between executive management and the board of directors are essential for effective risk management and oversight. Our CEO communicates frequently with members of the board to discuss strategy and challenges facing the company. Senior management usually attends our regular quarterly board meetings and is available to address any questions or concerns raised by the board of directors on risk management-related and any other matters. Each quarter, the board of directors receives presentations from senior management on matters involving our areas of operations.

Director Independence

Our board of directors has determined that a majority of the board consists of members are currently "independent" as that term is defined under current listing standards of NASDAQ.

Compensation of Directors

Under the 2009 Directors Stock Option Plan, upon election to the Board, each non-employee and non-consultant director receives a grant of stock options vesting over three years and having an exercise price equal to the fair market value of the common stock on the date of grant.

Non-employee and non-consultant directors also receive an annual cash fee of \$15,000 as well as cash compensation for serving on board committees. Chairpersons of the Audit Committee, Compensation Committee and Corporate Governance/Nominating Committee receive \$10,000, \$5,000 and \$3,000, respectively and members of such committees receive \$7,000 \$3,000 and \$1,500 respectively.

Audit Committee

The Audit Committee's responsibilities include: (i) reviewing the independence, qualifications, services, fees, and performance of the independent registered public accountants, (ii) appointing, replacing and discharging the independent auditors, (iii) pre-approving the professional services provided by the independent auditors, (iv) reviewing the scope of the annual audit and reports and recommendations submitted by the independent auditors, and (v) reviewing our financial reporting and accounting policies, including any significant changes, with management and the independent auditors. The Audit Committee also prepares the Audit Committee report that is required pursuant to the rules of the SEC.

The Audit Committee currently consists of John P. Brancaccio, chairman of the Audit Committee, Christopher McGuigan and Melvin K. Spigelman. Our board of directors has determined that each of Mr. Brancaccio, Mr. McGuigan and Mr. Spigelman is "independent" as that term is defined under applicable SEC and NASDAQ rules. Mr. Brancaccio is our audit committee financial expert. The board of directors has adopted a written charter setting forth the authority and responsibilities of the Audit Committee which is available on our website at www.synergypharma.com.

Compensation Committee

The Compensation Committee has responsibility for assisting the board of directors in, among other things, evaluating and making recommendations regarding the compensation of the executive officers and directors of our company; assuring that the executive officers are compensated effectively in a manner consistent with our stated compensation strategy; producing an annual report on executive compensation in accordance with the rules and regulations promulgated by the SEC; periodically evaluating the terms and administration of our incentive plans and benefit programs and monitoring of compliance with the legal prohibition on loans to our directors and executive officers.

The Compensation Committee currently consists of Thomas H. Adams, chairman of the Compensation Committee, Melvin K. Spigelman and John P. Brancaccio. Our board of directors has determined that all of the members are "independent" under the current listing standards of NASDAQ. The board of directors has adopted a written charter setting forth the authority and responsibilities of the Compensation Committee which is available on our web site at www.synergypharma.com.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee is an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Corporate Governance/Nominating Committee

The Corporate Governance/Nominating Committee has responsibility for assisting the board of directors in, among other things, effecting board organization, membership and function including identifying qualified board nominees; effecting the organization, membership and function of board committees including composition and recommendation of qualified candidates; establishment of and subsequent periodic evaluation of successor planning for the chief executive officer and other executive officers; development and evaluation of criteria for Board membership such as overall qualifications, term limits, age limits and independence; and oversight of compliance with the Corporate Governance Guidelines. The Corporate Governance/Nominating Committee shall identify and evaluate the qualifications of all candidates for nomination for election as directors.

The Corporate Governance/Nominating Committee currently consists of Alan Joslyn, chairman of the Corporate Governance/Nominating Committee, Thomas Adams and Christopher McGuigan. The Board of Directors has determined that all of the members are "independent" under the current listing standards of NASDAQ. The Board of Directors has adopted a written charter setting forth the authority and responsibilities of the Corporate Governance/Nominating Committee. A copy of this charter is available at our web site www.synergypharma.com.

Scientific Advisory Board

Michael Camilleri, M.D., Ph.D. is a Professor of Physiology and Medicine at the Mayo Clinic, Minnesota, MN. He has contributed extensively to the fields of enteric neurosciences, motility, and inflammatory bowel diseases (IBD). Dr. Camilleri is on the editorial boards of a number of prestigious journals including *Neurogastroenterology and Motility* and *American Neurogastroenterology*. He has been President Elect of the American Neurogastroenterology and Motility Society 2007.

Lin Chang, M.D. is a Professor of Medicine in the Division of Digestive Diseases and Department of Medicine at the David Geffen School of Medicine at UCLA. She is the Co-Director and Head of the Clinical Program at the Center for Neurovisceral Sciences & Women's Health and Director of the

Women's Digestive Health Center at UCLA. Dr. Chang is the Co-chair of the Rome III subcommittee on Gender, Age and Cultural Influences on Functional Bowel Disorders. She is currently serving on the FDA GI Advisory Committee.

Douglas Drossman, M.D. is a Professor of Medicine and Psychiatry, UNC School of Medicine, Division of Gastroenterology & Hepatology, and Co-Director of the UNC Center for Functional GI & Motility Disorders. He is President of the Rome Foundation and Scientific Director and member of the Board of the International Foundation for Functional GI Disorders (IFFGD). He has published extensively in the field of gastroenterology, including the textbook Functional GI Disorders (Rome I, Rome II and Rome III)

Scott Plevy, M.D. is an Associate Professor of Medicine, Microbiology and Immunology at the University of North Carolina School of Medicine, Division of Gastroenterology & Hepatology. He is the Core Director of the Immunotechnology Core in the Center for Gastrointestinal Biology and Disease as well as the Director of the University of North Carolina Federation of Clinical Immunology Societies. Dr. Plevy has contributed significantly to the medical literature on Crohn's disease and ulcerative colitis, and has been the principal investigator on numerous ulcerative colitis and Crohn's disease clinical trials.

Code of Business Conduct and Ethics

We have adopted a formal Code of Business Conduct and Ethics applicable to all Board members, executive officers and employees. A copy of our Code of Business Conduct and Ethics will be provided free of charge upon request to: Secretary, Synergy Pharmaceuticals, Inc. 420 Lexington Avenue, Suite 1609, New York, NY 10170.

ITEM 11. EXECUTIVE COMPENSATION

Compensation Committee Report

Under the rules of the SEC, this Compensation Committee Report is not deemed to be incorporated by reference by any general statement incorporating this Annual Report by reference into any filings with the SEC.

The Compensation Committee has reviewed and discussed the following Compensation Discussion and Analysis with management. Based on this review and these discussions, the Compensation Committee recommended to the Board of Directors that the following Compensation Discussion and Analysis be included in this Annual Report on Form 10-K.

Submitted by the Compensation Committee

Thomas Adams, Chairman

John Brancaccio

Melvin K. Spigelman

Compensation Discussion and Analysis

Overview

We compete with many other biotechnology companies in seeking to attract and retain a skilled work force. To meet this challenge, we have developed our compensation structure to enable our management to make decisions regarding our compensation programs, to manage these programs, and to effectively communicate the goals of these programs to our employees and stockholders.

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Our compensation philosophy is to offer our employees compensation and benefits that are competitive and that meet our goals of attracting, retaining and motivating highly skilled employees so that we can achieve our financial and strategic objectives.

Utilizing this philosophy, our compensation programs are designed to:

- be "market-based" and reflect the competitive environment for personnel;
- stress our "pay for performance" approach to managing pay levels;
- share risks and rewards with employees at all levels;
- be affordable, within the context of our operating expense model;
- align the interests of our employees with those of our stockholders;
- reflect our values; and
- be fairly and equitably administered.

In addition, as we administer our compensation programs, we plan to:

- evolve and modify our programs to reflect the competitive environment and our changing business needs;
- focus on simplicity, flexibility and choice wherever possible;
- openly communicate the details of our programs with our employees and managers to ensure that our programs and their goals are understood; and
- provide our managers and employees with the tools they need to administer our compensation programs.

Elements of Our Compensation Program

As a total rewards package, we design our compensation program to enable us to attract and retain talented personnel. The individual elements of our compensation program serve to satisfy this larger goal in specific ways as described below.

We design base pay to provide the essential reward for an employee's work, and is required to be competitive in attracting talent. Once base pay levels are initially determined, increases in base pay are provided to recognize an employee's specific performance achievements. Consistent with our compensation philosophy, we implement a "pay for performance" approach that provides higher levels of compensation to individual employees whose results merit greater rewards. Our managers typically make performance assessments throughout the year, and provide ongoing feedback to employees, provide resources and maximize individual and team performance levels.

We design equity-based compensation, including stock options, to ensure that we have the ability to retain talent over a longer period of time, and to provide optionees with a form of reward that aligns their interests with those of our stockholders. Employees whose skills and results we deem to be critical to our long-term success are eligible to receive higher levels of equity-based compensation.

We also utilize various forms of variable compensation, including cash bonuses that allow us to remain competitive with other companies while providing upside potential to those employees who achieve outstanding results.

Core benefits, such as our basic health benefits, are designed to provide a stable array of support to employees and their families throughout various stages of their careers, and are provided to all employees regardless of their individual performance levels.

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The four key elements of our compensation structure are:

- base pay;
- variable pay;
- equity-based pay; and
- benefits.

Consistent with our compensation philosophy, we have structured each element of our rewards package as follows:

Base Pay

We create a set of base pay structures that are both affordable and competitive in relation to the market. We continuously monitor base pay levels within the market and make adjustments to our structures as needed. In general, an employee's base pay level should reflect the employee's overall sustained performance level and contribution to our company over time. We seek to structure the base pay for our top performers to be aggressive in relation to the market.

Variable Pay

We design our variable pay programs to be both affordable and competitive in relation to the market. We monitor the market and adjust our variable pay programs as needed. Our variable pay programs, such as our bonus program, are designed to motivate employees to achieve overall goals. Our programs are designed to avoid entitlements, to align actual payouts with the actual results achieved and to be easy to understand and administer.

Equity-Based Rewards

We design our equity programs to be both affordable and competitive in relation to the market. We monitor the market and applicable accounting, corporate, securities and tax laws and regulations and adjust our equity programs as needed. Stock options and other forms of equity compensation are designed to reflect and reward a high level of sustained individual performance over time. We design our equity programs to align employees' interests with those of our stockholders.

Benefits Programs

We design our benefits programs to be both affordable and competitive in relation to the market while conforming with local laws and practices. We monitor the market, local laws and practices and adjust our benefits programs as needed. We design our benefits programs to provide an element of core benefits, and to the extent possible, offer options for additional benefits, be tax-effective for employees in each country and balance costs and cost sharing between us and our employees.

Determining the Amount of Each Element of Compensation

Base Pay. We provide our executive officers and other employees with base salary to compensate them for services rendered during the fiscal year. The Compensation Committee intends to compensate our executive officers competitively within the industry. The Compensation Committee considered the scope of and accountability associated with each executive officer's position and such factors as the performance and experience of each executive officer when setting base salary levels for fiscal year 2009. With respect to executive officers other than Dr. Jacob, who is discussed below, the Compensation Committee targeted base salaries to be competitive with our peers within the biotechnology industry. In some circumstances it is necessary to provide compensation above these levels; these circumstances include the need to retain key individuals, to recognize roles that were

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larger in scope or accountability than standard market positions and/or to reward individual performance.

Salary levels are typically reviewed annually as part of our performance review process as well as upon a promotion or other change in job responsibility.

Variable Pay. The Compensation Committee and the executive officer work together to establish targets and goals for the executive officer. Upon completion of the fiscal year, the Compensation Committee assesses the executive officer's performance and with input from management determines the amount of variable pay to be awarded within the parameters of the executive officer's agreement with us.

Equity-Based Pay. The Compensation Committee may provide our executive officers with long-term incentive awards through grants of stock options. The Compensation Committee is responsible for determining who will receive awards, when awards will be granted, the exercise price of each stock option grant, and the number of shares of our common stock subject to each option. The Compensation Committee considers grants of long-term incentive awards to executive officers each fiscal year. Stock options enhance the link between the creation of stockholder value and long-term executive incentive compensation. Stock options provide our executive officers with the opportunity to purchase and maintain an equity interest in our company and to share in the appreciation of the value of our common stock. Additionally, stock options maintain a competitive level of total compensation. The Compensation Committee believes that stock options are inherently performance-based and are a form of at-risk compensation, as the optionee does not receive any benefit unless our stock price rises after the date that the option is granted, thus providing direct incentive for future performance. Stock option award levels are determined based on prevailing market practice and market data and vary among participants based on their positions within our company.

Our stock options typically have annual vesting over a three-year period and a term of ten years, in order to encourage a long-term perspective and to encourage key employees to remain with us. We also use performance based vesting in our option grants. Generally, vesting and exercise rights cease upon termination of employment. Prior to the exercise of an option, the holder has no rights as a stockholder with respect to the shares subject to such option, including voting rights and the right to receive dividends or dividend equivalents.

Timing of Equity Awards

Only the Compensation Committee may approve stock option grants to our executive officers. Stock options are generally granted at predetermined meetings of the Compensation Committee. On limited occasions, grants may occur upon unanimous written consent of the Compensation Committee, which occurs primarily for the purpose of approving a compensation package for newly hired or promoted executive. The exercise price of a newly granted option is the closing price of our common stock on the date of grant.

Executive Equity Ownership

We encourage our executives to hold a significant equity interest in our company. However, we do not have specific share retention and ownership guidelines for our executives.

Performance-Based Compensation and Financial Restatement

We have not considered or implemented a policy regarding retroactive adjustments to any cash or equity-based incentive compensation paid to our executives and other employees where such payments were predicated upon the achievement of certain financial results that were subsequently the subject of a financial restatement.

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Severance and Change in Control Arrangements

Several of our executives have employment and other agreements which provide for severance payment arrangements and/or acceleration of stock option vesting that would be triggered by an acquisition or other change in control of our company. See "—Employment Agreements and Change of Control Arrangements" below for a description of the severance and change in control arrangements for our named executive officers.

Effect of Accounting and Tax Treatment on Compensation Decisions

In the review and establishment of our compensation programs, we consider the anticipated accounting and tax implications to us and our executives.

Section 162(m) of the Internal Revenue Code imposes a limit on the amount of compensation that we may deduct in any one year with respect to our chief executive officer and each of our next four most highly compensated executive officers, unless certain specific and detailed criteria are satisfied. Performance-based compensation, as defined in the Internal Revenue Code, is fully deductible if the programs are approved by stockholders and meet other requirements. We believe that grants of equity awards under our existing stock plans qualify as performance-based for purposes of satisfying the conditions of Section 162(m), thereby permitting us to receive a federal income tax deduction in connection with such awards. In general, we have determined that we will not seek to limit executive compensation so that it is deductible under Section 162(m). However, from time to time, we monitor whether it might be in our interests to structure our compensation programs to satisfy the requirements of Section 162(m). We seek to maintain flexibility in compensating our executives in a manner designed to promote our corporate goals and therefore our compensation committee has not adopted a policy requiring all compensation to be deductible. Our compensation committee will continue to assess the impact of Section 162(m) on our compensation practices and determine what further action, if any, is appropriate.

Role of Executives in Executive Compensation Decisions

Our board of directors and our Compensation Committee generally seek input from our Chief Executive Officer, Gary S. Jacob, when discussing the performance of, and compensation levels for executives other than himself. The Compensation Committee also works with Dr. Jacob and our Senior Vice President, Finance evaluating the financial, accounting, tax and retention implications of our various compensation programs. Neither Dr. Jacob nor any of our other executives participates in deliberations relating to his or her compensation.

Chief Executive Officer Compensation for Fiscal Year 2009

On February 1, 2010, Dr. Jacob entered into an Amended and Restated Executive Employment Agreement with us as approved by the Compensation Committee which extended the term under his employment agreement to December 31, 2012. In addition, in the agreement we deleted the bonus provision which provided for a bonus if we engaged in a merger or sale of our company with a minimum value of \$150 million, \$200 million and \$250 million during the first, second and third year of the agreement and replaced it with a bonus of 2.5% of the value of the company if there is a merger or sale of the company and the value of the company at the time of the merger or sale equals or exceeds \$400 million. The Compensation Committee believes that the amendments to Dr. Jacob's employment agreement incentivize Dr. Jacob to the maximum extent possible to obtain the highest price possible for shareholders in the event of a sale or merger of our company. In addition, on February 25, 2010, the Compensation Committee approved a 5% increase in base salary for Dr. Jacobs as well as a bonus of \$150,000. In addition, the Compensation Committee approved a grant to Dr. Jacob of stock options to purchase 1,800,000 shares of common stock pursuant to the Plan at an

exercise price equal to \$0.70 per share which is only exercisable upon a change of control of our company. At the same meeting the Compensation Committee approved a set of performance objectives and bonus criteria for Dr. Jacob in 2010 which includes, among other things, performance objectives related to the development of SP-304 and SP-333, recruiting additional members of management and funding

Summary Compensation Table

The following table provides certain summary information concerning compensation awarded to, earned by or paid to our Chief Executive Officer, Principal Financial Officer and two other highest paid executive officers whose total annual salary and bonus exceeded \$100,000 (collectively, the "named executive officers") for fiscal year 2009.

Name & Principal Position(2)	Year	Salary	Bonus	Option and Restricted Stock Awards(1)	Total
Gabriele M. Cerrone	2009	\$ 187,761	—	\$ —	\$ 187,761
Chairman	2008	63,021	—	697,625	760,646
Gary S. Jacob	2009	243,937	—	—	243,937
President, Chief Executive Officer and Director	2008	98,437	—	710,327	808,764
Bernard Denoyer	2009	125,687	—	—	125,687
Senior Vice President, Principal Financial Officer	2008	41,562	—	76,660	118,222
Kunwar Shailubhai	2009	176,250	—	—	\$ 176,250
Chief Scientific Officer	2008	\$ 117,083	\$ 8,813	\$ 522,038	\$ 647,934

- (1) Amounts represent the aggregate grant date fair value in accordance with FASB ASC Topic 718 as discussed in Item 8. Financial Statements—Note 3 *Summary of Significant Accounting Policies and New Accounting Pronouncements*.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information for the named executive officers regarding the number of shares subject to both exercisable and unexercisable stock options and restricted stock, as well as the exercise prices and expiration dates thereof, as of December 31, 2009.

Name	Number of Securities Underlying Unexercised Options (#) exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable(1)	Option Exercise Price	Option Expiration Date	Number of Shares or Units of Restricted Stock That Have Not Vested (#)(2)	Market Value of Shares or Units of Stock That Have Not Vested \$(3)
Stock Options						
Gabriele Cerrone	308,354	616,709(1)\$	0.25	July 3, 2018	187,470	\$ 1,049,829
Gary S. Jacob	316,641	633,281(1)\$	0.25	July 3, 2018	187,470	\$ 1,049,829
Bernard F. Denoyer	50,011	100,023(1)\$	0.25	July 3, 2018	—	—
Kunwar Shailubhai	291,684	583,368(1)\$	0.25	July 3, 2018	62,441	\$ 349,670

- (1) The unexercisable options vest ratably on July 3, 2010 and 2011.
- (2) The restricted stock awards vest fully on July 3, 2010.
- (3) The last closing price of our common stock on the OTC Bulletin Board on December 31, 2009 was \$5.60 per share.

Director Compensation

The following table sets forth summary information concerning the total compensation paid to our non-employee directors in 2009 for services to our company.

Name	Fees Earned or Paid in Cash	Option Awards(1)	Total
Melvin K. Spigelman(2)	\$ 75,833	\$ 103,999	\$ 179,832
John P. Brancaccio(3)	\$ 29,125	\$ 121,332	\$ 150,457
Thomas H. Adams(4)	\$ 24,875	\$ 93,165	\$ 118,040
Christopher McGuigan(5)	\$ 18,625	\$ 97,471	\$ 116,096
Alan Joslyn(6)	\$ 4,500	\$ 13,000	\$ 17,500

- (1) Amounts represent the aggregate grant date fair value for fiscal year 2009 of stock options granted in 2009 under ASC Topic 718 as discussed in Item 8. Financial Statements—Note 3 *Summary of Significant Accounting Policies and New Accounting Pronouncements*.
- (2) As of December 31, 2009, 324,000 stock options were outstanding, of which 100,000 were exercisable.
- (3) As of December 31, 2009, 228,045 stock options were outstanding, of which 66,682 were exercisable.
- (4) As of December 31, 2009, 221,545 stock options were outstanding, of which 66,682 were exercisable.
- (5) As of December 31, 2009, 222,545 stock options were outstanding, of which 66,682 were exercisable.
- (6) As of December 31, 2009, 53,000 stock options were outstanding, of which none were exercisable.

Employment Agreements and Change in Control Agreements

On February 1, 2010, Dr. Gary Jacob entered into an amended and restated employment agreement with us in which he agreed to serve as Chief Executive Officer and President. The term of the agreement was effective as of August 1, 2008 and continues until December 31, 2012 and is automatically renewed for successive one year periods at the end of each term. Dr. Jacob's salary is \$300,000 per year. Dr. Jacob is eligible to receive a cash bonus of up to 50% of his base salary per year based on meeting certain performance objectives and bonus criteria. Such performance objectives and bonus criteria had not been determined as of December 31, 2009. On February 25, 2010, the Compensation Committee approved a 5% increase in base salary for Dr. Jacobs as well as a bonus of \$150,000. In addition, the Compensation Committee approved a grant to Dr. Jacob of stock options to purchase 1,800,000 shares of common stock pursuant to the Plan at an exercise price equal to \$0.70 per share which are only exercisable upon a change of control of our company. Dr. Jacob is also eligible to receive a realization bonus in the event that we enter into an out-license agreement for our technology or enter into a joint venture in which we contribute such rights to the joint venture where the enterprise value equals or exceeds a minimum of \$150 million, \$200 million and \$250 million in the first, second or third years of the term of the agreement or any years beyond the third term of the agreement, respectively, or the license fees we contract to receive equals or exceeds \$50 million. The realization bonus will be equal to the enterprise value in the case of a joint venture or the sum of the license fees actually received in the case of an out license, multiplied by 0.5%. In addition, in the event we engage in a merger transaction or a sale of substantially all of our assets where the enterprise value equals or exceeds \$400 million, Dr. Jacob shall receive a bonus in an amount determined by multiplying the enterprise value by 2.5%.

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If the employment agreement is terminated by us other than for cause or as a result of Dr. Jacob's death or permanent disability or if Dr. Jacob terminates his employment for good reason which includes a change of control, Dr. Jacob shall receive (i) a severance payment equal to the higher of the aggregate amount of his base salary for the then remaining term of the agreement or twelve times the average monthly base salary paid or accrued during the three full calendar months preceding the termination, (ii) expense compensation in an amount equal to twelve times the sum of his average base salary during the three full months preceding the termination, (iii) immediate vesting of all unvested stock options and the extension of the exercise period of such options to the later of the longest period permitted by our stock option plans or ten years following the termination date, (iv) payment in respect of compensation earned but not yet paid and (v) payment of the cost of medical insurance for a period of twelve months following termination. In the event Dr. Jacob's employment was terminated upon a change of control as of December 31, 2009, he would have been entitled to receive a lump sum payment of \$900,000, less applicable withholding.

On February 1, 2010, Gabriele M. Cerrone, our Chairman of the Board, entered into an amended and restated consulting agreement with us. The term of the agreement was effective as of August 1, 2008 and continues until December 31, 2012 and is automatically renewed for successive one year periods at the end of each term. Pursuant to the agreement, Mr. Cerrone's compensation is \$295,000 per year. Mr. Cerrone is eligible to receive a cash bonus of up to 50% of his base compensation per year based on meeting certain performance objectives and bonus criteria. Such performance objectives and bonus criteria had not been determined as of December 31, 2009. On February 25, 2010, the Compensation Committee approved a 5% increase in base compensation for Mr. Cerrone as well as a bonus of \$147,500. In addition, the Compensation Committee approved a grant to Mr. Cerrone of stock options to purchase 1,800,000 shares of common stock pursuant to the Plan at an exercise price equal to \$0.70 per share which is only exercisable upon a change of control of our company. Mr. Cerrone is also eligible to receive a realization bonus in the event that we enter into an out-license agreement for our technology or enter into a joint venture in which we contribute such rights to the joint venture where the enterprise value equals or exceeds a minimum of \$150 million, \$200 million and \$250 million in the first, second or third years of the term of the agreement or any years beyond the third term of the agreement, respectively, and in the case of a financing transaction, we receive not less than \$20 million of gross proceeds; or the license fees we contract to receive equals or exceeds \$50 million. The realization bonus will be equal to the enterprise value in the case of a joint venture or financing or the sum of the license fees actually received multiplied by 0.5%. In addition, in the event we engage in a merger transaction or a sale of substantially all of our assets where the enterprise value equals or exceeds \$400 million, Mr. Cerrone shall receive a bonus in an amount determined by multiplying the enterprise value by 2.5%.

If the consulting agreement is terminated by us other than for cause or as a result of Mr. Cerrone's death or permanent disability or if Mr. Cerrone terminates the agreement for good reason which includes a change of control, Mr. Cerrone shall receive (i) a severance payment equal to the higher of the aggregate amount of his base compensation for the then remaining term of the agreement or twelve times the average monthly base compensation paid or accrued during the three full calendar months preceding the termination, (ii) expense compensation in an amount equal to twelve times the sum of his average base compensation during the three full months preceding the termination, (iii) immediate vesting of all unvested stock options and the extension of the exercise period of such options to the later of the longest period permitted by our stock option plans or ten years following the termination date, (iv) payment in respect of compensation earned but not yet paid and (v) payment of the cost of medical insurance for a period of twelve months following termination. In the event Mr. Cerrone's employment was terminated upon a change of control as of December 31, 2009, he would have been entitled to receive a lump sum payment of \$885,000 less applicable withholding.

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On August 21, 2008, the Board of Synergy appointed Melvin K. Spigelman, M.D. as a Director of the Company. In addition, the Board appointed Dr. Spigelman Chairman of Synergy's Clinical Oversight Committee as well as a member of the Compensation and Audit Committees. In connection therewith, the Board approved the payment of an annual fee of \$90,000 to Dr. Spigelman for his service on the Board and the Committees. Additionally, the Board approved a grant of 300,000 stock options to Dr. Spigelman with an exercise price of \$0.60 per share. Such options vest in 100,000 increments over a period of 3 years. During 2009, the Clinical Oversight Board was disbanded and Dr. Spigelman is paid a director fee comparable to the other independent Board members.

On April 6, 2004, Kunwar Shailubhai, Ph.D. entered into an employment agreement with Synergy-DE in which he agreed to serve as Senior Vice President, Drug Discovery. Dr. Shailubhai's employment agreement was for a term of 12 months beginning April 6, 2004 and was automatically renewed for successive one year periods at the end of each term. On July 9, 2008, Dr. Shailubhai was appointed Chief Scientific Officer of Synergy, his salary is currently \$200,000 per year and he is eligible to receive a discretionary performance bonus of up to 15% of his salary per year.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The following table sets forth certain information regarding beneficial ownership of shares of our common stock as of March 12, 2010 by (i) each person known to beneficially own more than 5% of our outstanding common stock, (ii) each of our directors, (iii) our named executive officers and (iv) all directors and executive officers as a group. Except as otherwise indicated, the persons named in the table have sole voting and investment power with respect to all shares beneficially owned, subject to community property laws, where applicable. Unless otherwise indicated, the address of each beneficial owner listed below is c/o Synergy Pharmaceuticals, Inc., 420 Lexington Avenue, Suite 1609, New York, NY 10170.

<u>Name of Beneficial Owner</u>	<u>Number of Shares</u>	<u>Percentage(1)</u>
Executive officers and directors:		
Gabriele M. Cerrone	683,293(2)	*
Gary S. Jacob, Ph.D.	691,580(3)	*
Kunwar Shailubhai, Ph.D.	416,566(4)	*
Bernard Denoyer	50,011(5)	*
John Brancaccio	66,682(6)	*
Chris McGuigan	66,682(7)	*
Thomas Adams	66,682(8)	*
Melvin K. Spigelman, M.D.	100,000(9)	*
Alan F. Joslyn	0	—
All Officers and Directors as a Group (9 persons)	2,141,496(10)	2.4
5% or greater holders:		
Callisto Pharmaceuticals, Inc. 420 Lexington Avenue, Suite 1609 New York, NY 10170	44,590,000	50.4

* less than 1%

(1) Based on 88,423,359 shares outstanding on March 12, 2010.

(2) Includes 374,939 shares of common stock which are subject to a Repurchase Agreement with us dated July 3, 2008 pursuant to which such shares are subject to repurchase by us in the event the

holder is no longer an employee, officer, director or consultant to us. 50% of the shares are released from the repurchase option after one year from the date of the Repurchase Agreement and the remaining 50% are released from the repurchase option after two years from the date of the Repurchase Agreement. Also includes 308,354 shares of common stock issuable upon exercise of stock options.

- (3) Includes 374,939 shares of common stock which are subject to a Repurchase Agreement with us dated July 3, 2008 pursuant to which such shares are subject to repurchase by us in the event the holder is no longer an employee, officer, director or consultant to us. 50% of the shares are released from the repurchase option after one year from the date of the Repurchase Agreement and the remaining 50% are released from the repurchase option after two years from the date of the Repurchase Agreement. Also includes 316,641 shares of common stock issuable upon exercise of stock options.
- (4) Includes 124,882 shares of common stock which are subject to a Repurchase Agreement with us dated July 3, 2008 pursuant to which such shares are subject to repurchase by us in the event the holder is no longer an employee, officer, director or consultant to us. 50% of the shares are released from the repurchase option after one year from the date of the Repurchase Agreement and the remaining 50% are released from the repurchase option after two years from the date of the Repurchase Agreement. Also includes 291,684 shares of common stock issuable upon exercise of stock options.
- (5) Consists of 50,011 shares of common stock issuable upon exercise of stock options.
- (6) Consists of 66,682 shares of common stock issuable upon exercise of stock options.
- (7) Consists of 66,682 shares of common stock issuable upon exercise of stock options.
- (8) Consists of 66,682 shares of common stock issuable upon exercise of stock options.
- (9) Consists of 100,000 shares of common stock issuable upon exercise of stock options.
- (10) Includes 1,266,736 shares of common stock issuable upon exercise of stock options.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting and investment power with respect to securities. Beneficial ownership determined in this manner may not constitute ownership of such securities for other purposes or indicate that such person has an economic interest in such securities.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

On February 1, 2010, Gabriele M. Cerrone, our Chairman of the Board, entered into an amended and restated consulting agreement with us. The term of the agreement was effective as of August 1, 2008 and continues until December 31, 2012 and is automatically renewed for successive one year periods at the end of each term. Pursuant to the agreement, Mr. Cerrone's compensation is \$295,000 per year. Mr. Cerrone is eligible to receive a cash bonus of up to 50% of his base salary per year based on meeting certain performance objectives and bonus criteria. Such performance objectives and bonus criteria had not been determined as of December 31, 2009 and therefore not met or earned. Mr. Cerrone is also eligible to receive a realization bonus in the event that we enter into an out-license agreement for our technology or enter into a joint venture in which we contribute such rights to the joint venture where the enterprise value equals or exceeds a minimum of \$150 million, \$200 million and \$250 million in the first, second or third years of the term of the agreement or any years beyond the third term of the agreement, respectively, and in the case of a financing transaction, we receive not less than \$20 million of gross proceeds; or the license fees we contract to receive equals or exceeds \$50 million. The realization bonus will be equal to the enterprise value in the case of a joint venture or

financing or the sum of the license fees actually received multiplied by 0.5%. In addition, in the event we engage in a merger transaction or a sale of substantially all of our assets where the enterprise value equals or exceeds \$400 million, Mr. Cerrone shall receive a bonus in an amount determined by multiplying the enterprise value by 2.5%.

If the consulting agreement is terminated by us other than for cause or as a result of Mr. Cerrone's death or permanent disability or if Mr. Cerrone terminates the agreement for good reason which includes a change of control, Mr. Cerrone shall receive (i) a severance payment equal to the higher of the aggregate amount of his base compensation for the then remaining term of the agreement or twelve times the average monthly base compensation paid or accrued during the three full calendar months preceding the termination, (ii) expense compensation in an amount equal to twelve times the sum of his average base compensation during the three full months preceding the termination, (iii) immediate vesting of all unvested stock options and the extension of the exercise period of such options to the later of the longest period permitted by our stock option plans or ten years following the termination date, (iv) payment in respect of compensation earned but not yet paid and (v) payment of the cost of medical insurance for a period of twelve months following termination.

Conflicts of Interest

Gabriele Cerrone and his affiliates are subject to certain potential conflicts of interests. His consulting agreement expressly recognizes that he may provide consulting services to others. In addition, from time to time, he or his affiliates may be presented with business opportunities which could be suitable for our business and Mr. Cerrone is not subject to any restrictions with respect to other business activities, except to the extent such activities are in violation of our Code of Conduct and Ethics or violate general confidentiality provisions of his consulting agreement. In instances where there is potential conflict of interest or business opportunity, with respect to any officer or director, including Mr. Cerrone, our Audit Committee has both the authority and responsibility to review such matters and take appropriate actions.

Any future transactions with officers, directors or 5% stockholders will be on terms no less favorable to us than could be obtained from independent parties. Any affiliated transactions must be approved by a majority of our independent and disinterested directors who have access to our counsel or independent legal counsel at our expense.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

Audit Fees

The aggregate fees billed and unbilled for the fiscal years ended December 31, 2009 and December 31, 2008 for professional services rendered by our principal accountants for the audits of our annual financial statements, the review of our financial statements included in our quarterly reports on Form 10-Q and consultations and consents were approximately \$176,000 and \$174,000.

Audit-Related Fees

There were no aggregate fees billed for the fiscal year ended December 31, 2009 and 2008 for assurance and related services rendered by our principal accountants related to the performance of the audit or review of our financial statements, specifically accounting research.

Tax and Other Fees

The aggregate fees billed for the fiscal year ended December 31, 2009 and December 31, 2008 for professional services rendered by our principal accountants for tax related research and advice were \$12,000 and \$15,000, respectively.

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Consistent with SEC policies and guidelines regarding audit independence, the Audit Committee is responsible for the pre-approval of all audit and permissible non-audit services provided by our principal accountants on a case-by-case basis. Our Audit Committee has established a policy regarding approval of all audit and permissible non-audit services provided by our principal accountants. Our Audit Committee pre-approves these services by category and service. Our Audit Committee has pre-approved all of the services provided by our principal accountants.

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a) *List of Documents Filed as a Part of This Report:*

Index to Consolidated Financial Statements	F-1
Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets as of December 31, 2009 and 2008	F-3
Consolidated Statement of Operations for each of the three years ended December 31, 2009, 2008 and 2007 and for the period November 15, 2005 (inception) to December 31, 2009	F-4
Consolidated Statement of Changes in Stockholder's Equity (Deficit) for the period November 15, 2005 (inception) to December 31, 2009	F-5
Consolidated Statements of Cash Flows for each of the three years ended December 31, 2009, 2008 and 2007 and for the period November 15, 2005 (inception) to December 31, 2009	F-6
Notes to Consolidated Financial Statements	F-7

(2) *Index to Financial Statement Schedules:*

All schedules have been omitted because the required information is included in the consolidated financial statements or the notes thereto, or is not applicable or required.

(3) *Index to Exhibits*

Exhibit Index

The Exhibits listed below are identified by numbers corresponding to the Exhibit Table of Item 601 of Regulation S-K. The Exhibits designated by an asterisk (*) are management contracts or compensatory plans or arrangements required to be filed pursuant to Item 15.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Articles of Incorporation of Synergy Pharmaceuticals, Inc. (incorporated by reference to Exhibit 3.1 to Form 8-K filed December 7, 2009)
3.2	Amended and Restated Bylaws.
4.1	2008 Equity Compensation Incentive Plan (incorporated by reference to Exhibit 4.1 to Form 8-K filed July 18, 2008)*
4.2	2009 Directors Stock Option Plan*
10.1	Form of Restricted Stock Agreement (incorporated by reference to Exhibit 10.3 to Form 8-K filed July 18, 2008)*
10.2	Form of Executive Non-statutory Stock Option Agreement (incorporated by reference to Exhibit 10.4 to Form 8-K filed July 18, 2008)*
10.3	Form of Non-Executive Non-statutory Stock Option Agreement (incorporated by reference to Exhibit 10.5 to Form 8-K filed July 18, 2008)*

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Exhibit No.	Description
10.4	Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to Form 10-Q filed August 14, 2009)
10.5	Amended and Restated Executive Employment Agreement dated as of February 1, 2010 between Synergy Pharmaceuticals, Inc. and Gary S. Jacob (incorporated by reference to Exhibit 10.1 to Form 8-K filed February 5, 2010)*
10.6	Amended and Restated Consulting Agreement dated as of February 1, 2010 between Synergy Pharmaceuticals, Inc. and Gabriele M. Cerrone (incorporated by reference to Exhibit 10.2 to Form 8-K filed February 5, 2010)*
14	Code of Business Conduct and Ethics (incorporated by reference to Exhibit 14 to Form 10-K filed April 15, 2009)
21	List of Subsidiaries (incorporated by reference to Exhibit 21 to Form 10-K filed April 15, 2009)
23	Consent of BDO Seidman, LLP
31.1	Certification of Chief Executive Officer required under Rule 13a-14(a)/15d-14(a) under the Exchange Act
31.2	Certification of Principal Financial Officer required under Rule 13a-14(a)/15d-14(a) under the Exchange Act
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Principal Financial Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

* Indicates a management contract or compensatory plan or arrangement.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JOHN BRANCACCIO</u> John Brancaccio	Director	March 15, 2010
<u>/s/ CHRISTOPHER MCGUIGAN</u> Chris McGuigan	Director	March 15, 2010

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets as of December 31, 2009 and 2008	F-3
Consolidated Statements of Operations for the three years ended December 31, 2009, 2008 and 2007 and November 15, 2005 (inception) to December 31, 2009	F-4
Consolidated Statements of Changes in Stockholders' Equity (Deficit) for the period November 15, 2005 (Inception) to December 31, 2009	F-5
Consolidated Statements of Cash Flows for the three years ended December 31, 2009, 2008 and 2007, and for the period November 15, 2005 (Inception) to December 31, 2009	F-6
Notes to the Consolidated Financial Statements	F-7

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders
Synergy Pharmaceuticals, Inc.
New York, New York

We have audited the accompanying consolidated balance sheets of Synergy Pharmaceuticals, Inc. and Subsidiaries (a development stage company) (the "Company") as of December 31, 2009 and 2008, the related consolidated statements of operations and cash flows for each of the three years in the period ended December 31, 2009 and for the period from November 15, 2005 (inception) to December 31, 2009 and the related consolidated statement of stockholders' equity (deficit) for the period from November 15, 2005 (inception) to December 31, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Synergy Pharmaceuticals, Inc. and Subsidiaries as of December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009 and for the period from November 15, 2005 (inception) to December 31, 2009, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has suffered recurring losses from operations that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated March 15, 2010 expressed an adverse opinion thereon.

/s/ BDO SEIDMAN, LLP

BDO Seidman, LLP
New York, New York
March 15, 2010

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

CONSOLIDATED BALANCE SHEETS

	December 31, 2009	December 31, 2008
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 7,152,568	\$ 216,007
Note receivable from majority shareholder	—	690,333
Prepaid expenses and other current assets	1,061,630	—
Total Current Assets	8,214,198	906,340
Property and equipment, net	9,725	11,701
Security deposits	14,025	4,400
Due from majority shareholder	972,552	—
	<u>\$ 9,210,500</u>	<u>\$ 922,441</u>
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current Liabilities:		
Accounts payable	\$ 1,283,466	\$ 2,000,220
Accrued expenses	443,266	78,013
Total Current Liabilities	1,726,732	2,078,233
Stockholders' Equity Deficit:		
Common stock, par value of \$.0001 Authorized 200,000,000 and 150,000,000 shares at December 31, 2009 and 2008, respectively; Outstanding 88,423,359 and 65,606,434 shares at December 31, 2009 and 2008, respectively	8,844	6,560
Preferred stock, Authorized 20,000,000 shares and 0 shares outstanding at December 31, 2009 and 2008, respectively	—	—
Additional paid-in capital	47,395,465	30,633,089
Deficit accumulated during development stage	(39,920,541)	(31,795,441)
Total Stockholders' Equity (Deficit)	7,483,768	(1,155,792)
	<u>\$ 9,210,500</u>	<u>\$ 922,441</u>

The accompanying notes are an integral part of these consolidated financial statements.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

CONSOLIDATED STATEMENTS OF OPERATIONS

	<u>Year Ended December 31,</u>			<u>For the period</u>
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>November 15, 2005</u> <u>(inception) to</u> <u>December 31, 2009</u>
Revenues	\$ —	\$ —	\$ —	\$ —
Costs and Expenses:				
Research and development	4,257,285	1,909,226	—	6,166,511
Purchased in-process research and development	—	28,156,502	—	28,156,502
General and administrative	3,942,738	1,662,885	—	5,605,623
Loss from Operations	(8,200,023)	(31,728,613)	—	(39,928,636)
Interest and investment income	74,923	4,993	—	79,916
Loss from Continuing Operations	(8,125,100)	(31,723,620)	—	(39,848,720)
Loss from discontinued operations	—	(31,560)	(20,043)	(71,821)
Net loss	\$ (8,125,100)	\$ (31,755,180)	\$ (20,043)	\$ (39,920,541)
<i>Weighted Average Common Shares Outstanding</i>				
Basic and Diluted (restated for stock split)	73,281,327	118,600,496	165,081,215	
<i>Net Loss per Common Share, Basic and Diluted</i>				
Net Loss from Continuing Operations	(0.11)	(0.27)	.00	
Discontinued Operations:				
Loss from discontinued operations	0.00	.00	.00	
Net Loss per Common Share, Basic and Diluted	\$ (0.11)	\$ (0.27)	\$.00	

The accompanying notes are an integral part of these consolidated financial statements.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

**CONSOLIDATED STATEMENTS OF CHANGES IN
STOCKHOLDERS' EQUITY (DEFICIT)**

	Common Shares	Common Stock, Par Value	Additional Paid in Capital	Deficit Accumulated during the Development Stage	Total Stockholders' Equity (Deficit)
Balance at inception, November 15, 2005					
Sale of unregistered common stock to founder	151,381,215	\$ 15,138	\$ (13,138)	\$ —	\$ 2,000
Sale of common stock	13,700,000	1,370	16,730	—	18,100
Net loss for the year	—	—	—	(16)	(16)
Balance, December 31, 2005	165,081,215	16,508	3,592	(16)	20,084
Net loss for the year	—	—	—	(20,202)	(20,202)
Balance, December 31, 2006	165,081,215	16,508	3,592	(20,218)	(118)
Capital contribution by shareholders	—	—	8,893	—	8,893
Net loss for the year	—	—	—	(20,043)	(20,043)
Balance, December 31, 2007	165,081,215	16,508	12,485	(40,261)	(11,268)
Cancellation of unregistered founder shares	(149,981,208)	(14,998)	14,998	—	—
Common stock issued via Exchange Transaction	45,464,760	4,546	27,274,315	—	27,278,861
Common stock issued via private placement—July 14, 2008	5,000,000	500	2,999,500	—	3,000,000
Common stock issued via private placement—August 25, 2008	41,667	4	24,996	—	25,000
Fees and expenses related to private placements	—	—	(73,088)	—	(73,088)
Stock based compensation expense	—	—	379,883	—	379,883
Net loss for the period	—	—	—	(31,755,180)	(31,755,180)
Balance, December 31, 2008	65,606,434	\$ 6,560	\$ 30,633,089	\$ (31,795,441)	\$ (1,155,792)
Common stock issued via private placements	22,814,425	2,282	15,967,818	—	15,970,100
Fees and expenses related to private placements	—	—	(260,002)	—	(260,002)
Common Stocks Issued for services rendered	2,500	2	1,498	—	1,500
Stock based compensation expense	—	—	1,053,062	—	1,053,062
Net loss for the period	—	—	—	(8,125,100)	(8,125,100)
Balance, December 31, 2009	88,423,359	8,844	47,395,465	(39,920,541)	7,483,768

The accompanying notes are an integral part of these consolidated financial statements.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>Year Ended December 31,</u>			<u>Period from</u>
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>November 15, 2005</u> <u>(Inception) to</u> <u>December 31, 2009</u>
Cash Flows From Operating Activities:				
Net loss	\$ (8,125,100)	\$ (31,755,180)	\$ (20,043)	\$ (39,920,541)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation	1,976	494	672	3,198
Stock-based compensation expense	1,054,562	379,883	—	1,434,445
Purchased in-process research and development	—	28,156,502	—	28,156,502
Changes in operating assets and liabilities:				
Security deposit	(9,625)	(4,400)	—	(14,025)
Accounts payable and accrued expenses	(351,501)	1,343,957	6,233	1,003,689
Prepaid expenses and other current assets	(1,061,630)	—	—	(1,061,630)
Total Adjustments	(366,218)	29,876,436	6,905	29,552,179
Net Cash Used in Operating Activities	(8,491,318)	(1,878,744)	(13,138)	(10,398,362)
Cash Flows From Investing Activities:				
Net cash paid on Exchange Transaction	—	(155,326)	—	(155,326)
Loans from (to) related parties	(282,219)	(694,833)	4,500	(972,552)
Additions to property and equipment	—	(8,809)	—	(12,195)
Net Cash (used in)/ provided by Investing Activities	(282,219)	(858,968)	4,500	(1,140,073)
Cash Flows From Financing Activities:				
Capital contribution by shareholders	—	—	8,893	8,893
Issuance of common stock	—	—	—	2,000
Proceeds of private placement of common stock	15,970,100	3,025,000	—	18,995,100
Proceeds from sale of unregistered common stock to founders	—	—	—	18,100
Fees and expenses related to private placements	(260,002)	(73,088)	—	(333,090)
Net Cash Provided by Financing Activities	15,710,098	2,951,912	8,893	18,691,003
Net increase in cash and cash equivalents	6,936,561	214,200	255	7,152,568
Cash and cash equivalents at beginning of period	216,007	1,807	1,552	—
Cash and cash equivalents at end of period	\$ 7,152,568	\$ 216,007	\$ 1,807	\$ 7,152,568
Supplementary disclosure of cash flow information:				
Cash paid for taxes	\$ 6,289	\$ 632	\$ —	\$ 6,921
Value of common stock issued via Exchange Transaction	\$ —	\$ 27,278,861	\$ —	\$ 27,278,861

Cash flow activities for the twelve months ended December 31, 2008 include discontinued operations of Synergy's pet food business prior to July 14, 2008 and cash flow activities for the twelve months ended December 31, 2007 represent the discontinued operations of Synergy's pet food business.

The accompanying notes are an integral part of these condensed consolidated financial statements.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Business Overview

BUSINESS OVERVIEW

We are a biopharmaceutical company focused primarily on the development of drugs to treat gastrointestinal, or GI, disorders and diseases. Our lead drug candidate is SP-304, a guanylyl cyclase C, or GC-C, receptor agonist, to treat GI disorders, primarily chronic constipation, or CC, and constipation-predominant irritable bowel syndrome, or IBS-C. CC and IBS-C are functional gastrointestinal disorders that afflict millions of sufferers worldwide. CC is primarily characterized by constipation symptoms but a majority of these patients report experiencing bloating and abdominal discomfort as among their most bothersome symptoms. IBS-C is characterized by frequent and recurrent abdominal pain and/or discomfort associated with chronic constipation.

In December 2008, we completed a Phase 1 clinical trial of SP-304 which showed that SP-304 was well tolerated at all doses studied (0.1 mg to 48.6 mg) and exhibited gastrointestinal pharmacodynamic activity in healthy volunteers with no detectable systemic absorption of SP-304 in the blood. The data obtained from this trial supported advancing SP-304 for further clinical studies in patients with CC and IBS-C. In February, 2010, a Phase 2a 14-day, repeated-oral-dose trial of SP-304 in CC patients opened for enrollment and is actively recruiting patients.

2. Basis of Presentation and Going Concern

On July 14, 2008, Pawfect Foods Inc. ("Pawfect"), a Florida corporation incorporated on November 15, 2005, acquired 100% of the common stock of Synergy Pharmaceuticals, Inc., a Delaware corporation incorporated on September 11, 1992, and its wholly-owned subsidiary, Synergy Advanced Pharmaceuticals, Inc., (collectively "Synergy-DE"), under the terms of an Exchange Agreement among Pawfect, Callisto Pharmaceuticals, Inc. ("Callisto"), Synergy-DE, and certain other holders of Synergy-DE common stock ("Exchange Transaction"). For a more detailed discussion of this Exchange Transaction, see Note 4, *Acquisition and Stockholders' Equity (Deficit)* below.

On July 14, 2008, Synergy discontinued its pet food business and is now exclusively focused on the development of drugs to treat gastrointestinal ("GI") disorders and diseases. Synergy acquired the GI drugs and related technology in connection with the Exchange Transaction. On July 21, 2008, Pawfect amended its articles of incorporation to effect the actions necessary to complete the transactions contemplated by the Exchange Transaction and changed its name to Synergy Pharmaceuticals, Inc. ("Synergy" or "the Company").

The acquisition of Synergy-DE was treated as an asset acquisition, since Synergy-DE is a development stage company and does not have the necessary inputs and outputs to meet the definition of a business. The results of operations of Synergy-DE are included in the accompanying consolidated financial statements from the date of acquisition. As a result of the acquisition of Synergy-DE on July 14, 2008, the Company decided to discontinue its pet food business and accordingly, amounts in the consolidated statements of operations and related notes for all historical periods have been restated to reflect these operations as discontinued. For a more detailed discussion of this acquisition, see Note 4, *Acquisition and Stockholders' Equity (Deficit)* below.

All intercompany balances and transactions have been eliminated. These consolidated financial statements include Synergy and subsidiaries: (1) Synergy-DE, (2) Synergy Advanced Pharmaceuticals, Inc. and (3) IgX, Ltd (Ireland—inactive)). These consolidated financial statements as of December 31, 2009 have been prepared under the assumption that we will continue as a going concern. Synergy's independent registered public accounting firm has issued a report on our financial statements that

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

2. Basis of Presentation and Going Concern (Continued)

included an explanatory paragraph referring to our recurring losses from operations and expressing substantial doubt in Synergy's ability to continue as a going concern without additional capital becoming available. Synergy's ability to continue as a going concern is dependent upon its ability to obtain additional equity or debt financing, attain further operating efficiencies and, ultimately, to generate revenue. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As of December 31, 2009, Synergy had an accumulated deficit of \$ 39,920,541 resulting primarily from acquired in-process research and development valued at \$28,156,502 and expensed upon the acquisition of Synergy on July 14, 2008. Synergy expects to incur significant and increasing operating losses for the next several years as Synergy expands its research and development, continues clinical trials of SP-304 for the treatment of GI disorders, acquires or licenses technologies, advances other product candidates into clinical development, seeks regulatory approval and, if FDA approval is received, commercializes products. Because of the numerous risks and uncertainties associated with product development efforts, Synergy is unable to predict the extent of any future losses or when Synergy will become profitable, if at all.

Net cash used in operating activities was \$8,491,318 for the twelve months ended December 31, 2009. As of December 31, 2009 Synergy has \$7,152,568 of cash. During the twelve months ended December 31, 2009, Synergy incurred net losses from continuing operations of \$8,125,100. To date, Synergy's sources of cash have been primarily limited to private placements of common stock. Net cash provided by financing activities for the twelve months ended December 31, 2009 was \$15,710,098.

As of December 31, 2009 Synergy had working capital of \$6,487,466. During the twelve months ended December 31, 2009 Synergy sold 22,814,425 shares of unregistered common stock at \$0.70 per share to private investors for aggregate proceeds of \$15,970,100 and Synergy paid an aggregate \$260,002 to selling agents and legal fees in connection with certain of its private placements.. Recently worldwide economic conditions and the international equity and credit markets have significantly deteriorated and may remain depressed for the foreseeable future. These developments will make it more difficult to obtain additional equity or credit financing, when needed. Synergy has accordingly taken steps to conserve cash which include extending payment terms to our suppliers as well as substantial management and staff salary cuts and deferrals. These actions may not be sufficient to allow the Company time to raise additional capital.

Synergy will be required to raise additional capital within the next year to complete the development and commercialization of current product candidates and to continue to fund operations at the current cash expenditure levels. Synergy cannot be certain that additional funding will be available on acceptable terms, or at all. To the extent that Synergy raises additional funds by issuing equity securities, Synergy's stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants that impact Synergy's ability to conduct business. If Synergy is unable to raise additional capital when required or on acceptable terms, Synergy may have to (i) significantly delay, scale back or discontinue the development and/or commercialization of one or more product candidates; (ii) seek collaborators for product candidates at an earlier stage than otherwise would be desirable and on terms that are less favorable than might otherwise be available; or (iii) relinquish or otherwise dispose of rights to technologies, product candidates or products that Synergy would otherwise seek to develop or commercialize ourselves on unfavorable terms.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

3. Summary of Significant Accounting Policies and New Accounting Pronouncements

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents consist of checking accounts and short-term money market funds as of December 31, 2009 and December 31, 2008 on deposit with U.S. commercial banks, which at any point in time, may exceed federally insured limits.

Fair Value of Financial Instruments

Financial instruments consist of cash and accounts payable. These financial instruments are stated at their respective historical carrying amounts which approximate to fair value due to their short term nature.

Property, equipment and depreciation

Expenditures for additions, renewals and improvements are capitalized at cost. Depreciation is generally computed on a straight-line method based on the estimated useful lives of the related assets. The estimated useful lives of the major classes of depreciable assets are 2 to 5 years for equipment and furniture and fixtures. Expenditures for repairs and maintenance are charged to operations as incurred. Synergy periodically evaluates whether current events or circumstances indicate that the carrying value of its depreciable assets may not be recoverable.

Income Taxes

Income taxes have been determined using the asset and liability approach of accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. Deferred taxes result from differences between the financial statement and tax bases of Synergy's assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized. The assessment of whether or not a valuation allowance is required often requires significant judgments.

Contingencies

In the normal course of business, Synergy is subject to loss contingencies, such as legal proceedings and claims arising out of its business, that cover a wide range of matters, including, among others, government investigations, shareholder lawsuits, product and environmental liability, and tax matters. In accordance with FASB ASC Topic 450, *Accounting for Contingencies*, ("ASC Topic 450"), Synergy records accruals for such loss contingencies when it is probable that a liability will be incurred and the amount of loss can be reasonably estimated. Synergy, in accordance with this guidance, does not recognize gain contingencies until realized. For a discussion of contingencies, see Note 7, *Commitments and Contingencies* below.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

3. Summary of Significant Accounting Policies and New Accounting Pronouncements (Continued)

Research and Development

Research and development costs include expenditures in connection with an in-house research and development laboratory, salaries and staff costs, application and filing for regulatory approval of proposed products, patent filing and maintenance expenses, purchased in-process research and development, regulatory and scientific consulting fees, as well as contract research, patient costs, drug formulation and tableting, data collection, monitoring, insurance and FDA consultants. In accordance with FASB ASC Topic 730-10-55, *Research and Development*, Synergy recorded prepaid research and development expense of \$1 million for nonrefundable deposits on production of drug substance of its drug candidate SP-304 by two of its vendors. In accordance with this guidance, Synergy expenses these advance payments when drug compound is delivered.

Loss Per Share

Basic and diluted net loss per share is presented in conformity with ASC Topic 260, *Earnings per Share*, ("ASC Topic 260") for all periods presented. In accordance with this guide, basic and diluted net loss per common share was determined by dividing net loss applicable to common stockholders by the weighted-average common shares outstanding during the period. Diluted weighted-average shares are the same as basic weighted-average shares because shares issuable pursuant to the exercise of stock options would have been antidilutive. For the years ended December 31, 2009 and December 31, 2008 the effect of 4,214,016 and 4,080,016 outstanding stock options and other common stock equivalents were excluded from the calculation of diluted loss per share because the effect was antidilutive. As of December 31, 2007 there were no outstanding stock options and other common stock equivalents.

Recent Accounting Pronouncements

In August 2009, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2009-05, "Measuring Liabilities at Fair Value" ("ASU 2009-05"). ASU 2009-05 amends ASC Topic 820 and clarifies that, where a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using one or more of the following methods: 1) a valuation technique that uses a) the quoted price of the identical liability when traded as an asset or b) quoted prices for similar liabilities or similar liabilities when traded as assets and/or 2) a valuation technique that is consistent with the principles of ASC Topic 820. ASU 2009-05 also clarifies that, when estimating the fair value of a liability, a reporting entity is not required to adjust to include inputs relating to the existence of transfer restrictions on that liability. The adoption of ASU 2009-05 did not have a material impact on the Company's financial statements.

In June 2009, FASB issued Accounting Standards Update No. 2009-01, "Generally Accepted Accounting Principles" (ASC Topic 105), by the Codification which establishes the FASB Accounting Standards Codification (the "Codification" or "ASC") as the single source of authoritative GAAP. All existing accounting standards in effect prior to the Codification were superseded. All other accounting guidance not included in the Codification will be considered non-authoritative. The Codification also includes all relevant SEC guidance organized using the same topical structure in separate sections within the Codification. The Codification does not change GAAP and did not impact the Company's financial statements. All references to authoritative accounting literature (including references related to period's prior to the establishment of the Codification) have been referenced in accordance with the Codification.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

3. Summary of Significant Accounting Policies and New Accounting Pronouncements (Continued)

In May 2009, the FASB issued guidance within ASC Topic 855, *Subsequent Events*, amended by ASU 2010-09 relating to subsequent events. This guidance establishes principles and requirements for subsequent events. This guidance defines the period after the balance sheet date during which events or transactions that may occur would be required to be disclosed in a company's financial statements. Public entities are required to evaluate subsequent events through the date that financial statements are issued. This guidance also provides guidelines for evaluating whether or not events or transactions occurring after the balance sheet date should be recognized in the financial statements.

In June 2008, the FASB ratified the consensus reached on guidance within ASC Topic 815, *Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock* ("ASC Topic 815"). This guidance clarifies the determination of whether an instrument (or an embedded feature) is indexed to an entity's own stock, which would qualify as a scope exception under ASC Topic 815, *Accounting for Derivative Instruments and Hedging Activities*. ASC Topic 815 was effective for financial statements issued for fiscal years beginning after December 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cashflow.

In February 2008, the FASB issued ASC Topic 820, *Partial Deferral of the Effective Date of Statement 157*, ("ASC Topic 820"). This guidance delays the effective date of *Fair Value Measurements* ("ASC Topic 820") for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually) to fiscal years beginning after November 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cashflow.

In December 2007, the FASB ratified ASC Topic 808, *Accounting for Collaborative Arrangements Related to the Development and Commercialization of Intellectual Property*, ("ASC Topic 808"), which provides guidance on how the parties to a collaborative agreement should account for costs incurred and revenue generated on sales to third parties, how sharing payments pursuant to a collaboration agreement should be presented in the income statement and certain related disclosure requirements. ASC Topic 808 was effective for fiscal years beginning after December 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cashflow.

In December 2007, the FASB issued ASC Topic 805, *Business Combinations*. The revision is intended to simplify existing guidance and converge rulemaking under U.S. GAAP with international accounting rules. This statement applies prospectively to business combinations where the acquisition date was on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cashflow.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

3. Summary of Significant Accounting Policies and New Accounting Pronouncements (Continued)

In December 2007, the FASB issued ASC Topic 810, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ASC Topic 860*. This guidance requires all entities to report noncontrolling (minority) interests in subsidiaries as equity in the consolidated financial statements. Its intention is to eliminate the diversity in practice regarding the accounting for transactions between an entity and noncontrolling interests. This Statement was effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Adoption of this statement did not have a material effect on our consolidated financial position, results of operations or cashflow.

4. Acquisition and Stockholders' Equity (Deficit)

On July 14, 2008, Pawfect acquired 100% of the common stock of Synergy-DE from Callisto and certain other holders of Synergy-DE shares, in exchange for 45,464,760 unregistered shares of Pawfect's common stock. This represented approximately 70% of Pawfect's outstanding common stock after giving effect to (i) a 75.69060773 for one stock split, (ii) cancellation of 149,981,208 of 151,381,215 unregistered shares owned by Pawfect's principal stockholder and (iii) a \$3,000,000 private placement of 5,000,000 unregistered shares of Pawfect's common stock to private investors. Fees and expenses directly related to the closing of this private placement totaled \$73,088, yielding net proceeds of \$2,926,912. The stock split and change in par value, from \$0.001 to \$0.0001, resulted in the restatement of all historical common stock and additional paid-in capital amounts presented in the accompanying financial statements.

These transactions were completed under the terms of an Exchange Agreement dated as of July 11, 2008, as amended and effective on July 14, 2008 among Pawfect, Callisto, Synergy-DE, and certain other holders of Synergy-DE common stock. Callisto received 44,590,000 of the 45,464,760 shares of Pawfect's common stock exchanged for ownership of Synergy-DE, and Callisto which represented 68% of Pawfect's outstanding common stock. See Note 5, *Accounting for Share-Based Payments* below for shares issued to other holders.

The Exchange Transaction was treated as an asset acquisition by Pawfect for accounting purposes. Under this method of accounting, Pawfect is treated as the acquiring entity, issuing stock for the assets and liabilities of Synergy-DE. The assets and liabilities of Synergy-DE, primarily cash and accounts payable, were stated at their fair value. Net liabilities acquired totaled \$877,646. The fair value of the 45,464,760 shares issued in connection with the Exchange Transaction, totaled \$27,278,856 on July 14, 2008, based on a per share value of \$0.60, which was the per share price the Company's 5,000,000 common shares sold for in a private placement on that date. The total consideration of \$28,156,502 was allocated in full to the Synergy research and development projects which had not yet reached technological feasibility and, having no alternative use, this amount was charged to purchased in-process research and development ("IPR&D") expense as of the date of the Exchange Transaction.

In addition to purchased IPR&D, the Company retained four full time employees and acquired a patent related to the technologies acquired. There were no other intangible assets acquired which required allocation of the purchase price. The Company did not assign a value to the acquired employees as all continuing research and development is being performed under the supervision of other Company employees, nor the patent since the technology is still in an early stage. Therefore, the full purchase price accordingly allocated to purchased in-process research and development and there

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

4. Acquisition and Stockholders' Equity (Deficit) (Continued)

was no value assigned to goodwill. The value of the IPR&D was based on the fair value of the consideration given which was the value most reliably measurable.

Net liabilities assumed in excess of Synergy-DE assets acquired in connection with the Exchange Transaction on July 14, 2008 were as follows:

Assets	
Cash	\$ 194,674
Total assets acquired	194,674
Liabilities	
Accounts payable and other liabilities	(722,320)
Due to Callisto	(350,000)
Total liabilities assumed	(1,072,320)
Net liabilities assumed in excess of assets acquired	(877,646)
Fair value of shares issued to Synergy-DE shareholders	(27,278,856)
Total consideration paid by Pawfect to acquire Synergy-DE	<u>\$ (28,156,502)</u>

On July 14, 2008, Synergy discontinued its pet food business and is now exclusively focused on continuing the development of drugs to treat GI disorders and diseases acquired in connection with the Exchange Transaction.

On July 21, 2008, Pawfect amended its articles of incorporation in the State of Florida to effect the actions necessary to complete the transactions contemplated by the Exchange Transaction, including: (i) an increase in the authorized number of common shares from 50,000,000 to 150,000,000 (ii) authorized 20,000,000 shares of preferred stock (iii) changed the common stock par value per share from \$0.001 to \$0.0001 and (iv) changed its name to Synergy Pharmaceuticals, Inc.

During the twelve months ended December 31, 2009 Synergy sold 22,814,425 shares of unregistered common stock at \$0.70 per share to private investors, pursuant to a Securities Purchase Agreement, for aggregate proceeds of \$15,970,100. There were no warrants issued in connection with these transactions. Synergy incurred \$260,002 in fees to selling agents and attorneys in connection with these transactions. Pursuant to the Securities Purchase Agreement the investors agreed to be subject to a lock-up until August 15, 2010 and Synergy agreed to price protection for the investors in the event of subsequent sales of equity securities as defined, until February 15, 2011. In accordance with the guidance contained in ASC Topic 815-40, the Company has determined that the price protection provisions are embedded derivatives that require bifurcation and recognition at fair value in the company's financial statements. The Company has determined that the fair value of the derivatives is de minimus.

On November 20, 2009, the number of common shares authorized increased from 150,000,000 to 200,000,000.

As of December 31, 2009 Synergy's majority shareholder, Callisto, owns 50.4% of its outstanding shares. As of December 31, 2009 and 2008 the balance due from its majority shareholder amounted to \$972,552 and \$690,333, respectively. This balance represents Callisto's share of Synergy payments for

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

4. Acquisition and Stockholders' Equity (Deficit) (Continued)

common operating costs since the inception. Due to the uncertainty surrounding Callisto's ability to raise capital Synergy is unable to determine when this balance will be repaid and accordingly Synergy has classified it as a long term asset as of December 31, 2009.

5. Accounting for Shared-Based Payments

Stock Options

ASC Topic 718 "*Compensation—Stock Compensation*" requires companies to measure the cost of employee services received in exchange for the award of equity instruments based on the estimated fair value of the award at the date of grant. The expense is to be recognized over the period during which an employee is required to provide services in exchange for the award. Synergy did not issue stock options until 2008.

Synergy adopted the 2008 Equity Compensation Incentive Plan (the "Plan") on July 3, 2008. Stock options granted under the Plan typically vest after three years of continuous service from the grant date and have a contractual term of ten years. Synergy periodically issues stock options to employees and non-employees and has adopted ASC Topic 718 for employee awards on July 3, 2008 concurrently with adoption of the Plan. Prior to that date Synergy had not issued any stock options. The Company accounts for stock options issued and vesting to non-employees in accordance with ASC Topic 505-50 Equity-Based Payment to Non-Employees whereas the value of the stock compensation is based upon the measurement date as determined at either a) the date at which a performance commitment is reached, or b) at the date at which the necessary performance to earn the equity instruments is complete.

Stock-based compensation, including all options and restricted stock units, has been recognized in operating results as follow:

	Years Ended December 31,			November 15, 2005
	2009	2008	2007	(inception) to December 31, 2009
Employees—included in research and development	\$ 252,541	\$ 79,530	\$ —	\$ 332,071
Employees—included in general and administrative	358,167	112,728	—	470,895
Subtotal employee stock based compensation	610,708	192,258	—	802,966
Non-employees—included in research and development	33,913	8,548	—	42,461
Non-employees—included in general and administrative	409,941	179,077	—	589,018
Subtotal non-employee stock based compensation	443,854	187,625	—	631,479
Total stock-based compensation expense	<u>\$ 1,054,562</u>	<u>\$ 379,883</u>	<u>\$ —</u>	<u>\$ 1,434,445</u>

The estimated fair value of stock option awards was determined on the date of grant using the Black-Scholes option valuation model with the following weighted-average assumptions during the year ended December 31, 2009. The unrecognized compensation cost related to non-vested employee stock options and restricted stock awards outstanding at December 31, 2009, net of expected forfeitures, was

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

5. Accounting for Shared-Based Payments (Continued)

\$1,010,250 to be recognized over a weighted-average remaining vesting period of approximately one year.

	Years Ended December 31,		
	2009	2008	2007
Risk-free interest rate	2.20%	2.67% - 3.28%	N/A
Dividend yield	—	—	N/A
Expected volatility	90%	90%	N/A
Expected term (in years)	6.0 yrs	6.0 yrs	N/A

Risk-free interest rate—Based upon observed interest rates appropriate for the expected term of Synergy's employee stock options.

Dividend yield—Synergy has not paid any dividends on common stock since its inception and does not anticipate paying dividends on its common stock in the foreseeable future.

Expected volatility—Based on the historical volatility of comparable publicly traded stocks.

Expected term—Synergy has had no stock options exercised since inception. The expected option term represents the period that stock-based awards are expected to be outstanding based on the simplified method provided in Staff Accounting Bulletin ("SAB") No. 107, *Share-Based Payment*, ("SAB No. 107"), which averages an award's weighted-average vesting period and expected term for "plain vanilla" share options. Under SAB No. 107, options are considered to be "plain vanilla" if they have the following basic characteristics: (i) granted "at-the-money"; (ii) exercisability is conditioned upon service through the vesting date; (iii) termination of service prior to vesting results in forfeiture; (iv) limited exercise period following termination of service; and (v) options are non-transferable and non-hedgeable.

In December 2007, the SEC issued SAB No. 110, *Share-Based Payment*, ("SAB No. 110"). SAB No. 110 was effective January 1, 2008 and expresses the views of the Staff of the SEC with respect to extending the use of the simplified method, as discussed in SAB No. 107, in developing an estimate of the expected term of "plain vanilla" share options in accordance with ASC Topic 718. The Company will continue to use the simplified method until it has the historical data necessary to provide a reasonable estimate of expected life in accordance with SAB No. 107, as amended by SAB No. 110. For the expected term, the Company has "plain-vanilla" stock options, and therefore used a simple average of the vesting period and the contractual term for options granted subsequent to January 1, 2006 as permitted by SAB No. 107.

Forfeitures—ASC Topic 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Synergy estimated future unvested option forfeitures based on historical experience of its majority-owned shareholder, Callisto.

The weighted-average fair value per share of all options granted during the twelve months ended December 31, 2009 and December 31, 2008 estimated as of the grant date using the Black-Scholes option valuation model was \$0.70 and \$0.51 per share.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

5. Accounting for Shared-Based Payments (Continued)

The unrecognized compensation cost related to non-vested employee stock options outstanding at December 31, 2009 and December 31, 2008 was \$1,010,250 and \$1,290,122, to be recognized over a weighted-average remaining vesting period of approximately 1.3 year and 2.5 years. There were no options outstanding at December 31, 2007.

A summary of stock option activity and of changes in stock options outstanding under Synergy's plans is presented below:

	Number of Options	Exercise Price Per Share	Weighted Average Exercise Price Per Share	Intrinsic Value as of December 31, 2009
Balance outstanding, December 31, 2008	4,080,016	\$ 025-0.95	\$ 0.29	\$ 8,933,935
Granted	149,000	\$ 0.70	\$ 0.70	
Exercised	—	—	—	
Forfeited	(15,000)	\$ 0.25-0.95	\$ 0.72	
Balance outstanding, December 31, 2009	<u>4,214,016</u>	\$ 0.25 - 0.95	\$ 0.30	\$ 22,320,436
Exercisable at December 31, 2009	<u>1,417,420</u>	\$ 0.25-0.95	\$ 0.29	\$ 7,521,947

ASC Topic 718 requires that cash flows resulting from tax deductions in excess of the cumulative compensation cost recognized for options exercised (excess tax benefits) be classified as cash inflows from financing activities and cash outflows from operating activities. Due to Synergy's accumulated deficit position, no tax benefits have been recognized in the cash flow statement

Restricted Stock Units

Restricted stock units, which entitle the holder to receive, at the end of a vesting term, a specified number of shares of Synergy common stock are accounted for as stock based compensation in accordance with ASC Topic 718 in the same manner as stock options using fair value at the date of grant. Subject to a repurchase agreement assumed by Synergy pursuant to the Exchange Transaction, 50% of the units vest after 1 year of continuous service and the remaining 50% vest after 2 years of continuous service from the grant date. The total fair value is being expensed ratably by month over the 2 year service period.

On July 3, 2008, 874,760 restricted stock units were granted by Synergy-DE and assumed by Synergy as part of the Exchange Transaction and are subject to a repurchase agreement, as defined. These restricted stock units were issued to certain officers and a consultant of Synergy. The fair value of each restricted stock unit is estimated on the grant date based on the price paid by shareholders participating in the Company's July 14, 2008 private placement. Accordingly, the weighted-average grant date fair value per share of the 874,760 shares issued during the twelve months ended December 31, 2008 was determined to be \$0.60. As of December 31, 2009 there were 874,760 restricted stock units outstanding, included in shares outstanding. The fair value of the 874,760 restricted stock units on the date of grant was \$524,856 of which \$361,104 was recorded as stock-based compensation expense during the twelve months ended December 31, 2009. The intrinsic value of the 437,380 shares which vested during the twelve months ended December 31, 2009 was \$2,449,328.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

6. Income Taxes

At December 31, 2009, Synergy-DE has net operating loss carryforwards ("NOLs") aggregating approximately \$30 million, which, if not used, beginning in 2010 and expiring through 2029. The utilization of these NOLs is subject to limitations based on past and future changes in ownership of Synergy pursuant to Internal Revenue Code Section 382. The Company has determined that an ownership change occurred for Internal Revenue Code Section 382 purposes. As a result of this ownership change, the ability of the Company to utilize its NOLs is limited. The Company has no other material deferred tax items. Synergy records a valuation allowance against deferred tax assets to the extent that it is more likely than not that some portion, or all of, the deferred tax assets will not be realized. Due to the substantial doubt related to Synergy's ability to continue as a going concern and utilize its deferred tax assets, a valuation allowance for the full amount of the deferred tax assets has been established at December 31, 2009. As a result of this valuation allowance there are no income tax benefits reflected in the accompanying consolidated statements of operations to offset pre-tax losses.

The provisions of FASB ASC Topic 740-10-30-7, *Accounting for Income Taxes* were adopted by Synergy on January 1, 2007 and had no effect on Synergy's financial position, cash flows or results of operations upon adoption, as Synergy did not have any unrecognized tax benefits. Synergy's practice is to recognize interest and/or penalties related to income tax matters in income tax expense and none have been incurred to date.

Synergy has no uncertain tax positions subject to examination by the relevant tax authorities as of December 31, 2009. Synergy files U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2005 through 2008 tax years generally remain subject to examination by federal and most state tax authorities.

On July 14, 2008, Synergy engaged in a tax-free reorganization pursuant to the Internal Revenue Code Section 368(a)(1)(B) thereby acquiring 100% of shares in Synergy-DE, from Callisto, a Delaware corporation, and other restricted holders of Synergy-DE shares, in exchange for 45,464,760 shares of the Company's common stock (or approximately 70% of the Company's outstanding common stock). The transaction was characterized as a tax-free type "B" reorganization resulting in no gain or loss recognition to the Company, for federal tax purposes.

7. Commitments and Contingencies

Employment and Consulting Agreements

Gary S. Jacob, Ph.D.

On February 1, 2010, Dr. Gary Jacob entered into an amended and restated employment agreement with us in which he agreed to serve as Chief Executive Officer and President. The term of the agreement was effective as of August 1, 2008 and continues until December 31, 2012 and is automatically renewed for successive one year periods at the end of each term. Dr. Jacob's salary is \$300,000 per year. Dr. Jacob is eligible to receive a cash bonus of up to 50% of his base salary per year based on meeting certain performance objectives and bonus criteria. Such performance objectives and bonus criteria had not been determined as of December 31, 2009 and therefore not met or earned. Dr. Jacob is also eligible to receive a realization bonus in the event that we enter into an out-license agreement for our technology or enter into a joint venture in which we contribute such rights to the joint venture where the enterprise value equals or exceeds a minimum of \$150 million, \$200 million

SYNERGY PHARMACEUTICALS, INC.
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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

7. Commitments and Contingencies (Continued)

and \$250 million in the first, second or third years of the term of the agreement or any years beyond the third term of the agreement, respectively, or the license fees we contract to receive equals or exceeds \$50 million. The realization bonus will be equal to the enterprise value in the case of a joint venture or the sum of the license fees actually received in the case of an out license, multiplied by 0.5%. In addition, in the event we engage in a merger transaction or a sale of substantially all of our assets where the enterprise value equals or exceeds \$400 million, Dr. Jacob shall receive a bonus in an amount determined by multiplying the enterprise value by 2.5%.

If the employment agreement is terminated by us other than for cause or as a result of Dr. Jacob's death or permanent disability or if Dr. Jacob terminates his employment for good reason which includes a change of control, Dr. Jacob shall receive (i) a severance payment equal to the higher of the aggregate amount of his base salary for the then remaining term of the agreement or twelve times the average monthly base salary paid or accrued during the three full calendar months preceding the termination, (ii) expense compensation in an amount equal to twelve times the sum of his average base salary during the three full months preceding the termination, (iii) immediate vesting of all unvested stock options and the extension of the exercise period of such options to the later of the longest period permitted by our stock option plans or ten years following the termination date, (iv) payment in respect of compensation earned but not yet paid and (v) payment of the cost of medical insurance for a period of twelve months following termination. In the event Dr. Jacob's employment was terminated upon a change of control as of December 31, 2009, he would have been entitled to receive a lump sum payment of \$900,000, less applicable withholding.

Gabriele M. Cerrone

On February 1, 2010, Gabriele M. Cerrone, our Chairman of the Board, entered into an amended and restated consulting agreement with us. The term of the agreement was effective as of August 1, 2008 and continues until December 31, 2012 and is automatically renewed for successive one year periods at the end of each term. Pursuant to the agreement, Mr. Cerrone's compensation is \$295,000 per year. Mr. Cerrone is eligible to receive a cash bonus of up to 50% of his base salary per year based on meeting certain performance objectives and bonus criteria. Such performance objectives and bonus criteria had not been determined as of December 31, 2009 and therefore not met or earned. Mr. Cerrone is also eligible to receive a realization bonus in the event that we enter into an out-license agreement for our technology or enter into a joint venture in which we contribute such rights to the joint venture where the enterprise value equals or exceeds a minimum of \$150 million, \$200 million and \$250 million in the first, second or third years of the term of the agreement or any years beyond the third term of the agreement, respectively, and in the case of a financing transaction, we receive not less than \$20 million of gross proceeds; or the license fees we contract to receive equals or exceeds \$50 million. The realization bonus will be equal to the enterprise value in the case of a joint venture or financing or the sum of the license fees actually received multiplied by 0.5%. In addition, in the event we engage in a merger transaction or a sale of substantially all of our assets where the enterprise value equals or exceeds \$400 million, Mr. Cerrone shall receive a bonus in an amount determined by multiplying the enterprise value by 2.5%.

If the consulting agreement is terminated by us other than for cause or as a result of Mr. Cerrone's death or permanent disability or if Mr. Cerrone terminates the agreement for good reason which includes a change of control, Mr. Cerrone shall receive (i) a severance payment equal to

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

7. Commitments and Contingencies (Continued)

the higher of the aggregate amount of his base compensation for the then remaining term of the agreement or twelve times the average monthly base compensation paid or accrued during the three full calendar months preceding the termination, (ii) expense compensation in an amount equal to twelve times the sum of his average base compensation during the three full months preceding the termination, (iii) immediate vesting of all unvested stock options and the extension of the exercise period of such options to the later of the longest period permitted by our stock option plans or ten years following the termination date, (iv) payment in respect of compensation earned but not yet paid and (v) payment of the cost of medical insurance for a period of twelve months following termination. In the event Mr. Cerrone's employment was terminated upon a change of control as of December 31, 2009, he would have been entitled to receive a lump sum payment of \$885,000 less applicable withholding.

On August 21, 2008, the Board of Directors ("the Board") of Synergy appointed Melvin K. Spigelman, M.D. as a Director of the Company. In addition, the Board of Directors appointed Dr. Spigelman Chairman of Synergy's Clinical Oversight Committee ("the Committee") as well as a member of the Compensation and Audit Committees. In connection therewith, the Board of Directors approved the payment of an annual fee of \$90,000 to Dr. Spigelman for his service on the Board and the Committees. Additionally, the Board approved a grant of 300,000 stock options to Dr. Spigelman with an exercise price of \$0.60 per share. Such options vest in 100,000 increments over a period of 3 years. The fair value of the 300,000 options on the date of grant was \$135,655 of which \$33,914 was recorded as stock-based compensation expense during the twelve months ended December 31, 2009. . During 2009, the Clinical Oversight Board was disbanded and Dr. Spigelman is paid a director fee comparable to the other independent Board members.

Kunwar Shailubhai, Ph.D

On April 6, 2004, Kunwar Shailubhai, Ph.D. entered into an employment agreement with Synergy-DE in which he agreed to serve as Senior Vice President, Drug Discovery. Dr. Shailubhai's employment agreement was for a term of 12 months beginning April 6, 2004 and was automatically renewed for successive one year periods at the end of each term. On July 9, 2008, Dr. Shailubhai was appointed Chief Scientific Officer of Synergy. His salary is currently \$200,000 per year and he is eligible to receive a discretionary performance bonus of up to 15% of his salary per year.

Lease agreements

The Company's corporate headquarters totals approximately 5,500 square feet, in two suites, located at 420 Lexington Avenue, New York, New York. The New York corporate office is provided to it under a space sharing arrangement with Callisto, the Company's majority stockholder. The term of the leases at 420 Lexington Avenue expire on June 30, 2011 and September 30, 2010. The Company also occupies a small laboratory and several offices, totaling approximately 1,000 square feet, in the Bucks County Biotechnology Center in Doylestown, Pennsylvania under a lease expiring August 31, 2010. Rent expense for the twelve months ended December 31, 2009 totaled \$236,634.

SYNERGY PHARMACEUTICALS, INC.
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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

7. Commitments and Contingencies (Continued)

Commitments Prior to Exchange Transaction

The Company had retained Mr. Pietro Gattini as President, Chairman and Chief Executive Officer. Prior to the Exchange Transaction, Mr. Gattini was the only director, officer and employee of the Company. Compensation has been accrued at a rate of \$500 per month. On July 14, 2008, Mr. Gattini resigned as Chief Executive Officer and sole director of the Company and all compensation due him was paid from the net proceeds of the private placement. For a more detailed discussion of the private placement, see Note 4, *Acquisition and Stockholders' Equity (Deficit)* above.

The Company leased approximately 70 square feet of office space on a month-to-month basis from Steinway Group, LLC in Long Island City, New York. This facility served as the Company's principal executive and administrative office. Rent for the facility was \$2,400 per annum payable in equal monthly installments. On August 5, 2008, the Company terminated the lease with Steinway Group, LLC. For a more detailed discussion of the private placement, see Note 4, *Acquisition and Stockholders' Equity (Deficit)* above.

Capebio, LLC

On September 25, 2007, Synergy Advanced Pharmaceuticals, Inc. entered into a Service Agreement with Capebio, LLC ("Capebio") to provide research and development services for the commercialization of non-oncology related GI pharmaceutical products under the SP-304 patent (the "Service Agreement"). The Service Agreement was for a minimum term of eleven months starting October 1, 2007 during which period Synergy Advanced Pharmaceuticals, Inc. paid an initial fee of \$55,000 and was obligated to pay \$26,000 per month through August 31, 2008. This Service Agreement was terminated on July 2, 2008 and all amounts due were paid.

8. Property and Equipment

Equipment consists of laboratory, testing and computer equipment and furniture and fixtures consists of office furniture, both stated at cost, with useful lives ranging from 2-4 years, depreciated on a straight line basis. Depreciation expense for the years ended December 31, 2009, 2008, 2007 and from November 15, 2005 (inception) to December 31, 2009 were \$1976, \$494, \$672, respectively.

	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2008</u>
Furniture and fixtures	\$ 38,343	\$ 38,343
Machinery and equipment	12,195	12,195
Less accumulated depreciation	(40,813)	(38,837)
Property and equipment, net	<u>\$ 9,725</u>	<u>\$ 11,701</u>

9. Related Parties

As of December 31, 2009, Synergy's majority shareholder, Callisto, owns 50.4% of its outstanding shares. Synergy occupies corporate office space in New York City under a month to month sharing arrangement with Callisto, its majority shareholder. Rent is allocated from Callisto monthly based on

SYNERGY PHARMACEUTICALS, INC.
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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

9. Related Parties (Continued)

the square footage of office space occupied by Synergy. Such rent totaled approximately \$132,000 during the twelve months ended December 31, 2009.

As of December 31, 2009 Synergy had advanced Callisto \$972,552 which is Callisto's share of Synergy payments for common operating costs since July 2008. This indebtedness is evidenced by an unsecured promissory note which bears interest at 6% per annum. Due to the uncertainty surrounding Callisto's ability to raise capital Synergy is unable to determine when this balance will be repaid and accordingly Synergy has classified it as a long term asset.

10. Quarterly Consolidated Financial Data (Unaudited)

	Quarter Ended			
	March 31, 2009	June 30, 2009	September 30, 2009	December 31, 2009
	(DOLLARS in THOUSANDS, EXCEPT PER SHARE DATA)			
Revenues	\$ —	\$ —	\$ —	\$ —
Costs and expenses:				
Research and Development	333	1,115	1,164	1,645
Acquisition-related in-process research and development charges	—	—	—	—
General and administrative	664	860	1,059	1,360
Loss from operations	(997)	(1,975)	(2,223)	(3,005)
Interest and investment income	—	—	11	64
Loss from continuing operations	(997)	(1,975)	(2,212)	(2,941)
Loss from discontinued operations	—	—	—	—
Net Loss	\$ (997)	\$ (1,975)	\$ (2,212)	\$ (2,941)
Weighted average common shares outstanding—basic and diluted	65,743	67,360	75,769	84,108
Earnings per common share—basic and diluted(a):				
Loss from continuing operations	\$ (0.02)	\$ (0.03)	\$ (0.03)	\$ (0.03)
Discontinued operation	—	—	—	—
Net per common share	\$ (0.02)	\$ (0.03)	\$ (0.03)	\$ (0.03)

- (a) Basic and diluted EPS are computed independently for each of the periods presented. Accordingly, the sum of the quarterly EPS amounts may not agree to the total for the year.

SYNERGY PHARMACEUTICALS, INC.
(A development stage company)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

10. Quarterly Consolidated Financial Data (Unaudited) (Continued)

	Quarter Ended			
	March 31, 2008	June 30, 2008	September 30, 2008	December 31, 2008
	(DOLLARS in THOUSANDS, EXCEPT PER SHARE DATA)			
Revenues	\$ —	\$ —	\$ —	\$ —
Costs and expenses:				
Research and Development	—	—	709	1,200
Acquisition-related in-process research and development charges	—	—	28,157	—
General and administrative	—	—	940	723
Loss from operations	—	—	(29,806)	(1,923)
Interest and investment income	—	—	(2)	7
Loss from continuing operations	—	—	(29,808)	(1,916)
Loss from discontinued operations	(7)	(25)	—	(31)
Net Loss	\$ (7)	\$ (25)	\$ (29,808)	\$ (1,947)
Weighted average common shares outstanding—basic and diluted	165,081	165,081	79,644	65,606
Earnings per common share—basic and diluted(a):				
Loss from continuing operations	\$ —	\$ —	\$ (0.37)	\$ (0.03)
Discontinued operation	—	—	—	—
Net per common share	\$ —	\$ —	\$ (0.37)	\$ (0.03)

(a) Basic and diluted EPS are computed independently for each of the periods presented. Accordingly, the sum of the quarterly EPS amounts may not agree to the total for the year.

11. Subsequent Events

On February 1, 2010, the Compensation Committee of the Board of Directors of Synergy Pharmaceuticals, Inc. (the "Company") approved and the Company entered into an Amended and Restated Executive Employment Agreement with Gary S. Jacob, its President and Chief Executive Officer and an Amended and Restated Consulting Agreement with Gabriele Cerrone, its Chairman. Each agreement was modified by (i) extending the term to December 31, 2012 from December 31, 2011 and (ii) deleting the bonus provision which provided for a bonus if there is a merger or sale of the Company with a minimum value of \$150 million, \$200 million and \$250 million during the first, second and third year of the agreement and replacing it with a bonus of 2.5% of the value of the Company if there is a merger or sale of the Company and the value of the Company at the time of the merger or sale equals or exceeds \$400 million.

On March 1, 2010, a majority of our shareholders acting by written consent approved an amendment to the Plan increasing the number of shares reserved under the Plan to 15,000,000 shares.

Exhibit Index

The Exhibits listed below are identified by numbers corresponding to the Exhibit Table of Item 601 of Regulation S-K. The Exhibits designated by an asterisk (*) are management contracts or compensatory plans or arrangements required to be filed pursuant to Item 15.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Articles of Incorporation of Synergy Pharmaceuticals, Inc. (incorporated by reference to Exhibit 3.1 to Form 8-K filed December 7, 2009)
3.2	Amended and Restated Bylaws.
4.1	2008 Equity Compensation Incentive Plan (incorporated by reference to Exhibit 4.1 to Form 8-K filed July 18, 2008)*
4.2	2009 Directors Stock Option Plan*
10.1	Form of Restricted Stock Agreement (incorporated by reference to Exhibit 10.3 to Form 8-K filed July 18, 2008)*
10.2	Form of Executive Non-statutory Stock Option Agreement (incorporated by reference to Exhibit 10.4 to Form 8-K filed July 18, 2008)*
10.3	Form of Non-Executive Non-statutory Stock Option Agreement (incorporated by reference to Exhibit 10.5 to Form 8-K filed July 18, 2008)*
10.4	Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to Form 10-Q filed August 14, 2009)
10.5	Amended and Restated Executive Employment Agreement dated as of February 1, 2010 between Synergy Pharmaceuticals, Inc. and Gary S. Jacob (incorporated by reference to Exhibit 10.1 to Form 8-K filed February 5, 2010)*
10.6	Amended and Restated Consulting Agreement dated as of February 1, 2010 between Synergy Pharmaceuticals, Inc. and Gabriele M. Cerrone (incorporated by reference to Exhibit 10.2 to Form 8-K filed February 5, 2010)*
14	Code of Business Conduct and Ethics (incorporated by reference to Exhibit 14 to Form 10-K filed April 15, 2009)
21	List of Subsidiaries (incorporated by reference to Exhibit 21 to Form 10-K filed April 15, 2009)
23	Consent of BDO Seidman, LLP
31.1	Certification of Chief Executive Officer required under Rule 13a-14(a)/15d-14(a) under the Exchange Act
31.2	Certification of Principal Financial Officer required under Rule 13a-14(a)/15d-14(a) under the Exchange Act
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Principal Financial Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

* Indicates a management contract or compensatory plan or arrangement.

AMENDED AND RESTATED

BYLAWS

OF

Synergy Pharmaceuticals, Inc.

ARTICLE I - OFFICES

SECTION 1. PRINCIPAL PLACE OF BUSINESS

The initial location of the principal place of business of the corporation shall be as specified in the articles of incorporation and may be changed from time to time by resolution of the board of directors. It may be located at any place within or outside the State of Florida. [BCA Sec. 607.0202(b)] The principal place of business of the corporation shall also be known as the principal office of the corporation

SECTION 2. OTHER OFFICES

The corporation may also have offices at such other places as the board of directors may from time to time designate, or as the business of the corporation may require

ARTICLE II SHAREHOLDERS

SECTION 1. PLACE OF MEETINGS

All meetings of the shareholders shall be held at the principal place of business of the corporation or at such other place, within or outside the state of Florida, as may be determined by the board of directors. [BCA Secs. 607.0701(2) & 607.0702(2)]

SECTION 2. ANNUAL MEETINGS

The annual meeting of the shareholders may be held at any such time and place designated by the Board of Directors of the Corporation. Said meeting shall be held for the election of the Board of Directors and for the transaction of such other and further business as may properly come before such meeting. [BCA Sec. 607.0701(1)]

SECTION 3. SPECIAL MEETINGS

Special meetings of the shareholders may be called by the board of directors or by the shareholders. In order for a special meeting to be called by the shareholders, 10 percent or more of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting shall sign, date and deliver to the secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. [BCA Sec. 607.0702] The secretary shall issue the call for special meetings unless the president, the board or directors or the shareholders designate another person to make the call.

SECTION 4. NOTICE OF MEETINGS

Notice of all shareholders meetings, whether annual or special, shall be given to each shareholder of record entitled to vote at such meeting no fewer than 10 or more than 60 days before the meeting date. The notice shall include the date, time and place of the meeting and in the case of a special meeting the purpose or purposes for which the meeting is called. Only the business within the purpose or purposes included in the notice of special meeting may be conducted at a special shareholders meeting. Notice of shareholders' meetings may be given orally or in writing, by or at the direction of the president, the secretary or the officer or persons calling the meeting. Notice of meetings may be communicated in person; by telephone, telegraph, teletype, facsimile machine, or other form of electronic

communication; or by mail. If mailed, notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the corporation, with postage prepaid. When a meeting is adjourned to a different date, time or place, it shall not be necessary to give any notice of the adjourned meeting if the new date, time or place is announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted on the original date of the meeting. If, however, after the adjournment, the board fixes a new record date for the adjourned meeting, notice of the adjourned meeting in accordance with the preceding paragraphs of this bylaw shall be given to each person who is a shareholder as of the new record date and is entitled to vote at such meeting. [BCA Secs. 607.0141 & 607.0705]

SECTION 5. WAIVER OF NOTICE

A shareholder may waive any notice required by the Business Corporation Act, the articles of incorporation or these bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of

any annual or special meeting of the shareholders need be specified in any written waiver of notice. [BCA Sec. 607.0706(1)]

SECTION 6. ACTION WITHOUT MEETING

Any action which is required by law to be taken at an annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote if one or more written consents, setting forth the action so taken, shall be dated and signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Written consents shall not be effective to take corporate action unless, within 60 days of the date of the earliest written consent relating to the action, the signed written consents of the number of holders required to take the action are delivered to the corporation. Within 10 days after obtaining any such authorization by written consent, notice must be given to those shareholders who have not consented in writing or who are not entitled to vote on the action. The notice shall fairly summarize the material features of the authorized action. [BCA Sec. 607.0704]

SECTION 7. QUORUM AND SHAREHOLDER ACTION

A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. Unless otherwise provided under law, the articles of incorporation or these bylaws, if a quorum is present, action on a matter, other than the election of directors, shall be approved if the votes cast by the holders of the shares represented at the meeting and entitled to vote favoring the action exceed the votes cast opposing the action. Directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. After a quorum has been established at a shareholders' meeting, the subsequent withdrawal of shareholders, so as to reduce the number of shares entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof. [BCA Secs. 607.0727 & 607.0728]

SECTION 8. VOTING OF SHARES

Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be provided under law or the articles of incorporation. A shareholder may vote either in person or by proxy executed in writing by the shareholder or the shareholder's duly authorized attorney-in-fact. At each election of directors, each shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder, for as many persons as there are directors to be elected at that time and for whose election the shareholder has a right to vote. [BCA Secs. 607.0721 & 607.0728]

SECTION 9. PROXIES

A shareholder, or the shareholder's attorney in fact, may appoint a proxy to vote or otherwise act for the shareholder. An executed telegram or cablegram appearing to have been transmitted by such person, or a photographic,

photostatic, or equivalent reproduction of an appointment form, shall be a sufficient appointment form. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for up to 11 months unless a longer period is specified in the appointment form. An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is revocable and the appointment is coupled with an interest as provided in Section 607.0722(5) of the Business Corporation Act. [BCA Sec. 607.0722]

SECTION 10. RECORD DATE FOR DETERMINING SHAREHOLDERS

The board of directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. In no event may a record date fixed by the board of directors be a date preceding the date upon which the resolution fixing the record date is adopted. A record date may not be specified to be more than 70 days before the meeting or action. Unless otherwise specified by resolution of the board of directors, the following record dates shall be operative:

1. The record date for determining shareholders entitled to demand a special meeting is the date the first shareholder delivers the shareholder's demand to the corporation.
2. If no prior action is required by the board of directors pursuant to the Business Corporation Act, the record date for determining shareholders entitled to take action without a meeting is the date the first signed written consent relating to the proposed action is delivered to the corporation.
3. If prior action is required by the board of directors pursuant to the Business Corporation Act, the record date for determining shareholders entitled to take action without a meeting is at the close of business on the day on which the board of directors adopts the resolution taking such prior action.
4. The record date for determining shareholders entitled to notice of and to vote at a meeting of shareholders is at the close of business on the day before the first notice is delivered to the shareholders. [BCA Sec. 607.0707]

SECTION 11. SHAREHOLDERS' LIST

After a record date is fixed or determined in accordance with these bylaws, the secretary shall prepare an alphabetical list of the names of all

its shareholders who are entitled to notice of a shareholders' meeting. The list shall show the addresses of, and the number and class and series, if any, of shares held by, each person. The shareholders' list shall be available for inspection by any shareholder for a period of 10 days prior to the meeting, or such shorter time as exists between the record date and the meeting, and continuing through the meeting, at the corporation's principal place of business. [BCA Sec. 607.0720]

ARTICLE III DIRECTORS

SECTION 1. POWERS

Except as may be otherwise provided by law or the articles of incorporation, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors [BCA Sec. 607.0801(2)] A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless:

1. The director votes against or abstains from the action taken; or
2. The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting specified business at the meeting. [BCA Sec. 607.0824(4)] The board of directors shall have the authority to fix the compensation of directors. [BCA Sec. 607.08101]

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SECTION 2. QUALIFICATION AND NUMBER

Directors shall be individuals who are 18 years of age or older but need not be residents of Florida or shareholders of this corporation. [BCA Sec. 607.0802] The authorized number of directors shall be no fewer than one (1) and no more than eleven (11), as shall be fixed by resolutions of the board of directors. This number may be increased or decreased from time to time by amendment to these bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. [BCA Secs. 607.0803 & 607.0805(3)]

SECTION 3. ELECTION AND TENURE OF OFFICE

The directors shall be elected at each annual meeting of the shareholders and each director shall hold office until the next annual meeting of shareholders and until the director's successor has been elected and qualified, or until the director's earlier resignation or removal from office. [BCA Secs. 607.0803(3) & BCA Sec. 607.0805]

SECTION 4. VACANCIES

Unless otherwise provided in the articles of incorporation, any vacancy occurring in the board of directors, including any vacancy created by reason of an increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, or by the shareholders. [BCA Sec. 607.0809(1)] A director elected to fill a vacancy shall hold office only until the next shareholders' meeting at which directors are elected. [BCA Secs. 607.0805(4)]

SECTION 5. REMOVAL

Unless the articles of incorporation provide that a director may only be removed for cause, at a meeting of shareholders called expressly for that purpose, one or more directors may be removed, with or without cause, if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director. [BCA Sec. 607.0808]

SECTION 6. PLACE OF MEETINGS

Meetings Of the board of directors shall be held at any place, within or without the State of Florida, which has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, at the principal place of business of the corporation or as may be designated from time to time by resolution of the board of directors. The board of directors may permit any or all directors to participate in meetings by, or conduct the meeting through the use of, any means of communication by which all directors participating can simultaneously hear each other during the meeting. [BCA Sec.607.0820]

SECTION 7. ANNUAL AND REGULAR MEETINGS

An annual meeting of the board of directors shall be held without call or notice immediately after and at the same place as the annual meeting of the shareholders. Other regular meetings of the board of directors shall be held at such times and places as may be fixed from time to time by the board of directors. Call and notice of these regular meetings shall not be required. [BCA Secs. 607.0820(1) & 607.0822(1)]

SECTION 8. SPECIAL MEETINGS AND NOTICE REQUIREMENTS

Special meetings of the board of directors may be called by the chairman of the board or by the president and shall be preceded by at least three (3) days' notice of the date, time, and place of the meeting. Unless otherwise required by law, the articles of incorporation or these bylaws, the notice need not specify the purpose of the special meeting. (SCA Sec. 607.0822(2)] Notice of directors' meetings may be given orally or in writing, by or at the direction of the president, the secretary or the officer or persons calling the meeting. Notice of meetings may be communicated in person; by telephone, telegraph, teletype, facsimile machine, or other form of electronic communication; or by mail. If mailed, notice shall be deemed to be delivered when deposited in the United States mail, addressed to the director at the director's current

address on file with the corporation, with postage prepaid. [BCA Sec. 607.0141] If any

meeting of directors is adjourned to another time or place, notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors. [BCA Secs. 607.0820(2)]

SECTION 9. QUORUM

A majority of the authorized number of directors shall constitute a quorum for all meetings of the board of directors. [BCA Sec. 607.0824]

SECTION 10. VOTING

If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present at the meeting shall be the act of the board of directors. A director of the corporation who is present at a meeting of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless: 1. The director objects at the beginning of the meeting, or promptly upon arriving, to holding the meeting or transacting specified business at the meeting; or 2. The director votes against or abstains from the action taken. [BCA Sec. 607.0824]

SECTION 11. WAIVER OF NOTICE

Notice of a meeting of the board of directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning at the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. [BCA Sec. 607.0823]

SECTION 12. ACTION WITHOUT MEETING

Any action required or permitted to be taken at a board of directors' meeting or committee meeting may be taken without a meeting if the action is taken by all members of the board of directors or of the committee. The action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member. [BCA Sec. 607.0821]

SECTION 13. COMPENSATION OF DIRECTORS.

The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 14. CHAIRMAN OF THE BOARD.

The Board of Directors may, in its discretion, choose a chairman of the board who shall preside at meetings of the shareholders and of the directors and shall be an ex officio member of all standing committees. The Chairman of the Board shall have such other powers and shall perform such other duties as shall be designated by the Board of Directors. The Chairman of the Board shall be a member of the Board of Directors but no other officers of the Corporation need be a director. The Chairman of the Board shall serve until his successor is chosen and qualified, but he may be removed at any time by the affirmative vote of a majority of the Board of Directors.

ARTICLE IV OFFICERS

SECTION 1. OFFICERS

The officers of the corporation shall consist of a president, a secretary, a treasurer, and such other officers as the board of directors may appoint. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors. The same individual may simultaneously hold more than office in the corporation. Each officer shall have the authority and shall perform the duties set forth in these bylaws and, to the extent consistent with these bylaws, shall have such other duties and powers as may be determined by the board of directors or by direction of any officer authorized by the board of directors to prescribe the duties of other officers. (BCA Secs. 607.08401 & 607.0841)

SECTION 2. ELECTION

All officers of the corporation shall be elected or appointed by, and serve at the pleasure of, the board of directors. The election or appointment of an officer shall not itself create contract rights. [BCA Secs. 607.08401 & 607.0843]

SECTION 3. REMOVAL, RESIGNATION AND VACANCIES

An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date. The board of directors may remove any officer at any time with or without cause. Any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer. (BCA Secs. 607.0842 & 607.0843) Any vacancy occurring in any office may be filled by the board of directors.

SECTION 4. PRESIDENT

The president shall be the chief executive officer and general manager of the corporation and shall, subject to the direction and control of the board of directors, have general supervision, direction, and control of the business and affairs of the corporation. In the absence of a chairman of the board, he shall preside at all meetings of the shareholders if present thereat and be an ex-officio member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation. In the absence or disability of the president, the vice president, if any, shall perform all the duties of the president and, when so acting, shall have all the powers of, and be subject to all the restrictions imposed upon, the president.

SECTION 5. VICE PRESIDENTS.

The Vice Presidents in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. They shall perform such other duties and have such other powers as the Board of Directors shall prescribe or as the President may from time to time delegate.

SECTION 6. SECRETARY

1. The secretary shall be responsible for preparing, or causing to be prepared, minutes of all meetings of directors and shareholders and for authenticating records of the corporation.[BCA Sec. 607.0840(3)]
2. The secretary shall keep, or cause to be kept, at the principal place of business of the corporation, minutes of all meetings of the shareholders or the board of directors; a record of all actions taken by the shareholders or the board of directors without a meeting for the past three years; and a

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record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation (BCA Sec. 607.1601(1))

3. Minutes of meetings shall state the date, time and place of the meeting; whether regular or special; how called or authorized; the notice thereof given or the waivers of notice received; the names of those present at directors' meetings; the number of shares present or represented at shareholders' meetings; and an account of the proceedings thereof.
4. The secretary shall maintain, at the principal place of business of the corporation, a record of its shareholders, showing the names of the shareholders and their addresses, the number, class, and series, if any, held by each, the number and date of certificates issued for shares, and the number and date of cancellation of every certificate surrendered for cancellation. [BCA Sec. 607.1601(1)]
5. The secretary shall make sure that the following papers and reports are included in the secretary's records kept at the principal place of business of the corporation:
 - (a) The articles or restated articles of incorporation and all amendments to them currently in effect;
 - (b) The bylaws or restated bylaws and all amendments to them currently in effect;
 - (c) resolutions adopted by the board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
 - (d) Minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;
 - (e) Written communications to all shareholders generally of all shareholders of a class or series within the past 3 years, including the financial statements furnished for the past 3 years under Article VI, Section 2 of these bylaws and any reports furnished during the last 3 years under Article VI, Section 3 of these bylaws;
 - (f) A list of the names and business street addresses of current directors and officers; and
 - (g) The corporation's most recent annual report delivered to the Department of State under Article VI, Section 4 of these bylaws. [BCA Sec. 607.1601(5)]

The secretary shall give, or cause to be given, notice of all meetings of shareholders and directors required to be given by law or by the provisions of these bylaws. The secretary shall have charge of the seal of the corporation.

In the absence or disability of the secretary, the assistant secretary, or, if there is none or more than one, the assistant secretary designated by the board of directors, shall have all the powers of, and be subject to all the restrictions imposed upon, the secretary.

SECTION 7. TREASURER

The treasurer shall have custody of the funds and securities of the corporation and shall keep and maintain, or cause to be kept and maintained, at the principal business office of the corporation, adequate and correct books and records of accounts of the income, expenses, assets, liabilities, properties and business transactions of the corporation. {BCA Sec. 607.1601(2)} The treasurer shall prepare, or cause to be prepared, and shall furnish to shareholders, the annual financial statements and other reports required pursuant to Article VI, Sections 2 and 3 of these bylaws. The treasurer shall deposit monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The treasurer shall disburse the funds of the corporation in payment of the just demands against the corporation as authorized by the board of directors and shall render to the president and directors, whenever requested, an account of all his or her transactions as treasurer and of the financial condition of the corporation. In the absence or disability of the treasurer, the assistant treasurer, if any, shall perform all the duties of the treasurer and, when so acting, shall have all the powers of and be subject to all the restrictions imposed upon the treasurer.

SECTION 8. OTHER OFFICERS, EMPLOYEES AND AGENTS.

Each and every other officer, employee and agent of the Corporation shall possess, and may exercise, such power and authority, and shall perform such duties, as may from time to time be assigned to him by the Board of Directors, the officer so appointing him and such officer or officers who may from time to time be designated by the Board of Directors to exercise such supervisory authority.

SECTION 9. COMPENSATION

The officers of this corporation shall receive such compensation for their services as may be fixed by resolution of the board of directors.

ARTICLE V EXECUTIVE AND OTHER COMMITTEES

SECTION 1. EXECUTIVE AND OTHER COMMITTEES OF THE BOARD

The board of directors may, by resolution adopted by a majority of the authorized number of directors, designate from its members an executive committee and one or more other committees each of which, to the extent provided in such resolution, the articles of incorporation or these bylaws, shall have and may exercise the authority of the board of directors, except that no such committee shall have the authority to:

1. Approve or recommend to shareholders actions or proposals required by law to be approved by shareholders.
2. Fill vacancies on the board of directors or any committee thereof.
3. Adopt, amend, or repeal the bylaws.
4. Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors.
5. Authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors. Each such committee shall have two or more members who serve at the pleasure of the board of directors. The board, by resolution adopted by a majority of the authorized number of directors, may designate one or more directors as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting or such committee. The provisions of law, the articles of incorporation and these bylaws that govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors shall apply to such committees of the board and their members as well. Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with the director's responsibility to act in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in like position would use under similar circumstances. (BCA Sec. 607.0825)

ARTICLE VI CORPORATE BOOKS, RECORDS, AND REPORTS

SECTION 1. BOOKS, RECORDS AND REPORTS

The corporation shall keep correct and complete books and records of account; minutes or the proceedings of its shareholders, board of directors, and committees of directors; a record of its shareholders; and such other records and reports as are further described in Article IV, sections 5 and 6 of these bylaws, at the principal place of business

of the corporation. Any books, records, and minutes may be in written form or in another form capable of being converted into written form within a reasonable time. [BCA Sec. 607.1601(4)]

SECTION 2. ANNUAL FINANCIAL STATEMENTS FOR SHAREHOLDERS

Unless modified by resolution of the shareholders within 120 days of the close of each fiscal year, the corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of cash flow for that year. If financial statements are prepared on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis. If the annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records: 1. Stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis or preparation, and 2. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year. The corporation shall mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year or within such additional time thereafter as is reasonably necessary to enable the corporation to prepare its financial statements if, for reasons beyond the corporation's control, it is unable to prepare its financial statements within the prescribed period. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail the shareholder the latest financial statements. [BCA Sec. 607.1620] Copies of the annual financial statements shall be kept at the principal place of business of the corporation for at least 5 years, and shall be subject to inspection during business hours by any shareholder or holder of voting trust certificates, in person or by agent.

SECTION 3. OTHER REPORTS TO SHAREHOLDERS

If the corporation indemnities or advances expenses to any director, officer, employee, or agent, other than by court order or action by the shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting, or prior to such meeting if the indemnification or advance occurs after the giving of such notice but prior to the time that such meeting is held. The report shall include a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation. (SCA Sec. 607.1621(1)) If the corporation issues or authorizes the issuance of shares for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting. [BCA Sec. 607.1621(2)]

SECTION 4. ANNUAL REPORT TO DEPARTMENT OF STATE

The corporation shall prepare and deliver an annual report form to the Department of State each year within the time limits imposed, and containing the information required, by section 607.1622 of the Business Corporation Act.

SECTION 5. INSPECTION BY SHAREHOLDERS

1. A shareholder of the corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, the records of the corporation described in Article IV, Section 5(e) of these bylaws if the shareholder gives the secretary written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.
2. A shareholder of this corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 3. below and gives the corporation written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

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- a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee at the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) above;
 - b. Accounting records of the corporation;
 - c. The record of shareholders; and
 - d. Any other books and records of the corporation.
3. A shareholder may inspect and copy the records described in subsection 1. above only if:
 - a. The shareholder's demand is made in good faith and for a purpose reasonably related to the shareholder's interest as a shareholder;
 - b. The demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and
 - c. The records requested are directly connected with the shareholder's purpose.
 4. This section of the bylaws does not affect:
 - a. The right of a shareholder to inspect and copy records under Article II, Section 11 of these bylaws;
 - b. The power of a court, independently of the Business Corporation Act, to compel the production of corporate records for examination. [BCA Sec. 607.1602]

SECTION 6. INSPECTION BY DIRECTORS

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, of every kind of the corporation and to inspect the physical properties of the corporation. Such inspection by a director may be made in person or by agent or attorney. The right of inspection includes the right to copy and make extracts.

ARTICLE VII INDEMNIFICATION AND INSURANCE

SECTION 1. INDEMNIFICATION UNDER BCA SECTION 607.0850

The corporation shall indemnify its directors, officers, employees, and agents to the fullest extent permitted in Section 607.0850 of the Business Corporation Act.

SECTION 2. ADDITIONAL INDEMNIFICATION

The corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding such office. However, such further indemnification or advancement of expenses shall not be made in those instances specified in Section 607.0850 (7)(a-d) of the Business Corporation Act.

SECTION 3. COURT ORDERED INDEMNIFICATION

Unless otherwise provided by the articles of incorporation, notwithstanding the failure of the corporation to provide indemnification, and despite any contrary determination of the board or of the shareholders in the specific case, a director, officer, employee, or agent at the corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction in accordance with Section 607.0850(9) of the Business Corporation Act.

SECTION 4. INSURANCE

The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under provisions of law. [BCA Sec. 607.0850(12)]

ARTICLE VIII SHARES

SECTION 1. ISSUE OF CERTIFICATES; BOOK-ENTRY SYSTEM.

The Board of Directors may make such additional rules and regulations, not inconsistent with the Bylaws or the Articles of Incorporation, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the corporation. Further, the corporation may participate in one or more systems under which certificates for shares of stock are replaced by electronic book-entry pursuant to such rules, terms and conditions as the Board of Directors may approve and subject to applicable law, notwithstanding any provisions to the contrary set forth in this Article.

SECTION 2. LEGENDS FOR PREFERENCES AND RESTRICTIONS ON TRANSFER.

The designations, relative rights, preferences and limitations applicable to each class of shares and the variations in rights, preferences and limitations determined for each series within a class (and the authority of the Board of Directors to determine variations for future series) shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the Corporation will furnish the shareholder a full statement of this information on request and without charge. Every certificate representing shares that are restricted as to the sale, disposition, or transfer of such shares shall also indicate that such shares are restricted as to transfer and there shall be set forth or fairly summarized upon the certificate, or the certificate shall indicate that the Corporation will furnish to any shareholder upon request and without charge, a full statement of such restrictions. If the Corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under the applicable state securities laws, the transfer of any such shares shall be restricted substantially in accordance with the following legend:

“THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY APPLICABLE STATE LAW. THEY MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR PLEDGED WITHOUT (1) REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND ANY APPLICABLE STATE LAW, OR (2) AT HOLDER'S EXPENSE, AN OPINION (SATISFACTORY TO THE CORPORATION) OF COUNSEL (SATISFACTORY TO THE CORPORATION) THAT REGISTRATION IS NOT REQUIRED.

SECTION 3. FACSIMILE SIGNATURES.

The signatures of the Chairman of the Board, the President or a Vice President and the Secretary or Assistant Secretary upon a certificate may be facsimiles, if the certificate is manually signed by a transfer agent, or registered by a registrar, other than the Corporation itself or an employee of the Corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall

have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of the issuance.

SECTION 4. LOST CERTIFICATES.

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative,

to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

SECTION 5. TRANSFER OF SHARES.

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

SECTION 6. REGISTERED SHAREHOLDERS.

The Corporation shall be entitled to recognize the exclusive rights of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof except as otherwise provided by the laws of the State of Florida.

ARTICLE IX GENERAL PROVISIONS

SECTION 1. PAYMENT OF DIVIDENDS

The board of directors may authorize, and the corporation may make, dividends on its shares in cash, property, or its own shares and other distributions to its shareholders, subject to any restrictions contained in the articles of incorporation, to the requirements of sections 607.0623 and 607.06401 of the Business Corporation Act, and to all applicable provisions of law. [BCA Secs. 607.01401(15), 607.0623(2) & 607.06401(3)]

SECTION 2. RESERVES.

The Board of Directors may by resolution create a reserve or reserves out of earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner.

SECTION 3. CHECKS.

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

SECTION 4. FISCAL YEAR.

The fiscal year of the Corporation shall be fixed by the Board of Directors and may be changed from time to time by resolution of the Board of Directors.

SECTION 5. SEAL.

The corporate seal shall have inscribed thereon the name and state of incorporation of the Corporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

SECTION 6. GENDER.

All words used in these Bylaws in the masculine gender shall extend to and shall include the feminine and neuter genders.

ARTICLE X - AMENDMENT OF ARTICLES AND BYLAWS

SECTION 1. AMENDMENT OF ARTICLES OF INCORPORATION

The board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders. For the amendment to be effective:

1. The board of directors must recommend the amendment to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and
2. The shareholders entitled to vote on the amendment must approve the amendment as provided below. The board of directors may condition its submission of the proposed amendment to the shareholders on any basis. The shareholders shall approve amendments to the articles of incorporation by the vote of a majority of the votes entitled to be cast on the amendment, except as may otherwise be provided by the articles of incorporation, Sections 607.1003 and 607.1004 of the Business Corporation Act and other applicable provisions of law, and these bylaws. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholder' meeting to amend the articles of incorporation in accordance with Article II, section 4 of these bylaws. The notice of meeting must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment. Notwithstanding the above provisions of this section and unless otherwise provided in the articles of incorporation, if this corporation has 35 or fewer shareholders then, pursuant to section 607.1002(6) of the Business Corporation Act, the shareholders may amend the articles of incorporation without an act of the directors at a meeting of the shareholders for which the notice of the changes to be made is given. [BCA Secs 607.1002 - 607.1005]

SECTION 2. AMENDMENT OF BYLAWS

The board of directors may amend or repeal these bylaws unless:

1. The articles of incorporation or the Business Corporation Act reserves the power to amend the bylaws generally or a particular bylaw provision exclusively to the shareholders; or
2. The shareholders, in amending or repealing the bylaws generally or a particular bylaw provision, provide expressly that the board of directors may not amend or repeal the bylaws or that bylaw provision. The shareholders may amend or repeal these bylaws even though the bylaws may also be amended or repealed by the board of directors. [BCA Sec. 607.1020]

**SYNERGY PHARMACEUTICALS, INC.
2009 DIRECTORS' STOCK OPTION PLAN**

1. **PURPOSE.** The purpose of the Synergy Pharmaceuticals, Inc. 2009 Directors' Stock Option Plan (the "Plan") is to advance the interests of Synergy Pharmaceuticals, Inc. (the "Company") by providing non-employee directors of the Company, through the grant of options to purchase shares of Common Stock (as hereinafter defined), with a larger personal and financial interest in the Company's success.

2. **ADMINISTRATION.** The Plan shall be administered by the Company's Compensation Committee (the "Committee") consisting of at least two independent members of the Board of Directors of the Company (the "Board"). The Committee shall have full power and authority to interpret the Plan, to establish such rules and regulations as it deems appropriate for the administration of the Plan, and to take such other action as it deems necessary or desirable for the administration of the Plan. The Committee's interpretation and construction of any provision of the Plan or the terms of any Option (as hereinafter defined) shall be conclusive and binding on all parties.

3. **PARTICIPANTS.** Each director of the Company who is not an employee or consultant of the Company (an "Outside Director") shall be eligible to be granted Options to purchase shares of Common Stock ("Options") under the Plan.

Nothing contained in the Plan, or in any Option granted pursuant to the Plan, shall confer upon any Director any right to the continuation of his or her directorship or limit in any way the right of the Company to terminate his or her directorship at any time.

4. **THE SHARES.** Options may be granted from time to time under the Plan for the purchase, in the aggregate, of not more than 1,000,000 shares of common stock, par value \$0.0001 per share, of the Company ("Common Stock") (subject to adjustment pursuant to Section 13). Such shares of Common Stock may be set aside out of the authorized but unissued shares of Common Stock not reserved for any other purpose or out of previously issued shares acquired by the Company and held in its treasury. Any shares of Common Stock which, by reason of the termination or expiration of an Option or otherwise, are no longer subject to purchase pursuant to an Option granted under the Plan may again be subjected to an Option under the Plan.

5. **OPTION GRANTS.** Options shall be evidenced by Option agreements which shall be subject to the terms and conditions set forth in the Plan and such other terms and conditions not inconsistent herewith as the Committee may approve.

- (a) As of the effective date of his or her initial appointment or election to the Board (the "Initial Appointment Date"), an Outside Director shall receive a grant of an Option to purchase 50,000 shares of Common Stock (subject to adjustment pursuant to Section 13).

- (b) Upon the date of the Annual Meeting of Stockholders of the Company to be held in 2010 (the "2010 Annual Meeting") or any adjournment or adjournments thereof, each Outside Director who has been reelected at the 2010 Annual Meeting and is continuing as a member of the Board as of the completion of the 2010 Annual Meeting shall receive an Option to purchase 15,000 shares of Common Stock (subject to adjustment pursuant to Section 13).

- (c) each year after the 2010 Annual Meeting, upon the date of an Annual Meeting of Stockholders of the Company (an "Annual Meeting") each Outside Director who has been reelected at such Annual Meeting and is continuing as a member of the Board as of the completion of such Annual Meeting shall receive an Option to purchase 15,000 shares of Common Stock (subject to adjustment pursuant to Section 13); provided, however, that an Outside Director who has been reelected at such Annual Meeting and is continuing as a member of the Board as of the completion of such Annual Meeting but has not been a member of the Board during the entire period between such Annual Meeting and the prior Annual Meeting shall receive an Option to purchase that number of shares equal to the product of (i) 15,000 and (ii) a fraction, where the numerator is the number of days in the 12-month period immediately preceding such Annual Meeting during which such Outside Director was an Outside Director and the denominator is 365.

- (d) each year upon the date of an Annual Meeting, the Board shall have the sole discretion to grant to any Non Employee Director who has been elected at such Annual Meeting and is continuing as a member of the Board as of the completion of such Annual Meeting and, during the time period between such Annual Meeting and the prior Annual Meeting, who (i) has served on a committee of the Board (but who has not served as the chairman of a Board Committee), including but not limited to, the Audit Committee, the Compensation Committee and the Corporate Governance/Nominating Committee (each, a "Board Committee"), an Option to purchase up to 6,000 shares of Common Stock and (ii) has served as the chairman of a Board Committee, an Option to purchase up to 10,000 shares of Common Stock, subject to adjustment as provided in Section 13.

6. **OPTION PRICE.** The price (the "Option Price") at which shares of Common Stock may be purchased upon the exercise of an Option granted under the Plan shall be the fair market value of such shares on the date of grant of such Option. As used herein, fair market value shall be the closing price of the Common Stock on the date of determination (if the Common Stock is then traded on a national securities exchange or in the Nasdaq National Market System) or, if not so traded, the average of the closing bid and asked prices thereof on such day or, if the Common Stock is not traded on the date of determination, on the last preceding date on which the Common Stock is traded.

7. **TERM AND EXERCISABILITY OF OPTIONS.** Options shall be granted for a maximum term of 10 years. Subject to the other provisions of the Plan relating to exercisability of Options, or as otherwise provided by the Committee and evidenced in an Option agreement, (i) the participant who received a grant on the Initial Appointment Date shall have the cumulative right as of the first, second, and third anniversaries of the date of grant, to purchase up to one-third, two-thirds, and 100%, respectively, of the

Option Shares and (ii) the participant who receives a grant on a date other than the Initial Appointment Date shall have the right as of the first anniversary of the date of grant to purchase up to 100% of the Option Shares; provided, however, that in the event of a Change of Control, the participant shall have the cumulative right to purchase up to 100% of the Option Shares. Vesting of an Option will cease on the date of the participant ceasing to be a director of the Company.

A Change of Control means the happening of any of the following:

- (a) When any person, as defined in Section 3(a)(9) of the Securities Exchange Act of 1934 (the "Exchange Act") and as used in Sections 13(d) and 14(d) thereof, including a group as defined in Section 13(d) of the Exchange Act, but excluding the Company and any subsidiary and any employee benefit plan sponsored or maintained by the Company or any subsidiary (including any trustee of such plan acting as trustee), or any person, entity or group specifically excluded by the Board, directly or indirectly, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act, as amended from time to time) of securities of the Company representing 20 percent or more of the combined voting power of the Company's then outstanding securities;
- (b) When Incumbent Directors cease for any reason to constitute at least two-thirds of the Board (where Incumbent Director means any director on the date of adoption of the Plan and any director elected by, or on the recommendation of, or with the approval of, a majority of the directors who then qualified as Incumbent Directors);
- (c) The effective date of any merger or consolidation of the Company with another corporation where (i) the shareholders of the Company, immediately prior to the merger or consolidation, do not beneficially own, immediately after the merger or consolidation, shares entitling such shareholders to 50% or more of all votes (without consideration of the rights of any class of stock to elect directors by a separate class vote) to which all shareholders of the corporation issuing cash or securities in the merger or consolidation would be entitled in the election of directors, or (ii) where the members of the Board, immediately prior to the merger or consolidation, do not, immediately after the merger or consolidation, constitute a majority of the board of directors of the corporation issuing cash or securities in the merger; provided, however, that, in each of the cases set forth above in clauses (c)(i) or (c)(ii), no Change of Control shall be deemed to take place if the transaction was approved by the Board of Directors, the majority of the members of which were in place prior to the commencement of such sale, merger or consolidation; or
- (d) The date of approval by the shareholders of the Company of the liquidation of the Company or the sale or other disposition of all or substantially all of the assets of the Company.

8. **TERMINATION OF DIRECTORSHIP.** Except as otherwise provided in this Section 8, or as otherwise provided by the Committee and evidenced in an Option agreement, no person may exercise a vested Option more than three months after the first date on which he or she ceases to be a director of the Company. If a participant ceases to

be a director of the Company by reason of death or disability, any vested Options held by him or her may be exercised within 12 months after the date he or she ceases to be a director of the Company. In no event may an Option be exercised after the expiration of the term of such Option.

9. **PAYMENT.** Full payment of the purchase price for shares of Common Stock purchased upon the exercise, in whole or in part, of an Option granted under the Plan shall be made at the time of such exercise. The Option Price may be paid in cash, in shares of Common Stock valued at their fair market value on the date of exercise or with any other form of compensation permissible for such purposes under Delaware law, as determined by the Committee in its judgment. Alternatively, an Option may be exercised in whole or in part by delivering a properly executed exercise notice together with irrevocable instructions to a broker to deliver promptly to the Company the amount of sale or loan proceeds necessary to pay the Option Price, and such other documents as the Committee may determine.

No shares of Common Stock shall be issued or transferred to a participant until full payment therefor has been made, and a participant shall have none of the rights of a stockholder until shares are issued or transferred to him or her.

10. **NONTRANSFERABILITY.** Options granted under the Plan shall not be transferable other than by will or by the laws of descent and distribution, and, during a participant's lifetime, shall be exercisable only by him or her. Notwithstanding the foregoing, a participant may transfer any Option granted under the Plan to the participant's spouse, children, grandchildren, parents, and/or siblings or to one or more trusts for the benefit of such family members, if the agreement evidencing such Option so provides and the participant does not receive any consideration for the transfer. Any Option so transferred shall continue to be subject to the same terms and conditions that applied to such Option immediately prior to its transfer (except that such transferred Option shall not be further transferable by the transferee during the transferee's lifetime).

11. **ISSUANCE OF SHARES.** If a participant so requests, shares purchased upon the exercise of an Option may be issued or transferred in the name of the participant and another person jointly with the right of survivorship.

12. **STATUS OF OPTIONS.** Options granted under the Plan are nonqualified options not qualifying as incentive stock options under Section 422 of the Internal Revenue Code of 1986, as amended.

13. **CHANGES IN CAPITAL STRUCTURE, ETC.** In the event of any merger, share exchange, reorganization, consolidation, recapitalization, reclassification, distribution, stock dividend, stock split, reverse stock split, split-up, spin-off, or other similar transaction or

event affecting the Common Stock, the Committee is authorized, to the extent it deems appropriate, to make substitutions or adjustments in the aggregate number and kind of shares of Common Stock reserved for issuance under the Plan, in the number, kind and price of shares of Common Stock subject to outstanding awards, and in the

award limits under the Plan (or to make provision for cash payment to the holder of an Option). Outstanding Options shall be appropriately amended as to price and other terms in a manner consistent with the aforementioned adjustment to the shares of Common Stock subject to the Plan. Fractional shares resulting from any adjustment in Options pursuant to this Section 13 may be settled in cash or otherwise as the Committee shall determine. Notice of any adjustment shall be given by the Company to each holder of an Option which shall have been adjusted and such adjustment (whether or not such notice is given) shall be effective and binding for all purposes of this Plan.

14. **EFFECTIVE DATE AND TERMINATION OF PLAN.** The Plan shall become effective on the date of its adoption by the Board or a duly authorized committee thereof, subject to the approval of the Plan by the Company's stockholders at the 2009 Annual Meeting. The Plan shall terminate 10 years from the date of its adoption or such earlier date as the Board or such committee may determine. Any Option outstanding under the Plan at the time of its termination shall remain in effect in accordance with its terms and conditions and those of the Plan.

15. **AMENDMENT.** The Board or a duly authorized committee thereof may amend the Plan in any respect from time to time; provided, however, that no amendment shall become effective unless approved by affirmative vote of the Company's shareholders if such approval is necessary or desirable for the continued validity of the Plan or if the failure to obtain such approval would adversely affect the compliance of the Plan with Rule 16b-3 or any successor rule under the Securities Exchange Act of 1934, as amended, or any other rule or regulation. No amendment may, without the consent of a participant, impair his or her rights under any Option previously granted under the Plan.

The Board or a duly authorized committee thereof shall have the power, in the event of any disposition of substantially all of the assets of the Company, its dissolution, any merger or consolidation of the Company with or into any other corporation, or the merger or consolidation of any corporation into the Company, to amend all outstanding Options to terminate such Options as of such effectiveness. If the Board shall exercise such power, all Options then outstanding shall be deemed to terminate upon such effectiveness.

16. **LEGAL AND REGULATORY REQUIREMENTS.** No Option shall be exercisable and no shares will be delivered under the Plan except in compliance with all applicable federal and state laws and regulations including, without limitation, compliance with the rules of all domestic stock exchanges on which the Common Stock may be listed. Any share certificate issued to evidence shares for which an Option is exercised may bear such legends and statements as the Committee shall deem advisable to assure compliance with federal and state laws and regulations. No Option shall be exercisable, and no shares will be delivered under the Plan, until the Company has obtained consent or approval from regulatory bodies, federal or state, having jurisdiction over such matters as the Committee may deem advisable.

In the case of the exercise of an Option by a person or estate acquiring the right to exercise the Option by bequest or inheritance, the Committee may require reasonable evidence as to the ownership of the Option and may require consents and releases of taxing authorities that it may deem advisable.

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Exhibit 23

Consent of Independent Registered Public Accounting Firm

Synergy Pharmaceuticals, Inc.
New York, New York

We hereby consent to the incorporation by reference in the Registration Statement on Amendment No.1 of the Form S-3 (No. 333-163316) of Synergy Pharmaceuticals, Inc. and Subsidiaries (a development stage company) (the "Company") of our reports dated March 15, 2010, relating to the consolidated financial statements and the effectiveness of the Company's internal control over financial reporting which appears in this Form 10-K. Our report on the financial statements contains an explanatory paragraph regarding the Company's ability to continue as a going concern. Our report on the effectiveness of internal control over financial reporting expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2009.

/s/BDO Seidman, LLP
New York, New York
March 15, 2010

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[Exhibit 23](#)

[Consent of Independent Registered Public Accounting Firm](#)

CERTIFICATION

I, Gary S. Jacob, certify that:

1. I have reviewed this annual report on Form 10-K of Synergy Pharmaceuticals, Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ GARY S. JACOB

Gary S. Jacob
Chief Executive Officer

March 15, 2010

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[Exhibit 31.1](#)

[CERTIFICATION](#)

CERTIFICATION

I, Bernard Denoyer, certify that:

1. I have reviewed this annual report on Form 10-K of Synergy Pharmaceuticals, Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ BERNARD DENOYER

Bernard Denoyer
Senior Vice President, Finance

March 15, 2010

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[Exhibit 31.2](#)

[CERTIFICATION](#)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Synergy Pharmaceuticals, Inc. (the "Company") on Form 10-K for the year ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Gary S. Jacob, Acting Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ GARY S. JACOB

Gary S. Jacob
Chief Executive Officer

March 15, 2010

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[Exhibit 32.1](#)

[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Synergy Pharmaceuticals, Inc. (the "Company") on Form 10-K for the year ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bernard Denoyer, Senior Vice President, Finance of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ BERNARD DENOYER

Bernard Denoyer
Senior Vice President, Finance

March 15, 2010

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[Exhibit 32.2](#)

[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-
OXLEY ACT OF 2002](#)