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# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 10-Q

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

**For the quarterly period ended March 31 , 2009**

**OR**

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

**Commission File Number: 000-32179**

# EXACT SCIENCES CORPORATION

(Exact name of registrant as specified in its charter)

| | |
|---|---|
| **DELAWARE**<br>(State or other jurisdiction of incorporation or organization) | **02-0478229**<br>(I.R.S. Employer Identification Number) |
| **100 Campus Drive, Marlborough, Massachusetts**<br>(Address of principal executive offices) | **01752**<br>(Zip Code) |

**(508) 683-1200**
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ 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 (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes £ No £

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

| | |
|---|---|
| Large accelerated filer ☐ | Accelerated filer ☐ |
| Non-accelerated filer ☐<br>(Do not check if a smaller reporting company) | 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 ☒

As of May 15, 2009, the registrant had 30,887,484 shares of Common Stock outstanding.

**EXACT SCIENCES CORPORATION**

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**EXACT SCIENCES CORPORATION**
**Condensed Consolidated Balance Sheets**
**(Amounts in thousands, except share data - unaudited)**

| | March 31, 2009 | December 31, 2008 |
|---|---|---|
| **ASSETS** | | |
| Current Assets: | | |
| Cash and cash equivalents | $ 3,595 | $ 4,937 |
| Marketable securities | 17,018 | — |
| Prepaid expenses and other current assets | 690 | 190 |
| Total current assets | 21,303 | 5,127 |
| Property and Equipment, at cost: | | |
| Laboratory equipment | 174 | 174 |
| Office and computer equipment | 22 | 13 |
| Leasehold improvements | — | — |
| Furniture and fixtures | — | — |
| | 196 | 187 |
| Less—Accumulated depreciation and amortization | (123) | (111) |
| | 73 | 76 |
| Patent costs, net of accumulated amortization of $2,820 at December 31, 2008 | — | 95 |
| Restricted cash | 600 | 600 |
| | $ 21,976 | $ 5,898 |
| **LIABILITIES AND STOCKHOLDERS' DEFICIT** | | |
| Current Liabilities: | | |
| Accounts payable | $ 34 | $ 683 |
| Accrued expenses | 1,234 | 1,498 |
| Third party royalty obligation, current portion | 1,000 | 1,500 |
| Deferred license fees, current portion | 4,986 | 1,350 |
| Total current liabilities | 7,254 | 5,031 |
| | | |
| Third party royalty obligation, less current portion | 965 | 1,950 |
| | | |
| Deferred license fees, less current portion | 14,901 | 1,350 |
| | | |
| Commitments and contingencies | | |
| | | |
| Stockholders' Deficit: | | |
| Preferred stock, $0.01 par value Authorized—5,000,000 shares Issued and outstanding—0 shares at March 31, 2009 and December 31, 2008, respectively | — | — |
| Common stock, $0.01 par value Authorized—100,000,000 shares Issued and outstanding—30,848,070 and 27,522,931 shares at March 31, 2009 and December 31, 2008, respectively | 308 | 275 |
| Additional paid-in capital | 174,878 | 169,854 |
| Treasury stock, at cost, 85,550 shares | (97) | (97) |
| Other comprehensive income | 71 | — |
| Accumulated deficit | (176,304) | (172,465) |
| Total stockholders' deficit | (1,144) | (2,433) |
| | $ 21,976 | $ 5,898 |

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

**EXACT SCIENCES CORPORATION**
**Condensed Consolidated Statements of Operations**
**(Amounts in thousands, except per share data - unaudited)**

| | Three Months Ended March 31, | |
|---|---|---|
| | 2009 | 2008 |
| Revenue: | | |
| Product royalty fees | $ 7 | $ (292) |
| License fees | 993 | 338 |
| Product | — | 5 |
| | 1,000 | 51 |
| Cost of revenue: | | |
| Product royalty fees | — | 1 |
| Gross profit | 1,000 | 50 |
| Operating expenses: | | |
| Research and development (1) | 108 | 859 |
| General and administrative (1) | 4,768 | 1,835 |
| Restructuring | (3) | (2) |
| | 4,873 | 2,692 |
| Loss from operations | (3,873) | (2,642) |
| Interest income | 34 | 124 |
| Net loss | $ (3,839) | $ (2,518) |
| Net loss per share—basic and diluted | $ (0.13) | $ (0.09) |
| Weighted average common shares outstanding—basic and diluted | 30,230 | 27,145 |

(1) Non-cash stock-based compensation expense included in these amounts are as follows:

| | | |
|---|---|---|
| Research and development | $ — | $ 44 |
| General and administrative | 623 | 257 |

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

**EXACT SCIENCES CORPORATION**
**Condensed Consolidated Statements of Cash Flows**
**(Amounts in thousands - unaudited)**

| | Three Months Ended March 31, | |
|---|---|---|
| | 2009 | 2008 |
| Cash flows from operating activities: | | |
| Net loss | $ (3,839) | $ (2,518) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation of fixed assets | 12 | 59 |
| Amortization and write-offs of patents | 95 | 34 |
| Stock-based compensation | 623 | 301 |
| Amortization of deferred license fees | (993) | (338) |
| Changes in assets and liabilities: | | |
| Prepaid expenses and other current assets | (500) | (178) |
| Accounts payable | (649) | 30 |
| Accrued expenses | (264) | (743) |
| Third party royalty obligation | (1,485) | 300 |
| Net cash used in operating activities | (7,000) | (3,053) |
| Cash flows from investing activities: | | |
| Purchases of marketable securities | (16,947) | (2,466) |
| Maturities of marketable securities | — | 5,080 |
| Purchases of property and equipment | (9) | — |
| Increase in patent costs and other assets | — | (54) |
| Net cash (used in) provided by investing activities | (16,956) | 2,560 |
| Cash flows from financing activities: | | |
| Proceeds from Genzyme Collaboration, License and Purchase Agreement | 16,650 | — |
| Proceeds from sale of common stock to Genzyme | 6,000 | — |
| Proceeds from exercise of common stock options and stock purchase plan | 14 | 6 |
| Payment to repurchase stock options | (50) | — |
| Net cash provided by financing activities | 22,614 | 6 |
| Net decrease in cash and cash equivalents | (1,342) | (487) |
| Cash and cash equivalents, beginning of period | 4,937 | 4,486 |
| Cash and cash equivalents, end of period | $ 3,595 | $ 3,999 |

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

**EXACT SCIENCES CORPORATION**
**Notes to Condensed Consolidated Financial Statements**
**(Unaudited)**

## (1) ORGANIZATION AND BASIS OF PRESENTATION

### Organization

EXACT Sciences Corporation (the "Company") was incorporated in February 1995. The Company's purpose is to improve quality of life through the development of innovative diagnostics. The mission of the company is to save lives by launching an FDA-cleared, patient friendly colon cancer test that detects both pre-cancer and cancer. Effective April 2, 2009 the Company's board of directors appointed Kevin T. Conroy as president and chief executive, and Maneesh K. Arora as senior vice president and chief financial officer. Both Conroy and Arora bring significant experience with molecular diagnostics and managing complex clinical trials to their new roles at the Company. They were most recently president and chief executive, and chief financial officer, respectively, of Third Wave Technologies Inc. Third Wave, a NASDAQ-traded molecular diagnostics company which was acquired last year by Hologic Inc. for $582 million.

The American Cancer Society estimates that 80-90 million people in the United States are eligible for colorectal cancer screening. The company will approach this market opportunity by remaining focused on key priorities. The company's priorities for 2009 are: 1) product development, 2) clinical trial planning and 3) creating a performance culture at Exact.

As more fully described in Note 3 below, the Company entered into a strategic transaction with Genzyme Corporation (the "Genzyme Strategic Transaction") on January 27, 2009, pursuant to which Genzyme acquired certain intellectual property assets related to the fields of prenatal and reproductive health and licensed certain intellectual property outside the fields of colorectal cancer screening and stool-based DNA detection. Genzyme also purchased 3.0 million shares of the Company's common stock. Pursuant to the strategic transaction, EXACT retained worldwide rights to its colorectal cancer screening and stool-based DNA testing intellectual property, and will receive a share of Genzyme's sublicensing income derived from the purchased intellectual property outside the fields of prenatal and reproductive health.

The Genzyme Strategic Transaction provides for the Company to receive up to $24.5 million in cash in total. On January 27, 2009, the Company received $16.65 million, with an additional $1.85 million to be received over the next 18 months, contingent upon the non-occurrence of certain events, in exchange for the sale and license of certain of the Company's intellectual property assets, including those relating to reproductive and prenatal health. In addition, at closing, Genzyme purchased 3.0 million shares of EXACT common stock at $2.00 per share for an aggregate purchase price of $6.0 million.

The Company has licensed certain of its technologies, including improvements to such technologies, on an exclusive basis through December 2010 to Laboratory Corporation of America® Holdings ("LabCorp®") for use in a commercial testing service for the detection of colorectal cancer developed by LabCorp. The Company has devoted the majority of its efforts to date on research and development and commercialization support of its colorectal cancer detection technologies.

The Company expects that cash, cash equivalents and marketable securities on hand at March 31, 2009 will be sufficient to fund its current operations for at least the next twelve months, based on current operating plans. The projection is based on the Company's currently anticipated cost structure and operating assumptions and does not provide for the full funding of the development of the Company's stool-based DNA technology and related FDA submission and commercialization efforts or other programs and initiatives. The Company does not expect that product royalty payments or milestone payments from LabCorp will materially supplement its liquidity position in the next twelve months, if at all. Since the Company has no current sources of material ongoing revenue, it believes that it will need to raise additional capital to complete the development, FDA submission for clearance or approval, and commercialization of its technologies, including an FDA-approved in vitro diagnostic test for stool-based DNA colorectal cancer screening. If the Company is unable to obtain sufficient additional funds to enable it to fund its operations through the completion of the development of such a test, the submission to the FDA for clearance or approval of the test, and commercialization of the test, the Company's results of operations and financial condition would be materially adversely affected and it may be required to delay such efforts and otherwise scale back operations. Even if the Company successfully raises sufficient funds to continue its operations to fund the development, FDA submission, and commercialization of its technology, including an FDA-approved in vitro diagnostic test for stool-based DNA colorectal cancer screening, the Company cannot assure you that its business will ever generate sufficient cash flow from operations to become profitable.

### Basis of Presentation

The accompanying condensed consolidated financial statements of the Company are unaudited and have been prepared on a basis substantially consistent with the Company's audited financial statements. These condensed consolidated financial statements assume that the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business, and, in the opinion of management, include all normal and recurring adjustments which are necessary to present fairly the results of operations for the reported periods. These condensed consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and follow the requirements of the Securities and Exchange Commission ("SEC") for interim reporting.

The results of the Company's operations for any interim period are not necessarily indicative of the results of the Company's operations for any other interim period or for a full fiscal year.

## (2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of the Company's wholly-owned subsidiary, EXACT Sciences Securities Corporation, a Massachusetts securities corporation. All significant intercompany transactions and balances have been eliminated in consolidation.

### Use of Estimates

The preparation of financial statements in conformity with 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

The Company considers all highly-liquid investments with maturities of 90 days or less at the time of acquisition to be cash equivalents. Cash equivalents primarily consist of money market funds.

### Restricted Cash

At March 31 , 2009 and December 31, 2008, $0.6 million of the Company's cash has been pledged as collateral for an outstanding letter of credit in connection with the lease for the Company's corporate headquarters.

### Marketable Securities

The Company accounts for its investments in marketable securities in accordance with Statement of Financial Accounting Standards ("SFAS") No. 115, *Accounting for Certain Investments in Debt and Equity Securities* . Management determines the appropriate classification of debt securities at the time of purchase and re-evaluates such designation as of each balance sheet date. Debt securities are classified as held-to-maturity when the Company has the positive intent and ability to hold the securities to maturity. Marketable equity securities and debt securities not classified as held-to-maturity are classified as available-for-sale. Available-for-sale securities are carried at fair value, with the unrealized gains and losses, net of tax, reported in other comprehensive income. The amortized cost of debt securities in this category is adjusted for amortization of premiums and accretion of discounts to maturity computed under the effective interest method. Such amortization is included in investment income. Realized gains and losses and declines in value judged to be other-than-temporary on available-for-sale securities are included in investment income. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in investment income.

At March 31, 2009, the Company's investments were comprised of fixed income investments and all were deemed available-for-sale. At December 31, 2008, the Company held no marketable securities. The objectives of the Company's investment strategy are to provide liquidity and safety of principal while striving to achieve the highest rate of return consistent with these two objectives. The Company's investment policy limits investments to certain types of instruments issued by institutions with investment grade credit ratings and places restrictions on maturities and concentration by type and issuer. There were no realized gains or losses on the sale of available-for-sale securities during the three months ended March 31, 2009 and 2008.

### Patent Costs

Patent costs, which have historically consisted of related legal fees, are capitalized as incurred and are amortized beginning when patents are approved over an estimated useful life of five years. Capitalized patent costs are expensed upon disapproval, upon a decision by the Company to no longer pursue the patent or when the related intellectual property is either sold or deemed to be no longer of value to the Company. In connection with the Genzyme Strategic Transaction, the Company sold its then-remaining capitalized intellectual property to Genzyme on January 27, 2009, and accordingly, wrote off the remaining unamortized capitalized patent costs at that time.

The following table summarizes activity with respect to the Company's capitalized patents for the three months ended March 31, 2009 and 2008. Amounts included in the table are in thousands.

| | Three Months Ended | |
|---|---|---|
| | March 31, 2009 | March 31, 2008 |
| Patents, net of accumulated amortization, Beginning of period | $ 95 | $ 432 |
| Patent costs capitalized | — | 54 |
| Amortization of patents | — | (34) |
| Write-offs of patents | (95) | — |
| Patents, net of accumulated amortization, End of period | $ — | $ 452 |

**Net Loss Per Share**

Basic and diluted net loss per share is presented in conformity with SFAS No. 128, *Earnings per Share* ("SFAS No. 128"), for all periods presented. In accordance with SFAS No. 128, basic 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. Basic and diluted net loss per share are the same because all outstanding common stock equivalents have been excluded, as they are anti-dilutive.

The following potentially issuable common shares were not included in the computation of diluted net loss per share because they would have an anti-dilutive effect due to net losses for each period:

| | March 31, | |
|---|---|---|
| (In thousands) | 2009 | 2008 |
| Shares issuable upon exercise of stock options | 6,636 | 4,433 |
| Shares issuable upon exercise of outstanding warrants | — | 1,000 |
| | 6,636 | 5,433 |

In conjunction with its strategic alliance with LabCorp, in June 2002, the Company issued to LabCorp a warrant (the "LabCorp Warrant") to purchase 1,000,000 shares of its common stock, exercisable over a three-year period at an exercise price of $16.09 per share. At the time of issuance, the LabCorp Warrant had an expiration date of June 26, 2005. On June 24, 2005, the Company extended the expiration date of the LabCorp Warrant to August 13, 2008, which was the expiration date of the exclusive period at the time of the extension. On August 13, 2008, the LabCorp Warrant expired unexercised.

**Accounting for Stock-Based Compensation**

The Company accounts for share-based payments to employees in accordance with SFAS No. 123(R), *Share-Based Payment* ("SFAS No. 123(R)"), which requires all share-based payments to employees, including grants of employee stock options and shares purchased under an employee stock purchase plan (if certain parameters are not met), to be recognized in the financial statements based on their fair values. Share-based payment transactions with parties other than employees are accounted for in accordance with EITF 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.*

**Revenue Recognition**

***License fees.*** License fees for the licensing of product rights on initiation of strategic agreements are recorded as deferred revenue upon receipt and recognized as revenue on a straight-line basis over the license period. On June 27, 2007, the Company entered into an amendment to its exclusive license agreement with LabCorp (the "Second Amendment") that, among other modifications to the terms of the license, extended the exclusive license period from August 2008 to December 2010, subject to carve-outs for certain named organizations. Accordingly, the Company amortizes the remaining deferred revenue balance resulting from its license agreement with LabCorp at the time of the Second Amendment ($4.7 million) on a straight-line basis over the remaining exclusive license period, which ends in December 2010.

As more fully described in Note 3 below, in connection with the Genzyme Strategic Transaction, the Company received an up-front payment of $16.65 million on January 27, 2009 in exchange for the assignment and licensing of certain intellectual property to

Genzyme. Pursuant to the provisions of SEC Staff Accounting Bulletin No. 104 and EITF No. 00-21, *Revenue Arrangements with Multiple Deliverables* , which govern revenue recognition, the Company's on-going performance obligations to Genzyme under the Collaboration, License and Purchase Agreement (the "CLP Agreement"), as described below, including its obligation to deliver certain intellectual property improvements to Genzyme during the initial five-year collaboration period, were deemed to be undelivered elements of the CLP Agreement on the date of closing. Accordingly, the Company deferred the initial $16.65 million in cash received at closing and will amortize that up-front payment on a straight line basis into the License Fee Revenue line item in its statements of operations over the initial five-year collaboration period ending in January 2014. Receipt of any holdback amounts, as defined below, will similarly be deferred and amortized on a straight line basis into the License Fee Revenue line item in the Company's statements of operations over the remaining term of the collaboration at the time of receipt.

In addition, Genzyme paid $2.00 per share for the 3,000,000 million shares of common stock purchased from the Company on January 27, 2009, representing a premium of $0.51 per share above the closing price of the Company's common stock on that date of $1.49 per share. Under FASB Technical Bulletin No. 85-6, *Accounting for a Purchase of Treasury Shares at a Price Significantly in Excess of the Current Market Price of the Shares and the Income Statement Classification of Costs Incurred in Defending against a Takeover Attempt*, ("FTB No. 85-6"), the aggregate premium paid by Genzyme over the closing price of the Company's common stock on the date of the transaction of $1.53 million is deemed to be a part of the total consideration for the CLP Agreement. Accordingly, the Company deferred the aggregate $1.53 million premium and will amortize that amount on a straight line basis into the License Fee Revenue line item in its statements of operations over the initial five-year collaboration period ending in January 2014. The Company recognized approximately $0.7 million in license fee revenue in connection with the amortization of the up-front payments from Genzyme during the quarter ended March 31, 2009.

***Product royalty fees.*** The Company has licensed certain of its technologies, including improvements to such technologies, on an exclusive basis through December 2010 to LabCorp. LabCorp developed and commercially offered PreGen-Plus, a non-invasive stool-based DNA colorectal cancer screening service for the average-risk population based on the Company's Version 1 technology, from August 2003 through June 2008. In June 2008, LabCorp stopped offering PreGen-Plus. On July 14, 2008, LabCorp began to commercially offer ColoSure, its next generation non-invasive, stool-based DNA testing service for the detection of colorectal cancer in the average-risk population, which is based on certain of the Company's intellectual property. The Company will be entitled to the same royalty and milestone structure on any sales of ColoSure as it was entitled to on sales of PreGen-Plus.

Prior to the effective date of the Second Amendment, the Company's product royalty fees were based on a specified contractual percentage of LabCorp's cash receipts from performing PreGen-Plus tests. Accordingly, the Company recorded product royalty fees based on this specified percentage of LabCorp's cash receipts, as reported to the Company each month by LabCorp. Subsequent to the effective date of the Second Amendment, the Company's product royalty fees are based on a specified contractual percentage of LabCorp's net revenues from sales of PreGen-Plus through June 1, 2008, when LabCorp stopped offering PreGen-Plus, and from sales of ColoSure from and after July 2008. Accordingly, subsequent to the effective date of the Second Amendment, the Company records product royalty fees based on the specified contractual percentage of LabCorp's net revenues from its sales of such colorectal cancer screening tests, as reported to the Company each month by LabCorp. The current royalty rate is 15%, subject to an increase to 17% in the event that LabCorp achieves a specified significant threshold of annual net revenues from the sales of such colorectal cancer screening tests.

Additionally, pursuant to the Second Amendment, the Company is potentially obligated to reimburse LabCorp for certain third-party royalty payments, as described in Note 5 below. To the extent the Company incurs liabilities in connection with this provision of the Second Amendment, the accretion of such liabilities will be recorded as a reduction in the product royalty fee line item in the Company's condensed consolidated statements of operations.

***Product revenue.*** Product revenue from the sale of certain components of the Company's Effipure™ technology to LabCorp was recognized upon transfer of the components provided that title passed, the price was fixed or determinable and collection of the receivable was probable. LabCorp has indicated that Effipure is not used as a component in LabCorp's ColoSure offering and the Company therefore does not expect to record product revenue in connection with Effipure sales in future periods.

***Other revenue .*** Revenue from milestone and other performance-based payments is recognized as revenue when the milestone or performance is achieved and collection of the receivable is estimable and probable.

**Comprehensive Loss**

SFAS No. 130, *Reporting Comprehensive Income* , establishes presentation and disclosure requirements for comprehensive income (loss). Comprehensive loss consists of net loss and the change in unrealized gains and losses on marketable securities. Comprehensive loss for the three months ended March 31, 2009 and 2008 was as follows:

| | Three Months Ended March 31, | |
|---|---|---|
| **(In thousands)** | **2009** | **2008** |
| Net loss | $ (3,839) | $ (2,518) |
| Unrealized gain on marketable securities | 71 | 1 |
| Comprehensive loss | $ (3,768) | $ (2,517) |

**(3) GENZYME STRATEGIC TRANSACTION**

***Transaction summary***

On January 27, 2009, the Company entered into a Collaboration, License and Purchase Agreement (the "CLP Agreement") with Genzyme Corporation ("Genzyme"). Pursuant to the CLP Agreement, the Company (i) assigned to Genzyme all of its intellectual property applicable to the fields of prenatal and reproductive health (the "Transferred Intellectual Property"), (ii) granted Genzyme an irrevocable, perpetual, exclusive, worldwide, fully-paid, royalty-free license to use and sublicense all of the Company's remaining intellectual property (the "Retained Intellectual Property") in the fields of prenatal and reproductive health (the "Genzyme Core Field"), and (iii) granted Genzyme an irrevocable, perpetual, non-exclusive, worldwide, fully-paid, royalty-free license to use and sublicense the Retained Intellectual Property in all fields other than the Genzyme Core Field and other than colorectal cancer detection and stool-based disease protection (the "Company Field"). Following the Genzyme Transaction, EXACT retains rights in its intellectual property to pursue only the fields of colorectal cancer detection and stool-based detection of any disease or condition. Further, subject to the terms of the JHU Amendment (defined below), the Company assigned to Genzyme its rights under the license agreement between the Company and The Johns Hopkins University ("JHU") dated March 25, 2003, as amended (the "JHU Agreement") (collectively, with the licenses and assignment described herein, the "Sale Transaction"). The CLP Agreement also provides for the formation of a joint advisory committee to assist both parties in the achievement of product development and regulatory goals. The collaboration period under the CLP Agreement may be terminated upon certain events. Additional termination rights concerning the collaboration period arise after five years.

Under the CLP Agreement, the Company retained ownership of intellectual property rights other than the Transferred Intellectual Property. In addition, with respect to the Transferred Intellectual Property, Genzyme granted the Company an irrevocable, perpetual, exclusive, worldwide, fully-paid, royalty-free license to use and sublicense such intellectual property in the Company Field. The parties also granted to each other a perpetual (subject to termination for uncured material breaches), exclusive, worldwide, fully-paid, royalty-free license to use and sublicense any improvements Genzyme or the Company makes to the Transferred Intellectual Property that is applicable to the Company Field (in the case of the Company as licensee) or all fields other than the Company Field (the "Genzyme Field") (in the case of Genzyme as licensee). Further, the parties granted to each other a perpetual (subject to termination for uncured material breaches), exclusive, worldwide, fully-paid, royalty-free license to use and sublicense intellectual property jointly developed pursuant to the collaboration between the parties (the "Joint Technology"). The license to the Joint Technology granted by the Company to Genzyme is exclusive in the Genzyme Field and the license to the Joint Technology granted by Genzyme to the Company is exclusive in the Company Field. The Company also granted to Genzyme an exclusive option to obtain an exclusive license, in the Genzyme Core Field, to certain technology that the Company may develop or acquire that has applicability in the Genzyme Core Field. The CLP Agreement contains representations, warranties and covenants with respect to the Sale Transaction and provides, under certain circumstances, for the Company and Genzyme to indemnify each other for breaches of their respective representations, warranties and covenants.

As part of the Sale Transaction, the Company entered into an Assignment, Sublicense, Consent and Eighth Amendment to License Agreement with Genzyme and JHU (the "JHU Amendment") on January 27, 2009, whereby the Company assigned its rights under the JHU Agreement to Genzyme. Pursuant to the JHU Amendment, Genzyme sublicensed to the Company the intellectual property subject to the JHU Agreement for colorectal cancer detection and stool-based disease detection, including the BEAMing technology for the detection of colorectal cancer. Under the JHU Amendment, the Company and Genzyme will share in the royalty and annual payment obligations to JHU. The JHU Amendment also modified the minimum annual license fee due to JHU under the JHU Agreement. The JHU Agreement terminates upon the later of 20 years from the effective date of the JHU Agreement and the expiration of the last to expire of the patents for the licensed technology, or upon certain uncured defaults of JHU or Genzyme. Pursuant to the JHU Amendment, the sublicense to the Company terminates upon certain uncured defaults of the Company. The JHU Amendment also provides that, in the event the JHU Agreement terminates upon an uncured default of Genzyme, if the Company is in good standing under the JHU Agreement at such time, the sublicense to the Company will become a direct license from JHU to the Company.

Also as part of the Sale Transaction, the Company entered into an Amended and Restated License Agreement (the "Restated License") with Genzyme on January 27, 2009, which amends and restates the License Agreement between the parties dated March 25,

1999, effective as of January 27, 2009. Pursuant to the Restated License, Genzyme granted to the Company a non-exclusive license to use technology related to the use of certain genes, specifically APC and p53, and methodologies related thereto. In exchange for the license, which continues until the expiration of the last to expire licensed patent, the Company has agreed to pay Genzyme royalties based on net revenues received from performing tests that incorporate the licensed technology and sales of reagents and diagnostic test kits that incorporate the licensed technology, as well as certain minimum royalties, milestone payments and maintenance fees.

Pursuant to the Sale Transaction, Genzyme agreed to pay an aggregate of $18.5 million to the Company, of which $16.65 million was paid at closing and $1.85 million (the "Holdback Amount") is subject to a holdback by Genzyme to satisfy certain potential indemnification obligations of the Company. Subject to the terms and conditions of the CLP Agreement, one-half of the Holdback Amount will be released to the Company in 12 months and one-half will be released in 18 months. Genzyme also agreed to pay a double-digit royalty to the Company on income received by Genzyme as a result of any licenses or sublicenses to third parties of the Transferred Intellectual Property or the Retained Intellectual Property in any field other than the Genzyme Core Field or the Company Field.

In addition, the Company entered into a Common Stock Subscription Agreement with Genzyme (the "Purchase Agreement") on January 27, 2009, which provided for the private issuance and sale to Genzyme of 3,000,000 shares (the "Shares") of the Company's common stock, $0.01 par value per share ("Common Stock"), at a per share price of $2.00, for an aggregate purchase price of $6.0 million.

Pursuant to the Purchase Agreement, Genzyme has the right until December 31, 2010 to participate in certain future private offerings of equity securities by the Company up to the amount necessary to maintain Genzyme's pro-rata percentage ownership of the Company, at a price per share equal to the greater of $2.00 or the closing price of the Common Stock on the Company's trading market on the day prior to the date that the Company notifies Genzyme of its right to purchase additional shares. This right is subject to certain customary exclusions, including issuances to employees pursuant to a stock plan, issuances in connection with a change of control transaction and issuances in connection with strategic partnerships. Under the Purchase Agreement, Genzyme also has the right to include the Shares on a registration statement filed by the Company or, under certain circumstances, cause the Company to file a registration statement covering the resale of the Shares by Genzyme with the Securities and Exchange Commission.

Pursuant to the provisions of SEC Staff Accounting Bulletin No. 104 and EITF No. 00-21, which govern revenue recognition, the Company's on-going performance obligations to Genzyme under the CLP, including the obligation to deliver certain intellectual property improvements to Genzyme during the initial five year collaboration period, were deemed to be undelivered elements of the CLP Agreement on the date of closing. Accordingly, the Company deferred the initial $16.65 million in cash received at closing and will amortize that up-front payment on a straight line basis into the License Fee Revenue line item in its statements of operations over the initial five year collaboration period. Receipt of any Holdback Amounts will similarly be deferred and amortized on a straight line basis into the License Fee Revenue line item in the Company's statements of operations over the remaining term of the collaboration at the time of receipt.

In addition, Genzyme paid $2.00 per share for the 3,000,000 million shares of common stock purchased on January 27, 2009, representing a premium of $0.51 per share above the closing price of the Company's common stock on that date of $1.49 per share. Under FTB No. 85-6 the aggregate premium paid by Genzyme over the closing price of the Company's common stock on the date of the transaction of $1.53 million is included as a part of the total consideration for the CLP. Accordingly, the Company deferred the aggregate $1.53 million premium and will amortize that amount on a straight line basis into the License Fee Revenue line item in the Company's statements of operations over the initial five-year collaboration period. The Company recognized approximately $0.7 million in license fee revenue in connection with the amortization of the up-front payments from Genzyme during the quarter ended March 31, 2009.

## (4) CHANGES IN SENIOR MANAGEMENT AND EMPLOYMENT AGREEMENTS

***Former Chief Executive Officer and Former Chief Financial Officer***

Effective April 2, 2009, Jeffrey R. Luber resigned as the Company's President and Chief Executive Officer and member of the Company's Board of Directors, and Charles R. Carelli, Jr. resigned as the Company's Chief Financial Officer. Mr. Carelli remained employed by the Company as a non-executive employee through April 30, 2009.

In connection with their departure, Messrs. Luber and Carelli were entitled to receive severance benefits pursuant to their previously disclosed retention agreements, including salary continuation of $472,500 and $287,500, which is equal to eighteen months and fifteen months, respectively, of their base salaries as of the date of termination. On March 31, 2009, the Company entered into release agreements with Messrs. Luber and Carelli that provided, in exchange for a general release in favor of the Company, for the accelerated payment of the salary continuation obligations on March 31, 2009. In addition, the release agreements also provided for

the repurchase by the Company of options held by Messrs. Luber and Carelli for an aggregate of 895,000 shares of common stock, in lieu of accelerated vesting and an extension of the option exercise period arising from the prior retention agreements. The Company paid Messrs. Luber and Carelli approximately $39,000 and $11,000, respectively, to repurchase Mr. Luber's options to purchase 620,000 shares and Mr. Carelli's options to purchase 275,000 shares. The purchase price of the outstanding options represented a 75 percent discount from the estimated fair value of the vested options as of March 31, 2009 and was recorded as a reduction to additional paid-in-capital. Messrs. Luber and Carelli retained the balance of their existing options, the vesting of which accelerated by nine months.

In connection with the repurchase of options from Messrs. Luber and Carelli, the Company recorded non-cash stock-based compensation charges of approximately $0.2 million in its condensed consolidated financial statements in the quarter ended March 31, 2009 in accordance with the provisions of SFAS No. 123(R). In addition, the Company recorded non-cash stock-based compensation charges of approximately $60,000 in its condensed consolidated financial statements during the quarter ended March 31, 2009 in accordance with the provisions of SFAS No. 123 (R) in connection with changes in vesting and period of exercise for options being retained by Messrs. Luber and Carelli.

A summary of options repurchased on March 31, 2009 from Mr. Luber and options retained subsequent to Mr. Luber's termination is below.

**Options Repurchased**

| Option Grant Date | Grant Price | Number of Securities Underlying Unexercised Options As of March 31, 2009 | | Total Options Repurchased |
|---|---|---|---|---|
| | | Exercisable | Unexercisable | |
| 11/18/2002 | $ 14.33 | 50,000 | — | 50,000 |
| 2/11/2004 | $ 7.72 | 80,000 | — | 80,000 |
| 12/23/2004 | $ 3.61 | 60,000 | — | 60,000 |
| 2/17/2005 | $ 4.22 | 20,000 | — | 20,000 |
| 2/16/2006 | $ 2.61 | 55,000 | — | 55,000 |
| 4/11/2006 | $ 3.07 | 29,166 | 834 | 30,000 |
| 2/15/2007 | $ 2.77 | 52,083 | 22,917 | 75,000 |
| 9/4/2007 | $ 2.90 | 125,000 | 125,000 | 250,000 |
| | | 471,249 | 148,751 | 620,000 |

**Options Retained**

| Option Grant Date | Grant Price | Number of Options Retained | Expiration Date |
|---|---|---|---|
| 2/21/2008 | $ 1.83 | 80,207 | 1/2/2011 |

A summary of options repurchased on March 31, 2009 from Mr. Carelli and options retained subsequent to Mr. Carelli's termination is below.

**Options Repurchased**

| Option Grant Date | Grant Price | Number of Securities Underlying Unexercised Options As of March 31, 2009 | | Total Options Repurchased |
|---|---|---|---|---|
| | | Exercisable | Unexercisable | |
| 11/9/2004 | $ 3.28 | 20,000 | — | 20,000 |
| 7/29/2005 | $ 2.65 | 27,499 | 2,501 | 30,000 |
| 2/16/2006 | $ 2.61 | 25,000 | — | 25,000 |
| 4/11/2006 | $ 3.07 | 24,305 | 695 | 25,000 |
| 2/15/2007 | $ 2.77 | 52,083 | 22,917 | 75,000 |
| 9/4/2007 | $ 2.90 | 50,000 | 50,000 | 100,000 |
| | | 198,887 | 76,113 | 275,000 |

**Options Retained**

| Option Grant Date | Grant Price | Number of Options Retained | Expiration Date |
|---|---|---|---|
| 2/21/2008 | $ 1.83 | 43,124 | 1/31/2011 |

***New Chief Executive Officer and Chief Financial Officer***

On March 18, 2009, the Company's Board of Directors appointed Kevin T. Conroy as President and Chief Executive Officer of the Company, effective April 2, 2009. Also on March 18, 2009, based on the recommendation of the Corporate Governance and Nominating Committee, the Board of Directors elected Mr. Conroy to the Board. In connection with his appointment, Mr. Conroy entered into an employment agreement with the Company on March 18, 2009 (the "Conroy Agreement"). Under the terms of the Conroy Agreement, Mr. Conroy serves as President and Chief Executive Officer of the Company at a base salary of $340,000 and is eligible to earn up to 50% of his base salary in annual bonuses, with the exact amount of any such bonus to be determined by the Compensation Committee. Pursuant to the Conroy Agreement, Mr. Conroy was granted options to purchase 2.5 million shares of the common stock of the Company, par value $0.01 per share (the "Common Stock"), at a price per share of $0.83, which is equal to the closing price of the Common Stock on the NASDAQ Capital Market on March 18, 2009. Twenty-five percent (25%) of the shares underlying the stock options become exercisable on the one-year anniversary of the date of grant, with the remainder vesting quarterly over the subsequent three years.

Mr. Conroy's employment with the Company continues until terminated in accordance with the Conroy Agreement. Mr. Conroy may terminate his employment with the Company without "good reason" (as defined in the Conroy Agreement) upon 30 business days' written notice to the Company and with good reason at any time within ninety (90) days after the occurrence of an event constituting good reason. The Company may terminate Mr. Conroy's employment, with or without "cause" (as defined in the Conroy Agreement), upon written notice to Mr. Conroy. In the event of termination by the Company without cause or by Mr. Conroy for good reason, then Mr. Conroy will receive (i) salary continuation for a period of eighteen (18) months at his then-current base salary, (ii) any accrued but unpaid base salary as of the termination date, (iii) any accrued but unpaid bonus (including any performance-based bonus), (iv) twelve months' accelerated vesting of any unvested equity awards, and (v) the right to exercise any vested equity awards until the earlier of two (2) years from the date of termination or the date such equity award expires.

In the event of termination by the Company without cause or by Mr. Conroy for good reason, within twelve (12) months before, or if Mr. Conroy remains employed with the Company on the effective date of, a "Change of Control" (as defined in the Conroy Agreement), Mr. Conroy will receive a lump-sum payment equal to twenty-four (24) months (which period will be reduced under certain circumstances) of his then-current base salary. Upon a Change of Control and subject to Mr. Conroy's agreement to remain employed by the Company (or any successor), if requested, for a period of at least six (6) months following such Change of Control at his then current base salary, all of Mr. Conroy's outstanding stock options would become fully vested and exercisable. The foregoing change of control payments shall be subject to increase to cover any excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended. The Conroy Agreement also provides that Mr. Conroy will participate in a long-term incentive plan to be developed by the Company pursuant to which he will be eligible for a cash payment upon certain changes of control of the Company.

The Conroy Agreement prohibits Mr. Conroy from engaging in certain activities involving competition with the Company for an 18-month period following termination of his employment with the Company.

On March 18, 2009, the Company's Board of Directors appointed Maneesh Arora as Senior Vice President and Chief Financial Officer of the Company, effective April 2, 2009. In connection with his appointment, Mr. Arora entered into an employment agreement with the Company on March 18, 2009 (the "Arora Agreement"). Under the terms of the Arora Agreement, Mr. Arora serves as Senior Vice President and Chief Financial Officer of the Company at a base salary of $240,000 and is eligible to earn up to 40% of his base salary in annual bonuses, with the exact amount of any such bonus to be determined by the Compensation Committee. Pursuant to the Arora Agreement, Mr. Arora was granted options to purchase 1.25 million shares of Common Stock, at a price per share of $0.83, which is equal to the closing price of the Common Stock on the NASDAQ Capital Market on March 18, 2009. Twenty-five percent (25%) of the shares underlying the stock options become exercisable on the one-year anniversary of the date of grant, with the remainder vesting quarterly over the subsequent three years.

Mr. Arora's employment with the Company continues until terminated in accordance with the Arora Agreement. Mr. Arora may terminate his employment with the Company without "good reason" (as defined in the Arora Agreement) upon 30 business days' written notice to the Company and with good reason at any time within ninety (90) days after the occurrence of an event constituting good reason. The Company may terminate Mr. Arora's employment, with or without "cause" (as defined in the Arora Agreement),

upon written notice to Mr. Arora. In the event of termination by the Company without cause or by Mr. Arora for good reason, then Mr. Arora will receive (i) salary continuation for a period of fifteen (15) months at his then-current base salary, (ii) any accrued but unpaid base salary as of the termination date, (iii) any accrued but unpaid bonus (including any performance-based bonus), (iv) twelve months' accelerated vesting of any unvested equity awards, and (v) the right to exercise any vested equity awards until the earlier of two (2) years from the date of termination or the date such equity award expires.

In the event of termination by the Company without cause or by Mr. Arora for good reason, within twelve (12) months before, or if Mr. Arora remains employed with the Company on the effective date of, a "Change of Control" (as defined in the Arora Agreement), Mr. Arora will receive a lump-sum payment equal to eighteen (18) months (which period will be reduced under certain circumstances) of his then-current base salary. Upon a Change of Control and subject to Mr. Arora's agreement to remain employed by the Company (or any successor), if requested, for a period of at least six (6) months following such Change of Control at his then current base salary, all of Mr. Arora's outstanding stock options would become fully vested and exercisable. The Arora Agreement also provides that Mr. Arora will participate in a long-term incentive plan to be developed by the Company pursuant to which he will be eligible for a cash payment upon certain changes of control of the Company.

The Arora Agreement prohibits Mr. Arora from engaging in certain activities involving competition with the Company for an 18-month period following termination of his employment with the Company.

**(5) CONTINGENCIES**

***Third Party Royalty Obligation***

Pursuant to the terms of the Second Amendment to the Company's license agreement with LabCorp, the Company is obligated to reimburse LabCorp for certain third-party royalty payments if LabCorp's third-party royalty rate is greater than a specified royalty rate during the measuring period, as outlined in the table below. During the quarter ended March 31, 2009, the Company paid LabCorp approximately $1.5 million related to its obligation for the first measurement period, which ended on December 31, 2008. The Company's future obligation to pay LabCorp pursuant to this provision of the Second Amendment is based on LabCorp's sales volumes of colorectal cancer screening tests using the Company's technology during two separate measurement periods, as defined below. A significant increase in such sales volumes during either measurement period, as compared to historical PreGen-Plus sales volumes, could reduce the Company's potential obligation during such measurement period, while test volumes consistent with historical PreGen-Plus sales levels could result in aggregate future payments to LabCorp totaling up to $2.0 million during the remaining measurement periods. Until LabCorp's sales of colorectal cancer screening tests using the Company's technology increase to a level that would reduce this potential maximum obligation, if ever, the Company intends to record its estimated obligation under this provision of the Second Amendment as a reduction in the product royalty fee line item in its consolidated statements of operations, in accordance with EITF No. 01-09, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)* . Based on sales volumes of PreGen-Plus through June 1, 2008 (when LabCorp ceased selling this service) and anticipated sales volumes of ColoSure, as of March 31, 2009, the Company had accrued a total of $1.97 million related to the total potential $2.0 million remaining obligation to LabCorp. The Company recorded charges of $2.25 million and $1.2 million during the years ended December 31, 2008 and 2007, respectively, in connection with this third-party royalty obligation. These charges were recorded under the caption "Product royalty fees" in the Company's consolidated statements of operations. Future increases in this obligation, to the extent necessary, will continue to be recorded as charges to the product royalty revenue line item of the Company's consolidated statements of operations. Amounts included in the table are in thousands.

| Measurement period Start Date | Measurement period End Date | Payment Due Date for Measurement Period | Potential Minimum Third Party Royalty Obligation During Measurement Period | Potential Maximum Third Party Royalty Obligation During Measurement Period |
|---|---|---|---|---|
| January 1, 2009 | December 31, 2009 | January 30, 2010 | $ — | $ 1,000 |
| January 1, 2010 | December 31, 2010 | January 30, 2011 | — | 1,000 |
| | | | $ — | $ 2,000 |

**(6) RESTRUCTURING**

***2008 Restructuring***

On July 16, 2008, the Company implemented certain cost reduction initiatives, including the suspension of the clinical validation study for its Version 2 technology and the elimination of eight positions, or 67% of the Company's workforce (the "2008 Restructuring"), in connection with the Company's revised corporate strategy of reducing costs to better preserve existing cash.

In connection with the 2008 Restructuring, the Company recorded restructuring charges of approximately $0.5 million during the three months ended September 30, 2008, including $0.3 million in one-time termination benefits arising under retention and severance agreements with each of the terminated employees and $0.2 million resulting from the write-off of leasehold improvements abandoned by the Company in connection with the reduction in force. The Company's decision to eliminate 67% of its workforce was deemed to be an impairment indicator under SFAS No. 144. As a result of performing the impairment evaluations, non-cash asset impairment charges of $0.3 million were recorded to adjust the carrying value of the related leasehold improvements to their net realizable value.

In addition, in connection with the 2008 Restructuring, the Company accelerated the vesting of 15,523 shares under terminated employees' previously unvested stock options, with a weighted average exercise price of $2.65 per share, and extended the expiration date of all the terminated employees' outstanding options as of their date of termination, covering an aggregate of 181,828 shares with a weighted average exercise price of $4.50 per share, through August 1, 2009. Pursuant to the measurement provisions of SFAS No. 123(R), the Company recorded one-time non-cash stock-based compensation charges of approximately $3,000 in the "Restructuring" line item of the Company's condensed consolidated statements of operations during the quarter ended September 30, 2008.

During the fourth quarter of 2008, the Company entered into a sublease agreement (the "2008 Sublease Agreement") with QTEROS, Inc. ("QTEROS") to sublease to QTEROS approximately 25,537 square feet of rentable area in the Company's corporate headquarters. The term of the 2008 Sublease Agreement, which commenced on December 9, 2008, is 20 months with a base rent of $625,657 per year. Pursuant to the 2008 Sublease Agreement, QTEROS has no rights to renew or extend the 2008 Sublease Agreement. Under the terms of the 2008 Sublease Agreement, QTEROS is required to pay its pro rata share of any increases in building operating expenses and real estate taxes and to provide a security deposit in the form of an irrevocable, standby letter of credit from a national commercial bank reasonably acceptable to the Company in the amount of approximately $52,000 naming the Company as beneficiary. The 2008 Sublease Agreement provides for the Company's employees to continue to occupy approximately 1,100 square feet in the premises subleased to QTEROS. The Company believes that such 1,100 square feet are adequate to meet our space requirements with respect to administrative needs. The Company believes that the development of an FDA-approved product for colorectal cancer screening will require that it lease additional space. In this regard, the Company is currently exploring additional space in Madison, Wisconsin.

In connection with the 2008 Sublease Agreement, the Company also recorded the following restructuring charges during the fourth quarter of 2008 (included opposite the caption "Facility consolidation costs" in the table below): approximately $0.1 million in future cash payments related to the difference between the Company's committed lease payments and the estimated sublease rental income under the 2008 Sublease Agreement; approximately $0.1 million in one time real estate transaction and laboratory decommissioning fees; and approximately $0.1 million of non-cash charges related to the write-off of leasehold improvements abandoned by the Company in connection with the 2008 Sublease Agreement. These charges were offset by cash receipts of approximately $0.3 million received in connection with sales of fully depreciated fixed assets upon commencement of the 2008 Sublease Agreement. During the quarter ended March 31, 2009, certain of the cost estimates related to the 2008 Restructuring were adjusted, resulting in a credit of approximately $3,000 to the restructuring line item in the Company's condensed consolidated statements of operations.

Amounts remaining in the 2008 Restructuring accrual at March 31, 2009, which are expected to be paid out in cash through July 2010, are recorded under the caption "Accrued expenses" in the Company's consolidated balance sheets. The following table summarizes changes made to the restructuring accrual during the three months ended March 31, 2009 relating to the 2008 Restructuring. Amounts included in the table are in thousands.

| Type of Liability | Balance, December 31, 2008 | Charges | Cash Payments | Balance, March 31, 2009 |
|---|---|---|---|---|
| Employee separation costs | $ 16 | $ (2) | $ (14) | $ — |
| Facility consolidation costs | 165 | (1) | (43) | 121 |
| Total | $ 181 | $ (3) | $ (57) | $ 121 |

***2007 Restructuring***

During the third quarter of 2007, in connection with the Third Amendment to the LabCorp agreement, the Company notified six employees of their termination from the Company (the "2007 Restructuring"). The 2007 Restructuring was principally designed to eliminate the Company's sales and marketing functions to reduce costs and help preserve the Company's cash resources. In connection with the 2007 Restructuring, the Company recorded restructuring charges of approximately $0.8 million during the three months ended September 30, 2007, primarily related to one-time termination benefits arising under retention and severance agreements with each of the terminated employees.

Restructuring charges recorded during the third quarter of 2007 of $0.8 million included $0.6 million in severance and related benefit costs which were paid in cash through May 2008, and $0.2 million in non-cash stock-based compensation charges associated with extending the period of exercise for vested stock option awards for terminated employees.

During the fourth quarter of 2007, the Company entered into a sublease agreement (the "2007 Sublease Agreement") with INTRINSIX Corporation to sublease to INTRINSIX approximately 11,834 square feet of rentable area in the Company's corporate headquarters. The term of the 2007 Sublease Agreement, which commenced on December 15, 2007, is 32 months with a base rent of $266,265 per year. Pursuant to the 2007 Sublease Agreement, INTRINSIX has no rights to renew or extend the 2007 Sublease Agreement. Under the terms of the 2007 Sublease Agreement, INTRINSIX was required to provide a security deposit of $35,000 and is required to pay its pro rata share of any building operating expenses and real estate taxes.

In connection with the 2007 Sublease Agreement, the Company recorded restructuring charges of approximately $0.4 million during the fourth quarter of 2007, which consist of approximately $0.3 million in future cash payments related to the difference between the Company's committed lease payments and the estimated sublease rental income under the 2007 Sublease Agreement and approximately $0.1 million of non-cash charges related to the write-off of leasehold improvements abandoned by the Company in connection with the Sublease Agreement. The Company's decision to enter into the 2007 Sublease Agreement was deemed to be an impairment indicator under SFAS No. 144. As a result of performing the impairment evaluations, asset impairment charges of $0.1 million were recorded to adjust the carrying value of the related leasehold improvements to their net realizable value. Facility consolidation costs also include one time real estate transaction fees in connection with the Sublease Agreement.

Amounts remaining in the 2007 Restructuring accrual at March 31, 2009, which are expected to be paid out through July 2010, are recorded under the caption "Accrued expenses" in the Company's condensed consolidated balance sheets. The following table summarizes the 2007 Restructuring activities during the quarter ended March 31, 2009. Amounts included in the table are in thousands.

| Type of Liability | Balance, December 31, 2008 | Charges | Cash Payments | Balance, March 31, 2009 |
|---|---|---|---|---|
| Employee separation costs | $ — | $ — | $ — | $ — |
| Facility consolidation costs | 161 | — | (23) | 138 |
| Total | $ 161 | $ — | $ (23) | $ 138 |

## (7) STOCK-BASED COMPENSATION

### Stock-Based Compensation Plans

The Company maintains the 1995 Stock Option Plan ("1995 Option Plan"), the 2000 Stock Option and Incentive Plan ("2000 Option Plan") and the 2000 Employee Stock Purchase Plan. Note 8 to the Company's consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008, which has been filed with the SEC, includes a description of the Company's stock-based compensation plans.

### Stock-Based Compensation Expense

The Company recorded $0.6 million in stock-based compensation during the three months ended March 31, 2009 in connection with the amortization of restricted common stock awards and stock options granted to employees, non-employee directors and non-employee consultants as well as certain stock option modifications discussed below . The Company recorded $0.3 million in stock-based compensation during the three months ended March 31, 2008 in connection with the amortization of awards of common stock, restricted common stock and stock options granted to employees, non-employee directors and non-employee consultants, as well as stock-based compensation expense related to the Company's 2008 401(k) match.

**Determining Fair Value**

***Valuation and Amortization Method*** **-** The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model based on the assumptions in the table below. The estimated fair value of employee stock options is amortized to expense using the straight-line method over the vesting period.

***Expected Term*** **-** The Company uses the simplified calculation of expected life, described in the SEC's Staff Accounting Bulletins 107 and 110, as the Company does not currently have sufficient historical exercise data on which to base an estimate of expected term. Using this method, the expected life is determined using the average of the vesting period and the contractual life of the stock options granted.

***Expected Volatility*** **-** Expected volatility is based on the Company's historical volatility from the time of its initial public offering in January 2001 through the measurement date of the awards.

***Risk-Free Interest Rate*** **-** The Company bases the risk-free interest rate used in the Black-Scholes valuation method on the implied yield currently available on U.S. Treasury zero-coupon issues with an equivalent remaining term.

***Forfeitures*** - As required by SFAS No. 123(R), the Company records share-based compensation expense only for those awards that are expected to vest. The Company does not need to estimate forfeitures for awards prior to 2009 because all such share based awards vest monthly.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model based on the assumptions in the following table.

| | Three Months Ended March 31, | |
|---|---|---|
| | 2009 | 2008 |
| **Option Plan Shares** | | |
| Risk-free interest rates | 1.76% | 2.80% |
| Expected term (in years) | 6 | 6 |
| Expected volatility | 85% | 70% |
| Dividend yield | 0% | 0% |
| Weighted average fair value per share of options granted during the period | $ 0.60 | $ 1.17 |

**Stock Option Activity**

A summary of stock option activity under the 1995 Option Plan and the 2000 Option Plan during the three months ended March 31, 2009 is as follows:

| Options (Aggregate intrinsic value in thousands) | Shares | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term (Years) | Aggregate Intrinsic Value (1) |
|---|---|---|---|---|
| Outstanding, January 1, 2009 | 3,703,899 | $ 3.99 | 4.9 | |
| Granted | 4,053,790 | $ 0.77 | | |
| Exercised | (51,349) | $ 0.27 | | |
| Cancelled or redeemed | (1,070,818) | $ 4.30 | | |
| Outstanding, March 31, 2009 | 6,635,522 | $ 2.00 | 7.7 | $ 2,190 |
| Exercisable, March 31, 2009 | 2,067,765 | $ 4.59 | 2.9 | $ 27 |
| Vested and expected to vest, March 31, 2009 | 6,479,478 | $ 1.96 | 7.5 | $ 2,190 |

(1) The aggregate intrinsic value of options outstanding, as well as options vested and expected to vest, at March 31, 2009 is calculated as the difference between the exercise price of the underlying options and the market price of the Company's common stock for the 4,289,790 options that had exercise prices that were lower than the $1.25 market price of the Company's common stock at March 31, 2009. The aggregate intrinsic value of options exercisable at March 31, 2009 is calculated as the difference between the exercise price of the underlying options and the market price of the Company's common stock for the 50,307 options that had exercise prices that were lower than the $1.25 market price of our common stock at March 31, 2009.

The table above includes outstanding restricted stock awards of 458,790 shares as of March 31, 2009. The Company granted 288,790 shares of common stock pursuant to restricted stock awards during the quarter ended March 31, 2009. There were 15,000 common stock awards that vested and were no longer subject to restriction during the quarter ended March 31, 2009.

As of March 31, 2009, there was $2.6 million of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under all equity compensation plans. Total unrecognized compensation cost will be adjusted for future changes in forfeitures. The Company expects to recognize that cost over a weighted average period of 2.4 years.

**(8) FAIR VALUE MEASUREMENTS**

In September 2006, the FASB issued Statement No. 157, *Accounting for Fair Value Measurements* ("SFAS No. 157"). SFAS No. 157 clarifies the principle that fair value should be based on the assumptions market participants would use when pricing an asset or liability and establishes a fair value hierarchy that prioritizes the information used to develop those assumptions. Under the standard, fair value measurements are separately disclosed by level within the fair value hierarchy. SFAS No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years. The Company adopted SFAS No. 157 on January 1, 2008 and it did not have any impact on its consolidated results of operations, financial position or cash flows.

SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs used to measure fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs. Observable inputs are inputs that reflect the assumptions that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances.

The three levels of the fair value hierarchy established by SFAS No. 157 in order of priority are as follows:

**Level 1** Quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access as of the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

**Level 2** Pricing inputs other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reporting date. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.

**Level 3** Unobservable inputs that reflect the Company's assumptions about the assumptions that market participants would use in pricing the asset or liability. Unobservable inputs shall be used to measure fair value to the extent that observable inputs are not available.

In accordance with the disclosure provisions of SFAS No. 157, the following table presents the Company's fair value measurements as of March 31, 2009 along with the level within the fair value hierarchy prescribed by SFAS No. 157 in which the fair value measurements in their entirety fall, segregating fair value measurements using quoted prices in active markets for identical assets or liabilities (Level 1), significant other observable inputs (Level 2), and significant unobservable inputs (Level 3). Cash and cash equivalents are recorded at cost, which approximates fair value. Amounts in the table are in thousands.

| Description | Fair Value at March 31, 2009 | Fair Value Measurement at March 31, 2009 Using: Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|---|---|---|---|---|
| Available-for-Sale | | | | |
| Marketable Securities | $ 17,018 | $ — | $ 17,018 | $ — |
| Total | $ 17,018 | $ — | $ 17,018 | $ — |

**(9) NEW ACCOUNTING PRONOUNCEMENTS**

In September 2006, the FASB issued SFAS No. 157. SFAS No. 157 establishes a common definition for fair value to be applied under GAAP requiring use of fair value, establishes a framework for measuring fair value, and expands disclosure about such fair value measurements. Issued in February 2008, FASB Staff Position No. SFAS 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13* , removed leasing transactions accounted for under FASB Statement No. 13, *Accounting for Leases* , and related guidance from the scope of SFAS No. 157. Issued in February 2008, FASB Staff Position No. SFAS 157-2, *Effective Date of FASB Statement No. 157* , deferred the effective date of SFAS No. 157 for all nonfinancial assets and nonfinancial liabilities to fiscal years beginning after November 15, 2008. The adoption of FASB Staff Position No. SFAS 157-2 did not have a material effect on the Company's consolidated financial statements.

In December 2007, the FASB ratified the consensus reached by the EITF on EITF Issue No. 07-1, *Accounting for Collaborative Arrangements* ("EITF 07-1"). EITF 07-1 requires collaborators to present the results of activities for which they act as the principal on a gross basis and report any payments received from (made to) other collaborators based on other applicable GAAP or, in the absence of other applicable GAAP, based on analogy to authoritative accounting literature or a reasonable, rational, and consistently applied accounting policy election. Further, EITF 07-1 clarified the determination of whether transactions within a collaborative arrangement are part of a vendor-customer (or analogous) relationship subject to EITF Issue No. 01-9, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)* . EITF 07-1 became effective for the Company beginning on January 1, 2009. The implementation of EITF 07-1 did not have a material effect on the Company's consolidated financial statements.

**(10) SUBSEQUENT EVENT**

**NASDAQ Compliance**

On March 6, 2009, the Company received notice from The NASDAQ Stock Market LLC ("NASDAQ") that it was not in compliance with NASDAQ Marketplace Rule 4310(c)(3) (the "Rule"), which requires an issuer to maintain a minimum $35 million market value of its listed securities for continued listing on The NASDAQ Capital Market. NASDAQ also noted that the Company was not in compliance with either of the other alternatives for compliance with the Rule, which require minimum stockholders' equity of $2,500,000 or net income from continuing operations of $500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years, respectively. The Company was provided a period of 90 calendar days, or until June 4, 2009, to regain compliance with the Rule. On April 2, 2009, the Company received a determination from NASDAQ indicating that the Company had evidenced compliance with the Rule for continued listing on The NASDAQ Capital Market.

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

The following discussion of the financial condition and results of operations of EXACT Sciences Corporation should be read in conjunction with the condensed consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and the audited financial statements and notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2008, which has been filed with the Securities and Exchange Commission, or SEC.

### Forward-Looking Statements

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended, that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, can generally be identified by the use of forward-looking terms such as "believe," "expect," "may," "will," "should," "could," "seek," "intend," "plan," "estimate," "anticipate" or other comparable terms. Forward-looking statements in this Quarterly Report on Form 10-Q may address the following subjects among others: statements regarding the sufficiency of our capital resources, expected operating losses, expected license fee revenues, expected research and development expenses, expected general and administrative expenses and our expectations concerning our business strategy. Forward-looking statements involve inherent risks and uncertainties which could cause actual results to differ materially from those in the forward-looking statements, as a result of various factors including those risks and uncertainties described in the Risk Factors and in Management's Discussion and Analysis of Financial Condition and Results of Operations sections of this report and our Annual Report on Form 10-K for the year ended December 31, 2008. We urge you to consider those risks and uncertainties in evaluating our forward-looking statements. We caution readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date made. Except as otherwise required by the federal securities laws, we disclaim any obligation or undertaking to publicly release any updates or revisions to any forward-looking statement contained herein (or elsewhere) to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.*

### Overview

EXACT Sciences Corporation is a molecular diagnostics company focused on colorectal cancer. Our non-invasive stool-based DNA (sDNA) screening technology includes proprietary and patented methods that isolate and analyze human DNA present in stool to screen for the presence of colorectal pre-cancer and cancer. We believe that our proprietary methods and technologies have several advantages over other screening options that may ultimately lead to decreased mortality associated with colorectal cancer, which is the third leading cause of cancer death overall, the second leading cause of death from cancers that affect both men and women, and the leading cause of cancer death among non-smokers in the United States.

Currently, we license certain of our colorectal cancer screening technologies on an exclusive basis in the U.S. and Canada through December 2010 to Laboratory Corporation of America® Holdings, or LabCorp®. LabCorp has developed and commercially offers a non-invasive stool-based DNA (sDNA) colorectal cancer screening service for the average-risk population, which is based on certain of our technologies.

Our primary goal is to become the market leader for a patient-friendly diagnostic screening product for the early detection of colorectal pre-cancer and cancer. Our strategic roadmap to achieve this goal includes the following key components:

- develop and refine our non-invasive sDNA colorectal pre-cancer and cancer screening test;
- advance our product through U.S. Food and Drug Administration, or FDA, clinical trials;
- secure insurance coverage and reimbursement for our product; and
- commercialize an FDA-cleared product that detects colorectal pre-cancer and cancer.

We believe obtaining FDA approval is critical to building broad demand and successful commercialization for our sDNA colorectal cancer screening technologies. In 2009, we intend to focus on further refining our product design to demonstrate the clinical superiority of the test to detect pre-cancer and adenomas while balancing its product attributes to enable ease of commercialization and widespread laboratory adoption. Additionally, we intend to finalize plans for clinical trials in 2009—with the goal of confirming our trial protocols with the FDA.

We have generated limited operating revenues since inception and, as of March 31, 2009, we had an accumulated deficit of approximately $176.3 million. Losses have historically resulted from costs incurred in conjunction with research, development and clinical study initiatives; salaries and benefits associated with the hiring of personnel; the initiation of marketing programs; and prior to August 31, 2007, the build-out of our sales infrastructure to support the commercialization of SDNA screening. We expect to continue to incur losses for the next several years, and it is possible we may never achieve profitability.

**Recent Developments**

***New Senior Management Team***

Effective April 2, 2009, Jeffrey R. Luber resigned as our President, Chief Executive Officer and member of our board of directors and Charles R. Carelli, Jr. resigned as our Chief Financial Officer.

On March 18, 2009, our board of directors appointed Kevin T. Conroy as President and Chief Executive Officer, effective April 2, 2009. Also on March 18, 2009, based on the recommendation of our corporate governance and nominating committee, the board of directors appointed Mr. Conroy to fill a vacancy on our board. Our board of directors also appointed Maneesh Arora as our Senior Vice President and Chief Financial Officer, effective April 2, 2009.

***Genzyme Strategic Transaction***

In January 2009, we completed a strategic transaction with Genzyme Corporation, pursuant to which we assigned to Genzyme all of our intellectual property applicable to the fields of prenatal and reproductive health and granted Genzyme an irrevocable, perpetual, exclusive, worldwide, fully-paid, royalty-free license to use and sublicense all of our remaining intellectual property in all fields other than colorectal cancer detection and stool-based disease detection. We retained our rights in both the assigned and licensed intellectual property in the fields colorectal cancer detection and stool-based disease detection. We and Genzyme also agreed to form a joint advisory committee to assist Genzyme in the achievement of product development goals related to the purchased intellectual property and to assist us with our regulatory goals.

Genzyme agreed to pay us an aggregate of $18.5 million, of which $16.65 million was paid at closing and $1.85 million is subject to a holdback by Genzyme to satisfy certain of our potential indemnification obligations. Subject to terms of the strategic agreement, one-half of the holdback amount will be released to us in 12 months and one-half will be released in 18 months. Genzyme also agreed to pay a double-digit royalty to us on income received by Genzyme as a result of any licenses or sublicenses to third parties of the assigned or licensed intellectual property in any field other than prenatal and reproductive health or colorectal cancer detection and stool-based disease detection.

In addition, we sold to Genzyme 3,000,000 shares of our common stock at a per share price of $2.00, for a total purchase price of $6.0 million.

***Messrs. Luber and Carelli Severance***

In connection with their departures in March 2009, Messrs. Luber and Carelli were entitled to receive severance benefits pursuant to their existing retention agreements, including salary continuation of $472,500 and $287,500, which is equal to eighteen months and fifteen months, respectively, of their base salaries as of the date of termination. On March 31, 2009, we entered into release agreements with Messrs. Luber and Carelli that provided, in exchange for a general release in favor of us, for the accelerated payment of the salary continuation obligations on March 31, 2009. In addition, the release agreements also provided for the repurchase by us of certain options held by Messrs. Luber and Carelli for an aggregate of 895,000 shares of common stock, in lieu of accelerated vesting and an extension of the option exercise period arising from their retention agreements. We paid Messrs. Luber and Carelli approximately $39,000 and $11,000, respectively, to repurchase Mr. Luber's options to purchase 620,000 shares and Mr. Carelli's options to purchase 275,000 shares. The purchase price of the outstanding options represented a 75 percent discount from the estimated fair value of the vested options as of March 31, 2009. Messrs. Luber and Carelli retained options to purchase 80,207 and 43,124 shares at an exercise price of $1.83, following the termination of their employment, respectively.

***Compliance with NASDAQ Listing Requirements***

On March 6, 2009, we received notice from The NASDAQ Stock Market LLC, or NASDAQ, that we were not in compliance with NASDAQ Marketplace Rule 4310(c)(3), or the Rule, which requires an issuer to maintain a minimum $35 million market value of its listed securities for continued listing on The NASDAQ Capital Market. NASDAQ also noted that we were not in compliance with either of the other alternatives for compliance with the Rule, which require minimum stockholders' equity of $2,500,000 or net

income from continuing operations of $500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years, respectively. On April 2, 2009, we received a determination from NASDAQ indicating that we had evidenced compliance with the Rule for continued listing on The NASDAQ Capital Market.

**Significant Accounting Policies**

This management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition and intangible assets. We base our estimates on historical experience and on various other factors that are believed to be appropriate under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The notes to our consolidated financial statements included in our annual report on Form 10-K for the year ended December 31, 2008 include a summary of the significant accounting policies and methods used in the preparation of our consolidated financial statements. As described below, we believe that that the following accounting policies and judgments are critical to fully understand and evaluate our reported financial results.

***Revenue Recognition.***

***License fees.*** License fees for the licensing of product rights on initiation of strategic agreements are recorded as deferred revenue upon receipt and recognized as revenue on a straight-line basis over the license period. On June 27, 2007, we entered into an amendment to our exclusive license agreement with LabCorp, or the Second Amendment, that, among other modifications to the terms of the license, extended the exclusive license period from August 2008 to December 2010, subject to carve-outs for certain named organizations. Accordingly, we are amortizing the remaining deferred revenue balance resulting from our license agreement with LabCorp at the time of the Second Amendment ($4.7 million) on a straight-line basis over the remaining exclusive license period, which ends in December 2010.

As more fully described under the heading "Genzyme Strategic Transaction" above, in connection with the Genzyme strategic transaction, we received an up-front payment of $16.65 million on January 27, 2009 in exchange for the assignment and licensing of certain of our intellectual property to Genzyme. Pursuant to the provisions of SEC Staff Accounting Bulletin No. 104 and EITF No. 00-21, which govern revenue recognition, our on-going performance obligations to Genzyme under the Collaboration, License and Purchase Agreement, or the CLP Agreement, including our obligation to deliver certain intellectual property improvements to Genzyme during the initial five year collaboration period, were deemed to be undelivered elements of the CLP Agreement on the date of closing. Accordingly, we deferred the initial $16.65 million in cash received at closing and are amortizing that up-front payment on a straight line basis into the License Fee Revenue line item in our statements of operations over the initial five-year collaboration period ending in January 2014. Receipt of any holdback amounts will similarly be deferred and amortized on a straight line basis into the License Fee Revenue line item in our statements of operations over the remaining term of the collaboration at the time of receipt.

In addition, Genzyme paid $2.00 per share for the 3.0 million shares purchased from us on January 27, 2009, representing a premium of $0.51 per share above the closing price of the Company's common stock on that date of $1.49 per share. Under FASB Technical Bulletin No. 85-6, the aggregate premium paid by Genzyme over the closing price of our common stock on the date of the transaction of $1.53 million was deemed to be a part of the total consideration for the CLP Agreement. Accordingly, we deferred the aggregate $1.53 million premium and will amortize that amount on a straight line basis into the License Fee Revenue line item in our statements of operations over the initial five year collaboration period ending in January 2014. We recognized approximately $0.7 million in license fee revenue in connection with the amortization of the up-front payments from Genzyme during the quarter ended March 31, 2009.

***Product royalty fees.*** We have licensed certain of our technologies, including improvements to such technologies, on an exclusive basis through December 2010 to LabCorp. LabCorp developed and commercially offered PreGen-Plus, a non-invasive sDNA colorectal cancer screening service for the average-risk population based on our Version 1 technology, from August 2003 through June 2008. In June 2008, LabCorp stopped offering PreGen-Plus. On July 14, 2008, LabCorp began to commercially offer ColoSure, its next generation non-invasive, sDNA testing service for the detection of colorectal cancer in the average-risk population, which is based on certain of our intellectual property. We are entitled to the same royalty and milestone structure on any sales of ColoSure as we were entitled to on sales of PreGen-Plus.

Prior to the effective date of the Second Amendment, our product royalty fees were based on a specified contractual percentage of LabCorp's cash receipts from performing PreGen-Plus tests. Accordingly, we recorded product royalty fees based on this specified percentage of LabCorp's cash receipts, as reported to us each month by LabCorp. Subsequent to the effective date of the Second Amendment, our product royalty fees are based on a specified contractual percentage of LabCorp's net revenues from sales of PreGen-Plus through June 1, 2008, when LabCorp stopped offering PreGen-Plus, and from sales of ColoSure from and after July 2008. Accordingly, subsequent to the effective date of the Second Amendment, we record product royalty fees based on the specified contractual percentage of LabCorp's net revenues from its sales of such colorectal cancer screening tests, as reported to us each month by LabCorp. The current royalty rate is 15%, subject to an increase to 17% in the event that LabCorp achieves a specified significant threshold of annual net revenues from the sales of such colorectal cancer screening tests.

Additionally, as described below under the heading "Crirical Accounting Estimate — Third Party Royalty Obligation,"pursuant to the Second Amendment, we are potentially obligated to reimburse LabCorp for certain third-party royalty payments. To the extent we incur liabilities in connection with this provision of the Second Amendment, the accretion of such liabilities will be recorded as a reduction in the product royalty fee line item in our statements of operations.

***Other revenue .*** Revenue from milestone and other performance-based payments is recognized as revenue when the milestone or performance is achieved and collection of the receivable is estimable and probable.

***Patent Costs .*** Patent costs, which have historically consisted of related legal fees, are capitalized as incurred and are amortized beginning when patents are approved over an estimated useful life of five years. Capitalized patent costs are expensed upon disapproval, upon a decision by us to no longer pursue the patent or when the related intellectual property is either sold or deemed to be no longer of value to us. In connection with the Genzyme transaction, we sold our then-remaining capitalized intellectual property to Genzyme on January 27, 2009, and accordingly, we wrote-off the remaining unamortized capitalized patent costs at that time.

We apply SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets and for Long-Lived Assets* , or SFAS No. 144, which requires that we continually evaluate whether events or circumstances have occurred that indicate that the estimated remaining useful life of long-lived assets and certain identifiable intangibles and goodwill may warrant revision or that the carrying value of these assets may be impaired.

***Stock-Based Compensation.*** We adopted SFAS No. 123(R) effective January 1, 2006 using the modified prospective transition method. SFAS No. 123(R) requires all share-based payments to employees, including grants of employee stock options and shares purchased under an employee stock purchase plan (if certain parameters are not met), to be recognized in the financial statements based on their fair values. SFAS No. 123(R) did not change the accounting guidance for share-based payment transactions with parties other than employees provided in SFAS No. 123, as originally issued and EITF 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services* . Prior to January 1, 2006, we accounted for stock-based compensation under the provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* .

***Critical Accounting Estimate - Third Party Royalty Obligation***

Pursuant to the terms of the Second Amendment to our license agreement with LabCorp, we are obligated to reimburse LabCorp for certain third-party royalty payments if LabCorp's third-party royalty rate is greater than a specified royalty rate during the measuring period, as outlined in the table below. During the quarter ended March 31, 2009, we paid LabCorp approximately $1.5 million related to our obligation for the first measurement period, which ended on December 31, 2008. Our future obligation to pay LabCorp pursuant to this provision of the Second Amendment is based on LabCorp's sales volumes of colorectal cancer screening tests using our technology during two separate measurement periods, as defined below. A significant increase in such sales volumes during either measurement period, as compared to historical PreGen-Plus sales volumes, could reduce our potential obligation during such measurement period, while test volumes consistent with historical PreGen-Plus sales levels could result in aggregate future payments to LabCorp totaling up to $2.0 million during the remaining measurement periods. Until LabCorp's sales of colorectal cancer screening tests using our technology increase to a level that would reduce this potential maximum obligation, if ever, we intend to record our estimated obligation under this provision of the Second Amendment as a reduction in the product royalty fee line item in our statements of operations, in accordance with EITF No. 01-09, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)* . Based on sales volumes of PreGen-Plus through June 1, 2008 (when LabCorp ceased selling this service) and anticipated sales volumes of ColoSure, as of March 31, 2009, we had accrued a total of $1.97 million related to the total potential $2.0 million remaining obligation to LabCorp. Amounts included in the table are in thousands.

| Measurement period Start Date | Measurement period End Date | Payment Due Date for Measurement Period | Potential Minimum Third Party Royalty Obligation During Measurement Period | Potential Maximum Third Party Royalty Obligation During Measurement Period |
|---|---|---|---|---|
| January 1, 2009 | December 31, 2009 | January 30, 2010 | $ — | $ 1,000 |
| January 1, 2010 | December 31, 2010 | January 30, 2011 | — | 1,000 |
| | | | $ — | $ 2,000 |

***Recent Accounting Pronouncements***

In September 2006, the FASB issued Statement No. 157, *Accounting for Fair Value Measurements* , or SFAS No. 157. SFAS No. 157 establishes a common definition for fair value to be applied under GAAP requiring use of fair value, establishes a framework for measuring fair value, and expands disclosure about such fair value measurements. Issued in February 2008, FASB Staff Position No. SFAS 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13* , removed leasing transactions accounted for under FASB Statement No. 13, *Accounting for Leases* , and related guidance from the scope of SFAS No. 157. Issued in February 2008, FASB Staff Position No. SFAS 157-2, *Effective Date of FASB Statement No. 157* , deferred the effective date of SFAS No. 157 for all nonfinancial assets and nonfinancial liabilities to fiscal years beginning after November 15, 2008. The adoption of FASB Staff Position No. SFAS 157-2 did not have a material effect on our consolidated financial statements.

In November 2007, the FASB issued EITF Issue No. 07-1, *Accounting for Collaborative Arrangements*, or EITF 07-1, which defines collaborative arrangements and establishes reporting requirements for transactions between participants in a collaborative arrangement and between participants in the arrangement and third parties, including the appropriate income statement presentation and classification of, and the required disclosures related to, these arrangements. EITF 07-1 is effective January 1, 2009, to be applied retrospectively for collaborative arrangements existing as of the effective date. The adoption of EITF 07-1 did not have a material impact on our consolidated financial statements.

**Results of Operations**

***Revenue.*** Net revenue is primarily composed of the amortization of up-front technology license fees associated with our amended license agreement with LabCorp and our collaboration, license and purchase agreement with Genzyme. The unamortized LabCorp up-front payment is being amortized on a straight-line basis over the remaining exclusive license period, which ends in December 2010. The unamortized Genzyme up-front payment is being amortized on a straight-line basis over the initial Genzyme collaboration period, or through January 2014. While we expect license fee revenue resulting from the amortization of the up-front license payment from LabCorp in 2009 to be consistent with amounts recorded in 2008, we expect that total license fee revenue for 2009 will be higher than amounts recorded in 2008 as a result of amortization of payments received from Genzyme in January 2009 in connection with the Genzyme strategic transaction.

Net revenue increased to $1.0 million for the quarter ended March 31, 2009, from $0.1 million for the same period in 2008. The increase in net revenue for the quarter ended March 31, 2009, when compared to the quarter ended March 31, 2008, was primarily due to an increase of approximately $0.7 million in license fee amortization as a direct result of the commencement of amortization of the upfront payment received from Genzyme in January 2009. In addition, product royalty revenues were higher in the quarter ended March 31, 2009 when compared to the quarter ended March 31, 2008 due to product royalty revenue charges of $0.3 million recorded in the quarter ended March 31, 2008. These charges related to our third-party royalty reimbursement obligation to LabCorp, and resulted in negative product royalty revenue for the quarter ended March 31, 2008.

***Research and development expenses.*** Research and development expenses decreased to $0.1 million for the three months ended March 31, 2009 from $0.9 million for the three months ended March 31, 2008. The decrease was primarily the result of the continuing effect of the cost reduction plans undertaken in 2007 and 2008. Research and development costs for the quarter ended March 31, 2009 were primarily comprised of external licensing costs and rent.

As a result of the activities anticipated in support of our objectives toward developing an FDA-approved in vitro diagnostic test, we expect research and development costs in 2009 to be higher than 2008 levels.

***General and administrative expenses.*** General and administrative expenses increased to $4.8 million for the quarter ended March 31, 2009, compared to $1.8 million for the same period in 2008. This increase was primarily the result of $1.9 million in transaction costs related to the Genzyme strategic transaction in January 2009, including legal, audit, and investment banking fees as well as approximately $0.8 million in retention bonus payments made to employees pursuant to board-approved retention agreements. Non-cash stock-based compensation expense included in general and administrative expense in the quarter ended March 31, 2009 also increased by $0.4 million compared to the same period in 2008 primarily as a result of $0.3 million in non-cash charges recorded in the first quarter of 2009 in connection with the option modifications made pursuant to separation and release agreements with Messrs. Luber and Carelli described elsewhere in this report. These increases were partially offset by a decrease in professional fees related to on-going operations of $0.2 million in the first quarter of 2009 compared to the prior year period.

We expect general and administrative expenses in 2009 to be higher than 2008 levels, primarily as a result of professional fees in connection with the Genzyme strategic transaction and the transition of our senior management team as described above.

***Interest income.*** Primarily as a result of less favorable interest rates on investments held, interest income decreased to $34,000 for the three months ended March 31, 2009 from $0.1 million for the same period in 2008.

**Liquidity and Capital Resources**

We have financed our operations since inception primarily through private and public offerings of our equity securities, cash received from LabCorp in connection with our license agreement, and cash received in January 2009 from Genzyme in connection with the Genzyme strategic transaction described above. As of March 31, 2009, we had approximately $3.6 million in unrestricted cash and cash equivalents, $0.6 million in restricted cash, which has been pledged as collateral for an outstanding letter of credit in connection with the lease for our Marlborough, Massachusetts facility, and approximately $17.0 million in investments in marketable securities. All of our investments in marketable securities are comprised of fixed income investments and all are deemed available-for-sale.

Net cash used in operating activities was $7.0 million for the quarter ended March 31, 2009 as compared to $3.1 million for the quarter ended March 31, 2008. The principal use of cash in operating activities for the three months ended March 31, 2009 and 2008 was to fund our net loss. The increase in net cash used in operating activities for quarter ended March 31, 2009 as compared to the same period in 2008, was primarily due to the payment of the $1.5 million to LabCorp to satisfy our third party royalty obligation for 2008, one-time transaction payments for professional fees in connection with the Genzyme strategic transaction of approximately $1.1 million, one time retention bonus payments to employees pursuant to board-approved retention payments of approximately $0.8 million, and one-time severance payments of approximately $0.8 million to former executives, each as described elsewhere in this report. Cash flows from operations can vary significantly due to various factors, including changes in our operations, prepaid expenses, accounts payable and accrued expenses.

Net cash used in investing activities was $17.0 million for the quarter ended March 31, 2009 and represented the investment of a portion of the funds received in January 2009 from the Genzyme strategic transaction. Net cash provided by investing activities was $2.6 million for the three months ended March 31, 2008 and primarily resulted from the maturity of marketable securities. Purchases of property and equipment were not material during the quarters ended March 31, 2009 and 2008. As a result of the cash received in January 2009 in connection with the Genzyme strategic transaction, and based on our plans for further development of our sDNA technology for colorectal cancer detection, we expect that purchases of property and equipment during 2009 will be higher than amounts invested in 2008.

Net cash provided by financing activities was $22.6 million for the quarter ended March 31, 2009 and was comprised primarily of the receipt of cash in connection with the Genzyme strategic transaction. We also paid $50,000 to repurchase outstanding options from former executives as described elsewhere in this report.

We expect that cash, cash equivalents and marketable securities on hand at March 31, 2009 will be sufficient to fund our current operations for at least the next twelve months, based on current operating plans. This projection is based on our currently anticipated cost structure and operating assumptions and does not provide for the full funding of our current strategic plan, the centerpiece of which is the commercialization of our sDNA technology through completion of the development an FDA-approved in vitro diagnostic test for sDNA colorectal pre-cancer and cancer screening. We do not expect that product royalty payments or milestone payments from LabCorp will materially supplement our liquidity position in the next twelve months, if at all. Since we have no current sources of material ongoing revenue, we believe that we will need to raise additional capital to complete our strategic plan. If we are unable to obtain sufficient additional funds to enable us to fund our operations through the completion of such plan, our results of operations and financial condition would be materially adversely affected and we may be required to delay the implementation of our plan and otherwise scale back operations. Even if we successfully raise sufficient funds to continue the implementation of our strategic plan, we cannot assure you that our business will ever generate sufficient cash flow from operations to become profitable.

The table below reflects our estimated fixed obligations and commitments as of March 31, 2009:

| Description | Total | Payments Due by Period | | | |
|---|---|---|---|---|---|
| | | Less Than One Year | 1 - 3 Years | 3 - 5 Years | More Than 5 Years |
| | | | (in Thousands) | | |
| Obligations under license and collaborative agreements | $ 4,144 | $ 1,221 | $ 1,360 | $ 342 | $ 1,221 |
| Operating lease obligations | 1,367 | 1,023 | 344 | — | — |
| Severance obligations | 75 | 75 | — | — | — |
| Purchase obligations | 152 | 152 | — | — | — |
| Total | $ 5,738 | $ 2,471 | $ 1,704 | $ 342 | $ 1,221 |

Obligations under license and collaboration agreements represent on-going commitments under various research collaborations and licensing agreements. This category includes a potential obligation to reimburse LabCorp for a certain third-party royalty, up to a remaining aggregate maximum of $2.0 million, during two defined measurement periods between January 1, 2009 and December 31, 2010. Although payment of this potential obligation is dependent upon LabCorp's sales levels of ColoSure during the measurement periods, the total remaining potential $2.0 million obligation has been included in the table above based on historical sales levels of PreGen-Plus and current sales levels of ColoSure as of March 31, 2009. Commitments under license agreements generally expire concurrent with the expiration of the intellectual property licensed from the third party. Operating leases reflect remaining obligations associated with leased facilities in Marlborough, Massachusetts. Purchase obligations primarily represent historical amounts owed in connection with our operations. Severance obligations represent remaining commitments to former personnel, including our former Chief Executive Officer and former Chief Financial Officer.

**Off-Balance Sheet Arrangements**

As of March 31, 2009, we had no off-balance sheet arrangements.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Our exposure to market risk is principally confined to our cash, cash equivalents and marketable securities. We invest our cash, cash equivalents and marketable securities in securities of the U.S. government and its agencies and in investment-grade, highly liquid investments consisting of commercial paper, bank certificates of deposit and corporate bonds, all of which are currently invested in the U.S. and are classified as available-for-sale. We place our cash equivalents and marketable securities with high-quality financial institutions, limit the amount of credit exposure to any one institution and have established investment guidelines relative to diversification and maturities designed to maintain safety and liquidity.

Based on a hypothetical ten percent adverse movement in interest rates, the potential losses in future earnings, fair value of risk-sensitive financial instruments, and cash flows are immaterial, although the actual effects may differ materially from the hypothetical analysis.

**Item 4T. Controls And Procedures**

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15b promulgated under the Exchange Act of 1934, as amended. Based upon that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that, as of March 31, 2009, our disclosure controls and procedures were effective in enabling us to record, process, summarize and report information required to be included in our periodic SEC filings within the required time period. Our disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the periodic reports filed with the SEC is accumulated and communicated to our management, including our principal executive, financial and accounting officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

During the fiscal quarter covered by this report, there have been no significant changes in internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Part II - Other Information**

**Item 1A. Risk Factors**

**Factors That May Affect Future Results**

We operate in a rapidly changing environment that involves a number of risks that could materially affect our business, financial condition or future results, some of which are beyond our control. In addition to the other information set forth in this report, the risks and uncertainties that we believe are most important for you to consider are discussed in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008. There are no material changes to the risk factors described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008. Additional risks and uncertainties not presently known to us, which we currently deem immaterial or which are similar to those faced by other companies in our industry or business in general, may also impair our business operations. If any of the foregoing risks or uncertainties actually occurs, our business, financial condition and operating results would likely suffer.

**Item 6. Exhibits**

| Exhibit Number | Description |
|---|---|
| 3.1 | Amended and Restated By-Laws of the Registrant, as amended. |
| 10.1** | Collaboration, License and Purchase Agreement between Genzyme Corporation and the Registrant, dated January 27, 2009 (previously filed as Exhibit 10.1 to our Report on Form 8-K filed on January 28, 2009, which is incorporated herein by reference). |
| 10.2** | Assignment, Sublicense, Consent and Eighth Amendment to License Agreement among the Registrant, Genzyme Corporation and The Johns Hopkins University, dated January 27, 2009 (previously filed as Exhibit 10.2 to our Report on Form 8-K filed on January 28, 2009, which is incorporated herein by reference). |
| 10.3** | Amended and Restated License Agreement between Genzyme Corporation and the Registrant, dated January 27, 2009 (previously filed as Exhibit 10.3 to our Report on Form 8-K filed on January 28, 2009, which is incorporated herein by reference). |
| 10.4 | Common Stock Subscription Agreement between the Registrant and Genzyme Corporation, dated January 27, 2009 (previously filed as Exhibit 10.4 to our Report on Form 8-K filed on January 28, 2009, which is incorporated herein by reference). |
| 10.5† | Employment Agreement by and between Kevin T. Conroy and the Registrant, dated as of March 18, 2009 (previously filed as Exhibit 10.1 to our Report on Form 8-K filed on March 18, 2009, which is incorporated herein by reference). |
| 10.6† | Employment Agreement by and between Maneesh Arora and the Registrant, dated as of March 18, 2009 (previously filed as Exhibit 10.2 to our Report on Form 8-K filed on March 18, 2009, which is incorporated herein by reference). |
| 10.7† | Release Agreement between Jeffrey R. Luber and the Registrant, dated as of March 31, 2009 (previously filed as Exhibit 10.36 to our Annual Report on Form 10-K for the period ended December 31, 2008, which is incorporated herein by reference). |
| 10.8† | Release Agreement between Charles R. Carelli, Jr. and the Registrant, dated as of March 31, 2009 (previously filed as Exhibit 10.37 to our Annual Report on Form 10-K for the period ended December 31, 2008, which is incorporated herein by reference). |
| 31.1 | Certification Pursuant to Rule 13(a)-14(a) or Rule 15d-14(a) of Securities Exchange Act of 1934. |
| 31.2 | Certification Pursuant to Rule 13(a)-14(a) or Rule 15d-14(a) of Securities Exchange Act of 1934. |
| 32.1 | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

** *Confidential treatment has been requested for portions of this exhibit.*
† *Indicates a management contract or any compensatory plan, contract or arrangement.*

**SIGNATURES**

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

EXACT SCIENCES CORPORATION

Date: May 15, 2009

By: /s/ Kevin T. Conroy
Kevin T. Conroy

President and Chief Executive Officer
(Authorized Officer)

Date: May 15, 2009

By: /s/ Maneesh K. Arora
Maneesh K. Arora

Chief Financial Officer
(Authorized Officer and Principal Financial Officer)

## EXHIBIT INDEX

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**Exhibit 3.1**

# AMENDED AND RESTATED

# BY-LAWS

# OF

# EXACT SCIENCES CORPORATION

**BY-LAWS**

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**AMENDED AND RESTATED**

**BY-LAWS**

**OF**

**EXACT SCIENCES CORPORATION**
**(the "Corporation")**

## ARTICLE 1 - STOCKHOLDERS

1.1 PLACE OF MEETINGS. All meetings of stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Chairman of the Board (if any), the board of directors of the Corporation (the "Board of Directors") or the President or, if not so designated, at the registered office of the Corporation.

1.2 ANNUAL MEETING. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date to be fixed by the Chairman of the Board (if any), Board of Directors or the President (which date shall not be a legal holiday in the place where the meeting is to be held) at the time and place to be fixed by the Chairman of the Board, the Board of Directors or the President and stated in the notice of the meeting.

1.3 SPECIAL MEETINGS. Special meetings of stockholders may be called at any time by the Chairman of the Board (if any), a majority of the Board of Directors or the President and shall be held at such place, on such date and at such time as shall be fixed by the Board of Directors or the person calling the meeting. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 NOTICE OF MEETINGS. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notices of all meetings shall state the place, date and hour of the meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation.

1.5 VOTING LIST. The officer who has charge of the stock ledger of the Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the metropolitan area of the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 QUORUM. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Shares held by brokers which such brokers are prohibited from voting (pursuant to their discretionary authority on behalf of beneficial owners of such shares who have not submitted a proxy with respect to such shares) on some or all of the matters before the stockholders, but which shares would otherwise be entitled to vote at the meeting ("Broker Non-Votes") shall be counted, for the purpose of determining the presence or absence of a quorum, both (a) toward the total voting power of the shares of capital stock of the Corporation and (b) as being represented by proxy. If a quorum has been established for the purpose of conducting the meeting, a quorum shall be deemed to be present for the purpose of all votes to be conducted at such meeting, provided that where a separate vote by a class or classes, or series thereof, is required, a majority of the voting power of the shares of such class or classes, or series, present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the voting power of the shares of stock entitled to vote who are present, in person or by proxy, may adjourn the meeting to another place, date, or time.

1.7 ADJOURNMENTS. Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these By-Laws by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as Secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

1.8 VOTING AND PROXIES. At any meeting of the stockholders, each stockholder shall have one vote for each share of stock entitled to vote at such meeting held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided in the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting (to the extent not otherwise prohibited by the Certificate of Incorporation or these By-laws), may vote or express such consent or dissent in person or may authorize another person or persons to vote or act for such stockholder by written proxy executed by such stockholder or his or her authorized agent or by a transmission permitted by law and delivered to the Secretary of the

Corporation. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 1.8 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or reproduction shall be a complete reproduction of the entire original writing or transmission.

In the election of directors, voting shall be by written ballot, and for any other action, voting need not be by ballot.

1.9 ACTION AT MEETING. When a quorum is present at any meeting of stockholders, the holders of a majority of the stock present or represented and voting on a matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, the holders of a majority of the stock of that class present or represented and voting on such matter) shall decide any matter to be voted upon by the stockholders at such meeting (other than the election of directors), except when a different vote is required by express provision of law, the Certificate of Incorporation or these By-Laws. Any election of directors by the stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote at such election, except as otherwise provided by the Certificate of Incorporation. For the purposes of this paragraph, Broker Non-Votes represented at the meeting but not permitted to vote on a particular matter shall not be counted, with respect to the vote on such matter, in the number of (a) votes cast, (b) votes cast affirmatively, or (c) votes cast negatively.

1.10 INTRODUCTION OF BUSINESS AT MEETINGS.

**A. ANNUAL MEETINGS OF STOCKHOLDERS.**

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 1.10, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.10. For the avoidance of doubt, the foregoing clause (b) shall be the exclusive means for a stockholder to bring nominations or business properly before an annual meeting of stockholders (other than matters properly brought under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), and such stockholder must comply with the notice and other procedures set forth in Section 1.10 of this By-law to bring such nominations or business properly before an annual meeting of stockholders.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (b) of paragraph (A)(1) of this Section 1.10, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (ii) the stockholder must have provided any updates or supplements to such notice at the times and in the forms required by this Section 1.10, (iii) the stockholder, together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, must have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by this Section 1.10 and (iv) the business proposed by the stockholder must otherwise be a proper matter for stockholder action. To be timely, a stockholder's written notice shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the date of the preceding year's annual meeting, provided, however, that if either (i) the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after the first anniversary date of the preceding year's annual meeting or (ii) no annual meeting of stockholders were held in the preceding year, notice by the stockholder to be timely must be so received not earlier than the close of business on the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. Such stockholder's written notice shall set forth:

(a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of each Proposing Person (as defined below);

(c) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person the following information: (A) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future, (B) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (x) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person, (y) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (z) whether or not such Proposing Person and/or, to the extent known, the counterparty to such Synthetic

Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (C) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (D) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (E) any performance-related fees (other than an asset based fee) that such Proposing Person, directly or indirectly, is entitled to based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation or any Synthetic Equity Interests (the disclosures to be made pursuant to the foregoing subclauses (A) through (E) are referred to, collectively, as "Material Ownership Interests") and (iii) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proposing Person or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation;

(d) (i) a description of all agreements, arrangements or understandings by and among any of the Proposing Persons, or by and among any Proposing Persons and any other person (including with any proposed nominees), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(e) a statement whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, will deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by such Proposing Person to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder (such statement, the "Solicitation Statement").

For purposes of this Section 1.10 of these By-laws, the term "Proposing Person" shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders' meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders' meeting is made. For purposes of this Section 1.10 of these By-laws, the term "Synthetic Equity Interest" shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including, without limitation, any derivative, swap, hedge, repurchase or so-called "stock borrowing" agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) in any manner otherwise provide the opportunity to profit or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) A stockholder providing timely notice of nominations or business proposed to be brought before a meeting of stockholders shall further update and supplement such notice, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided in such notice pursuant to this By-law shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such meeting of stockholders, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date for the meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(4) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.10 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least seventy (70) days prior to the first anniversary of the preceding year's annual meeting (or, if the annual meeting is held more than thirty (30) days before or sixty (60) days after such anniversary date, at least seventy (70) days prior to such annual meeting), a stockholder's notice required by this Section 1.10 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

**B. SPECIAL MEETINGS OF STOCKHOLDERS.**

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting

and who complies with the notice procedures set forth in this Section 1.10 (including the procedures to update and supplement the notice). If the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if (i) such stockholder delivers written notice thereof to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth (90th) day prior to such special meeting nor later than the later of (x) the close of business on the sixtieth (60th) day prior to such special meeting or (y) the close of business on the tenth (10th) day following the day on which public announcement is first made of the date of such special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting, (ii) such stockholder's written notice includes the information required to be provided in subparagraphs (a), (c), (d) and (e) of paragraph (A)(2) of this Section 1.10, and (iii) such stockholder has provided updates or supplements (if any) to such notice at the times and in the forms required by paragraph (A)(3) of this Section 1.10. For the avoidance of doubt, for a stockholder to bring nominations before a special meeting of stockholders, such stockholder must comply with the notice and other procedures set forth in this Section 1.10 and this shall be the exclusive means for a stockholder to bring such nominations properly before a special meeting.

**C. GENERAL.**

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.10 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.10. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.10 and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposal or nomination shall be disregarded.

(2) In no event shall the adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders commence a new time period for the giving of a stockholder's notice under this Section 1.10. For purposes of this Section 1.10, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, PR Newswire, Reuters or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 1.10, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 1.10 shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor rule) under the Exchange Act and, to the extent required by such Rule, have such proposals considered and voted on at an annual meeting of stockholders or (ii) the holders of any series of Preferred Stock to elect directors under specified circumstances.

1.11 ACTION WITHOUT MEETING. Stockholders of the Corporation may not take any action by written consent in lieu of a meeting. Notwithstanding any other provision of law, the Certificate of Incorporation or these By-Laws, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast at any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Section 1.11.

## ARTICLE 2 - DIRECTORS

2.1 GENERAL POWERS. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the Corporation except as otherwise provided by law or the Certificate of Incorporation. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law or the Certificate of Incorporation, may exercise the powers of the full Board of Directors until the vacancy is filled. Without limiting the foregoing, the Board of Directors may:

(a) declare dividends from time to time in accordance with law;

(b) purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;

(c) authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, to borrow funds and guarantee obligations, and to do all things necessary in connection therewith;

(d) remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(e) confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(f) adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees, consultants and agents of the Corporation and its subsidiaries as it may determine;

(g) adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees, consultants and agents of the Corporation and its subsidiaries as it may determine; and

(h) adopt from time to time regulations, not inconsistent herewith, for the management of the Corporation's business and affairs.

2.2 NUMBER; ELECTION AND QUALIFICATION. The number of directors which shall constitute the whole Board of Directors shall be determined by resolution of the Board of Directors, but in no event shall be less than three. The number of directors may be decreased at any time and from time to time by a majority of the directors then in office, but only to eliminate vacancies existing by reason of the death, resignation, removal or expiration of the term of one or more directors. The directors shall be elected at the annual meeting of stockholders (or, if so determined by the Board of Directors pursuant to Section 10 hereof, at a special meeting of stockholders), by such stockholders as have the right to vote on such election. Directors need not be stockholders of the Corporation.

2.3 CLASSES OF DIRECTORS. The Board of Directors shall be and is divided into three classes: Class I, Class II and Class III. No one class shall have more than one director more than any other class.

2.4 TERMS IN OFFICE. Each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; provided, however, that each initial director in Class I shall serve for a term ending on the date of the annual meeting next following the end of the Corporation's fiscal year ending December 31, 2000 each initial director in Class II shall serve for a term ending on the date of the annual meeting next following the end of the Corporation's fiscal year ending December 31, 2001; and each initial director in Class III shall serve for a term ending on the date of the annual meeting next following the end of the Corporation's fiscal year ending December 31, 2002.

2.5 ALLOCATION OF DIRECTORS AMONG CLASSES IN THE EVENT OF INCREASES OR DECREASES IN THE NUMBER OF DIRECTORS. In the event of any increase or decrease in the authorized number of directors, (i) each director then serving as such shall nevertheless continue as a director of the class of which he or she is a member until the expiration of such director's current term or his or her prior death, removal or resignation and (ii) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of directors, subject to the second sentence of Section 2.3. To the extent possible, consistent with the foregoing rule, any newly created directorships shall be added to those classes whose terms of office are to expire at the earliest dates following such allocation, unless otherwise provided for from time to time by resolution adopted by a majority of the directors then in office, although less than a quorum. No decrease in the number of directors constituting the whole Board of Directors shall shorten the term of an incumbent Director.

2.6 TENURE. Notwithstanding any provisions to the contrary contained herein, each director shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

2.7 VACANCIES. Unless and until filled by the stockholders, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement thereof, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, if any, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next election of directors of the class for which such director was chosen and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

2.8 RESIGNATION. Any director may resign by delivering his or her written resignation to the Corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.9 REGULAR MEETINGS. Regular meetings of the Board of Directors may be held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

2.10 SPECIAL MEETINGS. Special meetings of the Board of Directors may be held at any time and place, within or without the State of Delaware, designated in a call by the Chairman of the Board (if any), the President, two or more directors, or by one director in the event that there is only a single director in office.

2.11 NOTICE OF SPECIAL MEETINGS. Notice of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (i) by giving notice to such director in person or by telephone at least 48 hours in advance of the meeting, (ii) by sending a telegram or delivering written notice by facsimile transmission or by hand, to his or her last known business or home address at least 48 hours in advance of the meeting, or (iii) by mailing written notice to his or her last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.12 MEETINGS BY TELEPHONE CONFERENCE CALLS. Directors or any members of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall be deemed to constitute presence in person at such meeting.

2.13 QUORUM. A majority of the total number of the whole Board of Directors shall constitute a quorum at all meetings of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by

one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the total number of the whole Board of Directors constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.14 ACTION AT MEETING. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these By-Laws.

2.15 ACTION BY WRITTEN CONSENT. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to such action in writing, and the written consents are filed with the minutes of proceedings of the Board of Directors or committee.

2.16 REMOVAL. Unless otherwise provided in the Certificate of Incorporation, any one or more or all of the directors may be removed, without cause only by the holders of at least seventy-five percent (75%) of the shares then entitled to vote at an election of directors. Any one or more or all of the directors may be removed with cause only by the holders of at least a majority of the shares then entitled to vote at an election of directors.

2.17 COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members of such committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at such meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of the State of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine or as provided herein, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the Board of Directors. Adequate provisions shall be made for notice to members of all meeting of committees. One-third (1/3) of the members of any committee shall constitute a quorum unless the committee shall consist of one (1) or two (2) members, in which event one (1) member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of such committee.

2.18 COMPENSATION OF DIRECTORS. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

## ARTICLE 3 - OFFICERS

3.1 ENUMERATION. The officers of the Corporation shall consist of a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including, but not limited to, a Chairman of the Board, a Vice-Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 ELECTION. The President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 QUALIFICATION. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 TENURE. Except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws, each officer shall hold office until his or her successor is elected and qualified, unless a different term is specified in the vote choosing or appointing such officer, or until his or her earlier death, resignation or removal.

3.5 RESIGNATION AND REMOVAL. Any officer may resign by delivering his or her written resignation to the Chairman of the Board (if any), to the Board of Directors at a meeting thereof, to the Corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Any officer may be removed at any time, with or without cause, by vote of a majority of the entire number of directors then in office.

Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his or her resignation or removal, or any right to damages on account of such removal, whether his or her compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the Corporation.

3.6 VACANCIES. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for

the unexpired term of his predecessor and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

3.7 CHAIRMAN OF THE BOARD AND VICE-CHAIRMAN OF THE BOARD. The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and stockholders at which he or she is present and shall perform such duties and possess such powers as are designated by the Board of Directors. If the Board of Directors appoints a Vice-Chairman of the Board, he or she shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be designated by the Board of Directors.

3.8 PRESIDENT. The President shall, subject to the direction of the Board of Directors, have general charge and supervision of the business of the Corporation. Unless otherwise provided by the Board of Directors, and provided that there is no Chairman of the Board or that the Chairman and Vice-Chairman, if any, are not available, the President shall preside at all meetings of the stockholders, and, if a director, at all meetings of the Board of Directors. The Board of Directors shall designate the Chief Executive Officer of the Corporation. The President shall perform such other duties and shall have such other powers as the Board of Directors may from time to time prescribe. The President shall have the power to enter into contracts and otherwise bind the Corporation in matters arising in the ordinary course of the Corporation's business.

3.9 VICE PRESIDENTS. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the President may from time to time prescribe. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and, when so performing, shall have all the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors. Unless otherwise determined by the Board of Directors, any Vice President shall have the power to enter into contracts and otherwise bind the Corporation in matters arising in the ordinary course of the Corporation's business.

3.10 SECRETARY AND ASSISTANT SECRETARIES. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 TREASURER AND ASSISTANT TREASURERS. The Treasurer shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these By-Laws, to disburse such funds as ordered by the Board of Directors, to make proper accounts for such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the Corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the President or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.12 SALARIES. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.13 ACTION WITH RESPECT TO SECURITIES OF OTHER CORPORATIONS. Unless otherwise directed by the Board of Directors, the President or any officer of the Corporation authorized by the President shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

## ARTICLE 4 - CAPITAL STOCK

4.1 ISSUANCE OF STOCK. Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any issued, authorized capital stock of the Corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2 CERTIFICATES OF STOCK. Every holder of stock of the Corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by such stockholder in the Corporation. Each such certificate shall be signed by, or in the name of the Corporation by, the Chairman or Vice-Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation. Any or all of the signatures on such certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-Laws, applicable securities laws or any agreement among any number of shareholders or among such holders and the Corporation shall have conspicuously noted on the face or back of such certificate either the full text of such restriction or a statement of the existence of such restriction.

4.3 TRANSFERS. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares, properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these By-Laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-Laws.

4.4 LOST, STOLEN OR DESTROYED CERTIFICATES. The Corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the President may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the President may require for the protection of the Corporation or any transfer agent or registrar.

4.5 RECORD DATE. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or, to the extent permitted by the Certificate of Incorporation and these By-laws, to express consent (or dissent) to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting (to the extent permitted by the Certificate of Incorporation and these By-laws) when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

## ARTICLE 5 - GENERAL PROVISIONS

5.1 FISCAL YEAR. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

5.2 CORPORATE SEAL. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 NOTICES. Except as otherwise specifically provided herein or required by law or the Certificate of Incorporation, all notices required to be given to any person pursuant to these by-laws shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram or facsimile transmission. Any such notice shall be addressed to such person at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received shall be deemed to be the time of the giving of the notice.

5.4 WAIVER OF NOTICE. Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these By-Laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person’s duly authorized attorney, or by telegraph, facsimile transmission or any other available method, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice.

5.5 EVIDENCE OF AUTHORITY. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action.

5.6 FACSIMILE SIGNATURES. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these By-Laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

5.7 RELIANCE UPON BOOKS, REPORTS AND RECORDS. Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

5.8 TIME PERIODS. In applying any provision of these By-Laws that requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

5.9 CERTIFICATE OF INCORPORATION. All references in these By-Laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and in effect from time to time.

5.10 TRANSACTIONS WITH INTERESTED PARTIES. No contract or transaction between the Corporation and one or more of the directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(1) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(2) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(3) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee of the Board of Directors, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

5.11 SEVERABILITY. Any determination that any provision of these By-Laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws.

5.12 PRONOUNS. All pronouns used in these By-Laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the persons or persons so designated may require.

## ARTICLE 6 - AMENDMENTS

6.1 BY THE BOARD OF DIRECTORS. Except as is otherwise set forth in these By-Laws, these By-Laws may be altered, amended or repealed, or new by-laws may be adopted, by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

6.2 BY THE STOCKHOLDERS. Except as otherwise set forth in these By-Laws, these By-Laws may be altered, amended or repealed or new by-laws may be adopted by the affirmative vote of the holders of eighty percent (80%) of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at any regular meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new by-laws shall have been stated in the notice of such special meeting.

**Exhibit 31.1**

I, Kevin T. Conroy, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EXACT Sciences Corporation;

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 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 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.

Date: May 15, 2009

By: /s/ Kevin T. Conroy
Kevin T. Conroy
President and Chief Executive Officer

**Exhibit 31.2**

I, Maneesh K. Arora, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EXACT Sciences Corporation;

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 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 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.

Date: May 15, 2009

By: /s/ Maneesh K. Arora
Maneesh K. Arora
Chief Financial Officer

**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**

In connection with the Quarterly Report of EXACT Sciences Corporation (the "Company") on Form 10-Q for the period ending March 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Kevin T. Conroy, President and Chief Executive Officer of the Company and Maneesh K. Arora, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to our knowledge, 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/ Kevin T. Conroy
Kevin T. Conroy
President and Chief Executive Officer

May 15, 2009

/s/ Maneesh K. Arora
Maneesh K. Arora
Chief Financial Officer

May 15, 2009