GILEAD SCIENCES INC

FORM 10-K
(Annual Report)

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Address	333 LAKESIDE DR
	FOSTER CITY, California 94404
Telephone	650-574-3000
CIK	0000882095
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2002

or

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

For the transition period from to

Commission File No. 0-19731

GILEAD SCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware	**94-3047598**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
333 Lakeside Drive, Foster City, California	**94404**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **650-574-3000**

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE
SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
COMMON STOCK $.001 PAR VALUE
(Title of Class)

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (Section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether registrant is an accelerated filer (as defined in Rule 12B-2 of the Act). Yes ☒ No ☐

The aggregate market value of the voting stock held by non-affiliates of the registrant based upon the closing price of the Common Stock on the Nasdaq Stock Market on June 28, 2002 was $4,416,100,000.*

The number of shares outstanding of the Registrant's Common Stock on February 28, 2003 was 198,503,361.

DOCUMENTS INCORPORATED BY REFERENCE

Specified portions of Registrant's Definitive Proxy Statement filed with the Commission pursuant to Regulation 14A in connection with the 2003 Annual Meeting are incorporated by reference into Part III of this Report.

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* Based on a closing price of $32.88 per share. Excludes 61,476,550 shares of the registrant's common stock held by executive officers, directors and stockholders whose ownership exceeds 5% of the Common Stock outstanding at June 30, 2002. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the Registrant or that such person is controlled by or under common control with the Registrant.

GILEAD SCIENCES, INC.
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PART I

ITEM 1. BUSINESS

Forward-Looking Statements and Risk Factors

This report includes forward-looking statements. In particular, statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are contained or incorporated by reference in this report. We have based these forward-looking statements on our current expectations about future events. While we believe these expectations are reasonable, such forward-looking statements are inherently subject to risks and uncertainties, many of which are beyond our control. Our actual results may differ materially from those suggested by these forward-looking statements for various reasons, including those discussed in this report under the heading "Risk Factors That Affect Gilead" at page 23. Given these risks and uncertainties, you are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements included in this report are made only as of the date hereof. We do not undertake and specifically decline any obligation to update any such statements or to publicly announce the results of any revisions to any of such statements to reflect future events or developments. When used in the report, unless otherwise indicated, "we," "our" and "us" refers to Gilead and its subsidiaries.

Overview

Gilead Sciences, Inc. is a biopharmaceutical company that discovers, develops and commercializes therapeutics to advance the care of patients suffering from life-threatening diseases worldwide. We have six products that are currently marketed in the U.S., five of which are also marketed in other countries worldwide. Our research and clinical programs are focused on anti-infectives, including antivirals and antifungals. We endeavor to grow our existing portfolio of products through proprietary clinical development programs, internal discovery programs and an active product acquisition and in-licensing strategy.

Our worldwide headquarters are in Foster City, California and our European headquarters are in Paris, France. We were incorporated in Delaware on June 22, 1987.

On January 23, 2003, we completed the acquisition of all of the outstanding stock of Triangle Pharmaceuticals, Inc. (Triangle), which is now a wholly-owned subsidiary of Gilead. The aggregate preliminary purchase price was $525.0 million, including the cash paid for the outstanding stock, the fair value of options assumed, estimated direct transaction costs and employee termination costs. Triangle develops drug candidates in the antiviral area, with a particular focus on potential therapies for HIV, including AIDS, and the hepatitis B virus. Triangle's portfolio consists of several drug candidates in clinical trials, including emtricitabine for the treatment of HIV infection, emtricitabine for the treatment of hepatitis B, amdoxovir for the treatment of HIV infection and clevudine for the treatment of hepatitis B. Triangle has filed marketing applications for emtricitabine for the treatment of HIV in the United States and the European Union.

Our Products

- ***Viread*** is approved for sale and is sold in the U.S. by our U.S. commercial team for use in combination with other antiretroviral agents for the treatment of HIV infection and in the European Union by our European commercial team for use in combination with other antiretroviral agents for the treatment of HIV infection in patients who are experiencing early virological failure.
- ***AmBisome*** is approved for sale and is sold in more than 45 countries for the treatment of life-threatening fungal infections and in some of these countries for prevention of such

infections. We market AmBisome in the major countries of Europe and co-promote AmBisome in the U.S. with Fujisawa Healthcare, Inc. (Fujisawa).

- ***Hepsera*** is approved for sale and is sold in the U.S. by our U.S. commercial team for the treatment of chronic hepatitis B. Hepsera received marketing approval in the European Union in March 2003.
- ***Tamiflu*** is approved for sale and is sold by our corporate partner Hoffmann-La Roche (Roche) in more than 60 countries, including the U.S. and the European Union, for the prevention and treatment of influenza.
- ***Vistide*** is approved for sale and is sold in the U.S. by our U.S. commercial team, and by Gilead's ex-U.S. partner, Pharmacia Corporation (Pharmacia), in 25 countries for the treatment of cytomegalovirus (CMV) retinitis in patients with AIDS.
- ***DaunoXome*** is approved for sale and is sold in more than 20 countries for the treatment of AIDS-related Kaposi's sarcoma. It is sold in the U.S. by our U.S. commercial team and by independent distributors abroad.

In 2002, we earned revenues of $444.3 million from sales of and royalties on these products. Of this amount, sales of Viread generated aggregate product sales and royalty revenues of $225.8 million, or 48% of our total revenues, and sales of AmBisome generated aggregate product sales and royalty revenues of $201.4 million, or 43% of our total revenues. We earned revenues from sales of, and royalties on, all our

products in the U.S. of $206.4 million in 2002, $53.3 million in 2001 and $30.5 million in 2000. Outside of the U.S., we earned revenues from sales of, and royalties on, all of our products of $237.9 million in 2002, $160.7 million in 2001 and $143.6 million in 2000.

Viread (tenofovir disoproxil fumarate)

Viread is an oral formulation of a nucleotide analogue reverse transcriptase inhibitor, tenofovir DF, dosed once a day as part of combination therapy to treat HIV infection in adults. The drug works by blocking reverse transcriptase, an enzyme involved in the replication of HIV. We sell Viread in the U.S. through our U.S. commercial team and in the major European countries through our European commercial team. See "Commercial Operations."

The U.S. Food and Drug Administration (FDA) approved Viread for marketing in the U.S. in October 2001 and the European Agency for the Evaluation of Medicinal Products (EMEA) granted similar approval in the European Union in February 2002. In the U.S., Viread is approved for use in combination with other antiretroviral agents for the treatment of HIV infection. This indication is based on analyses of plasma HIV RNA levels and CD4 cell counts in a controlled study of Viread of 24 weeks duration (Study 902) and in a controlled, dose-ranging study of Viread of 48 weeks duration (Study 907). Both studies were conducted in treatment-experienced adults with evidence of HIV viral replication despite ongoing antiretroviral therapy.

Studies in patients who had not previously received antiretroviral therapy, or "antiretroviral-naïve patients," are ongoing. In February 2003, we reported 96-week data from an on-going three-year, randomized, double-blind clinical trial (Study 903) designed to compare the efficacy and safety of a combination treatment regimen of Viread, lamivudine (3TC) and efavirenz to a combination treatment regimen of stavudine (d4T), lamivudine and efavirenz in 600 antiretroviral-naïve patients with HIV infection. Data from Study 903 demonstrates that treatment-naïve patients who received Viread experienced substantially less lipodystrophy and lower elevations in fasting cholesterol and triglyceride levels, as well as improved levels of limb fat and weight gain, while achieving similar reductions in HIV viral load and increases in CD4 cell counts, compared to those who received stavudine. Adverse events were reported in less than two percent of patients and included rash, bacterial infection, depression, fever and pneumonia. There was a low discontinuation rate of approximately 15 percent in each arm of

the study. This 96-week data supplements the 48-week results from Study 903 that we submitted to the FDA in support of the use of Viread in patients who have not had prior HIV therapy. We intend to submit this 96-week data for potential inclusion in our U.S. and European labels. We cannot predict whether or not the FDA and the EMEA will accept our interpretation of the data and approve a label indicating Viread for use in patients who have not had prior HIV therapy based on such data. Approval of the 48-week data from Study 903 was recommended by the Committee for Proprietary Medicinal Products (CPMP) in February 2003.

One of the major challenges in treating HIV-infected patients is drug resistance. Because many of the existing therapies for treating HIV infection and AIDS rely on similarly-designed drug processes, patients who have developed resistance to one drug often develop resistance to other drugs within the same class. We believe that Viread, where approved by regulatory authorities, offers advantages over other approved HIV treatments because available data have shown that few patients have developed resistance to Viread and that Viread is effective in treating patients who have developed resistance to other therapies. We cannot be certain, however, that the resistance data we may obtain upon completion of our Phase 3 clinical trials will show similar resistance characteristics to the 48-week data from Study 907 or the data we obtained from the more limited Phase 2 clinical trials.

Another major concern in HIV treatment is convenience of dosing. While combination therapies have a positive impact, they require HIV-infected patients to take numerous drugs. Some of these drugs require multiple doses every day and many have timing and dietary restrictions. This not only results in inconvenience for patients but also contributes to patients missing doses or not adhering to their therapy. Viread is approved to be administered as a once-daily oral pill, which is a schedule that may be appealing to HIV-infected patients and their physicians.

The HIV competitive landscape is becoming more crowded and complicated as treatment trends continue to evolve. Twenty branded anti-HIV drugs are currently sold in the U.S. and many others are in advance stages of clinical development. See "Competition."

We have an exclusive, worldwide license to patent rights and related technology for Viread from the Institute of Organic Chemistry and Biochemistry (part of the Academy of Sciences of the Czech Republic) and Rega Stichting v.z.w. (together, IOCB/REGA) and are obligated to pay a percentage of net revenues from sales of Viread in the U.S., the European Union, and any other countries where the product is approved and has patent protection, to IOCB/REGA. See "Academic and Consulting Relationships—IOCB/REGA."

AmBisome (amphotericin B liposome for injection)

AmBisome is a proprietary liposomal formulation of amphotericin B. Amphotericin B is a powerful antifungal agent that is known for its ability to treat serious invasive fungal infections caused by various fungal species. These infections are generally life threatening, particularly in patients who have depressed immune systems due to aggressive chemotherapy regimens, stem cell or organ transplant or HIV infection. AmBisome treatment also has serious side effects, including kidney toxicity. Studies show, however, that by delivering amphotericin B in our

proprietary liposomal formulation, AmBisome reduces the rate and severity of kidney toxicity and injection-related reactions and allows these patients to receive higher doses of amphotericin B.

AmBisome is approved for sale in more than 45 countries, including the U.S., all of the European Union, most of the rest of Europe, Australia, Canada, and several countries in the Middle East, Latin America and Asia. In more than 20 of the countries where AmBisome is approved, including the U.S., we are authorized to promote AmBisome for empirical treatment of fungal infections, i.e. treatment of patients where a strong suspicion, without definite confirmation, exists for a potentially life-threatening invasive fungal infection. In the remaining countries where AmBisome is approved for sale, it is approved for use either as first-line treatment of serious invasive fungal infection or as second-line

treatment after conventional amphotericin B therapy fails or when conventional amphotericin B cannot be tolerated. Finally, AmBisome is approved in a number of countries for various other indications, for example, cryptococcal meningitis in AIDS patients, prophylaxis in liver transplant patients and visceral leishmaniasis.

In the U.S., we co-promote AmBisome with Fujisawa through our U.S. commercial team. Our agreement with Fujisawa entitles us to a percentage of revenues generated from these sales and provides that Fujisawa purchases AmBisome from us at our manufacturing cost. See "Collaborative Relationships—Fujisawa." In the major European countries and in Australia, we sell AmBisome through our international commercial teams; in certain other countries we sell AmBisome through independent distributors. Most of our revenues from AmBisome are in Europe, and we expect this to be the case for the foreseeable future. We have licensed commercial rights for AmBisome in Japan to Sumitomo Pharmaceuticals Co., Ltd. (Sumitomo) in exchange for royalties generated from those activities; however, AmBisome is not yet approved for sale in Japan.

AmBisome faces strong competition from several current competitors, and expected competitors whose treatments are in late stage clinical trials. See "Competition." Competition from these current and expected competitors is likely to erode the revenues we receive from sales of AmBisome.

Hepsera (adefovir dipivoxil)

Hepsera is an oral formulation of a nucleotide analogue HBV DNA polymerase inhibitor, adefovir dipivoxil, dosed once a day to treat chronic hepatitis B. Hepatitis B is caused by the highly contagious hepatitis B (HBV) virus and can cause acute liver failure. Some patients develop a chronic hepatitis B infection, which over many years can lead to complications, such as cirrhosis, liver cancer and liver failure, and in approximately 33% of patients can result in death. According to recent estimates from the World Health Organization and the Centers for Disease Control, there are over 400 million people worldwide and about 1.25 million people in the U.S. who have chronic hepatitis B. There are about one million deaths attributable to chronic hepatitis B worldwide each year, and it is one of the ten leading causes of death worldwide. Hepsera disables HBV by interfering with the activity of an enzyme known as HBV polymerase, which is necessary for the virus to replicate.

Our applications for U.S. and European Union marketing authorizations included data from two separate Phase 3 clinical trials designed to evaluate the safety and effectiveness of Hepsera in a 10mg dosage for treating patients with the hepatitis B virus. Both of our Phase 3 trials were designed as randomized, double-blind, placebo-controlled studies at clinical sites in the U.S., Canada, Europe, Australia and Southeast Asia. Study 437 evaluated Hepsera for treating patients who test positive for the HBV "e" antigen, the most common type of hepatitis B in the U.S. The other trial, Study 438, evaluated Hepsera for treating patients with a type of hepatitis B known as "precore mutant hepatitis B," the most common in Southeast Asian and the Mediterranean countries. Through 48 weeks, no adefovir-associated resistance mutations were identified in the hepatitis B patients treated in these clinical trials, which suggests that the development of resistance to Hepsera in hepatitis B patients may be delayed and infrequent. Consequently, we believe that Hepsera's resistance profile could make it an important drug for treating chronic hepatitis B. We cannot be certain, however, that the resistance data we may obtain from the continuing Phase 3 clinical trials on Hepsera will continue to show these resistance characteristics.

Hepsera is approved for sale in the U.S. for the treatment of chronic hepatitis B in adults with evidence of active viral replication and either evidence of persistent elevations in serum aminotransferases (ALT or AST) or histologically active liver disease. Our U.S. commercial team sells Hepsera in the U.S. In March 2002, we applied for approval by the EMEA of Hepsera for treatment of chronic hepatitis B in the European Union. Approval by the EMEA was recommended by the CPMP

in November 2002 and was received in March 2003. We plan to sell Hepsera in the major European Union countries through our European commercial team.

A vaccine is available that can prevent the transmission of HBV, but it is not effective in people who already have become chronically

infected with HBV. We expect that as this vaccine becomes more widely available, the incidence of new hepatitis B infections will decrease. However, even with these advances in the prevention of hepatitis B, the individuals suffering from chronic hepatitis B represent a patient pool with a significant risk of morbidity and mortality due to their underlying chronic viral infection.

Chronic hepatitis B is most common in China and Southeast Asia. In December 2000, we received a clinical trials permit to initiate Phase 1 clinical trials in China. We commenced these clinical trials in June 2001. We have licensed the rights to commercialize Hepsera solely for the treatment of hepatitis B in China, Korea, Japan, Taiwan, the rest of Asia, Latin America and certain other territories to GlaxoSmithKline (GSK). As part of our approval to commence Phase 1 clinical trials in China, Hepsera was granted Class I designation which, if Hepsera is ultimately approved for sale in China, would give GSK 12 years of market exclusivity for Hepsera with respect to competitors who may otherwise be able to begin clinical development of adefovir dipivoxil following such approval. After receiving the Chinese government's approval of the Phase 1 study, we were given approval to move forward with the Phase 2/3 program, which began patient enrollment in December 2002.

Several existing therapies for treating patients who are infected with HBV compete with Hepsera. These treatments represent significant competition for Hepsera. See "Competition."

We have an exclusive, worldwide license to patent rights and related technology for adefovir dipivoxil from IOCB/REGA, and pay a percentage of net revenues from sales of Hepsera to IOCB/REGA in countries where the product has patent protection, including the U.S. and the member states of the European Union. In addition, we pay a small variable percentage of net revenues from U.S. sales of Hepsera to the M.D. Anderson Cancer Center. See "Academic and Consulting Relationships."

Tamiflu (oseltamivir phosphate)

Tamiflu is an oral pill for the treatment and prevention of influenza A and B. Tamiflu is in a class of prescription drugs called neuraminidase inhibitors that act by disabling all common strains of the flu virus and preventing the virus from spreading in a patient. When used as approved for the treatment of influenza, Tamiflu has been shown to reduce the duration of the flu in adults by an average of 30%, and to reduce the severity of flu symptoms and the incidence of secondary infections. When taken as approved for the prevention of influenza, studies have shown that Tamiflu is up to 92% effective in preventing the development of the flu.

Tamiflu is approved in more than 60 countries for treatment of influenza, including the U.S., Japan and the European Union for treatment of influenza in children and adults. Tamiflu is also approved in the U.S. and the European Union for the prevention of influenza in adolescents and adults. We developed Tamiflu with Roche, and Roche has the exclusive right to manufacture and sell Tamiflu, subject to its obligation to pay us a percentage of the net revenues that Roche generates from Tamiflu sales. To date, Roche's sales of Tamiflu have been significantly below expectations. Moreover, Roche has experienced problems in the manufacturing and distribution of Tamiflu, which have reduced the net sales on which our royalty is based. This has not had a material effect on our revenues. See "Collaborative Relationships—Roche."

There are several products that have been available to treat the flu for some time, but they have not been shown to be as effective or as safe as neuraminidase inhibitors. See "Competition."

Tamiflu is not being marketed as an alternative to influenza vaccinations. We believe that influenza vaccinations will remain the most effective method of preventing the flu.

Vistide (cidofovir injection)

Vistide is an antiviral medication for the treatment of CMV retinitis in patients with AIDS. CMV retinitis is a condition characterized by lesions that form on a patient's retina that affects persons with weakened immune systems and is most common in patients with AIDS. If left untreated, CMV retinitis can lead to blindness.

Vistide is approved for sale in the U.S., the European Union and several other countries. Demand for Vistide has been low and product revenues are immaterial. Our U.S. commercial team sells Vistide in the U.S. Outside the U.S., Pharmacia has the exclusive right to sell Vistide. Pharmacia pays us a percentage of revenues it generates from sales of Vistide. See "Collaborative Relationships—Pharmacia."

The active agent in Vistide, cidofovir, is being considered as part of the U.S. government strategy for dealing with potential bioterrorism attacks involving smallpox, a life-threatening and highly communicable infectious disease. In laboratory tests, cidofovir has demonstrated activity against all 31 strains of the virus that causes smallpox. In current clinical trials of diluted smallpox vaccine conducted by the National Institute of Allergy and Infectious Diseases, cidofovir is being considered as a potential treatment for vaccinia infection, an adverse reaction sometimes caused by the smallpox vaccine. Additionally, the U.S. National Institutes of Health holds an IND that allows for the emergency use of cidofovir for smallpox outbreaks without marketing approval from the FDA. We do not know what the efficacy of cidofovir might be in such emergency use, or what side effects, if any, may appear with the use of cidofovir for smallpox. We also cannot predict whether the U.S. or other countries' governments may stockpile Vistide for the treatment of smallpox.

DaunoXome (daunorubicin citrate liposome injection)

DaunoXome is a liposomal formulation of the anticancer agent daunorubicin. It is a first-line therapy for treating patients who suffer from certain types of HIV-associated Kaposi's sarcoma, a disease characterized by widely disseminated lesions in the skin, mucous membranes, lymph nodes and viscera that can be life threatening for patients suffering from AIDS.

DaunoXome is approved for sale in the U.S. and more than 20 other countries. We sell DaunoXome in the U.S. and sell it abroad through independent distributors. Demand for DaunoXome has been low and product revenues are immaterial.

Our Products in Clinical Trials

Emtricitabine for HIV

We acquired emtricitabine as a result of our acquisition of Triangle, completed in January 2003. A nucleoside analogue, emtricitabine has been shown to be an inhibitor of HIV and HBV replication in laboratory studies. Emtricitabine is an antiviral agent against HIV strains obtained from a geographically diverse set of HIV-infected patients. Laboratory studies have shown that emtricitabine shares cross-resistance patterns with lamivudine. The most common resistance mutation to these two agents also reverses resistance of HIV to AZT in some cases. Four Phase 3 clinical studies for emtricitabine have been completed, one in collaboration with the Agence Nationale de Recherches sur le Sida (ANRS) in France. One of these studies, Study FTC-301, compared emtricitabine (200 mg once-a-day) to stavudine (40 mg twice-a-day) in combination with didanosine (400 mg once-a-day) and efavirenz (600 mg once-a-day) in patients without previous antiretroviral therapy. In July 2002, this Study was unblinded on the recommendation of an independent data safety monitoring board (DSMB) established to provide oversight of the study. The interim results evaluated by the Study's DSMB showed that the emtricitabine arm was statistically superior to the stavudine arm for primary and secondary endpoints for safety and efficacy. Eighty-seven percent (87%) of the patients in the

once-a-day emtricitabine arm had persistent virologic response through six months compared to 80% for the twice-daily stavudine arm. Patients in the emtricitabine arm also had significant improvements in immunologic function. In view of a compelling difference in favor of the emtricitabine arm, the DSMB recommended that the Study be unblinded and all patients be offered the regimen containing emtricitabine.

An application for marketing approval for emtricitabine was submitted for the treatment of HIV in the U.S. in September 2002 and in the European Union in December 2002. Both applications have been accepted for review. In the U.S., the FDA has advised us that the date for review is July 3, 2003.

Emtricitabine for Hepatitis B

Emtricitabine has been shown to be an inhibitor of hepatitis B virus replication in patients chronically infected with HBV. We are currently in Phase 3 clinical development of emtricitabine for the treatment of chronic hepatitis B. Some of the development activities undertaken with emtricitabine for the treatment of HIV will also be used in the assessment of emtricitabine for the treatment of hepatitis B.

Amdoxovir

We acquired amdoxovir as a result of our acquisition of Triangle, completed in January 2003. Amdoxovir is a purine dioxolane nucleoside that may offer advantages over other nucleosides currently in the market because of its activity against drug resistant viruses as exhibited in laboratory studies. In early 2002, Triangle initiated two Phase 2 clinical trials on amdoxovir. In August 2002, the FDA placed the clinical development program for amdoxovir on partial clinical hold as a result of concerns over lenticular opacities, a possible side effect characterized by clouding of the lens of the eye. The extent to which amdoxovir increased the occurrence of lenticular opacities in patients receiving amdoxovir, if at all, is unknown. Patients in clinical studies who are benefiting from amdoxovir and new studies involving patients who have failed other treatments that contained a drug from each currently approved class of anti-HIV medications and require amdoxovir in their regimens may continue on treatment. Discussions with the FDA regarding the partial clinical hold are planned.

Clevudine

We acquired clevudine as a result of our acquisition of Triangle, completed in January 2003. Clevudine is a pyrimidine nucleoside analogue and has been shown to be a potent inhibitor of hepatitis B virus replication in laboratory studies. In November 1999, Triangle initiated Phase 1 studies, and we are currently conducting Phase 2 clinical trials of clevudine for the treatment of chronic hepatitis B. Chronic toxicology studies have been completed and reproductive toxicology studies are in progress.

GS 7340

GS 7340 is a novel nucleotide analogue reverse transcriptase inhibitor that, when processed in the body, yields tenofovir, the active

chemical yielded by Viread, within cells. The chemical composition of GS 7340, however, may allow it to cross cell membranes more easily than Viread, leading to greater potency than Viread. In the first quarter of 2002, we began Phase 1/2 clinical trials of GS 7340 for the treatment of HIV infection.

Research & Development

We have research scientists in Foster City and San Dimas, California and Durham, North Carolina engaged in the discovery and development of new molecules and technologies that we hope will lead to new medicines and novel formulations of existing drugs. Our therapeutic focus is in the areas of life

threatening infectious diseases. In total, our research and development (R&D) expenses for 2002 were $134.8 million, compared with $185.6 million for 2001 and $132.3 million for 2000.

Nucleotide Analogues

Our scientists are working with our proprietary nucleotide analogues to develop treatments for viral infections. These compounds treat viral infections by interfering with the activity of certain enzymes that are necessary for the virus to grow.

We believe that small molecule nucleotide analogues can offer advantages as therapeutics. First, these molecules have demonstrated ability to work in both infected and uninfected cells. This could enable us to develop drugs that not only treat a patient who is infected with a virus but that can also prevent a healthy person from becoming infected in the first place. Second, drugs developed using these molecules have been shown to have treatment activity in a patient for longer periods of time than other available drugs. This could enable us to develop drugs that require less frequent dosing and are thus more convenient for patients.

HIV Protease Inhibitors

We are evaluating a number of small molecule compounds known as "protease inhibitors" for the potential treatment of HIV infection. Protease inhibitors act by interfering with the activity of protease, an enzyme that, like reverse transcriptase, is necessary for replication of HIV. We have conducted a number of preclinical experiments on these compounds and have demonstrated that they have potent antiviral activity. Our lead candidate is GS 224338, which is currently undergoing extensive preclinical evaluations.

Other Antiviral Research

We are undertaking additional research in the area of treatment of viral diseases. Many of these efforts focus on potential targets in HIV for therapeutic drugs.

Liposomes

We also have scientists focused on applying our proprietary liposomal drug delivery technology to develop safer, more effective and more convenient drugs. Liposomes are sub-microscopic hollow spheres into which drugs can be packed. We believe, and our research supports our belief, that we can influence the way compounds are released and distributed in the body by placing them in liposomes. This can, in turn, improve the safety and treatment benefits of such compounds.

Commercial Operations

We have U.S. and international commercial sales operations. We have marketing subsidiaries in the United Kingdom, Germany, Italy, Spain, France, Portugal, Greece and Australia. Our commercial teams promote and sell Viread, Hepsera and AmBisome in the U.S., and Viread and AmBisome in Europe and Australia. AmBisome is also sold by Fujisawa in the U.S. We sell Vistide and DaunoXome in the U.S; and our commercial partner, Pharmacia, sells Vistide outside of the U.S.; and, we sell DaunoXome outside of the U.S. through independent distributors. Our commercial partner, Roche, promotes and sells Tamiflu everywhere it is sold.

Our commercial teams promote Viread and Hepsera through direct field contact with physicians, hospitals, clinics and other healthcare providers who are involved in the treatment of patients with HIV (for Viread) or chronic hepatitis B (for Hepsera). They also promote AmBisome to infectious disease specialists, hospitals, home health care providers and cancer specialists.

We have international commercial operations in Europe and Australia. The European commercial team is supported by medical, operational, financial, regulatory, manufacturing and human resources personnel located primarily in our European headquarters in Paris, France. The U.S. and Australian commercial teams are supported by our worldwide headquarters in Foster City, California. In some countries outside of the U.S., we have agreements with third-party distributors, including distributors in certain of the countries where we have marketing operations, to promote, sell and distribute Viread, AmBisome and DaunoXome. These international distribution agreements generally provide that the distributor has the exclusive right to sell Viread, AmBisome and DaunoXome in a particular country or several countries for a specified period of time.

In January 2003, we announced a program pursuant to which we will be selling Viread at our cost to all countries in Africa and to the 15 other countries designated "Least Developed Countries" by the United Nations. We are taking steps to ensure that the Viread product sold under this program is used to serve patients in the developing world and not diverted to other markets. See "International Distribution."

To support and expand the commercialization of Viread and Hepsera, we have significantly increased our sales force in the U.S. and are devoting additional marketing resources in the U.S. to improve our coverage of healthcare professionals treating HIV-infected and HBV-infected patients. We have also significantly increased the size of our commercial operations in Europe to manage the commercialization of Viread and the anticipated commercialization of Hepsera in the European Union. It is our current intention to retain the commercial rights to Hepsera and market it directly or through distributors in the U.S., Canada, Europe, Australia, New Zealand and Turkey.

In April 2002, we entered into a licensing agreement with GSK, under which GSK received the rights to commercialize Hepsera in Asia, Latin America, Africa and certain other territories. Under the agreement, we retained rights to Hepsera in the U.S., Canada, Eastern and Western Europe, Australia, New Zealand and Turkey. GSK received exclusive rights to develop Hepsera solely for the treatment of hepatitis B in all other countries, the most significant of which include China, Korea, Japan and Taiwan. GSK will have full responsibility for development and commercialization of Hepsera in its territories.

In the U.S., Viread, Hepsera and Vistide are returnable in their original, unopened containers up to one year beyond the expiration date or, if damaged when received by the customer. Our customers may return AmBisome or DaunoXome if the shelf life has expired or if the product is damaged or defective when the customer receives it. AmBisome has an approved shelf life of 36 months in the U.S. and 30 months in most European countries. DaunoXome has a shelf life of 52 weeks in the U.S. and most European countries. Viread has a shelf life of 24 months in the U.S. and the European Union. Hepsera has a shelf life of 24 months in the U.S. Additionally, certain governmental agency customers and state AIDS drug assistance programs are entitled to or receive discounts, and we are required to provide rebates under state Medicaid programs. To date, returns, rebates and discounts have not been material to our financial results. Fujisawa establishes the return policy for AmBisome in North America, and Roche establishes the return policy for Tamiflu. At the end of each flu season, there have been significant returns of Tamiflu to Roche, which reduces the net sales on which our royalty from Roche is based.

Collaborative Relationships

As part of our business strategy, we establish collaborations with other companies to assist in the clinical development and/or commercialization of certain of our products and product candidates and to provide support for our research programs. We also evaluate opportunities for acquiring from other companies products or rights to products and technologies that are complementary to our business. The

accounting for each of these relationships can be found in Note 9 to our consolidated financial statements included in this report. Our existing collaborative relationships are as follows:

Anadys Pharmaceuticals, Inc.

In June 2002, we entered into a collaboration with Anadys Pharmaceuticals, Inc. to discover novel antiviral compounds. In addition to access fees and milestone payments and subject to some limitations, Gilead will pay Anadys royalties on any products developed under this research collaboration.

Archemix Corporation

In October 2001, we entered into an agreement with Archemix Corporation (Archemix). Under this agreement we granted Archemix an exclusive sublicense to the SELEX technology to identify aptamers, subject to the exclusion of all development areas as to which rights have not already been granted or forfeited. Our rights to the SELEX technology derive from a license to us from University License Equity Holdings, Inc. (ULEHI), the successor to University Technology Corporation and its predecessor University Research Corporation. The financial terms of the agreement with Archemix provide for lump sum payments to us totaling $17.5 million. Archemix has now made these payments. We also received warrants to purchase Archemix stock under the agreement. As required by our agreements with ULEHI, we shared a portion of the cash payments and warrants with ULEHI. See "Academic and Consulting Relationships—University License Equity Holdings, Inc."

Bukwang Pharm. Ind. Co., Ltd.

In February 1998, Triangle entered into, and we acquired as part of our acquisition of Triangle, a license agreement with Bukwang Pharm. Ind. Co., Ltd. (Bukwang) pursuant to which we received an exclusive license to all of Bukwang's rights to clevudine for use in the hepatitis B field, as well as all other human antiviral applications. This license includes all countries of the world except Korea. Under this license, we are obligated to make milestones and royalty payments to Bukwang, including an annual minimum royalty beginning the third year after the first FDA registration is granted for an FDA-approved product incorporating the clevudine technology.

GlaxoSmithKline

In April 2002, we entered into a licensing agreement with GSK giving it exclusive rights to commercialize Hepsera solely for the treatment of hepatitis B in Asia, Latin America and certain other territories. In addition to fees, milestone payments and other contract revenues, GSK is required to pay us a percentage of any revenue they generate from sales of Hepsera in the licensed territories. Under our agreement with GSK, we are required to enter into clinical and commercial supply agreements with GSK under which we would be required to arrange to supply them with their clinical and commercial requirements at our fully burdened cost to do so, subject to reasonable forecasting and ordering procedures. Our agreement with GSK expires on an individual country basis the later of patent expiration or ten years from first commercial sale in the particular country. In addition, GSK has the right to electively terminate the agreement on 12 months notice to Gilead, subject to a fee for elective termination under some circumstances early during the term of the agreement.

EyeTech Pharmaceuticals

In March 2000, we entered into an agreement with EyeTech Pharmaceuticals, Inc. (EyeTech) relating to a product named Macugen that it has developed for the treatment of age-related macular degeneration (AMD) and diabetic macular edema (DME). Gilead invented the compound upon which Macugen is based, NX 1838, using SELEX technology licensed to Gilead from ULEHI. See "Academic and Consulting Relationships—University License Equity Holdings, Inc." Gilead then licensed NX 1838 to EyeTech who further developed it into Macugen. Under its license from Gilead, EyeTech is required to pay us fees and milestone payments, as well as a percentage of any revenue they generate from worldwide sales of Macugen. Our agreement with EyeTech expires upon the later of ten years after first commercial sale of any product developed, or the date the last patent expires under the agreement. EyeTech granted Pfizer a sublicense relating to Macugen in December 2002. In December 2002, in connection with this sublicense, Gilead agreed to enter into a license with Pfizer on the same terms as contained in our agreement with EyeTech.

Roche

In 1996, we entered into a collaboration agreement with Roche granting Roche exclusive worldwide rights to Tamiflu, as well as other proprietary influenza neuraminidase inhibitors. As of December 31, 2002, we have received license fees and milestone payments from Roche totaling $48.7 million relating to the execution of this agreement and to regulatory filings and approvals for Tamiflu. Roche also funded all of the research and development costs for Tamiflu, including reimbursement to us of $28.1 million for the period from January 1, 1997 through December 31, 2001. Under the agreement, Roche is responsible for pricing, manufacturing, promoting and selling Tamiflu on a worldwide basis and pays us a percentage of its net revenues from sales of Tamiflu, subject to reduction for certain defined manufacturing costs. Our agreement with Roche terminates on an individual country basis on the later of patent expiration or ten years from first commercial sale in the particular country. In addition, Roche has the right to terminate the agreement in its entirety or an individual country basis prior to expiration at any time upon 12 months notice.

Fujisawa

In 1991, we entered into an agreement granting Fujisawa the exclusive right to promote and sell AmBisome in Canada and the primary responsibility to promote and sell AmBisome in the U.S. with Gilead as a co-promoter. Fujisawa pays us approximately 17% of Fujisawa's net revenues from sales of AmBisome in the U.S. We reserved the right to promote and sell AmBisome in the rest of the world, and pay Fujisawa 4% of our net revenues for AmBisome sales in significant Asian markets, including Japan, Korea, Taiwan, China and India. We manufacture all AmBisome that is sold worldwide. We sell AmBisome to Fujisawa for sale in the U.S. at a price equal to our cost to manufacture the product, and for sale in Canada at a price equal to our cost to manufacture the product, plus a specified percentage. Our agreement with Fujisawa terminates when the last patent covering AmBisome in the U.S. or Japan expires.

OSI Pharmaceuticals

In December 2001, we sold to OSI Pharmaceuticals (OSI) our pipeline of clinical stage oncology products and related intellectual property, as well as our Boulder, Colorado operations. In consideration for the assets, we received from OSI $130.0 million in cash and 924,984 shares of OSI common stock. Additionally, OSI will pay us up to an additional $30.0 million in either cash or a combination of cash and OSI common stock upon the achievement by OSI of certain milestones related to the development of NX 211, the most advanced of the oncology product candidates. Separately, under a manufacturing agreement with OSI, we have agreed to produce for OSI liposomal

formulations of two products, including NX 211, at our manufacturing facility in San Dimas, California.

Pharmacia

In 1996, we entered into an agreement with Pharmacia relating to Vistide. Under this agreement, Pharmacia has the exclusive right to market and sell Vistide in all countries outside of the U.S., subject to payment to us of a percentage of net revenues. We are required to sell Pharmacia bulk Vistide and to maintain the Vistide patents. Our agreement with Pharmacia expires on an individual country basis upon patent expiration or ten years from first commercial sale in countries where the product is not covered by a patent. In addition, Pharmacia may terminate the agreement as a whole upon six months notice or upon notice on an individual country basis, three months before applying for marketing approval of a competitive product.

Sumitomo

In 1996, we entered into an agreement with Sumitomo that gave Sumitomo the exclusive right to develop and market AmBisome in Japan. In addition to milestone payments, Sumitomo is required to pay us a percentage of any revenue they generate from Japanese sales of AmBisome. If AmBisome is approved for sale in Japan, we would manufacture AmBisome for sale by Sumitomo in Japan. The price that we would charge Sumitomo for the supply of AmBisome and the percentage of revenues that they would be required to pay to us would be determined by the price of AmBisome in Japan. Our agreement with Sumitomo terminates on the later of patent expiration in Japan or ten years from first commercial sale in Japan.

Termination of Agreement with Cubist Pharmaceuticals for Cidecin

In September 2002, we jointly announced with Cubist Pharmaceuticals, Inc. the termination of our licensing agreement for the commercialization of Cidecin® (daptomycin for injection) and an oral formulation of daptomycin. The terminated license agreement, executed in January 2001, had granted us exclusive commercialization rights to these products in 16 European countries following regulatory approval. Under the terms of the termination agreement, we do not owe any future payments to Cubist, and Cubist reacquired all European rights to both products.

Academic and Consulting Relationships

To supplement our research and development efforts, as part of our regular business we enter into arrangements with universities and medical research institutions. These arrangements often provide us with rights to patents, patent applications and technology owned by these institutions in return for payments and fees relating to our use of these rights.

Emory University and University of Georgia Research Foundation, Inc.

Emtricitabine. In April 1996, Triangle obtained, and we acquired as part of our acquisition of Triangle, an exclusive worldwide license to all of Emory University's rights to purified forms of emtricitabine for use in the HIV and the hepatitis B fields. We are obligated to make certain milestone and royalty payments to Emory, including annual minimum royalties beginning the third year after the first FDA registration is granted for an anti-HIV product incorporating the emtricitabine technology in the U.S. and the third year after the first registration is granted for an anti-hepatitis B product incorporating the emtricitabine technology in certain major market countries, for the HIV and hepatitis B indications, respectively. In 2002, Triangle began paying license maintenance fees because development milestones had not yet been achieved.

In May 1999, Emory and GSK settled their litigation pending in the United States District Court relating to emtricitabine, and we became the exclusive licensee of all U.S. and foreign patents and patent applications filed by Burroughs Wellcome Co. on the use of emtricitabine to treat hepatitis B.

Under the license and settlement agreements, we and Emory were also given access to development and clinical data and drug substance held by GSK relating to emtricitabine.

In May 2002, Emory, GSK and Shire Pharmaceuticals Group, plc (Shire) settled worldwide patent disputes involving lamivudine and emtricitabine. Under the terms of the settlement, Emory received an exclusive license from Shire under Shire's patents relating to emtricitabine and methods for its use and manufacture and Shire and GSK received exclusive licenses under Emory's patents relating to lamivudine. Under the terms of our license agreement with Emory, we automatically acquired an exclusive sublicense to the Shire patents relating to emtricitabine granted under the terms of the settlement, thereby resolving all previously pending patent disputes regarding emtricitabine.

Amdoxovir. In March 1996, Triangle entered into, and we acquired as part of our acquisition of Triangle, a license agreement with Emory and the University of Georgia Research Foundation, Inc. (UGRF) pursuant to which we received an exclusive worldwide license to all of Emory's and UGRF's rights to a series of nucleoside analogues including amdoxovir and DXG (i.e., the active anti-HIV agent) for use in the HIV and hepatitis B fields. We are obligated to make milestone and royalty payments to Emory and UGRF. In March 1999, Triangle began paying license maintenance fees because development milestones had not yet been achieved. Beginning the third year after the first FDA registration is granted for an FDA-approved product incorporating the amdoxovir technology, we will be required to pay Emory and UGRF a minimum annual royalty.

On August 30, 2002, Triangle resolved outstanding patent disputes involving amdoxovir with Shire. Under the terms of the settlement, Emory and UGRF received an exclusive license to Shire's patent rights covering amdoxovir and methods for its use and manufacture. Under the terms of this license agreement, we acquired an exclusive sublicense to these rights in exchange for an obligation to pay Shire an incremental royalty on future amdoxovir sales. Under the settlement agreement, Emory, UGRF and Gilead granted Shire an exclusive license under their patent rights to BCH-13520 and methods for its use and manufacture.

Both of the license agreements with Emory terminate upon the later of patent expiration or the expiration of our obligation to pay royalties. In addition, we have the right to terminate the agreement in its entirety or with respect to one or both indications (HIV and HBV) in one or more countries prior to expiration at any time upon 90 days notice.

M.D. Anderson Cancer Center

In 1994, we entered into an agreement with the M.D. Anderson Cancer Center relating to Hepsera. Under this agreement, we currently pay M.D. Anderson Cancer Center a percentage of net revenues based upon sales of Hepsera. The agreement with M.D. Anderson Cancer Center terminates the later of patent expiration or ten years from first commercial sale.

IOCB/REGA

In 1991 and 1992, we entered into agreements with IOCB/REGA relating to Viread, Hepsera and Vistide. Under these agreements, we received from IOCB/REGA the exclusive right to manufacture, use and sell the nucleotide compounds covered by these agreements. We currently pay 3% of net revenues based upon sales of Viread, Hepsera and Vistide to IOCB/REGA. The agreements with IOCB/REGA terminate on an individual country basis the later of patent expiration or ten years from first commercial sale. In addition, IOCB/REGA may terminate the licenses for a particular product in a key market in the absence of commercial sales of that product within 12 months after regulatory approval.

University License Equity Holdings, Inc.

We have an ongoing collaborative arrangement with University License Equity Holdings, Inc. (ULEHI), a technology holding company for the University of Colorado at Boulder, relating to its SELEX technology to identify aptamers. Under this arrangement, ULEHI has granted us all of its present and future rights to inventions covered by patents and patent applications for SELEX technology, improvements to SELEX technology it makes or discovers, oligonucleotides or other molecules it makes using SELEX technology and computer software related to SELEX technology. We are required to pay ULEHI certain variable royalties based on revenues generated from sales of products derived using the SELEX technology.

Developing World Collaborations

The Bill & Melinda Gates Foundation & Family Health International

In October 2002, we entered into an agreement with the Bill & Melinda Gates Foundation and Family Health International (FHI) to provide Viread for FHI's multinational clinical trial evaluating Viread's effectiveness as a method of reducing the risk of HIV infection among sexually active adults who are regularly exposed to HIV. The clinical trials, to be conducted by FHI, are funded by a $6.5 million, three-year grant from the Gates Foundation.

The DART Study

In November 2002, we entered into a collaborative agreement with the Medical Research Council (MRC) of the United Kingdom, Boehringer Ingelheim GmBH, and GSK in connection with a five-year clinical study conducted by the MRC on antiretroviral HIV therapy in Africa. The trial is called the DART Trial (Development of AntiRetroviral Therapy in Africa) and is aimed at studying clinical versus laboratory monitoring practices, and structured treatment interruptions versus continuous antiretroviral therapy in adults with HIV infection in sub-Saharan Africa. We will provide Viread at no cost for the DART study.

The Institute for One World Health

In January 2003, we entered into an agreement with the Institute for One World Health, pursuant to which we will provide AmBisome at our cost for a Phase 3 clinical trial evaluating AmBisome for the treatment of visceral leishmaniasis with paromomycin in India, which has the greatest global burden of visceral leishmaniasis. The clinical trial will be conducted by the Institute for One World Health in partnership with the World Health Organization.

International Distribution

We have various agreements with distributors in Europe, Asia, Latin America, the Middle East and Africa that grant these distributors the exclusive right to sell AmBisome, and in some cases DaunoXome, in a particular country or countries for a specified period of time. Most of these agreements also provide for collaborative efforts between us and the distributor for obtaining regulatory approval for the product in the particular country and for marketing the product in the country. Most of these agreements establish a price that the distributor must pay for our product and require us to deliver quantities of the product ordered by the distributor. We entered into similar distribution agreements for Viread in countries where we do not promote and sell it directly.

In January 2003, we announced a program pursuant to which we will supply Viread at our cost to all countries in Africa and to the 15 other countries designated "Least Developed Countries" by the United Nations. This humanitarian effort is in recognition of the extreme impact HIV disease has had in these resource-poor countries. Over 70% of the world's cases of HIV are located in these countries.

We are taking steps to ensure that the Viread product sold under this program is used to serve patients in the developing world and not diverted to other markets.

Manufacturing

AmBisome and DaunoXome

We manufacture AmBisome and DaunoXome in commercial quantities in two separate but adjacent facilities in San Dimas, California. The Medicines Control Agency of the United Kingdom and the FDA have approved the commercial production of each of AmBisome and DaunoXome in the facility in which it is produced. To import AmBisome and DaunoXome into the European Union, we own a manufacturing facility in Dublin, Ireland where we perform quality control testing, final labeling, packaging and distribution for the European Union and elsewhere.

We use commercially available materials and equipment to manufacture these products. Currently, we obtain the amphotericin B that we use to manufacture AmBisome, the daunorubicin HCl and distearoylphosphatidylcholine that we use to manufacture DaunoXome, and the cholesterol that we use to manufacture both AmBisome and DaunoXome from single approved suppliers.

AmBisome is sold as a freeze-dried product. We currently freeze-dry some AmBisome at our San Dimas manufacturing facility and also use a third party to freeze-dry additional product. Given our current projections for growth in AmBisome demand, we have sufficient capacity to meet future demand. We also have the option of installing additional freeze-drying capacity in San Dimas should such additional supply become necessary. Were we to prove unable to install additional freeze-drying capacity in San Dimas or locate appropriate third parties to meet this need, our ability to meet increased AmBisome demand would be diminished. Manufacturing liposomal products is a particularly complex process and any new liposomal product we develop will require unique and complex variations in our manufacturing process.

Antiviral Products

We contract with third parties to manufacture our antiviral drugs for clinical and commercial purposes, including Viread, Hepsera, Vistide, emtricitabine, amdoxovir and clevudine.

We manufacture Viread tablets through a single contract manufacturer for the U.S., European Union and sales and distribution in other territories. In addition, we have a second contract manufacturer in Europe for European Union distributed product. All have been approved by their respective agencies.

We have obtained qualification in the U.S. and are seeking qualification in the European Union for two contract manufacturers for the active ingredient in Hepsera. We have one contract manufacturer for the final Hepsera drug product for commercial supply and are seeking to qualify a second supplier.

In January 2002, Roche announced that due to production problems the liquid suspension form of Tamiflu approved for treatment of children as young as one year-old was not available; however, the liquid suspension form of Tamiflu was returned to market in time for the

2002-2003 flu season. These production issues did not affect availability of the tablet form of Tamiflu for adults and adolescents 13 years and older. In Japan, where the 2002-2003 flu season has been particularly severe, Roche's sublicensee, Chugai Corporation, has been unable to meet the heightened demand satisfactorily. In January 2003, Chugai issued a press release attributing this failure, in part, to manufacturing problems. These problems in Japan have reduced the net sales on which our royalty with Roche is based. To date, these production and commercialization issues have not had a material effect on our earnings, and we do not expect them to have a material effect on our earnings in the future.

We entered into an agreement with Abbott to manufacture emtricitabine bulk drug substance and final drug product for us. We are currently seeking qualification of Abbott in the U.S. and the European Union as a contract manufacturer. We are also seeking qualification in the European Union for a second contract manufacturer for emtricitabine bulk drug substance. Abbott has a recent history of violations of current Good Manufacturing Practice regulations cited by the U.S. FDA and has been working towards corrections under an FDA consent decree. The FDA conducted a pre-approval inspection at Abbott for the new drug application of emtricitabine and issued a Form 483 observation to Abbott in December 2002. In January 2003, Abbott submitted a response to the Form 483 observation. If the FDA deems Abbott's response to the Form 483 observation to be inadequate, or if Abbott is unable to supply the initial launch quantities of emtricitabine in a timely manner, the emtricitabine launch could be delayed.

We have two suppliers that have been approved by the FDA and the European Union to manufacture the cidofovir used in Vistide. We have a single FDA and EMEA approved supplier for the final Vistide drug product.

We have no commercial-scale manufacturing facilities for our antiviral products, and we have no current plans to establish such facilities. For our future antiviral products, we will need to develop additional manufacturing capabilities and establish additional third party suppliers in order to manufacture sufficient quantities of our product candidates to undertake clinical trials and to manufacture sufficient quantities of any products that are approved for commercial sale. If we are unable to develop manufacturing capabilities internally or contract for large scale manufacturing with third parties on acceptable terms for our future antiviral products, our ability to conduct large-scale clinical trials and meet customer demand for commercial products would be adversely affected.

We believe that the technology we use to manufacture our products and compounds is proprietary. For our antiviral products, we have disclosed all necessary aspects of this technology to contract manufacturers to enable them to manufacture the products and compounds for us. We have agreements with these manufacturers that are intended to restrict them from using or revealing this technology, but we cannot be certain that these manufacturers will comply with these restrictions. In addition, these manufacturers could develop their own technology related to the work they perform for us that we may need to manufacture our products or compounds. We could be required to enter into an agreement with that manufacturer if we wanted to use that technology ourselves or allow another manufacturer to use that technology. The manufacturer could refuse to allow us to use their technology or could demand terms to use their technology that are not acceptable.

We believe that we are in compliance with all material environmental regulations related to the manufacture of our products.

Patents and Proprietary Rights

Patents and other proprietary rights are very important to our business. If we have a properly designed and enforceable patent it can be more difficult for our competitors to use our technology to create competitive products and more difficult for our competitors to obtain a patent that prevents us from using technology we create. As part of our business strategy, we actively seek patent protection both in the U.S. and internationally and file additional patent applications, when appropriate, to cover improvements in our compounds, products and technology. We also rely on trade secrets, internal know-how, technological innovations and agreements with third parties to develop, maintain and protect our competitive position. Our ability to be competitive will depend on the success of this strategy.

We have a number of patents, patent applications and rights to patents related to our compounds, products and technology, but we cannot be certain that issued patents will be enforceable or provide adequate protection or that pending patent applications will result in issued patents. The following

table shows the actual or estimated expiration dates in the U.S. and Europe for the primary patents and for patents that may issue under pending applications that cover the compounds in our marketed products and our product candidates:

	U.S. Patent Expiration	European Patent Expiration
Products		
Viread	2017	2017*

Hepsera	2014	2011
AmBisome	2016	2008
Tamiflu	2016	2016
Vistide	2010	2012
DaunoXome	2009	2008
Product Candidates		
Emtricitabine	2015	2011
Amdoxovir	2015	2013
Clevudine	2014	2015

* Applications for these patents are pending. If patents from these applications do not issue, we would not have patent protection through the dates indicated and would instead rely on other patents that expire earlier. For example, if this European patent on Viread does not issue, we have patents that expire in 2006 and 2013 that provide protection.

Patents covering Viread, Hepsera, Vistide, emtricitabine, clevudine and amdoxovir are held by third parties. We acquired exclusive rights to these patents in the agreements we have with these parties. See "Collaborative Relationships" and "Academic and Consulting Relationships." Patents do not cover the active ingredients in AmBisome and DaunoXome. Instead, we hold patents to the liposomal formulations of these compounds and also protect these formulations through trade secrets. We do not have patent filings covering all forms of Hepsera in China or in certain other Asian countries, although we do have applications pending in various Asian countries, including China, that relate to specific forms and formulations of Hepsera. Asia is a major market for HBV therapies.

We may obtain patents for our compounds many years before we obtain marketing approval for them. This limits the time that we can prevent other companies from developing these compounds and therefore reduces the value of the product. However, we can apply for patent term extensions. For example, extensions for the patents on Vistide have been granted in the U.S. and a number of European countries, compensating in part for delays in obtaining marketing approval. Similar patent term extensions may be available for other products that we are developing, but we cannot be certain we will obtain them.

It is also very important that we do not infringe patents or proprietary rights of others and that we do not violate the agreements that grant proprietary rights to us. If we do infringe patents or violate these agreements, we could be prevented from developing or selling products or from using the processes covered by those patents or agreements, or we could be required to obtain a license from the third party allowing us to use their technology. We cannot be certain that, if required, we could obtain a license to any third-party technology or that we could obtain one at a reasonable cost. If we were not able to obtain a required license, we could be adversely affected. Because patent applications are confidential for at least some period of time, including sometimes in the U.S. until a patent issues, there may be pending patent applications from which patents will eventually issue and prevent us from developing or selling certain products unless we can obtain a license to use the patented technology.

Patents relating to pharmaceutical, biopharmaceutical and biotechnology products, compounds and processes such as those that cover our existing compounds, products and processes and those that we

will likely file in the future, do not always provide complete or adequate protection. Future litigation or reexamination proceedings regarding the enforcement or validity of our existing patents or any future patents could invalidate our patents or substantially reduce their protection. In addition, our pending patent applications and patent applications filed by our collaborative partners may not result in the issuance of any patents or may result in patents that do not provide adequate protection. As a result, we may not be able to prevent third parties from developing the same compounds and products that we are developing.

We also rely on unpatented trade secrets and improvements, unpatented internal know-how and technological innovation. In particular, a great deal of our liposomal manufacturing expertise, which is a key component of our liposomal technology, is not covered by patents but is instead protected as a trade secret. We protect these rights mainly through confidentiality agreements with our corporate partners, employees, consultants and vendors. These agreements provide that all confidential information developed or made known to an individual during the course of their relationship with us will be kept confidential and will not be used or disclosed to third parties except in specified circumstances. In the case of employees, the agreements provide that all inventions made by the individual while employed by us will be our exclusive property. We cannot be certain that these parties will comply with these confidentiality agreements, that we would have adequate remedies for any breach, or that our trade secrets will not otherwise become known or be independently discovered by our competitors. Under some of our research and development agreements, inventions discovered in certain cases become jointly owned by us and our corporate partner and in other cases become the exclusive property of one of us. It can be difficult to determine who owns a particular invention, and disputes could arise regarding those inventions.

Competition

Our products and development programs target a number of diseases and conditions, including viral, fungal and bacterial infections. There are many commercially available products for these diseases, and a large number of companies and institutions are spending considerable amounts of money and resources to develop additional products to treat these diseases. Our current products compete with other available products based primarily on:

- efficacy;
- safety;
- tolerability;
- acceptance by doctors;
- patient compliance;
- patent protection;
- ease of use;
- price;
- insurance and other reimbursement coverage;
- distribution;
- marketing; and
- adaptability to various modes of dosing.

Any other products we market in the future will also compete with products offered by our competitors. If our competitors introduce data that shows improved characteristics of their products,

improve or increase their marketing efforts or simply lower the price of their products, sales of our products could decrease. We also cannot be certain that any products we may develop in the future will compare favorably to products offered by our competitors or that our existing or future products will compare favorably to any new products that are developed by our competitors. Our ability to be competitive also depends upon our ability to attract and retain qualified personnel, to obtain patent protection or otherwise develop proprietary products or processes and to secure sufficient capital resources for the substantial period that it takes to develop a product.

Viread. The HIV competitive landscape is becoming more crowded and complicated as treatment trends continue to evolve. A growing number of anti-HIV drugs are currently sold or are in advance stages of clinical development. Of the 20 branded drugs available in the U.S., Zerit (stavudine, d4T) sold by Bristol-Myers Squibb (BMS) and the fixed combination products, Combivir (AZT and 3TC) and Trizivir (AZT, 3TC, ABC), both sold by GSK, represent the most direct competition for Viread. These companies are in the process of launching formulations of existing drugs now indicated by the FDA for once-daily oral dosing. These include GSK's 300 mg dose of Epivir (3TC) and BMS's new extended release formulation of Zerit. Antiretroviral product candidates that are expected to enter the market in the next few years include atazanivir (QD protease inhibitor from BMS), Fuzeon (injectable integrase inhibitor from Roche/Trimeris). GSK is also pursuing a once-daily dose of Ziagen (abacavir), as well as a new fixed dose combination of Ziagen and Epivir. Other companies competing in the HIV therapeutic category are Pfizer, Merck, Boehringer-Ingelheim and Abbott Laboratories.

AmBisome. AmBisome faces strong competition from several current and expected competitors. Current competitors include:

- conventional amphotericin B, made by BMS and numerous generic manufacturers;
- caspofungin, a product developed by Merck, which is marketed as Cancidas in the U.S. and as Caspofungin elsewhere;
- voriconazole, developed by Pfizer, which is marketed as Vfend;
- and, other lipid-based amphotericin B products approved in the U.S. and throughout Europe, including Abelcet, sold by Enzon Corp. in the U.S., Canada and Japan, and by Elan Corporation's marketing and distribution partners in other countries, and Amphotec, sold by InterMune Pharmaceuticals, Inc.

Presently unapproved but expected competitors include a class of treatments called echinocandins, including Fujisawa's micafungin,

which received marketing approval in Japan in October 2002 and is under submission for regulatory approval in the U.S. and Canada, and anidulafungin, a Versicor, Inc. product candidate, which is being evaluated in multiple late-stage clinical trials. Finally, Schering Plough is developing Noxafil (posaconazole), which is currently in Phase 3 trials. Competition from these current and expected competitors has eroded and is likely to continue to erode the revenues we receive from sales of AmBisome.

Hepsera. Hepsera faces significant competition from existing therapies for treating patients who are infected with HBV. Most significantly:

- Epivir-HBV (lamivudine) was developed in collaboration with Shire Pharmaceuticals, and is sold by GSK in all major countries throughout North and South America, Europe, and Asia. It is an orally administered nucleoside analogue that inhibits HBV DNA polymerase.
- Intron-A (interferon alfa-2b) is sold by Schering Plough in major countries throughout North and South America, Europe, and Asia. Intron-A is an injectable drug with immunomodulatory effects.

Hepsera also faces competition from clinical-stage candidates, including Bristol-Myers Squibb's entecavir and Idenix's LdT, two oral nucleoside analogues currently in Phase 3 trials. Other competition includes Roche's Pegasys (pegylated interferon alfa-2a), which is currently being studied for chronic hepatitis B.

Tamiflu. Tamiflu competes with Relenza, an anti-flu drug that is sold by GSK. Relenza is a neuraminidase inhibitor that is delivered as an orally-inhaled dry powder. In addition, BioCryst Pharmaceuticals is developing a neuraminidase inhibitor anti-flu drug, peramivir, that will represent significant competition, when and if the FDA approves it. This drug may be administered as a once-daily pill, as opposed to Tamiflu, which must be taken twice daily for treatment. We cannot be certain that Tamiflu will compare favorably to this drug based on performance, price, length of dosing, side effects or any other criteria.

Vistide. Vistide competes with a number of drugs that also treat CMV retinitis, including ganciclovir, sold in intravenous and oral formulations by Roche and as an ocular implant by Bausch & Lomb Incorporated; valganciclovir, also marketed by Roche; foscarnet, an intravenous drug sold by AstraZeneca; and, formivirsen, a drug injected directly into the eye sold by CibaVision.

DaunoXome. DaunoXome competes with or is expected to compete with a number of drugs that have been approved, or are awaiting approval, for the treatment of Kaposi's sarcoma in the U.S. and Europe, including Doxil, a product of Ortho Biotech that, like DaunoXome, is sold in a liposomal formulation.

A number of companies are pursuing the development of technologies competitive with our research programs. These competing companies include specialized pharmaceutical firms and large pharmaceutical companies acting either independently or together with biopharmaceutical companies. Furthermore, academic institutions, government agencies and other public and private organizations conducting research may seek patent protection and may establish collaborative arrangements for competitive products and programs.

We anticipate that we will face increased competition in the future as our competitors introduce new products to the market and new technologies become available. We cannot determine if existing products or new products that our competitors develop will be more effective or more effectively marketed and sold than any that we develop. Competitive products could render our technology and products obsolete or noncompetitive before we recover the money and resources we used to develop these products.

Government Regulation

Our operations and activities are subject to extensive regulation by numerous government authorities in the U.S. and other countries. In the U.S., drugs are subject to rigorous FDA regulation. The Federal Food, Drug and Cosmetic Act and other federal and state statutes and regulations govern the testing, manufacture, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our products. As a result of these regulations, product development and the product approval process is very expensive and time consuming.

The FDA must approve a drug before it can be sold in the U.S. The general process for this approval is as follows:

Preclinical Testing

Before we can test a drug candidate in humans, we must study the drug in laboratory experiments and in animals to generate data to

support the drug's potential safety and benefits. We submit this data to the FDA in an investigational new drug application (IND) seeking their approval to test the compound in humans.

Clinical Trials

If the FDA accepts the investigational new drug application, we study the drug in human clinical trials to determine if the drug is safe and effective. These clinical trials involve three separate phases that often overlap, can take many years and are very expensive. These three phases, which are themselves subject to considerable regulation, are as follows:

- Phase 1. The drug is given to a small number of healthy human subjects or patients to test for safety, dose tolerance, pharmacokinetics, metabolism, distribution, and excretion.
- Phase 2. The drug is given to a limited patient population to determine the effect of the drug in treating the disease, the best dose of the drug, and the possible side effects and safety risks of the drug.
- Phase 3. If a compound appears to be effective and safe in Phase 2 clinical trials, Phase 3 clinical trials are commenced to confirm those results. Phase 3 clinical trials are long-term, involve a significantly larger population, are conducted at numerous sites in different geographic regions and are carefully designed to provide reliable and conclusive data regarding the safety and benefits of a drug. It is not uncommon for a drug that appears promising in Phase 2 clinical trials to fail in the more rigorous and reliable Phase 3 clinical trials.

FDA Approval Process

If we believe that the data from the Phase 3 clinical trials show an adequate level of safety and effectiveness, we will file a new drug application (NDA) with the FDA seeking approval to sell the drug for a particular use. The FDA will review the NDA and often will hold a public hearing where an independent advisory committee of expert advisors asks additional questions regarding the drug. This committee makes a recommendation to the FDA that is not binding on the FDA but is generally followed by the FDA. If the FDA agrees that the compound has a required level of safety and effectiveness for a particular use, it will allow us to sell the drug in the U.S. for that use. It is not unusual, however, for the FDA to reject an application because it believes that the drug is not safe enough or effective enough or because it does not believe that the data submitted is reliable or conclusive.

At any point in this process, the development of a drug could be stopped for a number of reasons including safety concerns and lack of treatment benefit. We cannot be certain that any clinical trials that we are conducting, including those for Viread and emtricitabine for HIV infection and Hepsera for chronic hepatitis B, or any that we conduct in the future, will be completed successfully or within any specified time period. We may choose, or the FDA may require us to delay or suspend our clinical trials at any time if it appears that the patients are being exposed to an unacceptable health risk or if the drug candidate does not appear to have sufficient treatment benefit.

The FDA may also require us to complete additional testing, provide additional data or information, improve our manufacturing processes, procedures or facilities or require extensive post-marketing testing and surveillance to monitor the safety or benefits of our product candidates if

they determine that our new drug application does not contain adequate evidence of the safety and benefits of the drug. In addition, even if the FDA approves a drug, it could limit the uses of the drug. Approvals can also be withdrawn if the FDA does not believe that we are complying with regulatory standards or if problems are uncovered or occur after approval.

In addition to obtaining FDA approval for each drug, the manufacturing facilities for any drug we sell, including those of companies who manufacture our drugs for us as well as our own, must be approved by the FDA and are subject to periodic inspections by the FDA. Foreign establishments that manufacture products to be sold in the U.S. must also be approved by the FDA and are subject to periodic regulatory inspection. Manufacturing facilities located in California, including our San Dimas facility and Foster City facility, also must be licensed by the State of California in compliance with local regulatory requirements.

Drugs that treat serious or life-threatening diseases and conditions that are not adequately addressed by existing drugs may be designated as fast track products by the FDA and may be eligible for priority six month review and accelerated approval, as was the case for Viread. Drugs receiving accelerated approval must be monitored in post-marketing clinical trials in order to confirm the safety and benefits of the drug.

We are also subject to other federal, state and local regulations regarding workplace safety and protection of the environment. We use hazardous materials, chemicals, viruses and various radioactive compounds in our research and development activities and cannot eliminate the risk of accidental contamination or injury from these materials. Any misuse or accidents involving these materials could lead to significant litigation, fines and penalties.

Drugs are also subject to extensive regulation outside of the U.S. In the European Union, there is a centralized approval procedure that authorizes marketing of a product in all countries in the European Union (which includes most major countries in Europe). If this procedure is not used, under a decentralized system an approval in one country of the European Union can be used to obtain approval in another country of the European Union under a simplified application process. After approval under the centralized procedure, pricing and reimbursement approvals are also required in most countries. Vistide and Viread were approved by the European Union under the centralized procedure. Viread as an HIV drug was reviewed for accelerated approval in the European Union. Hepsera received a traditional review, as has emtricitabine.

Pricing and Reimbursement

Insurance companies, health maintenance organizations (HMOs), other third-party payors and some governments seek to limit the amount we can charge for our drugs. For example, in certain foreign markets, pricing negotiations are often required to obtain approval of a product, and in the U.S. there have been, and we expect that there will continue to be, a number of federal and state proposals to implement drug price control. In addition, managed care organizations are becoming more common in the U.S. and will continue to seek lower drug prices. The announcement of these proposals or efforts can cause our stock price to lower, and if these proposals are adopted, our revenues could decrease.

Our ability to sell our drugs also depends on the availability of reimbursement from governments and private insurance companies. These governments and insurance companies often demand rebates or predetermined discounts from list prices. We expect that products we are developing, particularly for AIDS indications, will be subject to reimbursement issues. We cannot be certain that any of our other products that obtain regulatory approval will be reimbursed by these government and insurance companies.

Regulatory approval of prices is generally required in most foreign countries. In particular, certain countries will condition their approval of a product on the agreement of the seller not to sell that product for more than a certain price in that country and in the past have required price reductions after or in connection with product approval. We cannot be certain that regulatory authorities in the future will not establish lower prices or that any regulatory action reducing the price of our products in any one country will not have the practical effect of requiring us to reduce our prices in other countries. Some European governments, notably Germany and Italy, have implemented, or are considering, legislation that would require pharmaceutical companies to sell their products subject to reimbursement at a mandatory discount. Such mandatory discounts would reduce the revenue we receive from our drug sales. In certain developing countries that are significantly affected by HIV and AIDS, parallel importing and generic competition may occur and adversely affect revenues from sales of or market share of Viread.

Management Changes

In March 2002, we announced that John F. Milligan, PhD, was promoted to Senior Vice President and Chief Financial Officer, reporting directly to the CEO. This was part of a restructuring in which we combined responsibility for the corporate functions that support the strategic, financial, communications and technological planning into a broadened senior management role. As such, the Corporate Development, Finance, Corporate Communications and Information Technology groups have been centralized under the leadership of Dr. Milligan. In addition, we announced at that time the completion of other organization changes, including the alignment of the manufacturing group in San Dimas with other operational areas, reporting to Mark L. Perry, Executive Vice President, Operations, and establishing a Paris, France headquarters for our European operations.

Employees

As of February 28, 2003, we had approximately 1,250 full-time employees. We believe that we have good relations with our employees.

Website

Our website address is www.gilead.com. We make available free of charge through our website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to these reports as soon as reasonably practicable after filing, by providing a hyperlink to the EDGAR website directly to our reports.

RISK FACTORS THAT AFFECT GILEAD

In evaluating our business, you should carefully consider the following risks in addition to the other information in this report. Any of the following risks could materially and adversely affect our business, operating results and financial condition.

If Viread does not maintain or increase its market acceptance, our results of operations will suffer.

We rely on sales of Viread for a significant portion of our operating income. Viread faces an extremely competitive marketplace. A

number of drugs to treat HIV infection and AIDS are currently sold or are in advanced stages of clinical development, including 20 products currently sold in the U.S. Among the companies that are significant competitors in the HIV/AIDS market are GSK, Bristol-Myers Squibb, Roche, Pfizer, Merck, Boehringer-Ingelheim and Abbott Laboratories.

All of our competitors and most of our potential competitors have substantially greater resources than we do. Those resources include greater experience in promoting and marketing HIV drugs, superior product development capabilities and financial, scientific, manufacturing, marketing,

managerial and human resources. In order for Viread to continue its success, we will have to maintain and expand its position in the marketplace against these competitors' drugs.

Viread's market penetration may be limited, particularly for use in treatment-naïve patients, given that most of our data, and the data supporting our marketing approvals, reflects use of Viread in a treatment-experienced patient population. Although we have obtained data about the safety and efficacy of Viread in treatment-naïve patients, regulatory authorities may not allow us to include this data in the labeling for Viread. If our marketing efforts are unsuccessful or if we cannot include information about Viread's use in treatment-naïve patients in Viread's labeling data, we may be unsuccessful in convincing physicians to prescribe Viread to their treatment-naïve patients, and some government reimbursers and private insurance companies may not pay for Viread for prescribed patients who have not had prior HIV therapy. If Viread does not maintain or increase its market acceptance, our results of operations will suffer.

Any significant reduction in Viread, AmBisome or Hepsera sales would significantly reduce our operating income and could require us to scale back our manufacturing operations and reduce our sales force.

Viread product sales for the years ended December 31, 2001 and 2002, were $15.6 million, or 7% and $225.8 million, or 48%, of our total revenues, respectively. We expect that product sales of Viread will constitute a substantial part of our total revenues for the foreseeable future.

AmBisome sales for the years ended December 31, 2000, 2001 and 2002 were $141.1 million, or 72%, $164.5 million, or 70% and $185.7 million, or 40% of our total revenues. We expect that revenues from sales of AmBisome will continue to provide a material portion of our total product revenues.

Hepsera product sales, which began in September 2002, for the year ended December 31, 2002, were approximately $4.2 million, or 1% of our total revenues. We expect that product sales of Hepsera will constitute a substantial part of our total revenues in the foreseeable future.

Accordingly, for the foreseeable future, we expect that we will continue to rely heavily on sales of Viread, AmBisome and Hepsera to support our existing manufacturing and sales infrastructure and to provide operating income to fund a significant portion of our administrative and research and development expenditures. Any significant reduction in sales of Viread, AmBisome or Hepsera, whether as a result of the introduction of competitive products or otherwise, would hurt our business, and we would have to scale back our manufacturing operations and reduce our sales force.

If safety issues arise for our marketed products, this could significantly reduce or limit our sales and adversely affect our results of operations.

The data that support the marketing approvals for our products, including Viread, AmBisome and Hepsera, and that form the basis for the safety warnings in our product labels, was obtained in controlled clinical trials of limited duration, and, in the case of Viread, from limited post-approval use. Following approval, these products are and will be used over longer periods of time in many patients taking numerous other medicines, who have underlying health problems and who will not be monitored for dosing compliance. If new safety issues are reported in post-marketing use and we cannot rule out the contributory role of our products, we may be required to provide additional warnings on our labels or narrow our approved indications, each of which could reduce the market acceptance of these products. For example, while we did not observe kidney toxicity in our clinical trials of Viread, kidney toxicity has been reported with post-approval use of Viread and the Viread label has been updated to include this warning. If serious safety issues with our marketed products were to arise, we could face potential product liability claims and sales of these products could be halted by us or by regulatory authorities. Similarly, in 1999, we discontinued development of adefovir dipivoxil 60 mg for treatment of HIV infection due to safety and benefit concerns arising from our studies. Double-blind, placebo-

controlled studies of adefovir dipivoxil 10 mg have demonstrated safety and efficacy in the treatment of patients with chronic hepatitis B. Studies have shown that adefovir dipivoxil is significantly more effective against HBV than against HIV, allowing us to use a lower dose of 10 mg of adefovir dipivoxil in Hepsera than was used for treatment of HIV infection. The 10 mg dose of adefovir dipivoxil used in Hepsera has

not been associated with significant kidney toxicity in our clinical trials to date, other than in patients who have pre-existing kidney problems or who are taking drugs known to cause kidney toxicity. The FDA has granted marketing approval for Hepsera, but we cannot be certain that the results from these Phase 3 clinical studies of Hepsera will demonstrate, to the satisfaction of other regulatory agencies, including in the European Union, that Hepsera can be a safe and effective treatment for chronic hepatitis B.

Hepsera is a new drug, and it may not gain significant market acceptance.

Hepsera is a new drug and faces a competitive marketplace. There are currently two drugs sold in the U.S. for treatment of chronic hepatitis B, and other potential drugs are in late stages of clinical development. Our competitors and most of our potential competitors have substantially greater resources than we do. Those resources include greater experience in promoting and marketing pharmaceuticals (including HBV drugs), superior product development capabilities and greater financial, scientific, manufacturing, marketing, managerial and human resources. In order for Hepsera to be successful, we will have to establish it in the marketplace against these competitors' drugs. It is too early to determine if Hepsera will achieve significant market acceptance.

There is no well-developed market or generally accepted treatment strategy for hepatitis B. We have never marketed or sold a drug for treatment of chronic hepatitis B before and might not be successful in doing so and may not be able to develop this therapeutic market effectively. Long term use of Hepsera may reveal safety issues or the development of resistance to Hepsera in patients. If our marketing efforts are unsuccessful, or if Hepsera turns out to have safety or resistance issues, we may be unsuccessful in convincing physicians to prescribe Hepsera to their patients, and some government reimbursers and private insurance companies may not pay for Hepsera. If Hepsera does not gain significant market acceptance, our expected future results of operations will suffer.

Fiscal year 2002 was our first full year of operating profitability, and we may not be able to maintain profitability on a sustainable basis.

Until 2002, we had never been profitable on an operating basis for a full year, and we may not continue to be profitable in the future. We expect the merger with Triangle will reduce our earnings in 2003, have no effect on earnings in 2004, and increase our earnings in 2005, although we cannot be certain our estimates are correct. At December 31, 2002, our accumulated deficit was approximately $381.6 million. Our losses have resulted principally from expenses associated with our research and development programs and, to a lesser extent, from sales, general and administrative expenses. Our operating results may be adversely affected by reduced sales of our products, increased marketing or development expenses, acquisitions of products or companies, such as Triangle, that are unprofitable at the time of acquisition or as a result of the other risks described in this report.

We develop drugs to treat HIV infection and AIDS and related conditions, and therefore changes in the regulatory and commercial environment for HIV infection and AIDS therapies could harm our business.

Several of our products and products in development address HIV infection and AIDS or related conditions. These products include Viread and emtricitabine for HIV infection and AIDS, Vistide for CMV retinitis and DaunoXome for HIV-associated Kaposi's sarcoma. We develop those products based upon current policy and the current marketplace for HIV infection and AIDS therapies, as well as our prediction of future policy and the future marketplace for these therapies. Our business is subject to

substantial risk because these policies and markets change quickly and unpredictably and in ways that could impair our ability to maintain regulatory approval and commercial acceptance of these products.

Our operations depend on compliance with complex FDA and comparable international regulations. Failure to obtain broad approvals on a timely basis or to achieve continued compliance could delay commercialization of our products.

The products that we develop must be approved for marketing and sale by regulatory authorities and will be subject to extensive regulation by the FDA and comparable regulatory agencies in other countries. We are continuing clinical trials for AmBisome, Viread and Hepsera for currently approved and additional uses. We anticipate that we will conduct a variety of clinical trials and file for marketing approval of additional products over the next several years. These products may fail to receive marketing approval on a timely basis, or at all. We cannot be certain that Hepsera will be approved by the European Union or regulatory authorities in other countries other than the U.S., or whether Hepsera will receive marketing approvals in such countries with significant limitations placed on its use. We cannot be certain that emtricitabine will be approved in the U.S. or the European Union or whether marketing approvals will have significant limitations on its use. We also cannot be certain that we will be able to obtain the regulatory approvals necessary to expand our commercial efforts into new markets. These failures, delays or limitations, as well as other regulatory changes, actions and recalls, could delay commercialization of any products and adversely affect our results of operations.

In addition, even after our products are marketed, the products and their manufacturers are subject to continual review. Later discovery of previously unknown problems with our products, our own manufacturing or the production by third-party manufacturers may result in restrictions on our products or the manufacture of our products, including withdrawal of the products from the market. If we fail to comply with

applicable regulatory requirements, we could be subject to penalties including fines, suspensions of regulatory approvals, product recalls, seizure of products and criminal prosecution.

Results of clinical trials are uncertain and may not support regulatory approval of our products.

We are required to demonstrate the safety and effectiveness of products we develop in each intended use through extensive preclinical studies and clinical trials in order to obtain regulatory approval of these products. The results from preclinical and early clinical studies do not always accurately predict results in later, large-scale clinical trials for several reasons, including:

- preliminary results may not be indicative of effectiveness;
- further clinical trials may not achieve the desired result; and
- further clinical trials may reveal unduly harmful side effects or may show the drugs to be less effective than other drugs or delivery systems for the desired indications.

Even successfully completed large-scale clinical trials may not result in marketable products for several reasons, including:

- the potential products are not shown to be safe and effective;
- regulatory authorities disagree with the results or design of our studies and trials; or
- the potential products are too difficult to develop into commercially viable products.

A number of companies in our industry have suffered setbacks in advanced clinical trials despite promising results in earlier trials. In the end, we may be unable to develop additional marketable products.

Delays in enrolling patients or developing suitable protocols for clinical trials could increase costs and delay regulatory approvals.

The rate of completion of our clinical trials will depend on the rate of patient enrollment. There will be substantial competition to enroll patients in clinical trials for drugs in development. This competition has delayed our clinical trials in the past. In addition, recent improvements in existing drug therapy, particularly for HIV and hepatitis B, may make it more difficult for us to enroll patients in our clinical trials as the patient population may choose to enroll in clinical trials sponsored by other companies or choose alternative therapies. Delays in planned patient enrollment can result in increased development costs and delays in regulatory approvals.

Our clinical trials must be carried out under protocols that are acceptable to regulatory authorities and to the committees responsible for clinical studies at the sites at which the studies are conducted. There may be delays in preparing protocols or receiving approval for them that may delay either or both of the start and finish of our clinical trials. In addition, feedback from regulatory authorities or results from earlier stage clinical studies might require modifications or delays in later stage clinical trials. These types of delays can result in increased development costs and delayed regulatory approvals.

Approximately half of our product sales occur outside the U.S., and currency fluctuations may impair our financial results.

A significant percentage of our product sales are denominated in foreign currencies. Increases in the value of the U.S. dollar against these foreign currencies in the past have reduced, and in the future may reduce, our U.S. dollar equivalent sales and negatively impact our financial condition and results of operations. Effective January 2002, we began to use foreign currency forward contracts to hedge a percentage of our forecasted international sales, primarily those denominated in the Euro currency. We also hedge a portion of our accounts receivable balances denominated in foreign currencies, which reduces but does not eliminate our exposure to currency fluctuations between the date a sale is recorded and the date that cash is collected. Additionally, to mitigate the impact of currency rate fluctuations on our cash outflows for certain foreign currency-denominated raw materials purchases, we enter into foreign exchange forward contracts to hedge our foreign currency-denominated accounts payable. Although we use forward contracts to reduce the impact of foreign currency fluctuations on our future results, we cannot be certain that these efforts will be successful and any such fluctuations could adversely affect our results of operations.

We face credit risks from our international accounts receivable.

We are subject to credit risk from our accounts receivable related to European product sales. Our European product sales to government owned or supported customers in Greece, Spain, Portugal, and Italy are subject to significant payment delays due to government funding and reimbursement practices. If significant changes were to occur in the reimbursement practices of European governments or if government funding becomes unavailable, our financial position and results of operations would be adversely affected.

Product development expenses can cause our operating expenses to fluctuate from quarter to quarter.

The clinical trials required for regulatory approval of our products are extremely expensive. It is difficult to accurately predict or control the amount or timing of these expenses from quarter to quarter. Uneven and unexpected activity in these programs causes our operating results to fluctuate from quarter to quarter.

We depend on relationships with other companies for sales and marketing performance and revenues. Failure to maintain these relationships would negatively impact our business.

We rely on a number of significant collaborative relationships with major pharmaceutical companies for our sales and marketing performance. These include collaborations with Fujisawa and Sumitomo for AmBisome, GSK for Hepsera, Roche for Tamiflu and Pharmacia for Vistide. In certain countries, we only rely on international distributors for sales of AmBisome and Viread and in some European countries, we intend to rely only on international distributors for sales of Hepsera. Some of these relationships also involve the clinical development of products by our partners. Reliance on collaborative relationships poses a number of risks, including:

- we will not be able to control whether our corporate partners will devote sufficient resources to our programs or products;
- disputes may arise in the future with respect to the ownership of rights to technology developed with corporate partners;
- disagreements with corporate partners could lead to delays in or termination of the research, development or commercialization of product candidates, or result in litigation or arbitration;
- contracts with our corporate partners may fail to provide significant protection or may fail to be effectively enforced if one of these partners fails to perform;
- corporate partners have considerable discretion in electing whether to pursue the development of any additional products and may pursue alternative technologies or products either on their own or in collaboration with our competitors;
- corporate partners with marketing rights may choose to devote fewer resources to the marketing of our products than they do to products of their own development;
- our distributors and corporate partners may be unable to pay us.

Given these risks, there is a great deal of uncertainty regarding the success of our current and future collaborative efforts. If these efforts fail, our product development or commercialization of new products could be delayed or revenue from existing products, including Viread, Hepsera, AmBisome and Tamiflu, could decline. In January 2002, Roche announced that due to production problems the liquid suspension form of Tamiflu approved for treatment of children as young as one year old was not available; however, the liquid suspension form of Tamiflu was returned to market in time for the 2002-2003 flu season. These production issues did not affect availability of the tablet form of Tamiflu for adults and adolescents 13 years and older. In Japan, where the 2002-2003 flu season has been particularly severe, Roche's sublicensee, Chugai Corporation, has been unable to meet heightened demand satisfactorily. In January 2003, Chugai issued a press release attributing this failure, in part, to manufacturing problems. These problems in Japan have reduced the net sales on which our royalty with Roche is based.

Under our April 2002 licensing agreement with GSK, we gave GSK the right to control clinical and regulatory development and commercialization of Hepsera in territories including Asia, Africa and Latin America. These include major markets for Hepsera, such as China, Japan, Taiwan and Korea. The success of Hepsera in these territories will depend almost entirely on the efforts of GSK. We receive royalties from GSK equal to a percentage of net sales made by GSK. If GSK fails to devote sufficient resources to, or does not succeed in developing or commercializing Hepsera in its territories, our potential revenues from sales of Hepsera may be substantially reduced.

Our existing products and products under development may not be accepted by physicians, insurers and patients.

The ability of our products to achieve and sustain market acceptance in countries where they are approved for marketing will depend on the scope of regulatory approvals and whether or not government authorities and managed care organizations will adequately reimburse patients who use these products.

In addition, we need to convince the medical and patient advocacy community of:

- the effectiveness of these products in treating disease;
- the safety of these products when administered to patients; and
- the advantages of these products over competitive products.

Physicians, patients, patient advocates, payors and the medical community in general may not accept or use any products that we may develop. If our products are not accepted, our results of operations will suffer.

Many other companies are targeting the same diseases and conditions as we are. Competitive products from other companies could significantly reduce the market acceptance of our products.

Our products and development programs target a number of diseases and conditions, including viral infections and fungal infections. There are many commercially available products for these diseases. Certain of these products are well-established therapies and have generated substantial sales. In addition, a large number of companies and institutions are conducting well-funded research and development activities directed at developing treatments for these diseases. Products currently on the market and those under development by our competitors could make our technology and products obsolete or noncompetitive. We expect that competition for the treatment of these diseases will increase in the future as new products enter the market and advanced technologies become available. We will also be competing to license or acquire technology from other companies.

Our plan to supply Viread at our cost to certain developing countries will reduce Viread's gross profit margin and could give rise to unforeseen liabilities.

We are launching a distribution program pursuant to which we will supply Viread at our cost to all countries in Africa and to the 15 other countries designated "Least Developed Countries" by the United Nations. Because we will receive no profit from the Viread we supply through this program, it will reduce the Viread product's gross profit margin. The amount of that reduction will depend upon the volume of Viread that flows through this program, which we cannot predict with any certainty. Additionally, supply and distribution of drugs in a resource-poor environment is a complicated undertaking. As this program develops, we could face unforeseen challenges and risks, which could give rise to unforeseen liabilities.

Our existing products are subject to reimbursement from government agencies and other third parties. Pharmaceutical pricing and reimbursement pressures may reduce profitability.

Successful commercialization of our products depends, in part, on the availability of governmental and third party payor reimbursement for the cost of such products and related treatments. Government health administration authorities, private health insurers and other organizations generally provide reimbursement. Government authorities and third-party payors increasingly are challenging the price of medical products and services, particularly for innovative new products and therapies. This has resulted in lower average sales prices. For example, a majority of our sales of AmBisome, Vistide and DaunoXome, and a significant percentage of our sales of Viread and Hepsera, are subject to reimbursement by government agencies, resulting in significant discounts from list price and rebate

obligations. Our business may be adversely affected by an increase in U.S. or international pricing pressures. These pressures can arise from rules and practices of managed care groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and health care reform, pharmaceutical reimbursement and pricing in general. In the U.S. in recent years, new legislation has been proposed at the federal and state levels that would effect major changes in the health care system, either nationally or at the state level. These proposals have included prescription drug benefit proposals for Medicare beneficiaries introduced in Congress. Although there has been no U.S. federal reform legislation, some states have enacted health care reform legislation. Further federal and state developments are possible. Although we cannot predict the exact nature of legislative health care reforms, if any, our results of operations could be adversely affected by such reforms. In Europe, the success of Hepsera (if approved for sale), Tamiflu and Viread will also depend largely on obtaining and maintaining government reimbursement in Europe because in many European countries, including the United Kingdom and France, patients are reluctant to pay for prescription drugs out of their own pocket. We also expect that the success of our products in development, particularly in Europe, will depend on the ability to obtain reimbursement. Even if reimbursement is available, reimbursement policies may adversely affect our ability to sell our products on a profitable basis.

In addition, in many international markets, governments control the prices of prescription pharmaceuticals. In these markets, once regulatory marketing approval is received, pricing negotiations with governmental authorities can take another six to twelve months or longer. Sales of competing products, attempts to gain market share or introductory pricing programs of our competitors could also require us to lower our prices in these countries, which could adversely affect our results of operations. Some foreign governments have passed, or are considering, legislation to require us to sell our products subject to reimbursement at a mandatory discount.

Our product revenues could be reduced by imports from countries where our products are available at lower prices.

Our sales in countries with relatively higher prices may be reduced if products can be imported into those countries from lower price markets. There have been cases in which pharmaceutical products were sold at steeply discounted prices in the developing world and then re-exported to European countries, where they could be re-sold at much higher prices. If this happens with our products, particularly Viread, which we have agreed to provide at our cost to all countries in Africa and to the 15 other countries designated "Least Developed Countries" by the United Nations, our revenues would be adversely affected.

In addition, in the European Union, we are required to permit cross border sales. This allows buyers in countries where government-approved prices for our products are relatively high to purchase our products legally from countries where they must be sold at lower prices. Such cross-border sales adversely affect our revenues.

We may not be able to obtain effective patents to protect our technologies from use by competitors, and patents of other companies could require us to stop using or pay for the use of required technology.

Our success will depend to a significant degree on our ability to:

- obtain patents and licenses to patent rights;
- preserve trade secrets; and
- operate without infringing on the proprietary rights of others.

We have rights to U.S. and foreign issued patents and have filed and will continue to file patent applications in the U.S. and abroad relating to our technologies. There is a risk, however, that patents may not issue from any of these applications or that the patents will not be sufficient to protect our technology. Patent applications are confidential for at least some period of time, sometimes in the U.S. until a patent issues. As a result, we may not know if our competitors filed patent applications for technology covered by our pending applications. We also cannot be certain that we were the first to invent the technology that is the subject of our patent applications. Competitors may have filed patent applications or received patents and may obtain additional patents and proprietary rights that block or compete with our patents.

We do not have patent filings in China or certain other Asian countries covering all forms of adefovir dipivoxil, the active ingredient in Hepsera, although we do have applications pending in various Asian countries that relate to various forms and formulations of adefovir dipivoxil. Asia is a major market for therapies for hepatitis B, the indication for which Hepsera has been developed. We may obtain patents for certain products many years before marketing approval is obtained for those products. Because patents have a limited life, which may begin to run prior to commercial sale, the commercial value of the product may be limited. In addition, patents may not provide adequate protection in certain countries in Africa and Asia, including China.

Our competitors may file patent applications covering our technology. If so, we may have to participate in interference proceedings or litigation to determine the right to a patent. Litigation and interference proceedings are expensive even if successful.

Our success depends in large part on our ability to operate without infringing upon the patents or other proprietary rights of third parties. If we infringe the patents of others, we may be prevented from commercializing products or may be required to obtain licenses from these third parties. We cannot be certain that we would be able to obtain alternative technologies or any required license. Even if we were to obtain such technologies or licenses, we cannot be certain that the terms would be reasonable. If we fail to obtain such licenses or alternative technologies, we may be unable to develop or commercialize some or all of our products.

In addition, we use significant proprietary technology and rely on unpatented trade secrets and proprietary know-how to protect certain aspects of our production and other technologies. Our trade secrets may become known or independently discovered by our competitors.

In some countries, we may be required to grant compulsory licenses for our HIV products or face generic competition for our HIV products.

In a number of developing countries, government officials and other groups have suggested that pharmaceutical companies should make drugs for HIV infection available at a low cost. In some cases, governmental authorities have indicated that where pharmaceutical companies do not do so, their patents might not be enforceable to prevent generic competition. Some major pharmaceutical companies have greatly reduced prices for HIV drugs in certain developing countries. If certain countries do not permit enforcement of our patents, sales of Viread in those countries could be reduced by generic competition. Alternatively, governments in those countries could require that we grant compulsory licenses to allow competitors to manufacture and sell their own versions of Viread in those countries, thereby reducing our Viread sales, or we could respond to governmental concerns by reducing prices for Viread. In all of these situations, our results of operations could be adversely affected.

Manufacturing problems could delay product shipments and regulatory approvals.

We depend on these third parties to perform manufacturing obligations effectively and on a timely basis. If these third parties fail to perform as required, this could impair our ability to deliver our

products on a timely basis or cause delays in our clinical trials and applications for regulatory approval, and these events could harm our competitive position. For Viread, Hepsera and Vistide, we rely on third parties for the manufacture of bulk drug substance and final drug product for clinical and commercial purposes. For example, Roche is responsible for manufacturing Tamiflu. In January 2002, Roche announced that due to production problems the liquid suspension form of Tamiflu approved for treatment of children as young as one year old was not available; however, the liquid suspension form of Tamiflu was returned to market in time for the 2002-2003 flu season. These production issues did not affect availability of the tablet form of Tamiflu for adults and adolescents 13 years and older. In Japan, where the 2002-2003 flu season has been particularly severe, Roche's sublicensee, Chugai Corporation, has been unable to meet heightened demand satisfactorily. In January 2003, Chugai issued a press release attributing this failure, in part, to manufacturing problems. These problems in Japan have reduced the net sales on which our royalty with Roche is based. Additionally, for emtricitabine, we are seeking qualification of Abbott in the U.S. and the European Union as a contract manufacturer for bulk drug substance and the final drug product. We are also seeking qualification in the European Union for a second contract manufacturer for emtricitabine bulk drug substance. Abbott has a recent history of violations of current Good Manufacturing Practice regulations cited by the FDA and has been working towards corrections under an FDA consent decree. The FDA conducted a pre-approval inspection at Abbott for the new drug application of emtricitabine and issued a Form 483 observation to Abbott in December 2002. In January 2003, Abbott submitted a response to the Form 483 observation. If the FDA deems Abbott's response to the Form 483 observation to be inadequate, or if Abbott is unable to supply the initial launch quantities of emtricitabine in a timely manner, the emtricitabine launch could be delayed.

We manufacture AmBisome and DaunoXome at our facilities in San Dimas, California. Our only formulation and manufacturing facilities are in San Dimas, California, although we own a manufacturing facility in Ireland that performs certain quality control testing, labeling and packaging, and we use third parties as alternate contract suppliers to fill and freeze dry certain batches of product. In the event of a natural disaster, including an earthquake, equipment failure, strike or other difficulty, we may be unable to replace this manufacturing capacity in a timely manner and would be unable to manufacture AmBisome and DaunoXome to meet market needs.

We may not be able to obtain materials necessary to manufacture our products.

Many of the materials that we utilize in our operations are made at only one facility. For example, we depend on single suppliers for high quality amphotericin B, daunorubicin HCl, distearoylphosphatidylcholine and high quality cholesterol, each of which is used in the manufacture of one or more of our liposomal products. Because the suppliers of key components and materials must be named in the new drug application filed with the FDA for a product, significant delays can occur if the qualification of a new supplier is required. If supplies from our suppliers were interrupted for any reason, we may be unable to ship Viread, AmBisome, Hepsera, Vistide or DaunoXome, or to supply any of our products in development for clinical trials.

We have limited experience in manufacturing our existing products and may need to develop additional manufacturing capacity for these products and our potential future products.

For some of our potential products under development, we will need to develop further our production technologies for use on a larger scale in order to conduct clinical trials and produce such products for commercial sale at an acceptable cost. We cannot be certain that we will be able to implement any of these developments successfully.

The manufacturing process for pharmaceutical products is highly regulated, and regulators may shut down manufacturing facilities that they believe do not comply with regulations. The FDA's current Good Manufacturing Practices are extensive regulations governing manufacturing processes, stability

testing, record-keeping and quality standards. In addition, our manufacturing operations are subject to routine inspections by regulatory agencies and similar regulations are in effect in other countries.

Our business may give rise to product liability claims not covered by insurance or indemnity agreements.

The testing, manufacturing, marketing and use of Viread, AmBisome, Hepsera, Tamiflu, Vistide and DaunoXome, as well as products in development, involve substantial risk of product liability claims. These claims may be made directly by consumers, healthcare providers, pharmaceutical companies or others. A successful product liability claim against us could require us to pay substantial amounts, which could impair our financial condition and our ability to clinically test and to market our products.

Additionally, we are required by governmental regulations to test our products even after they have been sold and used by patients. As a result of such tests, we may be required to, or may determine that, we should recall products already in the market. Subsequent testing and product recalls may increase our potential exposure to product liability claims.

Our internal research programs and our efforts to obtain rights to new products from third parties may not yield potential products for clinical development.

Our long term success depends on our ability either to identify, through internal research programs, potential product candidates that may be developed into new pharmaceutical products or to obtain new products or product candidates through licenses from third parties.

A significant portion of the research that we will conduct will involve new and unproven technologies. Research programs to identify product candidates require substantial technical, financial and human resources whether or not such candidates are identified. Our research programs may appear to be a promising route to identifying potential product candidates yet fail to yield product candidates for clinical development for a number of reasons, including:

- the research methodology used may not be successful in identifying potential product candidates;
- potential product candidates may on further study be shown to have unduly harmful side effects or characteristics that indicate they are unlikely to be effective drugs;
- we may be unable to develop larger scale manufacturing methods that are efficient, cost-effective and capable of meeting stringent regulatory standards; or
- others may hold intellectual property rights that prevent us from developing, making or selling certain products.

We may be unable to obtain suitable product candidates or products from third parties for a number of reasons, including:

- we may be unable to purchase or license such compounds on terms that would allow us to make an appropriate return from the product;
- competitors may be unwilling to assign or license product rights to us;
- we may be unable to identify suitable products or product candidates within our areas of expertise; or
- product candidates that we acquire may not be approved by regulatory authorities due to problems with their safety or effectiveness.

If we are unable to develop suitable potential product candidates through internal research programs or obtain rights to new products from third parties, our future revenue growth will suffer.

Our use of hazardous materials, chemicals, viruses and radioactive compounds exposes us to potential liabilities.

Our research and development involves the controlled use of hazardous materials, chemicals, viruses and various radioactive compounds. Although we believe that our safety procedures for handling and disposing of such materials comply with the standards prescribed by state and federal regulations, we cannot completely eliminate the risk of accidental contamination or injury from these materials. In the event of such an accident, we could be held liable for significant damages or fines.

Risks Related to Triangle Acquisition in January 2003

Emtricitabine may not receive marketing approval as a single agent, which could prevent or delay the commercial sale of a co-formulation of Viread with emtricitabine.

We have submitted applications for marketing approval of emtricitabine for the treatment of HIV infection in the U.S. and in the European Union. Our ability to obtain marketing approval for a co-formulation of Viread with emtricitabine will depend on emtricitabine receiving marketing approval as a single agent for treatment of HIV infection. Regulatory authorities in the U.S., European Union and other countries may not grant marketing approval for emtricitabine if they conclude it is not safe or efficacious for its intended use. In addition, because regulatory authorities in the European Union require that new products have sufficient efficacy or safety advantages over currently marketed products and have extensive pre-clinical toxicity data, these authorities may conclude that emtricitabine is not approvable as a single agent. Emtricitabine is similar at a chemical level to Epivir, GSK's lamivudine product that is already marketed for treatment of HIV infection, and

available data indicates that the products have comparable safety and efficacy profiles. If emtricitabine does not receive marketing approval as a single agent, we may be unable to obtain marketing approval for a co-formulation of Viread with emtricitabine or may have to conduct lengthy and expensive clinical trials of the co-formulation in order to obtain such approvals.

The proposed co-formulation of Viread and emtricitabine may not be technically possible, may not be effective or safe, or may not be approved by regulatory authorities.

We intend to develop and commercialize a co-formulation of Viread with emtricitabine. Achieving anticipated synergies and the potential benefits of a co-formulation, which were the significant motivations behind our merger with Triangle, will depend on successfully creating and obtaining marketing approval for a co-formulation of Viread with emtricitabine. We expect that if emtricitabine receives marketing approval, the only major requirement for obtaining marketing approval for the co-formulation of Viread with emtricitabine would be a clinical study showing that the co-formulation of emtricitabine and Viread is biologically equivalent to emtricitabine and Viread administered together as separate formulations. We will need a chemistry, manufacturing and bioequivalence package that shows the co-formulated tablet gives the same exposure to Viread and emtricitabine as the two drugs given individually. It is uncertain whether it will be possible to bring such a co-formulation to market. Emtricitabine has not been approved for marketing by regulatory authorities and may not be approved or might require additional clinical trials in order to obtain regulatory approval. In addition, a physical combination of emtricitabine with Viread may not be technically feasible or cost-effective. Even if the two drugs can be co-formulated, regulatory authorities may not approve the co-formulation or may require additional clinical trials before granting marketing approval. Any requirement for clinical trials, or any delay or failure in developing and commercializing a co-formulation of emtricitabine and Viread, would have a material adverse effect on our business, financial condition and results of operations.

If we do not successfully integrate Triangle into our operations, our business will be adversely affected.

Integrating Gilead and Triangle will be a complex and time-consuming process. Prior to the merger, Gilead and Triangle operated independently, each with its own business, corporate culture, locations, employees and systems. Gilead and Triangle now have to operate as a combined organization and begin utilizing common information and communication systems; operating procedures; financial controls; and human resource practices, including benefits, training and professional development programs. There may be substantial difficulties, costs and delays involved in any integration of Gilead and Triangle. These may include:

- distracting management from the business of the combined company;
- potential incompatibility of corporate cultures;
- potential inability to coordinate research and development efforts successfully;
- costs and delays in implementing common systems and procedures; and
- operating the combined company at three sites in the U.S. and at nine international sites.

Any one or all of these factors may increase operating costs or lower anticipated financial performance. In addition, the combined company may lose corporate partners, distributors, suppliers, manufacturers and employees. Many of these factors are also outside the control of the company. Achieving anticipated synergies and the potential benefits underlying the two companies' reasons for the merger will depend on successful integration of the two companies. The failure to integrate Gilead and Triangle successfully would have a material adverse effect on our business, financial condition and results of operations.

If we are unable to manufacture emtricitabine successfully or at a reasonable cost, our potential future results could suffer.

We have not manufactured emtricitabine and are not familiar with the manufacturing process for emtricitabine. Until completion of the merger, Triangle was responsible for making arrangements to obtain supplies of emtricitabine from a third party for an anticipated commercial launch following receipt of marketing approvals in the U.S. and the European Union. If Triangle has not made adequate arrangements for supplies, or if there are supply problems with the third party manufacturers for emtricitabine, there may not be sufficient supplies of emtricitabine to meet commercial demand, in which case our future results could suffer.

Triangle entered into an agreement with Abbott, under which Abbott has agreed to manufacture emtricitabine bulk drug substance and final drug product for us and to transfer the manufacturing technology for emtricitabine to third party manufacturers. We will rely on Abbott or on such third parties for manufacture of emtricitabine for some period of time. We are seeking qualification of Abbott in the U.S. and the European Union as a contract manufacturer. Abbott has a recent history of violations of current Good Manufacturing Practice regulations cited by the FDA and has been working towards corrections under an FDA consent decree. The FDA conducted a pre-approval inspection at Abbott for the new drug application of emtricitabine and issued a Form 483 observation to Abbott in December 2002. In January 2003, Abbott submitted a response to the Form 483 observation. We depend on Abbott to perform its obligations effectively and on a timely basis. If the FDA deems Abbott's response to the Form 483 observation to be inadequate, or if Abbott is unable to supply the initial launch quantities of

emtricitabine in a timely manner, the timing of the emtricitabine launch could be impacted and this event could harm our competitive position. Any new manufacturers for emtricitabine would also have to be approved by regulatory authorities, and if there are delays in such approval, we may have to rely on Abbott for emtricitabine supplies for a longer period than currently anticipated. If costs for supplies of emtricitabine from these third party manufacturers are unacceptably

high, our results of operations would suffer until we are able to arrange for manufacture of emtricitabine at lower cost. Because we have not manufactured emtricitabine before, we cannot be sure that the emtricitabine manufacturing costs can be reduced to an acceptable level.

Our profitability will depend in part upon Triangle's operations, which have incurred losses since Triangle's inception.

Triangle has incurred losses since its inception and as of December 31, 2002, its accumulated deficit was approximately $441.6 million. Triangle's losses have resulted primarily from expenses associated with the acquisition and development of its drug candidates and general and administrative costs. Triangle has not generated any revenue from the sale of its product candidates to date and was not expecting to do so before 2003. Triangle's operations may never generate significant revenue or achieve profitability.

The trading price of our securities could be subject to significant fluctuations.

The trading price of our common stock has been volatile, and may be volatile in the future. Factors such as announcements of fluctuations in our or our competitors' operating results, changes in our prospects and market conditions for biotechnology stocks in general could have a significant impact on the future trading prices of our common stock. In particular, the trading price of the common stock of many biotechnology companies, including us, has experienced extreme price and volume fluctuations, which have at times been unrelated to the operating performance of such companies whose stocks were affected. Some of the factors that may cause volatility in the price of our securities include:

- clinical trial results and regulatory developments;
- quarterly variations in results;
- business and product market cycles;
- fluctuations in customer requirements;
- the availability and utilization of manufacturing capacity;
- the timing of new product introductions; and
- the ability to develop and implement new technologies.

The price of our securities may also be affected by the estimates and projections of the investment community, general economic and market conditions, and the cost of operations in our product markets. While we cannot predict the individual effect that these factors may have on the price of our securities, these factors, either individually or in the aggregate, could result in significant variations in price during any given period of time. There can be no assurance that these factors will not have an adverse effect on the trading prices of our common stock.

ITEM 2. PROPERTIES

Our corporate headquarters, including our principal executive offices and some of our research facilities, are located in Foster City, California. At this location, we lease approximately 260,000 square feet of space in eight proximately located buildings. One of the leases covering approximately 59,000 square feet of space in this group of buildings expires in December 2003 and there are no renewal options. The remaining leases expire in March and September 2006 and we have an option to renew all of these leases for two additional five-year periods.

We also occupy facilities in San Dimas, California. At this location, we lease approximately 102,500 square feet of space, which houses research and development activities, manufacturing and certain administrative functions. These leases expire in May and November 2003, with two five-year renewal

options. In addition, we lease an adjacent warehouse facility with about 53,000 square feet of space that we use for product distribution and administrative functions. This lease expires in April 2006, with two additional five-year extensions.

In Durham, North Carolina, we lease approximately 101,000 square feet of administrative office and laboratory space, of which we sublease approximately 21,000 square feet to third parties. This lease expires in September 2003. We are currently in negotiations with the lessor for another lease term.

In addition, we lease approximately 85,000 square feet of space for our sales and marketing, regulatory, finance, information technology and human resource operations in Europe and Australia, including a prepaid, 999-year lease for our 13,000 square foot manufacturing and distribution facility in Ireland. The other leases have various expiration dates.

We believe that our facilities are adequate and suitable for at least our current and near-term future needs.

ITEM 3. LEGAL PROCEEDINGS

In 1997, we reached a settlement with Elan Corporation, plc (the successor company to The Liposome Company) in which both companies agreed to dismiss all legal proceedings involving AmBisome. Under the terms of the initial settlement agreement in 1997, we made an initial payment to Elan of $1.8 million and agreed to make additional royalty payments through 2006, based on AmBisome sales. In 1997, we recorded a $10.0 million accounting charge for the accrued litigation settlement expenses, representing the net present value of all future minimum payments we were required to make. In June 2002, we entered into an agreement with Elan terminating our remaining AmBisome payment obligations under the initial settlement agreement in exchange for a payment to Elan of $7.3 million.

In November 2002, ULEHI notified us that ULEHI believes Gilead has materially breached its licensing agreement with ULEHI concerning the SELEX technology to identify aptamers by, amongst other things, assigning rights under the agreement without ULEHI's consent. We contest ULEHI's allegations. We have met with ULEHI regarding these allegations and are actively engaged in negotiations to settle this disagreement. If these negotiations prove unsuccessful and ULEHI chooses to terminate the ULEHI-Gilead agreement, an arbitration concerning this termination would likely result. An unfavorable outcome in such an arbitration could give rise to an award against us of monetary damages or other adverse remedies, possibly including conveyance to ULEHI of Gilead's rights and obligations under the ULEHI licensing agreement and our sublicenses.

We are also a party to various other legal actions that arose in the ordinary course of our business. We do not believe that any of these other legal actions will have any significant impact on our business.

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

No matters were submitted to a vote of securities holders during the quarter ended December 31, 2002.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS

Our common stock is traded on The Nasdaq Stock Market under the symbol "GILD". The following table sets forth for the periods indicated the high and low intra-day sale prices per share of our common stock on The Nasdaq Stock Market. These prices represent quotations among dealers without adjustments for retail mark-ups, markdowns or commissions, and may not represent prices of actual transactions.

	High	Low
2002		
First Quarter	$ 39.00	$ 28.95
Second Quarter	$ 38.19	$ 28.05
Third Quarter	$ 37.25	$ 26.08
Fourth Quarter	$ 40.00	$ 30.61
2001		
First Quarter	$ 20.88	$ 12.44
Second Quarter	$ 30.98	$ 14.41
Third Quarter	$ 31.75	$ 22.85
Fourth Quarter	$ 36.84	$ 27.28

As of February 28, 2003, we had 198,503,361 shares of common stock outstanding held by approximately 519 stockholders of record. We have not paid cash dividends on our common stock since our inception and we do not anticipate paying any in the foreseeable future.

On December 18, 2002 we issued $345.0 million of 2% convertible senior notes due December 15, 2007 in a private offering to Goldman, Sachs & Co., which resold the notes to qualified institutional investors. Net proceeds were approximately $336.6 million.

The following table provides certain information with respect to all of our equity compensation plans in effect as of the end of the fiscal year ended December 31, 2002 (shares in thousands).

Equity Compensation Plan Information

Plan Category	Number of Common Shares to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Common Shares Remaining Available for Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a) (c)(1)
Equity compensation plans approved by security holders	21,060	$ 18.67	17,059
Equity compensation plans not approved by security holders	—	—	—
Total:	21,060	$ 18.67	17,059

(1) Includes approximately 1.7 million shares issuable under Gilead's Employee Stock Purchase Plan. See Note 14 of the Consolidated Financial Statements.

ITEM 6. SELECTED FINANCIAL DATA

GILEAD SCIENCES, INC.
SELECTED CONSOLIDATED FINANCIAL DATA (1)(2)
(in thousands, except per share data)

	Year Ended December 31,				
	2002	2001	2000	1999	1998
CONSOLIDATED STATEMENT OF OPERATIONS DATA:					
Total revenues	$ 466,790	$ 233,769	$ 195,555	$ 168,979	$ 151,119
Total costs and expenses	385,783	354,458	247,873	239,838	230,631
Income (loss) from operations	81,007	(120,689)	(52,318)	(70,859)	(79,512)
Gain on sale of oncology assets	—	157,771	—	—	—
Income (loss) before cumulative effect of change in accounting principle	72,097	51,182	(43,106)	(66,486)	(44,758)
Cumulative effect of change in accounting principle (3)	—	1,089	(13,670)	—	—
Net income (loss)	72,097	52,271	(56,776)	(66,486)	(44,758)
Amounts per common share—basic:					
Income (loss) before cumulative effect of change in accounting principle	$ 0.37	$ 0.27	$ (0.24)	$ (0.39)	$ (0.27)
Cumulative effect of change in accounting principle	—	0.01	(0.07)	—	—

(in thousands, except per share data)

Net income (loss) per share—basic	$ 0.37	$ 0.28	$ (0.31)	$ (0.39)	$ (0.27)
Shares used in per share calculation—basic	195,543	190,245	182,099	171,305	164,060
Amounts per common share—diluted:					
Income (loss) before cumulative effect of change in accounting principle	$ 0.35	$ 0.25	$ (0.24)	$ (0.39)	$ (0.27)
Cumulative effect of change in accounting principle	—	0.01	(0.07)	—	—
Net income (loss) per share—diluted	$ 0.35	$ 0.26	$ (0.31)	$ (0.39)	$ (0.27)
Shares used in per share calculation—diluted	206,477	202,321	182,099	171,305	164,060

	December 31,				
	2002	2001	2000	1999	1998
CONSOLIDATED BALANCE SHEET DATA:					
Cash, cash equivalents and marketable securities	$ 942,374	$ 582,851	$ 512,878	$ 294,394	$ 348,743
Working capital	1,078,868	627,642	535,560	324,104	359,555
Total assets	1,288,183	794,786	678,099	436,808	487,764
Long-term obligations	273	389	2,238	5,253	8,883
Convertible debt	595,000	250,000	250,000	79,533	80,000
Accumulated deficit	(381,640)	(453,737)	(506,008)	(449,232)	(382,746)
Total stockholders' equity(4)	571,341	452,437	351,124	297,292	333,699

(1) During 2001, we completed the sale of our oncology assets and related technology to OSI Pharmaceuticals, Inc. and recorded a non-operating gain of $157.8 million. In 2001, we also recorded a non-operating gain of $8.8 million from the sale of our 49 percent interest in Proligo. During 2002, Gilead sold all its shares of OSI common stock and recognized a loss on the sale of marketable securities of $16.0 million. These shares were partial consideration for the sale of our oncology assets.

(2) The 1998 prior period was restated to reflect the merger with NeXstar Pharmaceuticals, Inc. on July 29, 1999, which was accounted for as a pooling of interests.

(3) Gilead adopted Statement of Financial Accounting Standards Nos. 133 and 138, collectively referred to as SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* , in the first quarter of 2001. The change was accounted for as a change in accounting principle. Effective in the first quarter of 2000, Gilead adopted the SEC's Staff Accounting Bulletin No. 101 (SAB 101), *Revenue Recognition in Financial Statements* , and the change was also accounted for as a change in accounting principle.

(4) No cash dividends have been declared or paid on our common stock.

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

Overview

Gilead was incorporated in Delaware on June 22, 1987. We are a biopharmaceutical company focused on the discovery, development and commercialization of antivirals, antibacterials and antifungals to treat life-threatening infectious diseases. We are a multinational company, with revenues from six approved products and marketing operations in ten countries. Currently, we market Viread (tenofovir disoproxil fumarate) for the treatment of HIV infection; Hepsera (adefovir dipivoxil) for the treatment of chronic hepatitis B infection; AmBisome ((amphotericin B) liposome for injection), an antifungal agent; DaunoXome (daunorubicin citrate liposome injection), a drug approved for the treatment of Kaposi's Sarcoma; and Vistide (cidofovir injection) for the treatment of CMV retinitis. Roche markets Tamiflu (oseltamivir phosphate) for the treatment of influenza, under a collaborative agreement with us. We are seeking to add to our existing portfolio of products through our clinical development programs, internal discovery programs and an active product acquisition and in-licensing strategy, such as our acquisition of Triangle completed in January 2003. Our internal discovery activities include identification of new molecular targets, target screening and medicinal chemistry. In addition, we are currently developing products to treat HIV and HBV infections. We also have expertise in liposomal drug delivery technology that we use to develop drugs that are safer, easier for patients to tolerate and more effective.

In December 2001, we completed the sale of our oncology assets to OSI Pharmaceuticals, Inc. in a transaction valued at up to $200.0 million in cash and OSI stock. This transaction will allow us to focus on and continue to strengthen our core expertise in infectious diseases. See Note 4 to the consolidated financial statements for further information.

In the year ended December 31, 2001, Gilead adopted Statement of Financial Accounting Standards Nos. 133 and 138, collectively referred to as SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* , which resulted in a cumulative effect of change in accounting principle. In the year ended December 31, 2000, Gilead adopted the Securities and Exchange Commission's Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements* , also resulting in a cumulative effect of change in accounting principle.

Certain prior period amounts have been reclassified to conform to the current presentation.

Forward-Looking Statements and Risk Factors

The following discussion contains forward-looking statements that involve risks and uncertainties. Gilead's actual results could differ materially from those discussed in any forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this section, as well as under the caption "Business", including "Risk Factors That Affect Gilead" in Part I. All forward-looking statements included in this document are based on information currently available to Gilead, do not include the effect of the acquisition of Triangle in our 2003 guidance, unless specifically noted, since we are still evaluating the detailed financial impact of Triangle's operations on our consolidated financial statements, and we assume no obligation to update any such forward-looking statements. The following discussion should be read in conjunction with the consolidated financial statements and notes included elsewhere in this report.

Viread Sales. We rely on sales of Viread for a significant portion of our operating income. A number of drugs to treat HIV infection and AIDS are currently sold or are in advanced stages of clinical development, including 20 products currently sold in the U.S. Among the companies that are significant competitors in the HIV/AIDS market are GSK, BMS, Roche, Pfizer, Merck, Boehringer-Ingelheim and Abbott Laboratories. Given the broad range of competitors and depth of their

resources, Viread's market penetration may be limited, particularly for use in treatment-naïve patients, given that the data supporting Viread's U.S. approval is in a treatment-experienced patient population.

AmBisome Sales. We also rely on sales of AmBisome for a significant portion of our operating income. There are lower priced products that compete with AmBisome; two products that compete with AmBisome that were recently approved in the U.S. and European Union; and products being developed that could compete with AmBisome in the future. If any of these antifungal products achieve further market acceptance, or if the antifungal products in development become commercially available, revenues from sales of AmBisome would likely decrease, resulting in a reduction of operating income.

Acquisition Integration. In January 2003, we completed the acquisition of Triangle. Any acquisition carries inherent risks. We may not be able to successfully integrate Triangle into our operations and obtain any anticipated synergies or cost savings. We may also be unsuccessful in obtaining marketing approval for emtricitabine or in developing a co-formulated product. Failure to successfully integrate the Triangle operations into our business or obtain marketing approval of emtricitabine could adversely affect our financial position and results of operations.

Market Acceptance of Products. The ability of our products to achieve and sustain market acceptance will depend on a number of factors, including the receipt and scope of regulatory approvals; the availability of public and private insurance and reimbursement for our products; the safety, efficacy, tolerability and cost of our products; ease of administration and dosing, and how our products compare to competitive products. If our products do not achieve and sustain market acceptance, our results of operations will suffer.

Regulatory Process. The U.S. Food and Drug Administration and foreign agencies could reject or limit the commercialization of our products for a number of reasons including: if they disagree with the results or designs of our clinical trials; if they believe our products have

unacceptable efficacy, toxicity or tolerability; or if they believe our products cannot be manufactured on a commercial basis in compliance with the applicable safety and quality standards. If these agencies reject or limit the commercialization of our products, our financial results would be adversely affected. The clinical trials required for regulatory approval of our products are extremely expensive, and it is difficult for us to accurately predict or control the amount or timing of these expenses from quarter to quarter. In addition, regulatory agencies could require us to conduct additional unanticipated clinical trials on our products, the cost of which could be substantial.

Governmental Legislation and Reimbursement Programs. Regulatory, legal and legislative issues may adversely affect pricing and sales of our products. In the U.S., there is federal legislation that lowers the price for our products that are purchased or reimbursed by federal agencies, and some states have enacted legislation that can lower the prices for our products. In addition, there are a growing number of U.S. federal and state legislative proposals that if enacted would lower the price for our products. Many countries outside the U.S. have government sponsored health care programs that set lower drug prices and patient reimbursement levels. Our sales in countries with relatively higher prices may be reduced if products can be imported into those countries from lower price markets. This is of particular concern in the European Union where we are required to permit cross border sales and could be a concern in the U.S. if legislation easing import restrictions is enacted and applied.

International Credit Risk. We are subject to credit risk from our accounts receivable related to European product sales. Our European product sales to government owned or supported customers in Greece, Spain, Portugal and Italy are subject to significant payment delays due to government funding and reimbursement practices. If significant changes were to occur in the reimbursement practices of European governments or if government funding becomes unavailable, our financial position and results of operations would be adversely affected.

Compulsory Licensing and Generic Competition. In a number of developing countries, government officials and other groups have suggested that pharmaceutical companies should make drugs for HIV infection available at a low cost. In some cases, governmental authorities have indicated that where pharmaceutical companies do not do so, their patents might not be enforceable to prevent generic competition. Some major pharmaceutical companies have greatly reduced prices for HIV drugs in certain developing countries. If certain countries do not permit enforcement of our patents, sales of Viread in those countries could be reduced by generic competition. Alternatively, governments in those countries could require that we grant compulsory licenses to allow competitors to manufacture and sell their own versions of Viread in those countries, thereby reducing our Viread sales, or we could respond to governmental concerns by reducing prices for Viread. In all of these situations, our results of operations could be adversely affected.

Collaborations. We depend on collaborations for the development and commercialization of certain products and for revenue, including the collaboration with Fujisawa for sales of AmBisome in the U.S. and Canada, the collaboration with GSK for clinical and regulatory development and commercialization of Hepsera in Asia, Latin America and certain other territories, and the collaboration with Roche for sales of Tamiflu worldwide. We may also seek additional collaborations. These collaborations could fail for a number of reasons, including if our partners do not devote sufficient resources to the development, commercialization or marketing of our products, or if disputes arise with our partners. If these existing collaborations fail, our financial results would be adversely affected.

Foreign Currency Fluctuations. A significant percentage of our product sales are denominated in foreign currencies. Increases in the value of the U.S. dollar against these foreign currencies in the past have reduced, and in the future may reduce, our U.S. dollar return on these sales and negatively impact our financial condition. Prior to January 2002, we did not hedge our exposure to the impact of fluctuating foreign exchange rates on forecasted sales. Effective January 2002, we have begun to use forward contracts to hedge a percentage of our forecasted international sales, primarily those denominated in the Euro currency. We do hedge a portion of our accounts receivable balances denominated in foreign currencies, which minimizes but does not eliminate our exposure to currency fluctuations between the date a sale is recorded and the date that cash is collected. Additionally, to mitigate the impact of currency rate fluctuations on our cash outflows for certain foreign currency-denominated raw materials purchases, we enter into foreign exchange forward contracts to hedge our foreign currency-denominated accounts payable.

Uncertain Financial Results. We expect that our financial results will continue to fluctuate from quarter to quarter and that such fluctuations may be substantial. The fluctuations can be caused by many factors that are beyond our control, including the risk factors listed above. As of December 31, 2002, our accumulated deficit was $381.6 million.

Critical Accounting Policies and Estimates

Gilead's discussion and analysis of its financial condition and results of operations are based upon its 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 judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of assets and liabilities. On an on-going basis, we evaluate our estimates, including those related to revenue recognition, bad debts, inventories, accrued clinical and preclinical expenses, and contingencies. We base our estimates on historical experience and on various other market specific assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of

assets and liabilities that are not readily apparent from other sources. Actual results, however, may differ significantly from these estimates.

Gilead believes the following critical accounting policies reflect its more significant judgments and estimates used in the preparation of its consolidated financial statements:

- We record estimated reductions to revenue for expected returns of expired products, Medicaid reimbursements and customer incentives, such as cash discounts for prompt payment. Estimates for Medicaid reimbursements and cash discounts are based on contractual terms and expectations regarding the utilization rates for these programs. Estimates for product returns, including new products, are based on an on-going analysis of industry and historical return patterns. Expected returns for our marketed drugs are generally low because the shelf life for these products ranges from 24 months for Viread up to 36 months for AmBisome in the U.S. If conditions become more competitive for any of the markets served by our drugs or if other circumstances change, we may take actions to increase our product return estimates or we may offer additional customer incentives. This would result in an incremental reduction of future revenue at the time the return estimate is changed or incentives are offered.

- We also maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. This allowance is based on our analysis of several factors including, but not limited to, historical payment patterns of our customers and individual customer circumstances, an analysis of days sales outstanding by customer and geographic region, and a review of the local economic environment and its potential impact on the government funding and reimbursement practices. If the financial condition of our customers or the economic environment in which they operate were to deteriorate, resulting in an inability to make payments, additional allowances may be required.

- We write down our inventory based on quality control reviews of our individual raw material batches. We generally do not maintain inventory reserves based on estimated obsolescence or risk of competition primarily because the shelf life of the products is long. However, if our current assumptions about future demand and competition were to change and if actual market conditions are less favorable than those projected by management, additional inventory reserves may be required.

- We record accruals for estimated clinical and preclinical study costs. These costs are a significant component of research and development expenses. Management accrues costs for clinical studies performed by contract research organizations based on estimates that, generally, 25% to 30% of the work is for up-front costs with the remaining activity occurring on a straight-line basis over the life of the individual contract or study. This estimate may or may not match the actual services performed by the organizations as determined by patient enrollment levels and related activities. We monitor patient enrollment levels and related activity to the extent possible, however, if management has underestimated activity levels associated with various studies at a given point in time, we would have to record additional research and development expenses in future periods that could be significant.

Results of Operations

Revenues

We had total revenue of $466.8 million in 2002, $233.8 million in 2001 and $195.6 million in 2000. Included in total revenue are net product sales, royalty income and contract revenue, including revenue from research & development (R&D) and manufacturing collaborations.

Net product sales revenue was $423.9 million for 2002, compared with $191.0 million for 2001 and $149.7 million for 2000. Product sales increased 122% in 2002 compared to 2001 primarily due to

significant increases in sales of Viread, which was approved for sale in the U.S. in October 2001 and the European Union in February 2002. A significant percentage of Gilead's product sales continue to be denominated in foreign currencies. Prior to 2002, we did not hedge our exposure to the impact of fluctuating foreign exchange rates on forecasted sales. Effective January 2002, we began to use forward contracts to hedge a percentage of our forecasted international sales which will reduce, but not eliminate, fluctuations in sales due to changes in foreign currency exchange rates, primarily those denominated in the Euro currency. Losses on these revenue hedges reduced product revenues by $1.0 million in 2002.

Sales of Viread in 2002 were $225.8 million in 2002, or 53% of total product sales, compared to $15.6 million, or 8% of total product sales in 2001. Of the Viread sales in 2002, $167.0 million were U.S. sales and $58.8 million were international sales. With the continued market expansion of Viread, we expect Viread sales in 2003 to approximately double and be in the range of $425 million to $475 million.

Sales of AmBisome were $185.7 million in 2002, an increase of 13% over AmBisome sales of $164.5 million in 2001. Sales of

AmBisome were $141.1 million in 2000. Prior to 2002, our revenues have been primarily derived from sales of AmBisome, which represented 44% of total product sales in 2002, 86% of total product sales in 2001 and 94% of total product sales in 2000. Excluding the impact of foreign currencies relative to the U.S. dollar, AmBisome sales grew 9% for the year ended December 31, 2002 over the comparable period in 2001. The increase in sales in 2002 compared to 2001 was primarily due to volume sales increases in Europe, which offset declining sales in the U.S. The increase in sales in 2001 compared to 2000 is primarily due to volume and price increases in the U.S. and Europe. In addition, excluding the impact of the decline in foreign currencies relative to the U.S. dollar in 2001, sales of AmBisome in 2001 would have increased 20%. With the expected increase in competition, we expect AmBisome sales for 2003 to be lower than 2002 and in the range of $160 million to $170 million.

We recorded royalty revenue of $20.4 million in 2002, compared with $23.0 million in 2001 and $24.6 million in 2000. During this three-year period, the most significant source of royalty revenue was from sales of AmBisome in the U.S. by Fujisawa under a co-promotion arrangement with us. Royalty revenue from Fujisawa was $15.7 million in 2002, compared with $17.1 million in 2001 and $13.5 million in 2000.

We also recorded royalty revenue of $3.4 million in 2002, $4.5 million in 2001 and $9.6 million in 2000 related to sales of Tamiflu. Tamiflu is an orally administered compound developed to treat and prevent viral influenza in humans. Gilead co-developed Tamiflu with Roche, which owns the worldwide commercial rights to Tamiflu, and is required to pay us a royalty on net sales of the product. We began recognizing royalties from Tamiflu in the first quarter of 2000. In June 2002, Roche received European regulatory approval of Tamiflu for the treatment of influenza in adults and children and prevention in adolescents and adults. As it is difficult to estimate third party product sales, we record royalty revenue one quarter in arrears.

Total contract revenue was $22.5 million in 2002, compared with $19.8 million in 2001 and $21.3 million in 2000. In 2002 and 2001 a primary source of contract revenue was from our licensing of the SELEX process patent estate to Archemix, which, due to collectibility concerns, we recognized on a cash basis. This provided $8.1 million of contract revenue in 2002 and $8.6 million in 2001. In 2002, Roche made milestone payments of $8.0 million for the European prophylaxis and treatment approvals of Tamiflu, and in 2001 made a $2.0 million milestone payment relating to the development of Tamiflu under an R&D collaboration agreement. In 2000, contract revenue from Roche consisted of $9.6 million in milestone payments related to Roche completing regulatory filings and approvals for Tamiflu in the U.S. and Japan. As of December 31, 2002, Gilead is entitled to additional milestone payments of up to $1.6 million upon Roche achieving certain developmental and regulatory milestones.

In April 2002, Gilead and GSK entered into a licensing agreement providing GSK the rights to commercialize Hepsera, Gilead's antiviral for the treatment of chronic hepatitis B, in Asia, Latin America and certain other territories. Under the agreement, Gilead retained rights to Hepsera in the U.S., Canada, Eastern and Western Europe, Australia and New Zealand. GSK received exclusive rights to develop Hepsera solely for the treatment of hepatitis B in all of its territories, the most significant of which include China, Korea, Japan and Taiwan. In addition, GSK paid Gilead an up-front licensing fee of $10.0 million as the first payment against these additional obligations and, may pay up to $30.0 million upon achievement by GSK of certain regulatory, development and commercial milestones. Of this $30.0 million, $2.0 million was received for the U.S. approval of Hepsera in September 2002. GSK also will pay Gilead a royalty on net sales, if any, of Hepsera in the GSK territories. GSK will have full responsibility for development and commercialization of Hepsera in GSK's territories. The $10.0 million up-front fee and the $2.0 million U.S. approval fee have been recorded as deferred revenue in 2002 with a total of $0.5 million being recognized as contract revenue in 2002. The balance of deferred revenue at December 31, 2002 will be amortized into contract revenue over the period of Gilead's remaining obligations under the agreement, approximately 14 years.

In December 2001, we completed the sale of our oncology assets to OSI. To date, we have received $130.0 million in cash and $38.8 million in OSI stock. Under this agreement, we are entitled to additional payments from OSI of up to $30.0 million in either cash or a combination of cash and OSI stock if and when OSI reaches certain development milestones for NX 211, the most advanced of the oncology product candidates sold to OSI. Under a related manufacturing agreement, we will produce NX 211 and GS 7904L, the two liposomal products included in the sale at our manufacturing facility in San Dimas, California. In 2002, we recognized $3.3 million of contract revenue under this manufacturing agreement.

In October 2001, we entered into an agreement with Archemix Corporation relating to our SELEX technology. Under this agreement, we gave Archemix the exclusive rights to the SELEX process, including therapeutic and other commercial applications to the extent not already licensed under pre-existing agreements. Archemix paid to us $8.5 million in 2002 and $9.0 million in 2001. As required by our license agreement with ULEHI, we paid 5% of the $8.5 million and $9.0 million payments to ULEHI. We also received a warrant to purchase 350,000 shares of Archemix common stock, the value of which is not material. As required by our license agreement with ULEHI, we transferred 5% of this warrant to ULEHI.

In March 2000, we entered into an agreement with EyeTech Pharmaceuticals, Inc. relating to Gilead's proprietary aptamer EYE001, currently known as Macugen. Currently in early clinical trials, Macugen is an inhibitor of vascular endothelial growth factor, or VEGF, which is known to play a role in the development of certain ophthalmic diseases. Under the terms of the agreement, EyeTech received worldwide rights to all therapeutic uses of Macugen, and, if the product is successfully commercialized, EyeTech will pay us royalties on worldwide sales of the product. EyeTech also will be responsible for all research and development costs. We provided clinical supplies of the product to

EyeTech through March 2001. We received a $7.0 million up-front licensing fee from EyeTech in April 2000, which has been recognized as revenue ratably over the one-year supply agreement period. Accordingly, $5.2 million of the license fee was recorded as contract revenue in 2000, and $1.8 million was recognized as revenue in 2001. We are also entitled to additional cash payments from EyeTech of up to $25.0 million if and when EyeTech reaches certain Macugen development milestones. Additionally, we received a warrant to purchase 791,667 shares of EyeTech series B convertible preferred stock, exercisable at a price of $6.00 per share, the price at which the stock was issued to other investors.

Gross Margins

Product gross margins were 83.6% in 2002, compared with 77.1% in 2001 and 77.6% in 2000. The improvement from 2001 to 2002 is primarily driven by product mix as Viread, a higher margin product, contributed significantly to net product sales in 2002, whereas only modest sales of Viread were recorded in 2001.

Foreign exchange also impacts gross margins as we price our products in the currency of the country into which the products are sold while a significant majority of our manufacturing costs are in U.S. Dollars. For example, an increase in the value of these foreign currencies relative to the U.S. Dollar will positively impact gross margins since our manufacturing costs will remain approximately the same while our revenues after being translated into U.S. Dollars, will increase. In 2002, gross margins were positively impacted by the weakening U.S. dollar while in 2001 and 2000, gross margins were negatively impacted by these factors, as discussed in the product sales section under the caption "Revenues" above. Except for the potential impact of unpredictable and uncontrollable changes in exchange rates relative to the U.S. Dollar and the mix of product sales between Viread, Hepsera and AmBisome, we expect gross margins in 2003 to remain relatively stable compared to 2002.

Operating Expenses

In 2002, R&D expenses were 35% of total costs and expenses. In total, R&D expenses were $134.8 million in 2002, compared with $185.6 million in 2001 and $132.3 million in 2000. The major components of R&D expenses consist of personnel costs, including salaries and benefits, clinical studies performed by contract research organizations, materials and supplies, and overhead allocations consisting of various support and facilities related costs. Our R&D activities are also separated into three main categories: research, clinical development and pharmaceutical development. Research costs typically consist of preclinical and toxicology work. Clinical development costs include Phase 1,2, and 3 clinical trials as well as expanded access programs. Pharmaceutical development costs consist of product formulation and chemical analysis.

The following table breaks down these major components of research and development spending (in thousands):

	2002	2001	2000
Research	$ 27,856	$ 30,535	$ 24,925
Clinical development	82,261	107,229	72,881
Pharmaceutical development	24,641	25,392	24,431
Oncology (divested)	—	22,397	10,102
Total	$ 134,758	$ 185,553	$ 132,339

The $50.8 million decrease in R&D spending in 2002 compared to 2001 was primarily due to the reduction in expenses associated with the clinical program for Viread, which was approved in October 2001, and the elimination of expenses associated with our oncology program as a result of the sale of our oncology program to OSI in December 2001. Additionally, in 2001 we recognized as expense $10.6 million of a $13.0 million up-front license fee paid to Cubist Pharmaceuticals related to the European licensing agreement for daptomycin, also known as Cidecin, signed in January 2001. Upon termination of this agreement in September 2002, $2.0 million was recorded to R&D, which represented the remaining unamortized asset related to the preclinical oral formulation of daptomycin. Excluding the impact of the Triangle acquisition, we expect R&D expenses in 2003 to be approximately $160 million to $180 million, or approximately 20% to 35% higher than 2002 expenses.

The $53.3 million increase in R&D spending in 2001 versus 2000 was attributable in part to the recognition of $10.6 million of the $13.0 million up-front payment and $5.5 million of clinical milestone

payments to Cubist under the European licensing agreement for Cidecin. In addition, our expenses associated with the clinical programs for Viread and Hepsera increased by approximately $18.2 million and $13.3 million, respectively, during the year.

Recent industry reports indicate that a biopharmaceutical company generally takes 10 to 15 years (an average of 12 years) to research, develop and bring to market as a new prescription medicine in the U.S. These averages are generally consistent with the projects that we develop internally, although our recent product development timelines have been on a more accelerated basis. Drug development in the U.S. is a process that includes several steps defined by the FDA. The process begins with the filing of an IND, which, if successful, allows opportunity for clinical study of the potential new medicine. Clinical development typically involves three phases of study: Phase 1, 2, and 3, and generally accounts for an average of seven years of a drug's total development time. The most significant costs associated with clinical development are the Phase 3 trials as they tend to be the longest and largest studies conducted during the drug development process. We currently have products in development that are in Phase 3 studies. The successful development of our products is highly uncertain. An estimation of completion dates and R&D expenses can vary significantly for each product and are difficult to predict. Even after successful development and FDA approval of a product, we undertake additional studies to try and expand the product's label and market potential. For a more complete discussion of the risks and uncertainties associated with completing the development of products, see the "Risk Factors That Affect Gilead" section of Item I above.

Selling, general and administrative (SG&A) expenses were $181.3 million in 2002, compared with $125.1 million in 2001 and $82.0 million in 2000. The increase in expenses in 2002 compared to 2001 is primarily due to our global sales and marketing efforts, including the expansion of Gilead's U.S. and European sales forces to support the commercial launches of Viread and Hepsera.

The increase in SG&A expenses in 2001 versus 2000 was primarily due to Gilead's increased global marketing efforts and the expansion of our sales force to support the commercial launch of Viread.

In 2003, we expect SG&A expenses, excluding the impact of the Triangle acquisition, to be approximately $250 million to $270 million, or 40% to 50% higher than 2002 levels, primarily due to the increase in marketing activities associated with the continued promotion of Viread, Hepsera and AmBisome.

Gain on Sale of Oncology Assets

In December 2001, we completed the sale of our oncology assets, pipeline of clinical stage oncology products and related intellectual property, as well as our Boulder, Colorado operations, including clinical research and drug development personnel, infrastructure and facilities, to OSI. The pipeline of clinical candidates includes NX 211 (liposomal lurtotecan), GS 7836 (a nucleoside analogue) and GS 7904L (a liposomal thymidylate synthase inhibitor). On the closing date, we received $130.0 million in cash and OSI common stock valued at approximately $38.8 million. We recorded a non-operating gain of $157.8 million in the fourth quarter of 2001 as a result of this transaction. In addition, we recorded income taxes of $3.3 million in connection with this transaction.

Loss on Sale of Marketable Securities

In July 2002, the Company sold all of its remaining shares of OSI common stock for approximately $22.0 million. These shares were partial consideration for the sale of our oncology assets to OSI in December 2001, at which time they were recorded at a fair market value of approximately $38.0 million. In connection with the sale of these remaining shares, we recognized a non-operating loss of approximately $16.0 million in the year ended December 31, 2002.

Gain on Sale of Unconsolidated Affiliate

In August 2001, we also sold our 49 percent interest in Proligo L.L.C. (Proligo) to Degussa Corporation for $14.3 million in cash. Proligo was a joint venture between Gilead and SKW Americas, Inc. focused on the manufacturing of oligonucleotides. SKW Americas, a subsidiary of Degussa Corporation, held the remaining 51 percent of Proligo. The proceeds, net of Gilead's investment in Proligo, are reflected as an $8.8 million gain on the sale of unconsolidated affiliate in 2001.

Interest Income and Interest Expense

We recorded interest income of $22.3 million in 2002, compared with $25.6 million in 2001 and $17.6 million in 2000. The decrease in 2002 compared to 2001 is attributable to the significant decline in interest rates, partially offset by a higher average cash balance due to positive cash flow from operations and to the proceeds from the sale of the oncology assets to OSI. The increase in 2001 over 2000 was due to higher average balances of invested funds. Interest income in 2003 will depend principally upon prevailing interest rates, over which we have no control and the level of our cash, cash equivalent and marketable securities balances.

We incurred interest expense of $13.9 million in 2002, compared with $14.0 million in 2001 and $4.4 million in 2000. The significant

increase in 2001 over 2000 is due to the full year of interest on our $250.0 million 5% convertible subordinated notes. Interest expense for 2000 consisted primarily of interest on the $79.5 million 6.25% convertible notes, which were converted to common stock in August 2000. We expect interest expense in 2003 to increase as compared with 2002 expense levels primarily due to the issuance of the $345.0 million 2% convertible senior notes in December 2002.

Income Taxes

Our provision for income taxes was $1.3 million, $4.1 million and $1.2 million in 2002, 2001 and 2000, respectively. This income tax expense was primarily associated with income earned by our foreign subsidiaries as we have significant net operating losses which reduce our U.S. tax liability. The significant increase in income tax expense in 2001 resulted principally from the gain on the sale of our oncology assets to OSI, for which we recorded approximately $3.3 million of federal and state alternative minimum taxes. The provision for 2002 was reduced by a change in U.S. income tax law. This law allows net operating loss carryforward deductions to offset 100% of alternative minimum taxable income, resulting in a reduction of U.S. income tax recorded in the previous years of $1.3 million.

We record a valuation allowance to reduce our deferred tax assets to the amount that is likely to be realized. We consider future taxable income, ongoing tax planning strategies and our historical financial performance in assessing the need for a valuation allowance. If it were determined that we would be able to realize all or part of our deferred tax assets in the future, an adjustment to the deferred tax asset would increase income in the period in which such determination was made. Likewise, if we determine that we would not be able to realize all or part of our deferred tax asset in the future, an adjustment to the deferred tax asset would be charged to income in the period in which such determination was made. We evaluate the realizibility of our deferred tax assets on a quarterly basis.

Equity in Loss of Unconsolidated Affiliate

In 2001, we recorded $2.1 million as our equity in the loss of our unconsolidated affiliate, Proligo, prior to the date of the sale of our 49 percent interest. In 2000, we recorded $2.9 million as our equity in the loss of Proligo. This represented our 49 percent share of Proligo's loss for the thirteen-month period ended December 31, 2000. During the fourth quarter of 2000, Proligo changed its fiscal year-end to December 31 from November 30.

Cumulative Effect of Change in Accounting Principle

In the year ended December 31, 2001, Gilead adopted SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* , which resulted in a cumulative effect of change in accounting principle of $1.1 million. In the year ended December 31, 2000, Gilead adopted the Securities and Exchange Commission's Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements* , resulting in a cumulative effect of change in accounting principle of ($13.7) million. See Notes 2 and 3 to the consolidated financial statements for further discussion.

Liquidity and Capital Resources

During the fourth quarter of 2002, a misclassification was discovered in the December 31, 2001 balance sheet and cash flow statement for the year then ended. At December 31, 2001, $38.8 million of OSI stock received in consideration for the divestiture of our oncology assets was misclassified on the balance sheet as cash and cash equivalents instead of as marketable securities. The misclassification had no impact on our statement of operations for any period, including revenues and net income. The December 31, 2001 consolidated balance sheet and 2001 consolidated statement of cash flows in this report have been changed to reflect the correct classification.

Cash, cash equivalents and marketable securities totaled $942.4 million at December 31, 2002, up from $582.9 million at December 31, 2001. The increase of $359.5 million was primarily due to the $336.6 million in net proceeds received from the issuance of convertible senior notes in December 2002. Other major sources and uses of cash included net cash provided by operations of $74.4 million and proceeds from issuances of stock under employee stock plans of $51.4 million, partially offset by capital expenditures of $17.6 million and a $50.0 million convertible note received from Triangle. The $50.0 million loan to Triangle was returned to us in connection with the now completed acquisition. In January 2003, approximately $463.1 million has been paid to complete the acquisition of Triangle.

Working capital at December 31, 2002 was $1,078.9 million compared to $627.6 million at December 31, 2001. Significant changes in working capital during 2002 included a $43.9 million increase in accounts receivable and a $12.3 million increase in inventory. The accounts receivable increase was primarily due to increased sales of Viread in the U.S. and Europe. The $12.3 million increase in inventory was primarily due to an increase in the production of Viread inventory to meet increasing sales demand. Significant changes in current liabilities during 2002 included an $11.5 million increase in accrued liabilities, an $8.9 million decrease in accrued clinical and preclinical expenses, a $6.8 million increase in accrued compensation, a $5.2 million increase in accounts payable and a $13.1 million increase in deferred revenue. The $11.5 million increase in accrued liabilities is primarily due to Medicaid rebate obligations associated with higher sales of Viread. The $8.9 million decrease in accrued clinical and preclinical expenses is primarily due to decreasing activity associated with the clinical trial programs for Viread and Hepsera. The $6.8 million increase in accrued compensation is primarily due to increased bonus accruals and the

expansion of our sales force. The $5.2 million increase in accounts payable is primarily due to increases in our raw material purchases in support of Viread sales growth. The $13.1 million increase in deferred revenue primarily relates to the $12.0 million received under the collaboration with GSK that we entered into in April 2002.

The $13.4 million effect of exchange rate changes on cash is primarily due to the weakening U.S. dollar relative to the Euro and the translation of our foreign subsidiaries' accounts receivable balances, which are primarily denominated in the Euro currency.

We made capital expenditures of $17.6 million in 2002, $26.3 million in 2001 and $15.6 million in 2000. These expenditures were primarily for facilities improvements to accommodate our growth, as well as for laboratory and manufacturing equipment. Capital expenditures related to research and development were between 20% to 25% of the $17.6 million spent in 2002 and 50% to 60% of the

$26.3 million spent in 2001. We expect our capital spending for 2003 to be significantly higher than 2002 levels due to increased infrastructure needs and higher R&D spending.

In December 2002, we issued $345.0 million of 2% convertible senior notes due December 15, 2007 in a private offering. The notes are currently convertible into a total of up to 7,340,425 shares of Gilead common stock at $47.00 per share. The $47.00 conversion price was higher than Gilead's common stock price at the notes' issuance date. The notes are redeemable in whole or in part, at our option, at any time on or after June 19, 2004, at specified redemption prices plus accrued interest. Debt issuance costs of $8.4 million incurred in connection with the issuance of the notes were recorded as other noncurrent assets, and are being amortized to interest expense on a straight-line basis over the contractual term of the notes.

In December 2000, we issued $250.0 million of 5% convertible subordinated notes due December 15, 2007 in a private offering. The notes are currently convertible into a total of up to 10,178,116 shares of Gilead common stock at $24.5625 per share. The $24.5625 conversion price was higher than Gilead's common stock price at the notes' issuance date. The notes are redeemable in whole or in part, at our option, at any time on or after December 20, 2003, at specified redemption prices plus accrued interest. Debt issuance costs of $8.2 million incurred in connection with the issuance of the notes were recorded as other noncurrent assets, and are being amortized to interest expense on a straight-line basis over the contractual term of the notes.

In August 2000, we redeemed our 6.25% convertible subordinated debentures at a cash price of $1,030 per $1,000 principal amount of debentures outstanding, plus accrued interest, which was the redemption price provided for in the original debenture indenture. Upon redemption, the entire $79.5 million in principal amount of the debentures outstanding at that time was converted into 7,135,156 newly issued shares of Gilead common stock by August 15, 2000. Deferred debt issuance costs of $1.6 million related to the debentures were charged to additional paid in capital in connection with the conversion of the debentures into common stock.

We believe that our existing capital resources, supplemented by cash generated from our operations, will be adequate to satisfy our capital needs for the foreseeable future. Our future capital requirements will depend on many factors, including:

- the commercial performance of Viread, Hepsera and AmBisome,
- the commercial performance of any of our other products in development that receive marketing approval, including emtricitabine from our acquisition of Triangle completed in January 2003,
- the success of our partners' research, development and commercialization efforts for the products they have partnered with us,
- the progress of our research and development efforts,
- the scope and results of preclinical studies and clinical trials,
- the cost, timing and outcome of regulatory reviews,
- the rate of technological advances,
- determinations as to the commercial potential of our products under development,
- administrative expenses,
- the status of competitive products,
- the establishment of manufacturing capacity or third-party manufacturing arrangements,
- the expansion of sales and marketing capabilities,

- our possible geographic expansion, and
- the establishment of additional collaborative relationships with other companies.

We may in the future require additional funding, which could be in the form of proceeds from equity or debt financings or additional collaborative agreements with corporate partners. If such funding is required, we cannot assure you that it will be available on favorable terms, if at all.

Subsidiaries and Other

We have established a variety of subsidiaries in various countries for the purpose of conducting business in those locations. All of these subsidiaries are consolidated in our financial statements. We do not have any "special purpose" entities that are unconsolidated in our financial statements, including those defined as "variable interest entities" by the Financial Accounting Standards Board (FASB) Interpretation No. 46, *Consolidation of Variable Interest Entities* . We are also not involved in any non-exchange traded commodity contracts accounted for at fair value. We have no commercial commitments with related parties, except for employee loans. We have contractual obligations in the form of capital and operating leases, notes payable and clinical research organization contracts.

Recent Accounting Pronouncements

In June 2002, the FASB issued SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities* . SFAS 146 requires that a liability for costs associated with an exit or disposal activity be recognized and measured initially at fair value only when the liability is incurred. SFAS 146 is effective for exit or disposal activities that are initiated after December 31, 2002. The adoption of SFAS 146 is not expected to have a material impact on our financial position and results of operations.

In November 2002, The EITF reached a consensus on Issue 00-21, addressing how to account for arrangements that involve the delivery or performance of multiple products, services, and/or rights to use assets. Revenue arrangements with multiple deliverables are divided into separate units of accounting if the deliverables in the arrangement meet the following criteria: (1) the delivered item has value to the customer on a standalone basis; (2) there is objective and reliable evidence of the fair value of undelivered items; and (3) delivery of any undelivered item is probable. Arrangement consideration should be allocated among the separate units of accounting based on their relative fair values, with the amount allocated to the delivered item being limited to the amount that is not contingent on the delivery of additional items or meeting other specified performance conditions. The final consensus will be applicable to agreements entered into in fiscal periods beginning after June 15, 2003 with early adoption permitted. We are reviewing the provisions of this consensus to determine the effect, if any, it may have on the Company's financial position and results of operations.

In November 2002, the FASB issued Interpretation No. 45 (or FIN 45), *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* . FIN 45 elaborates on the existing disclosure requirements for most guarantees, including residual value guarantees issued in conjunction with operating lease agreements. It also clarifies that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value of the obligation it assumes under that guarantee and must disclose that information in its interim and annual financial statements. The initial recognition and measurement provisions apply on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002. Our adoption of the disclosure provisions of FIN 45 did not have a material impact on our results of operations and financial position.

In December 2002, the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation-Transition and Disclosure.* SFAS 148 is an amendment to SFAS No. 123, *Accounting for Stock-Based*

Compensation issued in October 1995. SFAS 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based compensation. In addition, this Statement amends the disclosure requirements of Statement 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The additional disclosure requirements of SFAS 148 are effective for fiscal years ending after December 15, 2002. We have elected to continue to follow the intrinsic value method of accounting as prescribed by Accounting Principles Board Opinion No. 25 (or APB 25), *Accounting for Stock Issued to Employees* , to account for employee stock options.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Exchange Risk

Our operations include manufacturing and sales activities in the U.S. as well as sales activities in Europe and Australia. As a result, our financial results could be significantly affected by factors such as changes in foreign currency exchange rates or weak economic conditions in the foreign markets in which we distribute our products. Our operating results are exposed to changes in exchange rates between the U.S. dollar and various foreign currencies, the most significant of which are the Euro, the British pound and the Australian dollar. When the U.S. dollar strengthens against these currencies, the relative value of sales made in the respective foreign currency decreases. Conversely, when the U.S. dollar weakens, the relative amounts of such sales increase. Overall, we are a net receiver of foreign currencies and, therefore, benefit from a weaker U.S. dollar and are adversely affected by a stronger U.S. dollar relative to those foreign currencies in which we transact significant amounts of business.

To mitigate the impact of changes in currency exchange rates on cash flows from our foreign currency sales transactions, we enter into foreign exchange forward contracts to hedge our foreign currency-denominated accounts receivable. Additionally, to mitigate the impact of currency rate fluctuations on our cash outflows for certain foreign currency-denominated raw materials purchases, we enter into foreign exchange forward contracts to hedge our foreign currency-denominated accounts payable.

A significant percentage of our product sales is denominated in foreign currencies. Increases in the value of the U.S. dollar against these foreign currencies in the past have reduced, and in the future may reduce, our U.S. dollar return on these sales and negatively impact our financial condition. Prior to 2002, we did not hedge our exposure to the impact of fluctuating foreign exchange rates on forecasted sales. Effective January 2002, we have begun to use forward contracts to hedge a percentage of our forecasted international sales, primarily those denominated in the Euro currency.

The following table summarizes the notional amounts, average currency exchange rates and fair values of our open foreign exchange forward contracts at December 31, 2002. The contracts have maturities of one year or less with one exception. One hedge contract intended to hedge raw materials purchases in the first quarter of 2004, with a notional amount of $4.3 million and an insignificant fair value at December 31, 2002 has a maturity of 13 months. Average rates are stated in terms of the amount of foreign currency per U.S. dollar. Fair values represent estimated settlement amounts at December 31, 2002 (notional amounts and fair values in U.S. dollars in thousands):

Currency	Notional Amount	Average Rate	Fair Value December 31, 2002
British Pound	6,920	0.6496	69
Euro	46,567	0.9743	(1,131)

The total notional amount of $53.5 million and fair value of ($1.1) million on our open foreign exchange forward contracts at December 31, 2002 compares with a total notional amount of

$72.3 million and fair value of ($0.9) million on our open foreign exchange forward contracts at December 31, 2001.

Interest Rate Risk

Our portfolio of available-for-sale investment securities and our fixed-rate liabilities create an exposure to interest rate risk. With respect to the investment portfolio, we adhere to an investment policy that requires us to limit amounts invested in securities based on duration, industry group, investment type and issuer, except for securities issued by the U.S. government. The goals of our investment policy, in order of priority, are as follows:

- Safety and preservation of principal and diversification of risk;
- Liquidity of investments sufficient to meet cash flow requirements; and
- Competitive after-tax rate of return.

The following table summarizes the expected maturities and average interest rates of our interest-bearing assets and fixed-rate liabilities at December 31, 2002 (dollars in thousands).

	Years ending December 31,							
	2003	2004	2005	2006	2007	Thereafter	Total	Fair Value December 31, 2002

Assets								
Available-for-sale securities	$ 674,770	$ 186,392	$ 24,035	—	—	—	$ 885,197	$ 885,197
Average interest rate	1.72%	2.74%	2.70%					
Liabilities								
Long-term obligations, including current portion(1)	$ 14,159	$ 9,499	$ 9,140	$ 5,693	$ 4,073	$ 1,418	$ 43,982	$ 43,982
Average interest rate	13.81%	16.44%	16.40%	20.75%	20.75%			
Convertible senior debentures	—	—	—	—	$ 345,000	—	$ 345,000	$ 357,410
Interest rate					2.00%			
Convertible subordinated debentures	—	—	—	—	$ 250,000	—	$ 250,000	$ 381,877
Interest rate					5.00%			

(1) Long-term obligations consist of capital leases, operating leases (net of noncancelable subleases) and debt secured by property, plant and equipment. The interest portion of payments due is included.

International Credit Risk

Our accounts receivable balance at December 31, 2002 was $125.0 million compared to $74.2 million at December 31, 2001. The growth was primarily due to higher product sales for Viread in the U.S. and Europe. In certain countries where payments are typically slow, primarily Greece, Spain, Portugal and Italy, our accounts receivable balances are significant. In most cases, these slow payment practices reflect the pace at which governmental entities reimburse our customers. This, in turn, may increase the financial risk related to certain of our customers. Sales to customers in countries that tend to be relatively slow paying have in the past increased, and in the future may further increase,

the average length of time that accounts receivable are outstanding. At December 31, 2002, our past due accounts receivable for Greece, Spain, Portugal and Italy totaled approximately $49.7 million, of which approximately $26.6 million was more than 120 days past due. At December 31, 2001, past due receivables for these countries were $28.7 million, of which approximately $9.9 million was more than 120 days past due. To date, we have not experienced significant losses with respect to the collection of our accounts receivable and believe that all accounts receivable balances as reflected on the consolidated balance sheet, including those due from customers in these four countries, are collectible. We continually seek to improve our collection processes to ensure that we fully collect amounts due to us based on our product sales and that collections are timely.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements required by this item are set forth beginning at page 63 of this report and are incorporated herein by reference.

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

Not applicable.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this Item concerning our directors and executive officers is incorporated by reference to the sections of our Definitive Proxy Statement filed with the SEC pursuant to Regulation 14A in connection with the 2003 Annual Meeting (the Proxy Statement)

under the headings "Nominees", "Executive Officers" and "Compliance with Section 16(a) of the Securities Exchange Act of 1934".

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference to the sections of our Proxy Statement under the headings "Executive Compensation" and "Compensation Committee Report".

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this Item is incorporated by reference to the section of our Proxy Statement under the heading "Security Ownership of Certain Beneficial Owners and Management".

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this Item is incorporated by reference to the sections of our Proxy Statement under the headings "Compensation Committee Interlocks and Insider Participation", "Certain Transactions" and "Executive Compensation".

ITEM 14. CONTROLS AND PROCEDURES

Within 90 days prior to the date of this report, we carried out an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures are effective in timely alerting them to material information required to be included in our periodic reports to the Securities and Exchange Commission. It should be noted that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and we cannot be certain that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

There have been no significant changes in our internal controls or in other factors that could significantly affect those controls subsequent to the date of their last evaluation.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) The following documents are filed as part of this Form 10-K:

(1) Index list to Financial Statements:

(2) Schedule II is included on page 102 of this report. All other schedules are omitted because they are not required or the required information is included in the financial statements or notes thereto.

(3) Exhibits

The following exhibits are filed herewith or incorporated by reference:

Exhibit Footnote	Exhibit Number	Description of Document
(21)	2.1	Asset Purchase Agreement between Registrant and OSI Pharmaceuticals, Inc. dated as of November 26, 2001.
(25)	2.2	Agreement and Plan of Merger, among Registrant, Simbolo Acquisition Sub, Inc., a wholly-owned subsidiary of Registrant, and Triangle Pharmaceuticals, Inc., dated as of December 3, 2002.
(20)	3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended.
(1)	3.2	Bylaws of the Registrant, as amended and restated March 30, 1999.
	4.1	Reference is made to Exhibit 3.1 and Exhibit 3.2.
(4)	4.2	Amended and Restated Rights Agreement dated as of October 21, 1999 between the Registrant and ChaseMellon Shareholder Services, LLC.
(10)	4.3	Agreement and Plan of Merger dated February 28, 1999 by and among Registrant, Gazelle Acquisition Sub, Inc. and NeXstar Pharmaceuticals, Inc.
(19)	4.4	Indenture dated as of December 18, 2000 between the Registrant and Chase Manhattan Bank and Trust Company, National Association, including therein the forms of the notes.
	4.5	Indenture dated as of December 18, 2002 between the Registrant and J.P. Morgan Trust Company, National Association, including herein the forms of the notes.
	4.6	Registration Rights Agreement dated as of December 18, 2002 between the Registrant and Goldman, Sachs & Co.
(5)	10.1	Form of Indemnity Agreement entered into between the Registrant and its directors and executive officers.
(5)	10.2	Form of Employee Proprietary Information and Invention Agreement entered into between Registrant and certain of its officers and key employees.
(5)	10.3	Registrant's 1987 Incentive Stock Option Plan and related agreements.
(5)	10.4	Registrant's 1987 Supplemental Stock Option Plan and related agreements.
(1)	10.5	Registrant's Employee Stock Purchase Plan, as amended March 30, 1999.

(26)	10.6	Registrant's 1991 Stock Option Plan, as amended and restated April 5, 2000, as amended January 18, 2001 and as amended January 30, 2002.
(5)	10.7	Form of Non-Qualified Stock Option issued to certain executive officers and directors in 1991.
(6)	10.8	Vintage Park Research and Development Net Lease by and between Registrant and Vintage Park Associates dated March 27, 1992 for premises located at 344B, 346 and 353 Lakeside Drive, Foster City, California with related addendum, exhibits and amendments.
(5)	10.9	Letter Agreement, dated as of September 23, 1991 between Registrant and IOCB/REGA, with exhibits with certain confidential information omitted.
(6)	10.10	Vintage Park Research and Development Net Lease by and between Registrant and Vintage Park Associates dated September 16, 1993 for premises located at 335 Lakeside Drive, Foster City, California with related exhibits.
(7)	10.11	Amendment Agreement, dated October 25, 1993 between Registrant and IOCB/REGA, and related license agreements and exhibits with certain confidential information omitted.
(20)	10.12	Amendment Agreement, dated December 27, 2000 between Registrant and IOCB/REGA.
(2)	10.13	Loan Agreement, dated as of October 1, 1994 among Registrant and Mark L. Perry and Melanie P. Peña.
(26)	10.14	Registrant's 1995 Non-Employee Directors' Stock Option Plan, as amended January 26, 1999, and as amended January 30, 2002.
(8)	10.15	Vintage Park Research and Development Lease by and between Registrant and WCB Sixteen Limited Partnership dated June 24, 1996 for premises located at 333 Lakeside Drive, Foster City, California.
(8)	10.16	Amendment No. 1 to Vintage Park Research and Development Lease by and between Registrant and WCB Seventeen Limited Partnership dated June 24, 1996 for premises located at 335 Lakeside Drive, Foster City, California.
(8)	10.17	Amendment No. 2 to Vintage Park Research and Development Lease by and between Registrant and WCB Seventeen Limited Partnership dated June 24, 1996 for premises located at 344B, 346 and 353 Lakeside Drive, Foster City, California.
(9)	10.18	License and Supply Agreement between Registrant and Pharmacia & Upjohn S.A. dated August 7, 1996 with certain confidential information omitted.
(9)	10.19	Development and License Agreement between Registrant and F. Hoffmann-La Roche Ltd. and Hoffmann-La Roche Inc. dated September 27, 1996 with certain confidential information omitted.
(18)	10.20	Amendment No. 3 to Vintage Park Research and Development Lease by and between Registrant and Spieker Properties, L.P. dated August 14, 1998 for premises located at 355 Lakeside Drive, Foster City, California.
(3)	10.21	NeXstar Pharmaceuticals, Inc.'s 1993 Incentive Stock Plan, adopted February 8, 1993, as amended.
(13)	10.22	NeXstar Pharmaceuticals, Inc.'s 1995 Director Option Plan, adopted July 25, 1995.
(14)	10.23	Vestar, Inc. 1988 Stock Option Plan.
(14)	10.24	Lease, dated March 26, 1987, between Vestar, Inc. and Majestic Realty Co. and Patrician Associates, Inc. and Amendment No. 1 thereto and Amendment No. 2 thereto, dated as of June 8, 1992.
(12)	10.25	Third Amendment, dated January 11, 1996, between Majestic Realty Co. and Patrician Associates, Inc. and the Registrant, to Lease, dated March 26, 1987, between Vestar, Inc. and Majestic Realty Co. and Patrician Associates, Inc.

(15)	10.26	Assignment and Royalty Agreement, dated December 21, 1990, effective as of June 2, 1989, between Vestar, Inc. and City of Hope National Medical Center.
(12)	10.27	License Agreement, effective as of August 12, 1986, between Vestar, Inc. and The Regents of the University of California.
(14)	10.28	Agreement by and between Fujisawa USA, Inc. and Vestar, Inc., dated August 9, 1991, and Amendment No. 1 thereto, dated as of May 17, 1994.
(13)	10.29	Amendment No. 2 to agreement between Fujisawa USA, Inc. and Vestar, Inc., dated as of April 3, 1995, between Fujisawa USA, Inc. and Vestar, Inc. with certain confidential information omitted.
(12)	10.30	Amendment No. 3 to Agreement between Fujisawa USA, Inc. and the Registrant, dated March 4, 1996, to the Agreement by and between Fujisawa USA, Inc. and Vestar, Inc., dated August 9, 1991.
(14)	10.31	Lease, dated April 13, 1992, between Vestar, Inc. and Majestic Realty Co. and Patrician Associates, Inc.
(12)	10.32	First Amendment to Lease, dated April 10, 1993, between Majestic Realty Co. and Patrician Associates, Inc. and Vestar, Inc. amending Lease, dated April 13, 1992, between Majestic Realty Co. and Patrician Associates, Inc. and Vestar, Inc.
(11)	10.33	License and Distribution Agreement, dated September 26, 1997, by and between Sumitomo Pharmaceuticals Co., Ltd. and NeXstar Pharmaceuticals, Inc. with certain confidential information omitted.
(16)	10.34	Settlement Agreement, dated August 11, 1997, by and among NeXstar Pharmaceuticals, Inc., Fujisawa U.S.A., Inc. and The Liposome Company, Inc. with certain confidential information omitted.
(17)	10.35	Amendment, dated April 30, 1998, between Sumitomo Pharmaceuticals Co., Ltd. and NeXstar Pharmaceuticals, Inc. to the License and Distribution Agreement, dated September 26, 1996, between Sumitomo and NeXstar Pharmaceuticals, Inc.
(24)	10.36	The Corporate Plan for Retirement Select Plan—Basic Plan Document.
(24)	10.37	The Corporate Plan for Retirement Select Plan—Adoption Agreement.
(24)	10.38	Addendum to the Gilead Sciences, Inc. Deferred Compensation Plan.
(22)	10.39	Licensing Agreement, dated April 26, 2002, by and between Gilead World Markets, Limited and Glaxo Group Limited.
(23)	10.40	Employment Agreement, dated July 1, 2002, by and between Gilead Sciences, Inc. and Sharon Surrey-Barbari.
(27)	10.41	Triangle Pharmaceuticals, Inc. 1996 Stock Incentive Plan.
(27)	10.42	Option Agreement between Triangle Pharmaceuticals, Inc. and Daniel G. Welch, dated August 5, 2002.
(28)	10.43	License Agreement among Triangle Pharmaceuticals, Inc., Emory University and the University of Georgia Research Foundation, Inc. for compound amdoxovir (DAPD), dated March 31, 1996.
(28)	10.44	License Agreement between Triangle Pharmaceuticals, Inc. and Emory University for Coviracil (FTC), dated April 17, 1996.
(29)	10.45	License Agreement between Triangle Pharmaceuticals, Inc. and Bukwang Pharm. Ind. Co., Ltd., dated as of February 27, 1998.
(30)	10.46	Exclusive License Agreement among Triangle Pharmaceuticals, Inc., Glaxo Group Limited, The Wellcome Foundation Limited, Glaxo Wellcome Inc. and Emory University, dated May 6, 1999.
(30)	10.47	Settlement Agreement among Triangle Pharmaceuticals, Inc., Emory University, Dr. David W. Barry, Glaxo Wellcome plc, Glaxo Wellcome Inc., Glaxo Group Limited and The Wellcome Foundation Limited, dated May 6, 1999.

(30)	10.48	Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Bukwang Pharm. Ind. Co., Ltd., dated April 1, 1999.
(30)	10.49	First Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Emory University, dated May 6, 1999.
(31)	10.50	First Amendment to License Agreement among Triangle Pharmaceuticals, Inc., Emory University and the University of Georgia Research Foundation, Inc., dated July 10, 2000.
(31)	10.51	Second Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Emory University, dated July 10, 2000.
(31)	10.52	Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Bukwang Pharm. Ind. Co., Ltd., dated September 5, 2000.
(32)	10.53	Third Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Bukwang Pharm. Co. Ltd., dated August 26, 2002.
(32)	10.54	Supply and Manufacturing Agreement between Triangle Pharmaceuticals, Inc. and Abbott Laboratories, dated July 30, 2002.
(32)	10.55	Settlement and Exclusive License Agreement among Triangle Pharmaceuticals, Inc., Shire Biochem Inc., Shire Pharmaceuticals Group plc, Emory University and the University of Georgia Research Foundation, dated August 30, 2002.
(33)	10.56	Second Amendment to License Agreement among Triangle Pharmaceuticals, Inc., Emory University and the University of Georgia Research Foundation, Inc., dated August 30, 2002.
(28)	10.57	Sublease between Triangle Pharmaceuticals, Inc. and Eli Lilly and Company, dated January 18, 1996.

(28)	10.58	Sublease Amendment between Triangle Pharmaceuticals, Inc. and Eli Lilly and Company, dated March 1, 1996.
(28)	10.59	Second Amendment to Sublease between Triangle Pharmaceuticals, Inc. and Eli Lilly and Company, dated August 2, 1996.
(34)	10.60	Third Amendment to Sublease between Triangle Pharmaceuticals, Inc. and Eli Lilly and Company, dated as of February 11, 1998.
+	10.62	Manufacturing Supply Agreement between Gilead World Markets, Ltd. and PPG-Sipsy S.A.S, entered into as of January 1, 2003.
	21.1	Subsidiaries of the Registrant.
	23.1	Consent of Ernst & Young LLP, Independent Auditors.
	23.2	Consent of PricewaterhouseCoopers LLP, Independent Auditors.
	24.1	Power of Attorney. Reference is made to Signature Page.
	99.1	Certification.

(1) Filed as an exhibit to Registrant's Annual Report on Form 10-K/A for the fiscal year ended December 31, 1998, and incorporated herein by reference.

(2) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended December 31, 1994, and incorporated herein by reference.

(3) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 1997, and incorporated herein by reference.

(4) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on October 22, 1999, and incorporated herein by reference.

(5) Filed as an exhibit to Registrant's Registration Statement on Form S-1 (No. 33-55680), as amended, and incorporated herein by reference.

(6) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1993, and incorporated herein by reference.

(7) Filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended March 31, 1994, and incorporated herein by reference.

(8) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1996, and incorporated herein by reference.

(9) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996, and incorporated herein by reference.

(10) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on March 9, 1999, and incorporated herein by reference.

(11) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1996, and incorporated herein by reference.

(12) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1995, and incorporated herein by reference.

(13) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-Q for the quarterly period ended September 30, 1995, and incorporated herein by reference.

(14) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1994, and incorporated herein by reference.

(15) Filed on March 22, 1991 as an exhibit to NeXstar Pharmaceuticals, Inc.'s Registration Statement on Form S-2 (File No. 33-39549), and incorporated herein by reference.

(16) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-Q for the quarterly period ended September 30, 1997, and incorporated herein by reference.

(17) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-Q for the quarter ended June 30, 1998, and incorporated herein by reference.

(18) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 1998, and incorporated herein by reference.

(19) Filed as an exhibit to Registrant's Registration Statement on Form S-3 (No. 333-54350), as amended, and incorporated herein by reference.

(20) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2000, and incorporated herein by reference.

(21) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on January 4, 2002, and incorporated herein by reference.

(22) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002, and incorporated herein by reference.

(23) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, and incorporated herein by reference.

(24) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2001, and incorporated herein by reference.

(25) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on December 10, 2002, and incorporated herein by reference.

(26) Filed as an exhibit to Registrant's Registration Statement on Form S-8 (No. 333-102912) filed on January 31, 2003, and incorporated herein by reference.

(27) Filed as an exhibit to Registrant's Registration Statement on Form S-8 (No. 333-102911) filed on January 31, 2003, and incorporated herein by reference.

(28) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Registration Statement on Form S-1 (No. 333-11793), as amended, and incorporated herein by reference.

(29) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1997, and incorporated herein by reference.

(30) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 1999, and incorporated herein by reference.

(31) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2000, and incorporated herein by reference.

(32) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Current Report on Form 8-K filed on September 19, 2002, and incorporated herein by reference.

(33) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, and incorporated herein by reference.

(34) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1998, and incorporated herein by reference.

+ Certain confidential portions of this Exhibit were omitted by means of marking such portions with an asterisk (the "Mark"). This Exhibit has been filed separately with the Secretary of the SEC without the Mark pursuant to the Registrant's Application Requesting Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934

(b) Reports on Form 8-K

The Registrant filed a report on Form 8-K on December 10, 2002 regarding its tender offer to purchase all the outstanding common shares of Triangle Pharmaceuticals, Inc. at a price of $6.00 per share. The Registrant filed reports on Form 8-K on December 12, 2002 and December 13, 2002 regarding the sale of $300 million of convertible notes ($345 million if the over-allotment is exercised in full) through a Rule 144A offering to qualified institutional buyers.

GILEAD SCIENCES, INC.
CONSOLIDATED FINANCIAL STATEMENTS
Years ended December 31, 2002, 2001 and 2000

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REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

The Board of Directors and Stockholders
Gilead Sciences, Inc.

We have audited the accompanying consolidated balance sheets of Gilead Sciences, Inc. as of December 31, 2002 and 2001, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2002. Our audits also included the financial statement schedule listed at Item 15(a) of this Annual Report on Form 10-K. These financial statements and schedule are the responsibility of the management of Gilead Sciences, Inc. Our responsibility is to express an opinion on these financial statements and schedule based on our audits. We did not audit the financial statements of Proligo L.L.C., a limited liability company, the investment in which is reflected in the accompanying consolidated financial statements using the equity method of accounting. The Company's equity in the net loss of Proligo L.L.C. was $2,858,000 in 2000. The 2000 financial statements of Proligo L.L.C. were audited by other auditors whose report has been furnished to us and our opinion, insofar as it relates to amounts included for Proligo L.L.C., is based solely on the report of the other auditors.

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

In our opinion, based on our audits and the report of other auditors, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Gilead Sciences, Inc. at December 31, 2002 and 2001, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2002, in conformity with accounting principles generally accepted in the United States. Also in our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Notes 2 and 3 to the consolidated financial statements, effective January 1, 2001, the Company changed its method of accounting for derivative instruments and hedging activities, and, effective January 1, 2000, changed its method of accounting for non-refundable up-front fees received in connection with collaboration agreements.

/s/ ERNST & YOUNG LLP

Palo Alto, California
January 24, 2003

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and
Members of Proligo LLC:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of members' equity and of cash flows present fairly, in all material respects, the financial position of Proligo LLC and its subsidiaries at December 31, 2000 and November 30, 1999 and 1998, and the results of their operations and their cash flows for the thirteen-months ended December 31, 2000, the year ended November 30, 1999, and the period August 15, 1998 to November 30, 1998, respectively, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PRICEWATERHOUSECOOPERS LLP

Broomfield, Colorado
January 12, 2001

GILEAD SCIENCES, INC.
Consolidated Balance Sheets
(in thousands, except per share amounts)

	December 31,	
	2002	2001
Assets		
Current assets:		
Cash and cash equivalents	$ 616,931	$ 123,490
Marketable securities	325,443	459,361
Accounts receivable, net of allowance for doubtful accounts of $5,329 at December 31, 2002 and $2,579 at December 31, 2001	125,036	74,228
Note receivable from Triangle Pharmaceuticals, Inc.	50,000	—
Inventories	51,628	39,280
Prepaid expenses and other	14,722	11,400
Total current assets	1,183,760	707,759
Property, plant and equipment, net	67,727	62,828
Other noncurrent assets	36,696	24,199
	$ 1,288,183	$ 794,786
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 24,406	$ 19,174
Accrued clinical and preclinical expenses	7,063	15,938
Accrued compensation and employee benefits	21,511	14,688
Other accrued liabilities	44,026	24,829

Deferred revenue	7,692	3,996
Long-term obligations due within one year	194	1,492
Total current liabilities	104,892	80,117
Long-term deferred revenue	16,677	7,252
Accrued litigation settlement expenses due after one year	—	4,591
Long-term obligations due after one year	273	389
Convertible senior debt	345,000	—
Convertible subordinated debt	250,000	250,000
Commitments and contingencies (see accompanying notes)		
Stockholders' equity:		
Preferred stock, par value $.001 per share, issuable in series; 5,000 shares authorized; none outstanding	—	—
Common stock, par value $.001 per share; 500,000 shares authorized; 197,595 and 193,041 shares issued and outstanding at December 31, 2002 and December 31, 2001, respectively	198	193
Additional paid-in capital	950,308	898,533
Accumulated other comprehensive income	2,475	7,448
Accumulated deficit	(381,640)	(453,737)
Total stockholders' equity	571,341	452,437
	$ 1,288,183	$ 794,786

See accompanying notes

GILEAD SCIENCES, INC.
Consolidated Statements of Operations
(in thousands, except per share amounts)

	Year Ended December 31,		
	2002	2001	2000
Revenues:			
Product sales	$ 423,879	$ 190,970	$ 149,709
Royalty revenue	20,406	22,969	24,591
Contract revenue	22,505	19,830	21,255
Total revenues	466,790	233,769	195,555
Costs and expenses:			
Cost of goods sold	69,724	43,764	33,512
Research and development	134,758	185,553	132,339
Selling, general and administrative	181,301	125,141	82,022
Total costs and expenses	385,783	354,458	247,873
Income (loss) from operations	81,007	(120,689)	(52,318)
Gain on sale of oncology assets	—	157,771	—
Gain on sale of unconsolidated affiliate	—	8,754	—
Loss on sale of marketable securities	(16,048)	—	—
Interest and other income, net	22,291	25,591	17,634
Interest expense	(13,853)	(13,980)	(4,365)
Income (loss) before provision for income taxes, equity in loss of unconsolidated affiliate and cumulative effect of change in accounting principle	73,397	57,447	(39,049)
Provision for income taxes	1,300	4,135	1,199
Equity in loss of unconsolidated affiliate	—	2,130	2,858

Income (loss) before cumulative effect of change in accounting principle	72,097	51,182	(43,106)
Cumulative effect of change in accounting principle	—	1,089	(13,670)
Net income (loss)	$ 72,097	$ 52,271	$ (56,776)
Amounts per common share—basic:			
Income (loss) before cumulative effect of change in accounting principle	$ 0.37	$ 0.27	$ (0.24)
Cumulative effect of change in accounting principle	—	0.01	(0.07)
Net income (loss) per share—basic	$ 0.37	$ 0.28	$ (0.31)
Shares used in per share calculation—basic	195,543	190,245	182,099
Amounts per common share—diluted:			
Income (loss) before cumulative effect of change in accounting principle	$ 0.35	$ 0.25	$ (0.24)
Cumulative effect of change in accounting principle	—	0.01	(0.07)
Net income (loss) per share—diluted	$ 0.35	$ 0.26	$ (0.31)
Shares used in per share calculation—diluted	206,477	202,321	182,099

See accompanying notes

GILEAD SCIENCES, INC.
Consolidated Statement of Stockholders' Equity
(in thousands)

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Income (Loss)	Deferred Compensation	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount					
Balance at December 31, 1999	176,371	$ 176	$ 748,949	$ (2,527)	$ (74)	$ (449,232)	$ 297,292
Net loss	—	—	—	—	—	(56,776)	(56,776)
Unrealized gain on available-for-sale securities, net	—	—	—	2,071	—	—	2,071
Foreign currency translation adjustment	—	—	—	(445)	—	—	(445)
Comprehensive loss							(55,150)
Employee stock purchase plan	408	—	3,942	—	—	—	3,942
Option exercises, net	4,634	5	26,504	—	—	—	26,509
Warrant exercises, net	25	—	—	—	—	—	—
Conversion of convertible subordinated debentures	7,137	8	77,939	—	—	—	77,947
Amortization of deferred compensation	—	—	—	—	71	—	71
Compensatory stock transactions	—	—	513	—	—	—	513
Balance at December 31, 2000	188,575	189	857,847	(901)	(3)	(506,008)	351,124
Net income	—	—	—	—	—	52,271	52,271
Unrealized gain on available-for-sale securities, net	—	—	—	7,735	—	—	7,735
Foreign currency translation adjustment	—	—	—	577	—	—	577
Unrealized gain on cash flow hedges, net	—	—	—	37	—	—	37

Comprehensive income							60,620
Employee stock purchase plan	368	—	5,357	—	—	—	5,357
Option exercises, net	4,098	4	30,950	—	—	—	30,954
Tax benefits of employee stock plans	—	—	1,500	—	—	—	1,500
Amortization of deferred compensation	—	—	—	—	3	—	3
Compensatory stock transactions	—	—	2,879	—	—	—	2,879
Balance at December 31, 2001	193,041	193	898,533	7,448	—	(453,737)	452,437
Net income	—	—	—	—	—	72,097	72,097
Unrealized loss on available-for-sale securities, net	—	—	—	(4,577)	—	—	(4,577)
Foreign currency translation adjustment	—	—	—	(580)	—	—	(580)
Unrealized gain on cash flow hedges, net	—	—	—	184	—	—	184
Comprehensive income							67,124
Employee stock purchase plan	342	—	6,701	—	—	—	6,701
Option exercises, net	4,212	5	44,680	—	—	—	44,685
Tax benefits of employee stock plans	—	—	350	—	—	—	350
Compensatory stock transactions	—	—	44	—	—	—	44
Balance at December 31, 2002	197,595	$ 198	$ 950,308	$ 2,475	$ —	$ (381,640)	$ 571,341

See accompanying notes

GILEAD SCIENCES, INC.
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,		
	2002	2001	2000
Operating activities:			
Net income (loss)	$ 72,097	$ 52,271	$ (56,776)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation	13,189	13,509	11,759
Amortization	1,239	1,182	249
Net effect of change in accounting principle	—	(1,089)	10,730
Gain on sale of oncology assets	—	(157,771)	—
Gain on sale of unconsolidated affiliate	—	(8,754)	—
Loss on sale of marketable securities	16,048	—	—
Equity in loss of unconsolidated affiliate	—	2,130	2,858
Net movement in provision for doubtful accounts	3,262	(170)	30
Tax benefits from employee stock plans	350	1,500	—
Net unrealized (gain) loss on foreign currency transactions	2,869	298	(1,615)
Other non-cash transactions	611	737	1,180
Changes in operating assets and liabilities:			
Accounts receivable	(43,890)	(25,482)	(3,942)
Inventories	(12,348)	(18,718)	397
Prepaid expenses and other assets	(8,915)	(2,734)	766
Long-term prepaid royalties	—	—	(11,367)
Accounts payable	5,232	8,454	2,232
Accrued liabilities	11,544	11,495	5,775

Deferred revenue	13,121	(3,837)	(478)
Net cash provided by (used in) operating activities	74,409	(126,979)	(38,202)
Investing activities:			
Purchases of marketable securities	(490,259)	(377,725)	(229,862)
Sales of marketable securities	422,168	143,684	29,490
Maturities of marketable securities	181,510	136,850	134,240
Capital expenditures	(17,597)	(26,331)	(15,621)
Issuance of note to Triangle Pharmaceuticals, Inc.	(50,000)	—	—
Proceeds from sale of oncology assets	—	130,000	—
Proceeds from sale of unconsolidated affiliate	—	14,300	—
Investment in unconsolidated affiliate	—	—	(2,450)
Net cash provided by (used in) investing activities	45,822	20,778	(84,203)
Financing activities:			
Proceeds from issuances of common stock	51,386	36,311	30,451
Repayments of long-term obligations	(1,414)	(2,761)	(3,156)
Proceeds from issuance of convertible senior notes, net of issuance costs	336,637	—	—
Proceeds from issuance of convertible subordinated notes, net of issuance costs	—	—	241,750
Net cash provided by financing activities	386,609	33,550	269,045
Effect of exchange rate changes on cash	(13,399)	(1,151)	3,641
Net increase (decrease) in cash and cash equivalents	493,441	(73,802)	150,281
Cash and cash equivalents at beginning of year	123,490	197,292	47,011
Cash and cash equivalents at end of year	$ 616,931	$ 123,490	$ 197,292
Supplemental disclosure of cash flow information:			
Interest paid	$ 12,657	$ 12,710	$ 5,417
Income taxes paid	851	1,778	493
Non-cash investing and financing activities			
OSI common stock received upon sale of oncology assets	$ —	$ 38,849	$ —
Common stock issued upon conversion of debentures	—	—	79,533
Reclassification of deferred debt issuance costs to additional paid-in capital upon conversion of subordinated debentures	—	—	1,586

See accompanying notes

GILEAD SCIENCES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2002

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Overview

Gilead (the Company) was incorporated in Delaware on June 22, 1987. We are a biopharmaceutical company focused on the discovery, development and commercialization of antivirals, antibacterials and antifungals to treat life-threatening infectious diseases. We are a multinational company, with revenues from six approved products and operations in ten countries. Currently, we market Viread for the treatment of HIV infection; Hepsera for the treatment of chronic hepatitis B infection; AmBisome, an antifungal agent; DaunoXome, a drug approved for the treatment of Kaposi's Sarcoma; and Vistide for the treatment of CMV retinitis. Roche markets Tamiflu for the treatment of influenza, under a collaborative agreement with us. We are seeking to add to our existing portfolio of products through our clinical development programs, internal discovery programs and an active product acquisition and in-licensing strategy, such as our acquisition of

Triangle Pharmaceuticals, Inc. completed in January 2003. Our internal discovery activities include identification of new molecular targets, target screening and medicinal chemistry. In addition, we are currently developing products to treat HIV infection. We also have expertise in liposomal drug delivery technology that we use to develop drugs that are safer, easier for patients to tolerate and more effective.

The accompanying consolidated financial statements include the accounts of Gilead and its wholly and majority-owned subsidiaries. Significant intercompany transactions have been eliminated. Certain prior period amounts, including certain cash and cash equivalents and marketable securities, have been reclassified to be consistent with the current presentation.

Stock Split

On February 22, 2001 and on March 8, 2002, Gilead completed two-for-one stock splits, effected in the form of a stock dividend, to stockholders of record as of February 2, 2001 and February 14, 2002, respectively. Accordingly, all share and per share amounts for all periods presented reflect both of these splits.

Changes in Accounting Principles

Gilead adopted Statement of Financial Accounting Standards (SFAS) Nos. 133 and 138, collectively referred to as SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* , in the first quarter of 2001. The change was accounted for as a change in accounting principle. See Note 3. Effective in the first quarter of 2000, Gilead adopted the SEC's Staff Accounting Bulletin No. 101 (SAB 101), *Revenue Recognition in Financial Statements* , and the change was also accounted for as a change in accounting principle. See Note 2.

Critical Accounting Policies and Estimates

The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of assets and liabilities. On an on-going basis, management evaluates its estimates, including those related to revenue recognition, bad debts, inventories, accrued clinical and preclinical expenses, and contingencies. We base our estimates on historical experience and on various other market specific assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making

judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ significantly from these estimates.

Revenue Recognition

We recognize revenue from product sales when persuasive evidence an arrangement exists, delivery has occurred, the price is fixed or determinable and collectibility is reasonably assured. We do not provide our customers with a general right of product return. However, we will accept returns of product that has expired or is deemed to be damaged or defective when delivered. Provisions are made for estimated product returns, cash discounts and government discounts and rebates based on contractual terms and expectations regarding utilization rates for these programs.

Contract revenue for research and development is recorded as earned based on the performance requirements of the contract. Nonrefundable contract fees for which no further performance obligations exist, and there is no continuing involvement by Gilead, are recognized on the earlier of when the payments are received or when collection is assured.

Revenue from non-refundable up-front license fees and milestone payments where we continue involvement through development collaboration or an obligation to supply product, is recognized as the manufacturing obligation is fulfilled or ratably over the development period or the period of the manufacturing obligation, as appropriate.

Revenue associated with substantive performance milestones is recognized based upon the achievement of the milestones, as defined in the respective agreements. Revenue under research and development cost reimbursement contracts is recognized as the related costs are incurred.

Advance payments received in excess of amounts earned are classified as deferred revenue.

Royalty revenue from sales of AmBisome is recognized in the month following that in which the corresponding sales occur. Royalty revenue from sales of Vistide and Tamiflu is recognized when received, which is the quarter following the quarter in which the corresponding sales occur.

Shipping and Handling Costs

Shipping and handling costs incurred for inventory purchases and product shipments are recorded in "Cost of goods sold" in the Consolidated Statements of Operations.

Research and Development Expenses

Major components of R&D expenses consist of personnel costs, including salaries and benefits, clinical studies performed by contract research organizations, materials and supplies, and overhead allocations consisting of various administrative and facilities related costs. Our research and development activities are also separated into three main categories: research, clinical development and pharmaceutical development. Research costs typically consist of preclinical and toxicology work. Clinical development costs include Phase 1, 2, and 3 clinical trials as well as expanded access programs. Pharmaceutical development costs consist of product formulation and chemical analysis. We record accruals for estimated clinical and preclinical study costs. These costs are a significant component of R&D expenses. Management accrues costs for clinical studies performed by contract research

organizations based on estimates that typically 25% to 30% of the work is for up-front costs with the remaining activity generally incurred on a straight-line basis over the life of the individual contract or study. This estimate may or may not match the actual services performed by the organizations, which is determined by patient enrollment levels and related activities. We monitor patient enrollment levels and related activity to the extent possible, and adjust our estimates in line with actual activity incurred on an on-going basis.

Advertising Expenses

We expense the costs of advertising, including promotional expenses, as incurred. Advertising expenses were $39.3 million in 2002, $16.5 million in 2001, and $8.4 million in 2000.

Stock-Based Compensation

In accordance with the provisions of SFAS No. 123, *Accounting For Stock-Based Compensation* , the Company has elected to continue to follow Accounting Principles Board Opinion (APB) No. 25, *Accounting For Stock Issued To Employees* , and Interpretation No. 44 (FIN 44), *Accounting for Certain Transactions Involving Stock Compensation—an Interpretation of APB Opinion No. 25,* in accounting for its employee stock option plans. Under APB 25, if the exercise price of Gilead's employee and director stock options equals or exceeds the fair value of the underlying stock on the date of grant, no compensation expense is recognized. See Note 14 for pro forma disclosures of stock-based compensation pursuant to SFAS 123, as amended by SFAS No. 148 *Accounting for Stock-Based Compensation—Transition and Disclosure* .

The table below presents the combined net income (loss) and basic and diluted net income (loss) per common share if compensation cost for the Gilead and NeXstar stock option plans and the ESPP had been determined based on the estimated fair value of awards under those plans on the grant or purchase date (in thousands, except per share amounts):

	Year Ended December 31,		
	2002	2001	2000
Net income (loss)—as reported	$ 72,097	$ 52,271	$ (56,776)
Deduct: Total stock-based employee compensation expense determined under the fair value based method for all awards, net of related tax effects	72,137	50,081	34,999
Pro forma net income (loss) (in thousands)	$ (40)	$ 2,190	$ (91,775)
Earnings (loss) per share:			
Basic—as reported	$ 0.37	$ 0.28	$ (0.31)
Basic—pro forma	$ 0.00	$ 0.01	$ (0.50)
Diluted—as reported	$ 0.35	$ 0.26	$ (0.31)
Diluted—pro forma	$ 0.00	$ 0.01	$ (0.50)

Fair values of awards granted under the stock option plans and ESPP were estimated at grant or purchase dates using a Black-Scholes option pricing model. We used the multiple option approach and the following assumptions:

	Year Ended December 31,		
	2002	2001	2000
Expected life in years (from vesting date):			
Stock options	1.86	1.95	1.88
ESPP	1.31	1.29	1.45
Discount rate:			
Stock options	3.9%	4.6%	6.3%
ESPP	3.0%	4.7%	5.5%
Volatility	82%	83%	84%
Expected dividend yield	0%	0%	0%

The weighted average estimated fair value of ESPP shares purchased was $18.54 for 2002, $11.57 for 2001 and $6.06 for 2000.

Per Share Computations

For 2002 and 2001, basic net income per common share is computed based on the weighted average number of common shares outstanding during the period. Diluted net income per common share for 2002 includes the effects of approximately 10.9 million stock options but does not include the effect of the $250.0 million 5% convertible notes, which would convert to approximately 10.2 million shares, or the $345.0 million 2% convertible notes, which would convert to approximately 7.3 million shares, as the effect of their assumed conversion is antidilutive. Diluted net income per common share for 2001 includes the effects of approximately 12.1 million stock options and warrants, but does not include the effect of the $250.0 million 5% convertible notes which would convert to approximately 10.2 million shares, as the effect of their assumed conversion is antidilutive. For 2000, both basic and diluted loss per common share are computed based on the weighted average number of common shares outstanding during the period. The potential common shares from convertible notes, stock options and warrants, as well as the convertible debentures that were previously outstanding, were excluded from the computation of diluted loss per share in 2000, as their effect would be antidilutive.

Cash and Cash Equivalents

We consider highly liquid investments with insignificant interest rate risk and a remaining maturity of three months or less at the purchase date to be cash equivalents. We may enter into overnight repurchase agreements under which we purchase securities with an obligation to resell them the following day. Securities purchased under agreements to resell are recorded at face value and reported as cash and cash equivalents. Under our investment policy, we may enter into repurchase agreements (repos) with major banks and authorized dealers provided that such repos are collateralized by U.S. government securities with a fair value of at least 102% of the fair value of securities sold to Gilead.

During the fourth quarter of 2002, a misclassification was discovered in the previously reported December 31, 2001 balance sheet and cash flow statement. At December 31, 2001, $38.8 million of OSI stock received in consideration for the divestiture of our oncology assets was misclassified on the balance sheet as cash and cash equivalents instead of as marketable securities. The December 31, 2001 consolidated balance sheet and 2001 consolidated statement of cash flows in this report have been changed to reflect the correct classification.

Marketable Securities

Management determines the appropriate classification of our marketable securities, which consists solely of debt securities, at the time of purchase and reevaluates such designation at each balance sheet date. All of our marketable securities are classified as available-for-sale and carried at estimated fair values and reported in either cash equivalents or marketable securities. At December 31, 2002, cash and cash equivalents include $559.8 million of securities designated as available-for-sale ($82.3 million at December 31, 2001). Unrealized gains and losses on available-for-sale securities are excluded from earnings and reported as a separate component of stockholders' equity. Interest income includes interest, dividends, amortization of purchase premiums and discounts, and realized gains and losses on sales of securities. The cost of securities sold is based on the specific identification method. We regularly review all of our investments for other-than-temporary declines in fair value. When we determine that the decline in fair value of an investment below our accounting basis is other-than-temporary, we reduce the carrying value of the securities we hold and record a loss in the amount of any such decline. No such reductions have been required during the past three years.

Concentrations of Credit Risk

Gilead is subject to credit risk from its portfolio of cash equivalents and marketable securities. By policy, we limit amounts invested in such securities by duration, industry group, investment type and issuer, except for securities issued by the U.S. government. Gilead is not exposed to any significant concentrations of credit risk from these financial instruments. The goals of our investment policy, in order of priority, are as follows: safety and preservation of principal and diversification of risk; liquidity of investments sufficient to meet cash flow

requirements; and competitive after-tax rate of return.

Gilead is also subject to credit risk from its accounts receivable related to product sales. A significant amount of our trade accounts receivable arises from sales of AmBisome and Viread, primarily through sales by our European subsidiaries and export sales to our distributors in Europe. In certain countries where payments are typically slow, primarily Greece, Spain, Portugal and Italy, our accounts receivable balances are significant. In most cases, these slow payment practices reflect the pace at which governmental entities reimburse our customers. This, in turn, may increase the financial risk related to certain of our customers. Sales to customers in countries that tend to be relatively slow paying have in the past increased, and in the future may further increase, the average length of time that accounts receivable are outstanding. At December 31, 2002, our past due accounts receivable for Greece, Spain, Portugal and Italy totaled approximately $49.7 million, of which approximately $26.6 million was more than 120 days past due. At December 31, 2001, past due receivables for these countries were $28.7 million, of which approximately $9.9 million was more than 120 days past due. To date, we have not experienced significant losses with respect to the collection of our accounts

receivable and believe that all our past due accounts receivable as reflected in the consolidated balance sheet, including those due from customers in these four countries, are collectible. We perform credit evaluations of our customer's financial condition and generally have not required collateral.

Many of the materials that we utilize in our operations are made at only one facility. For example, we depend on single suppliers for high quality amphotericin B, daunorubicin HCl, distearoylphosphatidylcholine and high quality cholesterol, each of which is used in the manufacture of one or more of our liposomal products. If supplies from our suppliers were interrupted for any reason, we may be unable to ship Viread, AmBisome, Hepsera, Vistide or DaunoXome, or to supply any of our products in development for clinical trials.

As of December 31, 2002, we had a $50.0 million note receivable from Triangle Pharmaceuticals, Inc. incurred in conjunction with the acquisition completed in January 2003. This note was not included in cash, cash equivalents, and marketable securities and has subsequently been eliminated in consolidation as a result of the closing of the acquisition on January 23, 2003.

Inventories

Inventories are recorded at the lower of cost or market, with cost determined on a first-in, first-out basis. Management periodically reviews the composition of inventory in order to identify obsolete, slow-moving or otherwise unsaleable items. If such items are observed and there are no alternate uses for the inventory, we will record a write-down to net realizable value in the period that the units are identified as impaired. Historically, inventory write-downs have been insignificant and consistent with management's expectations.

Property, Plant and Equipment

Property, plant and equipment is stated at cost less accumulated depreciation and amortization. Depreciation and amortization are recognized using the straight-line method. Estimated useful lives are as follows:

Description	Estimated Useful Life (in years)
Building and leasehold improvements	20
Laboratory and manufacturing equipment	4-10
Office and computer equipment	2-6

Office and computer equipment includes capitalized computer software. All of our capitalized software is purchased. We have no internally developed computer software. Leasehold improvements and capitalized leased equipment are amortized over the shorter of the lease term or the item's useful life. Capitalized interest on construction in progress is included in property, plant and equipment.

Other Noncurrent Assets

Other noncurrent assets at December 31, 2002 and 2001 includes $10.5 and $11.0 million, respectively, of prepaid royalties paid to the Institute of Organic Chemistry and Biochemistry of the Academy of Sciences of the Czech Republic and Rega Stichting (IOCB/REGA), as discussed under the "IOCB/REGA" caption of Note 9. Also included in other noncurrent assets at December 31, 2002 and

2001 are net deferred debt issuance costs of $14.0 million and $6.9 million, respectively, related to the $345.0 million 2% convertible senior

notes issued in December 2002 and to the $250.0 million 5% subordinated convertible notes Gilead issued in December 2000.

Long-Lived Assets

The carrying value of long-lived assets is reviewed on a regular basis for the existence of facts or circumstances both internally and externally that may suggest impairment. Specific potential indicators of impairment include:

- a significant decrease in the fair value of an asset;
- a significant change in the extent or manner in which an asset is used or a significant physical change in an asset;
- a significant adverse change in legal factors or in the business climate that affects the value of an asset;
- an adverse action or assessment by the U.S. Food and Drug Administration or another regulator;
- an accumulation of costs significantly in excess of the amount originally expected to acquire or construct an asset; and
- operating or cash flow losses combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with an income-producing asset.

Should there be indication of impairment, we will confirm this by comparing the estimated future cash flows expected to result from the use of the asset and its eventual disposition to the carrying amount of the asset. In estimating these future cash flows, assets are grouped at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows generated by other asset groups. If the sum of the expected future cash flows (undiscounted and without interest changes) is less than the carrying amount of the asset, an impairment loss, measured as the excess of the carrying value of the asset over its fair value, will be recognized. The cash flow estimates used in such calculations are based on management's best estimates, using appropriate and customary assumptions and projections at the time.

Foreign Currency Translation, Transactions and Contracts

Adjustments resulting from translating the financial statements of our foreign subsidiaries into U.S. dollars are excluded from the determination of net income and are accumulated in a separate component of stockholders' equity. Net foreign exchange transaction gains (losses) are reported as a selling, general and administrative expense in the consolidated statements of operations. Such realized gains (losses) were $0.6 million in 2002, ($1.4) million in 2001 and ($0.5) million in 2000.

We hedge certain of our foreign currency exposures related to outstanding trade accounts receivable, firmly committed purchase transactions, and forecasted product sales with foreign exchange forward contracts. In general, these contracts do not expose us to market risk because gains and losses

on the contracts offset gains and losses on the transactions being hedged. Our exposure to credit risk from these contracts is a function of changes in interest and currency exchange rates and, therefore, varies over time. Gilead limits the risk that counterparties to these contracts may be unable to perform by transacting only with major U.S. banks. We also limit risk of loss by entering into contracts that provide for net settlement at maturity. Therefore, our overall risk of loss in the event of a counterparty default is limited to the amount of any unrecognized and unrealized gains on outstanding contracts (i.e., those contracts that have a positive fair value) at the date of default. We do not enter into speculative foreign currency transactions and do not write options. We presently do not hedge our net investment in any of our foreign subsidiaries. In accounting for hedges of accounts receivable, we record the changes in the fair value in selling, general and administrative expense, as these derivative instruments are not designated as hedges under FAS No. 133.

We selectively hedge anticipated currency exposures by purchasing forward contracts to hedge firmly committed purchases transactions and anticipated products sales, which are designated as cash flow hedges under SFAS 133. The unrealized gains and losses on the underlying forward contracts are recorded in other comprehensive income and recognized in earnings when the forecasted transaction occurs. At December 31, 2002 and December 31, 2001, we have net unrealized losses on our open foreign exchange forward contracts of $1.1 million and $0.9 million, respectively. Losses on revenue hedges reduced product revenues by $1.0 million in 2002.

We had notional amounts on forward exchange contracts outstanding of $53.5 million at December 31, 2002 and $72.3 million at December 31, 2001. The contracts have maturities of one year or less with one exception. One hedge contract intended to hedge raw materials purchases in the first quarter of 2004, with a notional amount of $4.3 million and an insignificant fair value at December 31, 2002, has a maturity of 13 months.

See Note 3 for a further discussion of derivative financial instruments and our adoption of SFAS 133.

Fair Value of Financial Instruments

The Company's financial instruments consist principally of cash and cash equivalents, marketable securities, accounts receivable, certain other non-current assets, forward foreign exchange contracts, accounts payable, long-term obligations and convertible notes. Cash and cash equivalents, marketable securities and forward foreign exchange contracts that hedge accounts receivable are reported at their respective fair values on the balance sheet. Forward foreign exchange contracts that hedge firmly committed purchases are recorded at fair value, net of the related deferred gain or loss, resulting in a reported net balance of zero. The fair value of the convertible senior notes at December 31, 2002 was $357.4 million. The carrying value at December 31, 2002 was $345.0 million. The fair value of the convertible subordinated notes at December 31, 2002 was $381.9 million and the fair value at December 31, 2001 was $382.8 million. The carrying value at the end of each period was $250.0 million. The fair values at December 31, 2002 and December 31, 2001 for each of the convertible notes were determined by obtaining quotes from a market maker for the notes. Management believes the remaining financial instruments are reported on the balance sheet at amounts that approximate current fair values.

Recent Accounting Pronouncements

In June 2002, the FASB issued SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities* . SFAS 146 requires that a liability for costs associated with an exit or disposal activity be recognized and measured initially at fair value only when the liability is incurred. SFAS 146 is effective for exit or disposal activities that are initiated after December 31, 2002. The adoption of SFAS 146 is not expected to have a material impact on our financial position and results of operations.

In November 2002, The EITF reached a consensus on Issue 00-21, addressing how to account for arrangements that involve the delivery or performance of multiple products, services, and/or rights to use assets. Revenue arrangements with multiple deliverables are divided into separate units of accounting if the deliverables in the arrangement meet the following criteria: (1) the delivered item has value to the customer on a standalone basis; (2) there is objective and reliable evidence of the fair value of undelivered items; and (3) delivery of any undelivered item is probable. Arrangement consideration should be allocated among the separate units of accounting based on their relative fair values, with the amount allocated to the delivered item being limited to the amount that is not contingent on the delivery of additional items or meeting other specified performance conditions. The final consensus will be applicable to agreements entered into in fiscal periods beginning after June 15, 2003 with early adoption permitted. We are reviewing the provisions of this consensus to determine the effect, if any, it may have on the Company's financial position or results of operations.

In November 2002, the FASB issued Interpretation No. 45 (or FIN 45), *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* . FIN 45 elaborates on the existing disclosure requirements for most guarantees, including residual value guarantees issued in conjunction with operating lease agreements. It also clarifies that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value of the obligation it assumes under that guarantee and must disclose that information in its interim and annual financial statements. The initial recognition and measurement provisions apply on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002. Our adoption of the disclosure provisions of FIN 45 did not have a material impact on our results of operations and financial position.

In December 2002, the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure.* SFAS 148 is an amendment to SFAS No. 123, *Accounting for Stock-Based Compensation* issued in October 1995. SFAS 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based compensation. In addition, this Statement amends the disclosure requirements of Statement 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The additional disclosure requirements of FAS 148 are effective for fiscal years ending after December 15, 2002. We have elected to continue to follow the intrinsic value method of accounting as prescribed by Accounting Principles Board Opinion No. 25 (or APB 25), *Accounting for Stock Issued to Employees* , to account for employee stock options.

2. CUMULATIVE EFFECT OF CHANGE IN ACCOUNTING PRINCIPLE

In December 1999, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 101 (SAB 101), *Revenue Recognition in Financial Statements.* Among other things, SAB 101 describes the SEC Staff's position on the recognition of certain nonrefundable up-front fees received in connection with collaboration agreements. We previously recognized nonrefundable technology access fees received in connection with collaboration agreements as revenue when received or when collectibility was probable, and when the technology had been transferred. Effective January 1, 2000, Gilead changed its method of accounting for these fees to recognize them as the related manufacturing obligation is fulfilled or on a straight-line basis over the term of the related research and development collaboration, manufacturing or supply

arrangement, as appropriate, as this method best matches the effort provided. Management believes the change in accounting principle is preferable based on guidance provided in SAB 101.

The cumulative effect of the change in accounting principle was recorded in the fourth quarter of 2000, retroactively effective as of January 1, 2000, as deferred revenue that will be recognized as contract revenue over the remaining term of the research and development, manufacturing or supply arrangements, as appropriate. For the year ended December 31, 2000, the net impact of the change in accounting principle was to increase the net loss by $10.7 million, or $0.06 per share. The loss consists of a $13.7 million cumulative effect of the change as of January 1, 2000, net of $2.9 million of related deferred revenue that was recognized as contract revenue during the year 2000. An additional $4.7 million of contract revenue was recognized through 2002, and the remainder of the $6.1 million related deferred revenue balance as of December 31, 2002, is expected to be recognized as revenue through 2012.

3. DERIVATIVE FINANCIAL INSTRUMENTS

On January 1, 2001, Gilead adopted SFAS 133. The standard requires that Gilead recognize all derivatives as either assets or liabilities measured at fair value. The Company enters into foreign currency forward contracts to hedge against changes in the fair value of monetary assets and liabilities denominated in a non-functional currency. If the derivative is designated as, and meets the definition of, a fair value hedge, the changes in the fair value of the derivative and of the hedged item attributable to the hedged risk are recognized in earnings.

The Company also enters into foreign currency forward contracts, generally with maturities of 12 months or less, to hedge future cash flows related to purchase transactions and forecasted product sales in foreign denominated currencies. These derivative instruments are employed to eliminate or minimize certain foreign currency exposures that can be confidently identified and quantified. In accordance with SFAS 133, hedges related to anticipated foreign currency purchases of raw materials and forecasted product sales designated and documented at the inception of the respective hedge are designated as cash flow hedges and evaluated for effectiveness quarterly. As the terms of the forward contract and the underlying transaction are matched at inception, forward contract effectiveness is calculated by comparing the fair value of the contract to the change in the forward value of the underlying hedged item. Upon adoption of SFAS 133, we recorded a fair value of $0.6 million related to forward contracts previously not reflected in the balance sheet and recognized a cumulative transition adjustment to other comprehensive income of $0.6 million for the effective component of the hedge. Substantially all values reported in other comprehensive income at December 31, 2002 will be

reclassified to earnings within 12 months. Any residual changes in fair value of the instruments or other ineffectiveness are recognized immediately in selling, general and administrative expense. Ineffectiveness during 2002 and 2001 was not significant.

Gilead holds warrants to purchase stock in two non-public companies. These warrants have net exercise features and under SFAS 133 are classified as derivative instruments. Upon adoption, Gilead recorded the fair value of one of these warrants at $1.1 million with an offsetting adjustment to cumulative change in accounting principle.

During 2002, a $0.4 million loss on hedging contracts has been recognized in the income statement and a $0.2 million increase in the fair value of derivatives has been recognized in other comprehensive income. At December 31, 2002, the fair value of derivatives included in other comprehensive income is not material.

4. SALE OF ONCOLOGY ASSETS

On December 21, 2001, Gilead completed the sale of its oncology assets, pipeline of clinical candidates in oncology and all related intellectual property, as well as our Boulder, Colorado operations, including clinical research and drug development operations, infrastructure and facilities, to OSI. The three clinical development candidates sold to OSI were: NX 211 (liposomal lurtotecan), GS 7836 (a nucleoside analogue) and GS 7904L (a liposomal thymidylate synthase inhibitor). As consideration, Gilead received $130.0 million in cash and 924,984 shares of OSI common stock valued at approximately $38.8 million as of December 21, 2001. The number of shares issued to Gilead was determined by dividing $40.0 million by the average closing sale price of OSI common stock for the 5 days preceding December 21, 2001. We are also entitled to additional payments from OSI of up to $30.0 million in either cash or a combination of cash and OSI common stock if and when OSI reaches certain development milestones for NX 211, the most advanced of the oncology product candidates sold to OSI. Milestone payments, if any, received from OSI will be recognized as contract revenues upon receipt. Based upon the December 21, 2001 net book value of the oncology assets sold of $5.0 million, transaction costs of $3.2 million, and $2.8 million related to the acceleration of approximately 78,000 options to purchase Gilead common stock, we realized a pretax gain of $157.8 million in the fourth quarter of 2001. The carrying value of the transferred assets relates primarily to certain property and equipment. OSI assumed all of Gilead's oncology-related clinical and preclinical obligations, as well as various lease obligations. Under a related manufacturing agreement, we will produce for OSI liposomal formulations of NX 211 and GS 7904L, the two liposomal products sold to OSI, at our manufacturing facility in San Dimas, CA.

5. SALE OF MARKETABLE SECURITIES

In July 2002, Gilead sold all of its remaining shares of OSI common stock for approximately $22.0 million. These shares were partial

consideration for the sale of our oncology assets to OSI in December 2001, at which time they were recorded at a fair market value of approximately $38.0 million. In connection with the sale of these remaining shares, we recognized a non-operating loss of approximately $16.0 million that is reflected in our results for the year ended December 31, 2002.

6. AVAILABLE-FOR-SALE SECURITIES

The following is a summary of available-for-sale securities. Estimated fair values of available-for-sale securities are based on prices obtained from commercial pricing services (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
December 31, 2002				
U.S. treasury securities and obligations of U.S. government agencies	$ 419,784	$ 1,781	$ (9)	$ 421,556
Corporate debt securities	102,891	1,195	(17)	104,069
Asset-backed securities	68,708	852	(6)	69,554
Other debt securities	290,018	—	—	290,018
Total	$ 881,401	$ 3,828	$ (32)	$ 885,197
December 31, 2001				
U.S. treasury securities and obligations of U.S. government agencies	$ 64,898	$ 854	$ (41)	$ 65,711
Certificates of deposit	6,093	7	—	6,100
Corporate debt securities	265,532	3,533	(717)	268,348
Corporate equity securities	38,849	3,459	—	42,308
Asset-backed securities	58,309	1,154	(2)	59,461
Other debt securities	99,757	—	—	99,757
Total	$ 533,438	$ 9,007	$ (760)	$ 541,685

Other debt securities consist primarily of money market funds. We also maintain other marketable securities of nominal value recorded in other noncurrent assets. At December 31, 2002, these securities have a net unrealized loss of approximately $0.1 million.

The following table presents certain information related to sales of available-for-sales securities (in thousands):

	Year Ended December 31,		
	2002	2001	2000
Proceeds from sales	$ 422,168	$ 143,684	$ 29,490
Gross realized gains on sales	$ 3,492	$ 1,284	$ 62
Gross realized losses on sales	$ (16,705)	$ (59)	$ (146)

At December 31, 2002, $624.5 million of our portfolio of marketable securities (excluding $69.6 million of asset-backed securities) has a contractual maturity of less than one year and $191.1 million of the portfolio has a contractual maturity greater than one year but less than three years. None of the estimated maturities of our asset-backed securities exceed three years.

7. NOTE RECEIVABLE

In December 2002, as part of the arrangements contemplated by the proposed acquisition of Triangle by Gilead, a $50.0 million loan was extended to Triangle for working capital and other corporate purposes. Triangle issued to Gilead a 7.50% unsecured convertible promissory

note. Upon completion of the Triangle acquisition in January 2003, this loan was eliminated in our consolidated results as a result of the closing of the acquisition on January 23, 2003. See Note 20.

8. BALANCE SHEET DETAIL (In thousands)

	December 31,	
	2002	2001
Inventories:		
Raw materials	$ 24,840	$ 18,086
Work in process	16,548	10,004
Finished goods	10,240	11,190
Total	$ 51,628	$ 39,280
Property, plant and equipment, net:		
Building and improvements (including leasehold improvements)	$ 61,010	$ 55,658
Laboratory and manufacturing equipment	37,108	32,867
Office and computer equipment	27,005	22,574
Capitalized leased equipment	14,915	13,791
Construction in progress	8,467	6,238
	148,505	131,128
Less accumulated depreciation and amortization	(80,778)	(68,300)
Total	$ 67,727	$ 62,828
Other accrued liabilities:		
Accrued Medicaid rebates	$ 10,805	$ 2,489
Accrued sales and marketing expenses	8,205	1,586
Other liabilities	25,016	20,754
Total	$ 44,026	$ 24,829

9. COLLABORATIVE ARRANGEMENTS AND CONTRACTS

GlaxoSmithKline

In April 2002, Gilead and GSK entered into a licensing agreement providing GSK the rights to commercialize Hepsera, Gilead's antiviral for the treatment of chronic hepatitis B, in Asia, Latin America and certain other territories. Under the agreement, Gilead retained rights to Hepsera in the United States, Canada, Eastern and Western Europe, Australia and New Zealand. GSK received exclusive rights to develop Hepsera solely for the treatment of hepatitis B in all of its territories, the

most significant of which include China, Korea, Japan and Taiwan. In addition, GSK paid us an up-front licensing fee of $10.0 million, and we are entitled to receive additional cash payments of up to $30.0 million upon achievement by GSK of certain regulatory, development and commercial milestones. Of this $30.0 million, $2.0 million was received for the U.S. approval of Hepsera in September 2002. GSK also will pay Gilead a royalty on net sales, if any, of Hepsera in the GSK territories. GSK will have full responsibility for development and commercialization of Hepsera in GSK's territories. The $10.0 million up-front fee and $2.0 million U.S. approval fee have been recorded as deferred revenue in 2002 with a total of $0.5 million being recognized as contract revenue in 2002. The balance of deferred revenue at December 31, 2002 will be amortized into contract revenue over the period of Gilead's remaining obligations under the agreement, approximately 14 years.

In December 2000, Gilead entered into an agreement with Glaxo Wellcome, now GSK giving Gilead the rights to GS 7904L, a novel anti-tumor compound. Gilead was developing GS 7904L in a liposome and was evaluating it in preclinical studies. Under the agreement, Gilead had exclusive worldwide rights to develop and commercialize GS 7904L for all indications other than malaria. Gilead paid GSK an up-front fee that was included in R&D expense in 2000. In December 2001, this compound was assigned to OSI as part of the sale of oncology assets.

In May 1998, Gilead entered into a three-part collaboration with GSK in which (a) GSK received a non-exclusive right to use Gilead's proprietary SELEX process for target validation; (b) Gilead received exclusive rights (subject to GSK's right to elect to participate in such activities) to develop and commercialize NX 211, a liposomal formulation of GSK's proprietary topoisomerase I inhibitor (lurtotecan); and (c) GSK acquired 1,457,028 shares of Gilead common stock for $10.0 million in a private offering. In December 2000, the collaboration and license agreement was modified. Under the revised terms of agreement, GSK waived its right to participate in the development and commercialization of NX 211 and its right to receive royalties, giving Gilead exclusive rights to the compound. In December 2001, this compound was also assigned to OSI as part of the sale of oncology assets.

Cubist Pharmaceuticals

In September 2002, Gilead and Cubist Pharmaceuticals jointly announced the termination of their licensing agreement for the commercialization of Cidecin® (daptomycin for injection) and an oral formulation of daptomycin. The agreement, executed in January 2001, granted Gilead exclusive commercialization rights to the products in 16 European countries following regulatory approval. Under the terms of the termination agreement, Gilead does not owe any future payments to Cubist, and Cubist reacquired all European rights to both products. Upon termination, $2.0 million was recorded to research and development expense, which represented the remaining unamortized asset related to the preclinical oral formulation of daptomycin.

Archemix

In October 2001, we entered into an agreement with Archemix Corporation relating to our SELEX technology. Under this agreement, Archemix obtained the exclusive rights to the SELEX process, including therapeutic and other commercial applications to the extent not already licensed under pre-existing agreements. Archemix paid to us $9.0 million in 2001 and $8.5 million in 2002. As

required by our license agreement with University License Equity Holdings, Inc. (ULEHI), we paid 5% of the $9.0 million and the $8.5 million payments to ULEHI and we recognized $8.6 million and $8.1 million as revenue in 2002 and 2001, respectively. We also received a warrant to purchase 350,000 shares of Archemix common stock, the value of which is not material. As required by our license agreement with ULEHI, we transferred 5% of this warrant to ULEHI. No additional payments are due by Archemix under this agreement.

EyeTech

In March 2000, Gilead entered into an agreement with EyeTech Pharmaceuticals, Inc. relating to our proprietary aptamer EYE001, now known as Macugen. Currently in early clinical trials, Macugen is an inhibitor of vascular endothelial growth factor, or VEGF, which is known to play a role in the development of certain ophthalmic diseases. Under the terms of the agreement, EyeTech received worldwide rights to all therapeutic uses of Macugen, and, if the product is successfully commercialized, EyeTech will pay us royalties on worldwide sales of the product. EyeTech also will be responsible for all research and development costs. We provided clinical supplies of the product to EyeTech through March 2001. We also received a $7.0 million up-front licensing fee from EyeTech in April 2000, which was recognized as revenue ratably over the one-year supply agreement period. Accordingly, $5.2 million of the license fee was recorded as contract revenue under the agreement in 2000, and the remainder of the license fee was recognized as revenue in 2001. We are also entitled to additional cash payments from EyeTech of up to $25.0 million if and when EyeTech reaches certain Macugen development milestones. Additionally, we received a warrant to purchase 791,667 shares of EyeTech series B convertible preferred stock, exercisable at a price of $6.00 per share, the price at which the stock was issued to other investors. See Note 3 for a description of the accounting treatment of the warrant.

Fujisawa

Our rights to market AmBisome are subject to a 1991 agreement between Gilead and Fujisawa Healthcare, Inc., as successor to Fujisawa USA, Inc. (Fujisawa). Under the terms of the Fujisawa agreement, as amended, Fujisawa and Gilead co-promote AmBisome in the U.S., Fujisawa has sole marketing rights to AmBisome in Canada and we have exclusive marketing rights to AmBisome in the rest of the world, provided we pay royalties to Fujisawa in connection with sales in most significant Asian markets, including Japan. In connection with U.S. sales, Fujisawa purchases AmBisome from Gilead at cost. For sales in Canada, Fujisawa purchases AmBisome at cost plus a specified percentage. Fujisawa collects all payments from the sale of AmBisome in the U.S. and Canada. We receive 20% of Fujisawa's gross profits from the sale of AmBisome in the U.S. Gross profits include a deduction for cost of goods sold, giving us a current effective royalty rate of approximately 17% of Fujisawa's net sales of AmBisome in the U.S. In connection with the agreement between us and Fujisawa, we recorded royalty revenue of $15.7 million in 2002, $17.1 million in 2001 and $13.5 million in 2000.

Sumitomo

In September 1996, Gilead and Sumitomo entered into an agreement pursuant to which Sumitomo agreed to develop and market AmBisome in Japan. Under the terms of the agreement, Sumitomo paid us an initial $7.0 million licensing fee (less withholding taxes of $0.7 million) in October 1996 and a $3.0 million milestone payment (less withholding taxes of $0.3 million) in March 1998. Sumitomo also is required to make additional payments to us if certain clinical and commercial milestones are met and to pay us royalties on all Japanese AmBisome sales. Under the agreement, Gilead is obligated to provide a certain quantity of AmBisome to Sumitomo at no charge. AmBisome is not yet approved for marketing in Japan.

Subsequent to the cumulative effect of the change in accounting principle that was recorded effective in the first quarter of 2000 resulting from the adoption of SAB 101, Gilead has recognized the initial license fee over the remaining free supply arrangement period. The net impact of the change in accounting principle for the Sumitomo License was to increase the net loss in 2000 by $3.4 million. The cumulative effect of the change in accounting principle was a charge of $5.0 million. Contract revenue of $1.6 million related to the initial licensing fee from Sumitomo was recognized as contract revenue in 2000, $2.8 million was recognized as contract revenue in 2001 and the remaining $0.6 million was recognized as contract revenue in 2002.

Roche

In September 1996, Gilead entered into a collaboration agreement with Roche to develop and commercialize therapies to treat and prevent viral influenza (the Roche Agreement). Under the Roche Agreement, Roche received exclusive worldwide rights to Gilead's proprietary influenza neuraminidase inhibitors. Prior to 2000, Roche made license fee and developmental milestone payments totaling $29.1 million. During 2000, Gilead recognized $9.6 million of contract revenue from milestone payments from Roche related to Tamiflu milestones achieved during the year. The milestones included filing for regulatory approval in Japan for treatment of influenza, the Japanese approval of the application, the filing for U.S. regulatory approval for the prevention of influenza, and the receipt of such approval in the U.S. In 2001, we recognized a $2.0 million milestone payment for the filing of an application to market Tamiflu as a prophylaxis in the European Union. In 2002, we recognized $8.0 million in milestone payments for the European approval of Tamiflu for treatment and prophylaxis.

As of December 31, 2002, Gilead is entitled to additional cash payments from Roche of up to $1.6 million upon Roche achieving additional developmental and regulatory milestones. In addition, Roche is required to pay Gilead royalties on net product sales. Gilead began receiving royalties from Roche's sales of Tamiflu in the first quarter of 2000. We recorded a total of $3.4 million of Tamiflu royalties in 2002, $4.5 million of royalties in 2001 and $9.6 million of royalties in 2000. We recognize royalty revenue from Roche in the quarter following the quarter in which the related Tamiflu sales occur.

Under the Roche Agreement, Roche also reimburses us for its related R&D costs under the program by funding such costs quarterly and generally in advance, based on an annual budget. Reimbursements are included in contract revenue as we incur the related R&D costs. Amounts

incurred by us in excess of amounts funded may also be reimbursed, subject to Roche's approval. In this event, revenue is not recognized until such approval has been obtained. Conversely, if amounts funded by Roche exceed our related R&D costs, we may be required to repay such excess funding to Roche. We recorded contract revenue for R&D reimbursements related to the Roche Agreement of approximately $1.1 million over the previous three years ending in 2002. R&D costs related to the Roche Agreement approximate the reimbursement revenue and are included in R&D expenses.

Pharmacia

In August 1996, Gilead and Pharmacia Corporation (Pharmacia) entered into a License and Supply Agreement (Pharmacia Agreement) to market Vistide in all countries outside the U.S. Under the terms of the Pharmacia Agreement, Pharmacia paid Gilead an initial license fee of $10.0 million.

Subsequent to the cumulative effect of the change in accounting principle recorded effective in the first quarter of 2000, Gilead is recognizing the initial license fee on a straight-line basis over the supply arrangement period, which is sixteen years from the agreement date. The net impact of the change in accounting principle for the Pharmacia Agreement was to increase the net loss in 2000 by $7.3 million. The cumulative effect of the change in accounting principle related to the initial license fee from Pharmacia was a $7.9 million charge to results of operations, and additional contract revenue of $0.6 million was recognized in 2000 subsequent to the accounting change. The remaining $7.3 million of related deferred revenue is expected to be recognized on a straight-line basis as contract revenue over the remaining supply period, through 2013.

Under the terms of the Pharmacia Agreement and related agreements covering expanded access programs for Vistide outside of the U.S.,

Gilead is responsible for maintaining the cidofovir patent portfolio and for supplying to Pharmacia bulk cidofovir used to manufacture the finished Vistide product. Gilead is entitled to receive a royalty based upon Pharmacia's sales of Vistide. Gilead receives a portion of the royalty upon shipping either bulk drug substance or Vistide to Pharmacia, and the remainder upon Pharmacia's sale of Vistide to third parties. Any royalties that Gilead receives before the product is sold to third parties are recorded as deferred revenue until such third-party sales occur. At December 31, 2002, we have recorded on our balance sheet approximately $1.9 million of such deferred revenue ($3.1 million at December 31, 2001). We recognized royalty revenue from sales of Vistide outside of the United States by Pharmacia of $1.3 million in 2002, $1.4 million in 2001 and $1.5 million in 2000.

Somalogic

In November 1999, Gilead and Somalogic, Inc. (Somalogic) entered into an agreement whereby Gilead assigned to Somalogic under a sole and exclusive license, certain intellectual property related to the SELEX process for diagnostic purposes, including patents and patent applications. Under the terms of the agreement, Somalogic was required to pay Gilead a total of $2.5 million in two nonrefundable installments. The first $1.5 million was paid in November 1999 and was included in contract revenue for the year ended December 31, 1999. The remaining $1.0 million, which was reported as deferred revenue at December 31, 1999, was received and recorded as contract revenue in 2000. Gilead has no ongoing research or funding obligations under the agreement.

IOCB/REGA

In 1991 and 1992, Gilead entered into agreements with the Institute of Organic Chemistry and Biochemistry of the Academy of Sciences of the Czech Republic and Rega Stichting (IOCB/REGA) relating to certain nucleotide compounds discovered at these two institutions. Under the agreements, Gilead received the exclusive right to manufacture, use and sell these nucleotide compounds, and Gilead is obligated to pay IOCB/REGA a percentage of net revenues received from sales of products containing the compounds, subject to minimum royalty payments. The products covered by the agreement include Vistide, Hepsera and Viread, but exclude Tamiflu. Gilead currently makes quarterly payments to IOCB/REGA based on a percentage of Vistide, Hepsera and Viread sales.

In December 2000, the agreements with IOCB/REGA were amended to provide for a reduced royalty rate on future sales of Hepsera or Viread, in return for an up-front payment from Gilead of $11.0 million upon signing the agreement. This payment was recorded as a long-term prepaid royalty and is classified in other noncurrent assets on the balance sheet at December 31, 2002 and 2001. It is being recognized as royalty expense over the expected commercial life of Viread and Hepsera. Amortization of the $11.0 million payment began as of the product launch dates of Viread and Hepsera and totaled $0.5 million through December 31, 2002.

Southern Research Institute

In December 2000, Gilead entered into an agreement with Southern Research Institute giving Gilead worldwide rights to develop and commercialize GS 7836, an anti-tumor compound that Gilead was evaluating in preclinical studies. Under the terms of the agreement, Gilead paid Southern Research Institute an up-front fee, which was included in research and development expense in 2000. In December 2001, this compound was assigned to OSI as part of the sale of oncology assets.

10. INVESTMENT IN AND SALE OF UNCONSOLIDATED AFFILIATE

In July 1998, we established Proligo L.L.C., a Delaware limited liability company (Proligo), as a wholly owned subsidiary and transferred all of the assets of the NeXstar Technology Products division to Proligo. Proligo supplies nucleic acid and peptide synthesis products to the pharmaceutical and biopharmaceutical industry for sale and use as laboratory research reagents and in therapeutic and diagnostic products.

In August 1998, we sold a 51% interest (Interest) in Proligo to SKW Americas, Inc. (SKW). As payment for the Interest, we received $15.0 million in cash and a 49% interest in PerSeptive Biosystems GmbH, a company in Hamburg, Germany (Hamburg Company), which specializes in the manufacture of nucleoside phosphoramidite monomers. The 49% interest in the Hamburg Company had a fair market value of approximately $5.5 million. We recorded a $22.1 million gain in connection with this sale in 1998.

In January 2000 and October 1999, Gilead made two additional cash investments in Proligo for a total of $5.0 million to maintain its 49% ownership interest in Proligo. Gilead had no commitments to provide additional funding to Proligo beyond January 2000.

We accounted for our investment in Proligo using the equity method of accounting. In 2000, we recognized $2.9 million equity in Proligo's net loss, representing our 49% share of Proligo's loss for the thirteen-month period ended December 31, 2000. During the fourth

quarter of 2000, Proligo changed its fiscal year end to December 31 from November 30. During 2001, Gilead sold its 49% interest in Proligo to Degussa Corporation for $14.3 million in cash. The proceeds, net of Gilead's investment in Proligo, are reflected as an $8.8 million gain on the sale of unconsolidated affiliate. In 2001, prior to the date of the sale, Gilead recorded $2.1 million as equity in the loss of Proligo.

11. LONG-TERM OBLIGATIONS

Long-term obligations consist of the following (in thousands):

	December 31,	
	2002	2001
Capital lease obligations: monthly installments; interest rates ranging from 5.16% to 21.02%	$ 361	$ 1,466
Fixed rate debt: monthly installments through 2003; secured by equipment; interest rates ranging from 2.0% to 11.50%	106	415
Total long-term obligations	467	1,881
Less current portion	(194)	(1,492)
Long-term obligations due after one year	$ 273	$ 389

Maturities of long-term obligations, including capital lease obligations, are as follows (in thousands):

Year ending December 31,	
2003	$ 250
2004	128
2005	127
2006	84
2007	12
	601
Less amount representing interest	(134)
Total	$ 467

The terms of the various debt agreements require us to comply with certain financial and operating covenants. At December 31, 2002, we were in compliance with all such covenants.

12. CONVERTIBLE NOTES

On December 18, 2002, Gilead issued $345.0 million of 2% convertible senior notes due December 15, 2007 in a private offering to Goldman, Sachs & Co. who resold the notes to qualified institutional investors. The notes are convertible into a total of up to 7,340,425 shares of Gilead

common stock at $47.00 per share. The $47.00 conversion price is higher than Gilead's common stock price on the note's issuance date. The notes are redeemable in whole or in part, at the option of Gilead, at any time on or after June 20, 2004, at specified redemption prices plus accrued interest. Debt issuance costs of $8.4 million incurred in connection with the issuance of the notes were recorded as other noncurrent assets, and are being amortized to interest expense on a straight-line basis over the contractual term of the notes.

On December 13, 2000, Gilead issued $250.0 million of 5% convertible subordinated notes due December 15, 2007 in a private offering to J.P. Morgan & Co., Lehman Brothers and Morgan Stanley Dean Witter, which resold the notes to private institutional investors. The notes are convertible into a total of up to 10,178,116 shares of Gilead common stock at $24.5625 per share. The $24.5625 conversion price is higher than Gilead's common stock price on the note's issuance date. The notes are redeemable in whole or in part, at the option of Gilead, at any time on or after December 20, 2003, at specified redemption prices plus accrued interest. Debt issuance costs of $8.2 million incurred in connection with the issuance of the notes were recorded as other noncurrent assets, and are being amortized to interest expense on a straight-line basis over

the contractual term of the notes.

13. COMMITMENTS AND CONTINGENCIES

Lease Arrangements

We have entered into various long-term noncancelable operating leases for equipment and facilities.

Facility leases in Foster City and San Dimas, California expire on various dates between 2003 and 2007. Each of the leases has two five-year renewal options, with the exception of one lease in Foster City that expires in 2003 and contains no renewal options. We also have operating leases for sales, marketing and administrative facilities in Europe and Australia with various terms. Our equipment leases also include a corporate airplane, which has an initial term of two years and an annual renewal option of up to ten years.

Lease expense net of sublease income under our operating leases totaled approximately $13.4 million in 2002, $12.0 million in 2001 and $8.6 million in 2000.

In addition, we have assumed a facility lease in Durham, North Carolina, in connection with our acquisition of Triangle in January 2003. We lease approximately 101,000 square feet of administrative office and laboratory space, of which we sublease approximately 21,000 square feet to third parties. This lease expires in September 2003. We are currently in negotiations with the lessor to extend the lease term.

Aggregate noncancelable future minimum rental payments under operating and capital leases, net of aggregate future minimum rentals to be received by us under noncancelable subleases, are as follows (in thousands):

Years ending December 31,	Operating Leases, Net of Noncancelable Subleases (excluding Triangle leases)	Capital Leases
2003	$ 13,909	$ 141
2004	9,371	128
2005	9,013	127
2006	5,609	84
2007	4,061	12
Thereafter	1,418	—
	$ 43,381	492
Less amount representing interest		(131)
Total capital lease obligations		361
Less current portion		(88)
Capital lease obligations due after one year		$ 273

At December 31, 2002, we have placed $0.5 million in a bank escrow deposit, included in other noncurrent assets, to secure aggregate future payments due under one of our facilities leases.

Contingent Liability

Gilead has subleased certain of its facilities, primarily in California, through 2003. If any of the sublessees default on their obligations under these subleases, we would be primarily liable to the original lessor. The total future amounts due under these leases as of December 31, 2002 is $3.9 million.

Legal Proceedings

In 1997 we reached a settlement with Elan Corporation, plc (Elan, the successor company to The Liposome Company) in which both companies agreed to dismiss all legal proceedings involving AmBisome, Gilead's liposomal formulation of amphotericin B. Under the terms of the initial settlement agreement in 1997, we made an initial payment to Elan of $1.8 million and agreed to make additional royalty payments through 2006, based on AmBisome sales. In 1997, we recorded a $10.0 million accounting charge for the accrued litigation settlement

expenses, representing the estimated net present value of all future minimum payments we were required to make. In June 2002, Elan and Gilead entered into an agreement terminating our remaining AmBisome payment obligations under the initial settlement agreement in exchange for a payment to Elan of $7.3 million. The excess of the $7.3 million settlement amount over the remaining accrued litigation settlement expenses balance of $6.0 million is being amortized over the remaining life of the patents, approximately four years.

In November 2002, ULEHI notified us that ULEHI believes Gilead has materially breached its licensing agreement with ULEHI concerning the SELEX technology to identify aptamers by, amongst other things, assigning rights under the agreement without ULEHI's consent. We contest ULEHI's allegations. We have met with ULEHI regarding these allegations and are actively engaged in negotiations to settle this disagreement. If these negotiations prove unsuccessful and ULEHI chooses to terminate the ULEHI-Gilead agreement, an arbitration concerning this termination would likely result. An unfavorable outcome in such an arbitration could give rise to an award against us of monetary damages or other adverse remedies, possibly including conveyance to ULEHI of Gilead's rights and obligations under the ULEHI licensing agreement and our sublicenses.

We are also a party to various other legal actions that arose in the ordinary course of our business. We do not believe that any of these other legal actions will have a material adverse impact on our business, results of operations or financial position.

14. STOCKHOLDERS' EQUITY

Preferred Stock

Gilead has 5,000,000 shares of authorized preferred stock issuable in series. Our Board of Directors (Board) is authorized to determine the designation, powers, preferences and rights of any such series. We have reserved 400,000 shares of preferred stock for potential issuance under the Preferred Share Purchase Rights Plan. There was no preferred stock outstanding as of December 31, 2002.

Employee Stock Purchase Plan

Under Gilead's Employee Stock Purchase Plan (ESPP), employees can purchase shares of Gilead common stock based on a percentage of their compensation. The purchase price per share must equal at least the lower of 85 percent of the market value on the date offered or the date purchased. A total of 6,320,000 shares of common stock have been reserved for issuance under the ESPP. As of December 31, 2002, 4,643,022 shares of the total shares reserved had been issued under the ESPP (4,300,708 shares as of December 31, 2001).

Stock Option Plans

In December 1987, Gilead adopted the 1987 Incentive Stock Option Plan and the Supplemental Stock Option Plan for issuance of common stock to employees, consultants and scientific advisors. In April 1991, the Board approved the granting of certain additional nonqualified stock options with terms and conditions substantially similar to those granted under the 1987 Supplemental Stock Option Plan. None of the options issued under the plans described above had exercise prices that were less than the fair value of the underlying stock on the date of grant. The options vest over five years pursuant to a formula determined by the Board and expire after ten years. No shares are available for grant of future options under any of these plans.

In November 1991, Gilead adopted the 1991 Stock Option Plan (1991 Plan) for issuance of common stock to employees and consultants. Options issued under the 1991 Plan shall, at the discretion of the Board, be either incentive stock options or nonqualified stock options. In May 1998,

the 1991 Plan was amended such that the exercise price of all stock options must be at least equal to the fair value of Gilead's common stock on the date of grant. The options vest over five years pursuant to a formula determined by the Board and expire after ten years. The 1991 Plan was amended and restated in April 2000 to extend the term of the plan through 2010. In May 2002 the stockholders approved an amendment to the 1991 Plan that increased the total number of authorized shares under the plan from 47,000,000 to 53,000,000. At December 31, 2002, there were 14,459,445 shares available for grant of future options under the 1991 Plan.

In November 1995, Gilead adopted the 1995 Non-Employee Directors' Stock Option Plan (Directors' Plan) for issuance of common stock to non-employee Directors pursuant to a predetermined formula. The exercise price of options granted under the Directors' Plan must be at least equal to the fair value of Gilead's common stock on the date of grant. The options vest over five years from the date of grant in quarterly five percent installments and expire after ten years. In May 2002, the stockholders approved an amendment to the Directors' Plan that increased the total number of authorized shares under the Plan from 2,200,000 to 2,800,000. At December 31, 2002, there were 922,200 shares available for

grant of future options under the Directors' Plan.

Stock plans assumed by Gilead in the merger with NeXstar include the 1988 Stock Option Plan (1988 Plan), the 1993 Incentive Stock Plan, and the 1995 Director Option Plan (collectively, NeXstar Plans). Options pursuant to the 1988 Plan and the 1993 Incentive Stock Plan that were issued and outstanding as of July 29, 1999 have been converted into options to purchase Gilead common stock as a result of the merger and remain subject to their original terms and conditions. No shares are available for grant of future options under any of the NeXstar Plans.

NeXstar's 1988 Plan allows certain option holders to execute cashless exercises of options. In a cashless exercise transaction, the option holder specifies how many shares will be exercised and Gilead issues the specified number of shares, less the number that would be required to cover the exercise price based on the fair value of the stock on the exercise date. During 2002, 2001 and 2000, several option holders performed cashless exercises. As a result, such option awards are considered to be variable and, therefore, we recognized a nominal amount of compensation expense in 2002, $0.6 million in 2001 and $0.5 million in 2000. As of July 2002, there were no more options outstanding in this category.

The following table summarizes activity under all Gilead and NeXstar stock option plans for each of the three years in the period ended December 31, 2002. All option grants presented in the table had exercise prices not less than the fair value of the underlying stock on the grant date (shares in thousands):

	Year Ended December 31,					
	2002		2001		2000	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding, beginning of year	21,686	$ 14.26	21,672	$ 11.09	22,524	$ 8.34
Granted	4,371	$ 33.37	6,708	$ 21.11	6,064	$ 17.19
Forfeited	(785)	$ 21.90	(2,596)	$ 16.10	(2,208)	$ 10.99
Exercised	(4,212)	$ 10.61	(4,098)	$ 7.58	(4,708)	$ 5.79
Outstanding, end of year	21,060	$ 18.67	21,686	$ 14.26	21,672	$ 11.09
Exercisable, end of year	9,275	$ 11.82	9,022	$ 9.62	8,452	$ 7.31
Weighted average fair value of options granted		$ 22.01		$ 14.29		$ 11.25

The following is a summary of Gilead options outstanding and options exercisable at December 31, 2002 (options in thousands):

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Options Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Options Exercisable	Weighted Average Exercise price
$1.94-$10.48	5,428	4.21	$ 6.83	4,859	$ 6.78
$10.72-$14.80	5,658	7.19	$ 14.47	2,573	$ 14.38
$14.81-$32.64	5,016	7.88	$ 21.36	1,618	$ 19.78
$32.79-$38.30	4,958	9.15	$ 33.71	225	$ 34.25
Total	21,060	7.05	$ 18.67	9,275	$ 11.82

The Company has reserved an aggregate of 17,058,623 shares of common stock for future issuance under equity compensation plans as of December 31, 2002.

Pro Forma Disclosures

We have elected to follow Accounting Principles Board Opinion No. 25 (APB 25) to account for employee stock options. Under APB 25,

no compensation expense is recognized because the exercise price of our employee stock options equals the market price of the underlying stock on the date of grant.

The information regarding net income (loss) and earnings (loss) per share prepared in accordance with FAS 123 has been determined as if we had accounted for our employee stock options and

employee stock purchase plan under the fair value method prescribed by FAS 123 and the earnings (loss) per share method under FAS 128. The resulting effect on net income (loss) and earnings (loss) per share pursuant to FAS 123 is not likely to be representative of the effects on net income (loss) and earnings (loss) per share pursuant to FAS 123 in future years, due to subsequent years including additional grants and years of vesting.

The table below presents the combined net income (loss) and basic and diluted net income (loss) per common share if compensation cost for the Gilead and NeXstar stock option plans and the ESPP had been determined based on the estimated fair value of awards under those plans on the grant or purchase date (in thousands, except per share amounts):

	Year Ended December 31,		
	2002	2001	2000
Net income (loss)—as reported	$ 72,097	$ 52,271	$ (56,776)
Deduct: Total stock-based employee compensation expense determined under the fair value based method for all awards, net of related tax effects	72,137	50,081	34,999
Pro forma net income (loss)	$ (40)	$ 2,190	$ (91,775)
Earnings (loss) per share:			
Basic—as reported	$ 0.37	$ 0.28	$ (0.31)
Basic—pro forma	$ 0.00	$ 0.01	$ (0.50)
Diluted—as reported	$ 0.35	$ 0.26	$ (0.31)
Diluted—pro forma	$ 0.00	$ 0.01	$ (0.50)

Fair values of awards granted under the stock option plans and ESPP were estimated at grant or purchase dates using a Black-Scholes option pricing model. We used the multiple option approach and the following assumptions:

	Year Ended December 31,		
	2002	2001	2000
Expected life in years (from vesting date):			
Stock options	1.86	1.95	1.88
ESPP	1.31	1.29	1.45
Discount rate:			
Stock options	3.9%	4.6%	6.3%
ESPP	3.0%	4.7%	5.5%
Volatility	82%	83%	84%
Expected dividend yield	0%	0%	0%

The weighted average estimated fair value of ESPP shares purchased was $18.54 for 2002, $11.57 for 2001 and $6.06 for 2000.

Preferred Share Purchase Rights Plan

In November 1994, we adopted a Preferred Share Purchase Rights Plan. The plan provides for the distribution of a preferred stock purchase right as a dividend for each share of Gilead common stock. The purchase rights are not currently exercisable. Under certain conditions involving an acquisition or proposed acquisition by any person or group of 15% or more of our common stock, the purchase rights permit the holders (other than the 15% holder) to purchase Gilead common stock at a 50% discount from the market price at that time, upon payment of a

specified exercise price per purchase right. In addition, in the event of certain business combinations, the purchase rights permit the purchase of the common stock of an acquirer at a 50% discount from the market price at that time. Under certain conditions, the purchase rights may be redeemed by the Board in whole, but not in part, at a price of $.0025 per purchase right. The purchase rights have no voting privileges and are attached to and automatically trade with Gilead common stock.

In October 1999, the Board of Directors approved an amendment to the purchase rights plan. The amendment provided, among other things, for an increase in the exercise price of a right under the plan from $15 to $100 and an extension of the term of the plan from November 21, 2004 to October 20, 2009.

Acceleration of Stock Options

In December 2001, we completed the sale of our oncology assets to OSI. As part of this transaction, we accelerated approximately 78,000 options to purchase Gilead common stock with a value of $2.8 million. See Note 4 for further discussion.

15. COMPREHENSIVE INCOME (LOSS)

The following reclassification adjustments are required to avoid double-counting net realized gains (losses) on sales of securities that were previously included in comprehensive income prior to the sales of the securities (in thousands):

	Year Ended December 31,		
	2002	2001	2000
Net gain (loss) on sales of securities	$ (13,213)	$ 1,225	$ (84)
Other comprehensive income:			
Net unrealized gain (loss) arising during the year	$ (17,790)	$ 8,960	$ 1,987
Reclassification adjustment	13,213	(1,225)	84
Net unrealized gain (loss) reported in other comprehensive income (loss)	$ (4,577)	$ 7,735	$ 2,071

The balance of accumulated other comprehensive income as reported on the balance sheet consists of the following components (in thousands):

	December 31,	
	2002	2001
Net unrealized gain on available-for-sale securities	$ 3,670	$ 8,247
Net unrealized gain on cash flow hedges	221	37
Net foreign currency translation loss	(1,416)	(836)
Accumulated other comprehensive income	$ 2,475	$ 7,448

16. DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION

Gilead has determined that it has only one reportable segment because management has organized the business along its functional lines.

Product sales consist of the following (in thousands):

	Year Ended December 31,		
	2002	2001	2000
Viread	$ 225,815	$ 15,586	$ —
AmBisome	185,669	164,533	141,118
Other	12,395	10,851	8,591

$ 423,879	$ 190,970	$ 149,709

The following table summarizes revenues from external customers and collaborative partners by geographic region. Revenues are attributed to countries based on the location of the customer or collaborative partner (in thousands):

	Year Ended December 31,		
	2002	2001	2000
United States	$ 218,958	$ 63,888	$ 37,476
United Kingdom	43,427	28,533	23,827
France	42,417	16,775	9,528
Spain	33,591	18,283	15,074
Germany	29,461	19,256	21,340
Italy	20,818	18,783	16,978
Switzerland	12,445	7,721	21,531
Other European countries	47,527	40,499	32,053
Other countries	18,146	20,031	17,748
Consolidated total revenues	$ 466,790	$ 233,769	$ 195,555

At December 31, 2002, the net book value of our property, plant and equipment was $67.7 million. Approximately 89% of such assets were located in the U.S. At December 31, 2001, the net book value of property, plant and equipment was $62.8 million, and approximately 94% of such assets were located in the U.S.

Product sales to three distributors accounted for approximately 10%, 11% and 12% of total revenues in 2002. Product sales to any one distributor in 2001 did not exceed 10% of total revenues. Product sales to one distributor accounted for approximately 12% of total revenues in 2000. Total revenues from Fujisawa, which included product sales and royalties, were approximately 7% of total revenues in 2002, 15% in 2001, and 13% in 2000. Revenues from Roche, including royalties, milestone payments and reimbursement of research and development expenses, did not exceed 10% of total revenues in 2002 or in 2001, but did account for approximately 11% of total revenues in 2000.

17. INCOME TAXES

Gilead has no deferred provision for income taxes. The current provision for income taxes consisted of the following (in thousands):

	Year Ended December 31,		
	2002	2001	2000
Current provision:			
Federal	$ (1,300)	$ 2,800	$ —
State	4	506	21
Foreign	2,596	829	1,178
	$ 1,300	$ 4,135	$ 1,199

Foreign pre-tax (loss) was $(24.1) million in 2002, $(67.8) million in 2001 and $(40.3) million in 2000.

The difference between the provision for taxes on income and the amount computed by applying the federal statutory income tax rate to income before provision for income taxes, equity in loss of

unconsolidated affiliate and the cumulative effect of a change in accounting principle is explained below (in thousands):

	Year Ended December 31,		
	2002	2001	2000
Income (loss) before provision for income taxes, equity in loss of unconsolidated affiliate and the cumulative effect of a change in accounting principle	$ 73,397	$ 57,447	$ (39,049)
Tax at federal statutory rate	$ 25,689	$ 19,532	$ (13,277)
(Benefitted) unbenefitted losses	(23,601)	(19,339)	13,617
Federal alternative minimum taxes	(1,300)	2,800	—
Other	512	1,142	859
	$ 1,300	$ 4,135	$ 1,199

At December 31, 2002, we had U.S. federal net operating loss carryforwards of $359.3 million and state net operating loss carryforwards of $11.3 million. The federal net operating loss carryforwards will expire at various dates beginning in 2011 through 2020, if not utilized. The state net operating loss carryforwards will expire at various dates from 2004 through 2011, if not utilized. In addition, we had federal and state tax credit carryforwards of approximately $31.9 million and $18.1 million respectively, which expire in the years 2003 through 2022.

Utilization of net operating losses and credits may be subject to an annual limitation due to ownership change limitations provided in the Internal Revenue Code and similar state provisions. This annual limitation may result in the expiration of the net operating losses and credits before utilization.

The significant increase in income tax expense in 2001 resulted principally from the gain on the sale of our oncology assets to OSI, for which we recorded approximately $3.3 million of federal and state alternative minimum taxes. The provision for 2002 was reduced by a change in U.S. income tax law. This law allows net operating loss carryforward deductions to offset 100% of alternative minimum taxable income, resulting in a reduction of U.S. income tax recorded in the previous years of $1.3 million.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax

purposes. Significant components of our deferred tax assets and liabilities as of December 31, 2002 and 2001 are as follows (in thousands):

	December 31,	
	2002	2001
Net operating loss carryforwards	$ 126,424	$ 142,400
Research and other credits	43,700	37,300
Capitalized research and development expenses	14,923	14,400
Reserves and accruals not currently deductible	15,603	1,278
Other, net	26,171	17,322
Total deferred tax assets	226,821	212,700
Valuation allowance	(226,821)	(212,700)
Net deferred tax assets recognized	$ —	$ —

The valuation allowance increased by $14.1 million for the year ended December 31, 2002 and decreased by $15.9 million for the year ended December 31, 2001. Approximately $71.4 million of the valuation allowance at December 31, 2002 relates to the tax benefits of stock option deductions, which will be credited to additional paid-in capital when realized.

18. RETIREMENT SAVINGS PLAN

As of December 31, 2002, Gilead maintains one retirement savings plan under which eligible employees may defer compensation for income tax purposes under Section 401(k) of the Internal Revenue Code. Prior to January 1, 2001, Gilead maintained two separate retirement savings plans. One plan primarily covered former NeXstar employees (NeXstar Plan), and the other plan primarily covered Gilead's remaining eligible employees (Gilead Plan). Under the NeXstar Plan, employee contributions could not exceed 15% of eligible annual compensation. In addition, the NeXstar Plan included a Company match of 50% of employee contributions up to a maximum of 6% of contributions up to an annual maximum Company match of $2,500. At December 31, 2000, approximately $0.6 million, representing 13,857 shares of Gilead common stock, was held by the NeXstar Plan in trust for plan participants. Effective January 2001, the NeXstar Plan was terminated and combined with the Gilead Plan. The shares of Gilead common stock held by the NeXstar Plan were subsequently liquidated and the proceeds were deposited into the various other investment options available under the Gilead plan. Under the Gilead Plan, employees may contribute up to 15% of their eligible annual compensation. Effective January 1, 2000, Gilead began making matching contributions under the Gilead Plan. We contribute up to 50% of an employee's first 6% of contributions up to an annual maximum match of $2,500 . Our total matching contribution for the Gilead Plan was $1.2 million in 2002, $1.2 million in 2001 and a combined $0.9 million in 2000 for both plans.

19. RELATED PARTY TRANSACTIONS

Through December 31, 2000, the Chairman of Gilead's Board of Directors was a senior advisor to an investment fund that owns a controlling interest in PharmaResearch Corporation, a contract

research organization that performs services in connection with clinical studies. Gilead's payments to PharmaResearch Corporation were $10.2 million in 2000.

In December 2002, as part of the arrangements contemplated by the proposed acquisition of Triangle Pharmaceuticals, Inc. by Gilead, a $50.0 million loan was extended to Triangle for working capital and other corporate purposes. Triangle issued to Gilead a 7.50% unsecured convertible promissory note. Upon completion of the Triangle acquisition in January 2003, this loan was eliminated in our consolidated results as a result of the closing of the acquisition on January 23, 2003. See Note 20.

20. SUBSEQUENT EVENTS

On January 23, 2003, we completed the acquisition of all of the outstanding stock of Triangle, a development stage company. Triangle was active in the development of antiviral drug candidates.

The aggregate preliminary purchase price was $525.0 million, including the cash paid for the outstanding stock, the fair value of options assumed, estimated direct transaction costs and employee termination costs. We intend to account for this transaction in the first quarter of 2003, and we expect to record a substantial portion of the aggregate purchase price as in-process research and development expense.

21. QUARTERLY RESULTS (UNAUDITED)

The following table is in thousands, except per share amounts:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2002				
Total revenues	$ 78,416	$ 109,363	$ 133,984	$ 145,027
Total costs and expenses	85,359	90,169	98,067	112,188
Net income (loss)	(3,850)	19,711	20,757	35,479
Net income (loss) per common share—basic	$ (0.02)	$ 0.10	$ 0.11	$ 0.18
Net income (loss) per common share—diluted	$ (0.02)	$ 0.10	$ 0.10	$ 0.17

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2001 (1)(2)(3)				
Total revenues	$ 57,836	$ 50,687	$ 50,915	$ 74,331
Total costs and expenses	83,638	84,582	86,983	99,255

Income (loss) before cumulative effect of change in accounting principle	(22,812)	(32,387)	(25,196)	131,577
Cumulative effect of change in accounting principle	1,089	—	—	—
Net income (loss)	(21,723)	(32,387)	(25,196)	131,577
Amounts per common share—basic:				
Income (loss) before cumulative effect of change in accounting principle	$ (0.12)	$ (0.17)	$ (0.13)	$ 0.69
Cumulative effect of change in accounting principle	0.01	—	—	—
Net income (loss) per share—basic	$ (0.11)	$ (0.17)	$ (0.13)	$ 0.69
Amounts per common share—diluted:				
Income (loss) before cumulative effect of change in accounting principle	$ (0.12)	$ (0.17)	$ (0.13)	$ 0.62
Cumulative effect of change in accounting principle	0.01	—	—	—
Net income (loss) per share—diluted	$ (0.11)	$ (0.17)	$ (0.13)	$ 0.62

(1) In the year ended December 31, 2001, Gilead adopted SFAS133 and reported a cumulative effect of a change in accounting principle in the first quarter of 2001.

(2) Diluted net income per common share in the fourth quarter of 2001 includes the effects of both stock options and the $250.0 million 5% convertible subordinated notes.

(3) In December 2001, we completed the sale of our oncology assets to OSI and recorded a non-operating gain of $157.8 million in the fourth quarter of 2001 as a result of this transaction.

GILEAD SCIENCES, INC.
Schedule II: Valuation and Qualifying Accounts

	Balance at Beginning of Period	Additions: Charged to Expense	Additions: Charged to Other	Deductions	Balance at End of Period
Year ended December 31, 2002:					
Allowance for doubtful accounts	$ 2,579	$ 3,262	$ —	$ 512	$ 5,32
Allowance for sales returns	678	4,902	—	548	5,03
Valuation allowance for deferred tax assets	212,700	—	14,121(2)	—	226,82
	$ 215,957	$ 8,164	$ 14,121	$ 1,060	$ 237,18
Year ended December 31, 2001:					
Allowance for doubtful accounts	$ 2,300	$ 467	$ —	$ 188	$ 2,57
Allowance for sales returns	581	569	—	472	67
Valuation allowance for deferred tax assets	228,600	—	—	15,900(1)	212,70
	$ 231,481	$ 1,036	$ —	$ 16,560	$ 215,95
Year ended December 31, 2000:					
Allowance for doubtful accounts	$ 2,333	$ 30	$ —	$ 63	$ 2,30
Allowance for sales returns	372	465	—	256	58
Valuation allowance for deferred tax assets	194,200	—	34,400(2)	—	228,60
	$ 196,905	$ 495	$ 34,400	$ 319	$ 231,48

(1) Charged against current tax expense.

(2) Charged to deferred tax benefit.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

Gilead Sciences, Inc.

By: /s/ JOHN C. MARTIN

John C. Martin
President and Chief Executive Officer

POWER OF ATTORNEY KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John C. Martin and Mark L. Perry, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that all said attorneys-in-fact and agents, or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOHN C. MARTIN John C. Martin	President and Chief Executive Officer, Director (Principal Executive Officer)	March 11, 2003
/s/ JOHN F. MILLIGAN John F. Milligan	Senior Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	March 11, 2003
/s/ JAMES M. DENNY James M. Denny	Chairman of the Board of Directors	March 11, 2003
/s/ PAUL BERG Paul Berg	Director	March 11, 2003
/s/ ETIENNE F. DAVIGNON Etienne F. Davignon	Director	March 11, 2003
/s/ CORDELL W. HULL Cordell W. Hull	Director	March 11, 2003
/s/ GORDON E. MOORE		

Gordon E. Moore	Director	March 11, 2003

/s/ GEORGE P. SHULTZ George P. Shultz	Director	March 11, 2003
/s/ GAYLE E. WILSON Gayle E. Wilson	Director	March 11, 2003

CERTIFICATIONS

I, John C. Martin, certify that:

1. I have reviewed this annual report on Form 10-K of Gilead Sciences, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 11, 2003

/s/ JOHN C. MARTIN

John C. Martin
President and Chief Executive Officer

CERTIFICATIONS

I, John F. Milligan, certify that:

1. I have reviewed this annual report on Form 10-K of Gilead Sciences, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 11, 2003

/s/ JOHN F. MILLIGAN

John F. Milligan
Senior Vice President and Chief Financial Officer

Exhibit 4.5

GILEAD SCIENCES, INC.

ISSUER

TO

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

TRUSTEE

INDENTURE

Dated as of December 18, 2002

2.00% CONVERTIBLE SENIOR NOTES DUE DECEMBER 15, 2007

CROSS-REFERENCE TABLE*

TRUST INDENTURE ACT SECTION	INDENTURE SECTION
310(a)(1)	6.08
(a)(2)	6.08
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	6.08
(b)	6.13
(c)	N.A.
311(a)	6.14
(b)	6.14
(c)	N.A.
312(a)	14.01
(b)	14.01
(c)	14.02
313(a)	14.03
(b)(1)	14.03
(b)(2)	14.03
(c)	14.03
(d)	14.04
314(a)	14.04
(b)	N.A.
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	N.A.
(d)	N.A.
(e)	1.02
(f)	N.A.
315(a)	6.01
(b)	6.02; 10.08
(c)	6.03
(d)	6.01
(e)	5.14
316(a)(last sentence)	12.04
(a)(1)(A)	5.12
(a)(1)(B)	5.13
(a)(2)	N.A.
(b)	5.08
(c)	2.02
317(a)(1)	5.03
(a)(2)	5.04
(b)	6.02
318(a)	1.13
(b)	N.A.
(c)	1.13

* This Cross-Reference Table is not part of the Indenture.

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INDENTURE , dated as of December 18, 2002, between GILEAD SCIENCES, INC., a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 333 Lakeside Drive, Foster City, California 94404 (herein called the "Company"), and J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee hereunder (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 2.00% Convertible Senior Notes due December 15, 2007 (herein called the "Securities") of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1 Definitions .

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and

(3) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Act," when used with respect to any Holder of a Security, has the meaning specified in Section 1.4.

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

"Agent Member" means any member of, or participant in, the Depositary.

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

"Authenticating Agent" means any Person authorized pursuant to Section 6.12 to act on behalf of the Trustee to authenticate Securities.

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

"Board Resolution" means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, shall have been delivered to the Trustee.

"Business Day," when used with respect to any Place of Payment, Place of Conversion or any other place, as the case may be, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in such Place of Payment, Place of Conversion or other place, as the case may be, are authorized or obligated by law or executive order to close.

"Change in Control" has the meaning specified in Section 13.4(2).

"Closing Price Per Share" means, with respect to the Common Stock, for any day, (i) the last reported sale price regular way on The Nasdaq National Market or, (ii) if the Common Stock is not quoted on The Nasdaq National Market, the last reported sale price regular way per share or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, (iii) if the Common Stock is not quoted on The Nasdaq National Market or listed or admitted to trading on any national securities exchange, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Company for that purpose.

"Code" has the meaning specified in Section 2.l.

"Commission" means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means the Common Stock, par value $0.001 per share, of the Company authorized at the date of this Indenture as originally executed or as such stock may be constituted from time to time (including upon a change in the par value of such securities). Subject to the provisions of Section 12.11, shares issuable on conversion of Securities shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications and *further provided* that all references to "Common Stock" payable in connection with the purchase of Securities upon a Change in Control in accordance with the terms of Section 13.2 shall be deemed to include common stock of any entity, including the parent company of any such entity, that we consolidate or merge with or into, that is merged into us, or to which we sell or transfer all or substantially all of our assets.

"common stock" includes any stock of any class of capital stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer thereof, which has unrestricted voting rights and which is not subject to redemption by the issuer thereof.

"Company" means the Person named as the "Company" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Notice" has the meaning specified in Section 13.3.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by an Officer of the Company and delivered to the Trustee.

"Constituent Person" has the meaning specified in Section 12.11.

"Conversion Agent" means any Person authorized by the Company to convert Securities in accordance with Article XII. The Company has initially appointed the Trustee as its Conversion Agent pursuant to Section 10.2 hereof.

"Conversion Price" has the meaning specified in Section 13.4(3).

"Conversion Rate" has the meaning specified in Section 12.1.

"Corporate Trust Office" means the office of the Trustee at which at any particular time the trust created by this Indenture shall be principally administered (which at the date of this

Indenture is located at 560 Mission Street, 13th Floor, San Francisco, California 94105, Attention: Institutional Trust Services.

"corporation" means a corporation, company, association, joint-stock company or business trust.

"Defaulted Interest" has the meaning specified in Section 3.7.

"Depositary" means, with respect to any Securities (including any Global Securities), a clearing agency that is registered as such under the Exchange Act and is designated by the Company to act as Depositary for such Securities (or any successor securities clearing agency so registered).

"Dollar" or "U.S. $" means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

"DTC" means The Depository Trust Company, a New York corporation.

"Effective Failure" has the meaning specified in Section 2.2.

"Effectiveness Period" has the meaning specified in Section 2.2.

"Event of Default" has the meaning specified in Section 5.1.

"Exchange Act" means the United States Securities Exchange Act of 1934 (or any successor statute), as amended from time to time.

"Global Security" means a Security that is registered in the Security Register in the name of a Depositary or a nominee thereof.

"Holder" means the Person in whose name the Security is registered in the Security Register.

"Indenture" means this Indenture as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this Indenture and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Indenture and any such supplemental indenture, respectively.

"Initial Purchaser" means Goldman, Sachs & Co.

"Initial Purchaser Option" has the meaning specified in Section 3.1.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Securities.

"Issue Date" means December 18, 2002.

"Liquidated Damages" has the meaning specified in Section 2.2.

"Make-Whole Payment" has the meaning specified in Section 2.2.

"Maturity," when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, exercise of the repurchase right set forth in Article XIII or otherwise.

"Non-electing Share" has the meaning specified in Section 12.11.

"Notice Date" has the meaning specified in Section 2.2.

"Notice of Default" has the meaning specified in Section 5.1.

"Officer" means the Chairman or any Co-Chairman of the Board of Directors, any Vice Chairman of the Board of Directors, the Chief Executive Officer, the Chief Operating Officer, the President, any Executive Vice President, any Vice President or the Chief Financial Officer of the Company.

"Officer's Certificate" means a certificate signed by an Officer of the Company, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company or the General Counsel of the Company and who shall be reasonably acceptable to the Trustee.

"Outstanding," when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for which money in the necessary amount to pay or redeem such Securities has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities, provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor reasonably satisfactory to the Trustee has been made;

(iii) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company; and

(iv) Securities converted into Common Stock pursuant to Article XII;

provided, however , that in determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or

have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee has been notified in writing to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, and the Trustee shall be protected in relying upon an Officer's Certificate to such effect.

"Paying Agent" means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company and, except as otherwise specifically set forth herein, such term shall include the Company if it shall act as its own Paying Agent. The Company has initially appointed the Trustee as its Paying Agent pursuant to Section 10.2 hereof.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Conversion" has the meaning specified in Section 3.1.

"Place of Payment" has the meaning specified in Section 3.1.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Provisional Redemption" has the meaning specified in Section 2.2.

"Purchase Agreement" means the Purchase Agreement, dated as of December 13, 2002, between the Company and the Initial Purchaser, as such agreement may be amended from time to time.

"Qualified Institutional Buyer" shall mean a "qualified institutional buyer" as defined in Rule 144A.

"Record Date" means any Regular Record Date or Special Record Date.

"Record Date Period" means the period from the close of business of any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date.

"Redemption Date," when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price," when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Registrable Securities" has the meaning specified in Section 10.11.

"Registration Default" has the meaning specified in Section 2.2.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of December 18, 2002, between the Company and the Initial Purchaser, as such agreement may be amended from time to time in accordance with its terms.

"Regular Record Date" for interest payable in respect of any Security on any Interest Payment Date means the June 1 or December 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"Repurchase Date" has the meaning specified in Section 13.1.

"Repurchase Price" has the meaning specified in Section 13.1.

"Responsible Officer," when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge and familiarity with the particular subject.

"Restricted Global Security" has the meaning specified in Section 2.1.

"Restricted Securities" means all Securities required pursuant to Section 3.5(3) to bear any Restricted Securities Legend. Such term includes the Restricted Global Security.

"Restricted Securities Legend" means, collectively, the legends substantially in the forms of the legends required in the form of Security set forth in Section 2.2 to be placed upon each Restricted Security.

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

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

"Rule 144A Information" has the meaning specified in Section 10.9.

"Securities" has the meaning ascribed to it in the first paragraph under the caption "Recitals of the Company."

"Securities Act" means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.5.

"Shelf Registration Statement" has the meaning specified in Section 2.2.

"Significant Subsidiary" means, with respect to any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X under the Securities Act and the Exchange Act.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Company pursuant to Section 3.7.

"Stated Maturity," when used with respect to any Security or any installment of interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

"Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock or other similar interests in the corporation which ordinarily has or have voting power for the election of directors, or persons performing similar functions, whether at all times or only so long as no senior class of stock or other interests has or have such voting power by reason of any contingency.

"Successor Security" of any particular Security means every Security issued after, and evidencing all or a portion of the same debt as that evidenced by, such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Surrender Certificate" means a certificate substantially in the form set forth in Annex B.

"Trading Day" means (i) if the Common Stock is quoted on The Nasdaq National Market or any other system of automated dissemination of quotations of securities prices, days on which trades may be effected through such system, (ii) if the Common Stock is listed or admitted for trading on any national or regional securities exchange, days on which such national or regional securities exchange is open for business, or (iii) if the Common Stock is not listed on a national or regional securities exchange or quoted on The Nasdaq National Market or any other system of automated dissemination of quotation of securities prices, days on which the Common Stock is traded regular way in the over-the-counter market and for which a closing bid and a closing asked price for the Common Stock are available.

"Trust Indenture Act" means the Trust Indenture Act of 1939, and the rules and regulations thereunder, as in force at the date as of which this Indenture was executed, provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939, and the rules and regulations thereunder, as so amended.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its "possessions" including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

"Unrestricted Securities Certificate" means a certificate substantially in the form set forth in Annex A.

SECTION 1.2 Compliance Certificates And Opinions .

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (including certificates provided for in Section 10.8) shall include:

(1) a statement that the individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.3 Form of Documents Delivered to the Trustee .

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such certificate or opinion is based are erroneous. Any such certificate or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or any other Person stating that the information with respect to such factual matters is in the possession of the Company or such other Person, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 1.4 Acts of Holders of Securities .

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by (A) one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or proxy duly appointed in writing by such Holders or (B) the record of Holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities duly called and held in accordance with the provisions of Article IX. Such action shall become effective when such instrument or instruments or record is delivered to the Trustee and, where it is hereby expressly required, to the Company. The Trustee shall promptly deliver to the Company copies of all such instruments and records delivered to the Trustee. Such instrument or instruments and records (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Securities signing such instrument or instruments and so voting at such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 9.6.

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

(3) The principal amount and serial number of any Security held by any Person, and the date of his holding the same, shall be proved by the Security Register.

(4) The fact and date of execution of any such instrument or writing and the authority of the Person executing the same may also be proved in any other manner which the Trustee

deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.4.

(5) The Company may set any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted by this Indenture to be given or taken by Holders. Promptly and in any case not later than ten days after setting a record date, the Company shall notify the Trustee and the Holders of such record date. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 14.1) prior to such first solicitation or vote, as the case may be. With regard to any record date, the Holders on such date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to give or take, or vote on, the relevant action, whether or not such Holders remain Holders after such record date. Notwithstanding the foregoing, the Company shall not set a record date for, and the provisions of this paragraph shall not apply with respect to, any notice, declaration or direction referred to in the next paragraph.

Upon receipt by the Trustee from any Holder of (i) any notice of default or breach referred to in Section 5.1(4), if such default or breach has occurred and is continuing and the Trustee shall not have given such a notice to the Company, (ii) any declaration of acceleration referred to in Section 5.2, if an Event of Default has occurred and is continuing and the Trustee shall not have given such a declaration to the Company, or (iii) any direction referred to in Section 5.12, if the Trustee shall not have taken the action specified in such direction, then, with respect to clauses (ii) and (iii), a record date shall automatically and without any action by the Company or the Trustee be set for determining the Holders entitled to join in such declaration or direction, which record date shall be the close of business on the tenth day (or, if such day is not a Business Day, the first Business Day thereafter) following the day on which the Trustee receives such declaration or direction, and, with respect to clause (i), the Trustee may set any day as a record date for the purpose of determining the Holders entitled to join in such notice of default. Promptly after such receipt by the Trustee of any such declaration or direction referred to in clause (ii) or (iii), and promptly after setting any record date with respect to clause (i), and as soon as practicable thereafter, the Trustee shall notify the Company and the Holders of any such record date so fixed. The Holders on such record date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to join in such notice, declaration or direction, whether or not such Holders remain Holders after such record date; provided that, unless such notice, declaration or direction shall have become effective by virtue of Holders of the requisite principal amount of Securities on such record date (or their duly appointed agents or proxies) having joined therein on or prior to the 90th day after such record date, such notice, declaration or direction shall automatically and without any action by any Person be canceled and of no further effect. Nothing in this paragraph shall be construed to prevent a Holder (or a duly appointed agent or proxy thereof) from giving, before or after the expiration of such 90-day period, a notice, declaration or direction contrary to or different from, or, after the expiration of such period, identical to, the notice, declaration or direction to which such record date relates, in which event a new record date in respect thereof shall be set pursuant to this paragraph. In addition, nothing in this paragraph shall be construed to render ineffective any notice, declaration or direction of the type referred to in this paragraph given at any time to the Trustee and the

Company by Holders (or their duly appointed agents or proxies) of the requisite principal amount of Securities on the date such notice, declaration or direction is so given.

(6) Except as provided in Sections 5.12 and 5.13, any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(7) The provisions of this Section 1.4 are subject to the provisions of Section 9.5.

SECTION 1.5 Notices, Etc. to the Trustee and Company .

Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of Holders of Securities or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder of Securities or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with a Responsible Officer of the Trustee and received at its Corporate Trust Office, Attention: Institutional Trust Services.

(2) the Company by the Trustee or by any Holder of Securities shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing, mailed, first-class postage prepaid, or telecopied and confirmed by mail, first-class postage prepaid, or delivered by hand or overnight courier, addressed to the Company at 333 Lakeside Drive, Foster City, California 94404, Attention: Chief Financial Officer, or at any other address previously furnished in writing to the Trustee by the Company.

SECTION 1.6 Notice to Holders of Securities; Waiver .

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of Securities of any event, such notice shall be sufficiently given to Holders if in writing and mailed, first-class postage prepaid or delivered by an overnight delivery service, to each Holder of a Security affected by such event, at the address of such Holder as it appears in the Security Register, not earlier than the earliest date and not later than the latest date prescribed for the giving of such notice.

Neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Security shall affect the sufficiency of such notice with respect to other Holders of Securities. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Securities as shall be made with the approval of the Trustee, which approval shall not be unreasonably withheld, shall constitute a sufficient notification to such Holders for every purpose hereunder.

Such notice shall be deemed to have been given three (3) days after mailing, if by mail, one day (1) after mailing if by overnight courier, and on the date the notice is furnished if by telecopy or by hand.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7 Effect of Headings and Table of Contents .

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 1.8 Successors and Assigns .

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 1.9 Separability Clause .

In case any provision in this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.10 Benefits of Indenture .

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns hereunder and the Holders of Securities, any benefit or legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11 Governing Law .

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, THE UNITED STATES OF AMERICA.

SECTION 1.12 Legal Holidays .

In any case where any Interest Payment Date, Redemption Date, Repurchase Date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert his Security shall not be a Business Day at a Place of Payment or Place of Conversion, as the case may be, then (notwithstanding any other provision of this Indenture or of the Securities) payment of principal of, premium, if any, or interest on, or the payment of the Redemption Price or Repurchase Price (whether the same is payable in cash or in shares of Common Stock or a combination thereof in the case of the Repurchase Price) with respect to, or delivery for conversion of, such Security need not be made at such Place of Payment or Place of Conversion,

as the case may be, on or by such day, but may be made on or by the next succeeding Business Day at such Place of Payment or Place of Conversion, as the case may be, with the same force and effect as if made on the Interest Payment Date, Redemption Date or Repurchase Date, or at the Stated Maturity or by such last day for conversion; provided, however, that in the case that payment is made on such succeeding Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repurchase Date, Stated Maturity or last day for conversion, as the case may be.

SECTION 1.13 Conflict With Trust Indenture Act .

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be. Until such time as this Indenture shall be qualified under the Trust Indenture Act, this Indenture, the Company and the Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this Indenture were so qualified on the date hereof.

ARTICLE II

SECURITY FORMS

SECTION 2.1 Form Generally .

The Securities shall be in substantially the form set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange, the Internal Revenue Code of 1986, as amended, and regulations thereunder (the "Code"), or as may, consistent herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. All Securities shall be in fully registered form.

The Trustee's certificates of authentication shall be in substantially the form set forth in Section 2.3.

Conversion notices shall be in substantially the form set forth in Section 2.4.

Repurchase notices shall be substantially in the form set forth in Section 2.2.

The Securities shall be printed, lithographed, typewritten or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any automated quotation system or securities exchange (including on steel engraved borders if so required by any securities exchange upon which the Securities may be listed) on which the Securities may be quoted or listed, as the case may be, all as determined by the officers executing such Securities, as evidenced by their execution thereof.

Upon their original issuance, Securities issued as contemplated by the Purchase Agreement to Qualified Institutional Buyers in reliance on Rule 144A shall be issued in the form of one or more Global Securities in definitive, fully registered form without interest coupons and bearing the Restricted Securities Legend. Such Global Security shall be registered in the name of DTC, as Depositary, or its nominee and deposited with the Trustee, as custodian for DTC, for credit by DTC to the respective accounts of beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Such Global Security, together with its Successor Securities which are Global Securities, are collectively herein called the "Restricted Global Security."

SECTION 2.2 Form of Security .

[FORM OF FACE]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH RESTRICTED SECURITY:

THIS NOTE AND ANY COMMON STOCK ISSUABLE UPON THE CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THIS NOTE AND ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHO THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO AN INSTITUTIONAL INVESTOR THAT IS AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THIS NOTE, ANY SHARES OF COMMON STOCK ISSUABLE UPON ITS CONVERSION AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON

RESALES AND OTHER TRANSFERS OF THIS NOTE AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS NOTE AND ANY SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF THIS NOTE AND ANY SUCH SHARES TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE REGISTERED FORM IN THE LIMITED CIRCUMSTANCES REFERRED TO IN THE INDENTURE, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

GILEAD SCIENCES, INC.,

2.00% CONVERTIBLE SENIOR NOTE DUE DECEMBER 15, 2007

No._____ $_____

CUSIP NO. 375558 AC 7

Gilead Sciences, Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company," which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ United States Dollars (U.S.$_____) [**if this Security is a Global Security, then insert** — (which principal amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other Outstanding Securities, shall not exceed $300,000,000 (or $345,000,000 if the Initial Purchaser Option is exercised in full)) by adjustments made on the records of the Trustee hereinafter referred to in accordance with the Indenture)] on December 15, 2007 and to pay interest thereon, from December 18, 2002, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, semi-annually in arrears on June 15 and December 15 in each year (each, an "Interest Payment Date"), commencing June 15, 2003, at the rate of 2.00% per annum, until the principal hereof is due, and at the rate of 2.00% per annum on any overdue principal and premium, if any, and, to the extent permitted by law, on any overdue interest. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the June 1 or December 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Except as otherwise provided in the Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Company, notice whereof shall be given to Holders of Securities not less than 10 days prior to the Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any automated quotation system or securities exchange on which the Securities may be quoted or listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Payments of principal shall be made upon the surrender of this Security at the option of the Holder at the Corporate Trust Office of the Trustee, or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, in such lawful monies of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, or at such other offices or agencies as the Company may designate, by United States Dollar check drawn on, or wire transfer to, a United States Dollar account (such a wire transfer to be made only to a Holder of an aggregate principal amount of Securities in excess of U.S. $2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date). Payment of interest on this Security may be made by United States Dollar check mailed to the address of the Person entitled

thereto as such address shall appear in the Security Register, or, upon written application by the Holder to the Security Registrar setting forth wire instructions not later than the relevant Record Date, by transfer to a United States Dollar account (such a wire transfer to be made only to a Holder of an aggregate principal amount of Securities in excess of U.S. $2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date).

Except as specifically provided herein and in the Indenture, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof or an Authenticating Agent by the manual signature of one of their respective authorized signatories, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this Security to be duly executed.

GILEAD SCIENCES, INC.,

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION
as Trustee

By: _____
Authorized Signatory

[FORM OF REVERSE]

This Security is one of a duly authorized issue of securities of the Company designated as its "2.00% Convertible Senior Notes due December 15, 2007" (herein called the "Securities"), limited in aggregate principal amount to U.S. $300,000,000 (or $345,000,000 if the Initial Purchaser's Option is exercised in full), issued and to be issued under an Indenture, dated as of December 18, 2002 (herein called the "Indenture"), between the Company and J.P. Morgan Trust Company, National Association, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities of any authorized denominations as requested by the Holder surrendering the same upon surrender of the Security or Securities to be exchanged, at the Corporate Trust Office of the Trustee. The Trustee upon such surrender by the Holder will issue the new Securities in the requested denominations.

No sinking fund is provided for the Securities.

The Securities are subject to provisional redemption by the Company (a "Provisional Redemption"), in whole or in part, at any time after June 20, 2004 and prior to December 20, 2005, upon notice as set forth in Section 11.5 of the Indenture, at a redemption price equal to the principal amount of the Securities to be redeemed plus accrued and unpaid interest, if any, to the Redemption Date if (i) the Closing Price Per Share of the Common Stock shall have exceeded 150% of the Conversion Price then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the notice of redemption pursuant to Section 11.5 of the Indenture (the "Notice Date") and (ii) the Shelf Registration Statement covering resales of the Securities and the Common Stock is effective and available for use and is expected to remain effective and available for use for the 30 days following the Redemption Date, unless registration is no longer required. Upon any such redemption, the Company shall make an additional payment (the "Make-Whole Payment") with respect to the Securities called for redemption to Holders on the Notice Date in an amount equal to $60.00 per $1,000 in principal amount of the Securities, less the amount of any interest actually paid or accrued and unpaid on such Securities prior to the Redemption Date. The Company shall make the Make-Whole Payment on all Securities called for redemption, including any Securities converted into Common Stock pursuant to the terms of the Indenture after the Notice Date and prior to the Redemption Date. The Make-Whole Payment on Securities converted into Common Stock pursuant to the terms of the Indenture after the Notice Date and prior to the Redemption Date shall not be reduced by accrued and unpaid interest unless the Redemption Date occurs on or after the Business Day following the Record Date and prior to the next succeeding Interest Payment Date, in which case the Make-Whole Payment shall be reduced by the interest due on such Interest Payment Date. The Company may make the Make-Whole Payment (x) in cash or (y) subject to fulfillment by the Company of the conditions (A) through (D) set forth in the following paragraph, in shares of Common Stock, or a combination of cash and Common Stock, and the Company shall specify the type of consideration for the Make-Whole Payment in the Company Notice. For purposes of this paragraph, the fair market value of

shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices Per Share for the five consecutive Trading Days ending on the third Trading Day prior to the Redemption Date.

The following shall constitute the conditions to any election by the Company to pay the Make-Whole Payment (or any portion thereof) in shares of Common Stock:

(A) the shares of Common Stock to be issued in payment of the Make-Whole Payment (or any portion thereof) hereunder shall not require registration under any Federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase, or if registration is required, such registration shall be completed and shall become effective prior to or on the Redemption Date (and the Company shall state in the notice of Provisional Redemption that the Company expects that such registration statement shall remain effective for at least 30 days following the Redemption Date);

(B) the shares of Common Stock to be issued in payment of the Make-Whole Payment (or any portion thereof) hereunder shall not require registration with, or approval of, any governmental authority under any state law or any other Federal law before such shares may be validly issued or delivered upon repurchase, or if such registration is required or such approval must be obtained, such registration shall be completed or such approval shall be obtained prior to or on the Redemption Date;

(C) the shares of Common Stock to be issued in payment of the Make-Whole Payment (or any portion thereof) hereunder are, or shall have been approved for quotation on The Nasdaq National Market or listed on a national securities exchange, in either case, prior to or on the Redemption Date;

(D) all shares of Common Stock that may be issued in payment of the Make-Whole Payment (or any portion thereof) will be issued out of the Company's authorized but unissued Common Stock and will, upon issue, be duly and validly issued and fully paid and non-assessable and free of any preemptive or similar rights; and

(E) if any of the conditions set forth in clauses (A) through (D) above are not satisfied in accordance with the terms thereof, the Make-Whole Payment shall be paid by the Company only in cash.

The Securities are also subject to redemption at the option of the Company at any time on or after December 20, 2005, in whole or in part, upon not less than 30 nor more than 60 days' notice to the Holders prior to the Redemption Date at the Redemption Prices (expressed as percentages of the principal amount) as set forth below for Securities redeemed during the following periods described below:

PERIOD	REDEMPTION PRICE
Beginning on December 20, 2005 through December 14, 2006	100.80%
Beginning on December 15, 2006 through December 14, 2007	100.40%

and thereafter at a Redemption Price equal to 100% of the principal amount, together, in each case, with accrued interest to, but excluding, the Redemption Date; provided, however, that interest installments on Securities whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

In the event of a redemption of the Securities, the Company will not be required (a) to register the transfer or exchange of Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption or (b) to register the transfer or exchange of any Security, or portion thereof, called for redemption.

In any case where the due date for the payment of the principal of, premium, if any, interest, or Liquidated Damages on any Security or the last day on which a Holder of a Security has a right to convert his Security shall be, at any Place of Payment or Place of Conversion as the case may be, a day on which banking institutions at such Place of Payment or Place of Conversion are authorized or obligated by law or executive order to close, then payment of principal, premium, if any, interest, or Liquidated Damages, or delivery for conversion of such Security need not be made on or by such date at such place but may be made on or by the next succeeding day at such place which is not a day on which banking institutions are authorized or obligated by law or executive order to close, with the same force and effect as if made on the date for such payment or the date fixed for redemption or repurchase, or by such last day for conversion, and no interest shall accrue on the amount so payable for the period after such date.

Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at his option, at any time on or before the close of business on the date of Maturity, or in case this Security or a portion hereof is called for redemption or the Holder hereof has exercised his right to require the Company to repurchase this Security or such portion hereof, then in respect of this Security until the second Business Day immediately preceding, but (unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be) not after, the close of business on the second Business Day immediately preceding the Redemption Date or the Repurchase Date, as the case may be, to convert this Security (or any portion of the principal amount hereof that is an integral multiple of U.S.$1,000, provided that the unconverted portion of such principal amount is U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof) into fully paid and nonassessable shares of Common Stock of the Company at an initial Conversion Rate of 21.2766 shares of Common Stock for each U.S.$1,000 principal amount of Securities (or at the current adjusted Conversion Rate if an adjustment has been made as provided in the Indenture) by surrender of this Security, duly endorsed or assigned to the Company or in blank and, in case such surrender shall be made during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date (except if this Security or portion thereof has been called for redemption on a Redemption Date or is repurchasable on a Repurchase Date

occurring, in either case, during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the close of business on the third Business Day following such Interest Payment Date and, as a result, the right to convert this Security would otherwise terminate in such period if not exercised), also accompanied by payment in New York Clearing House or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted, and also the conversion notice hereon duly executed, to the Company at the Corporate Trust Office of the Trustee, or at such other office or agency of the Company, subject to any laws or regulations applicable thereto and subject to the right of the Company to terminate the appointment of any Conversion Agent (as defined below) as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, or at such other offices or agencies as the Company may designate (each a "Conversion Agent"), provided, further, that if this Security or portion hereof has been called for redemption (except pursuant to a call for Provisional Redemption) on a Redemption Date or is repurchasable on a Repurchase Date occurring, in either case, during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the close of business on the third Business Day following such Interest Payment Date, and as a result, the right to convert this Security would otherwise terminate in such period if not exercised and this Security is surrendered for conversion during such period, then the Holder of this Security on such Regular Record Date will be entitled to receive the interest accruing hereon from the Interest Payment Date next preceding the date of such conversion to such succeeding Interest Payment Date and the Holder of this Security who converts this Security or a portion hereof during such period shall not be required to pay such interest upon surrender of this Security for conversion. Subject to the provisions of the preceding sentence and, in the case of a conversion after the close of business on the Regular Record Date next preceding any Interest Payment Date and on or before the close of business on the third Business Day following such Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security of record as of such Regular Record Date) to receive the related installment of interest to the extent and under the circumstances provided in the Indenture, no cash payment or adjustment is to be made on conversion for interest accrued hereon from the Interest Payment Date next preceding the day of conversion, or for dividends on the Common Stock issued on conversion hereof. The Company shall thereafter deliver to the Holder the fixed number of shares of Common Stock (together with any cash adjustment, as provided in the Indenture) into which this Security is convertible and such delivery will be deemed to satisfy the Company's obligation to pay the principal amount of this Security. No fractions of shares or scrip representing fractions of shares will be issued on conversion, but instead of any fractional interest (calculated to the nearest 1/100th of a share) the Company shall pay a cash adjustment as provided in the Indenture. The Conversion Rate is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party (other than a consolidation or merger that does not result in any reclassification, conversion, exchange or cancellation of the Common Stock) or the conveyance, transfer, sale or lease (other than a mere grant of security interest) of all or substantially all of the property and assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then Outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, transfer, sale or lease by a holder of the number of

shares of Common Stock of the Company into which this Security could have been converted immediately prior to such consolidation, merger, conveyance, transfer, sale or lease (assuming such holder of Common Stock is not a Constituent Person or an Affiliate of a Constituent Person, failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of Non-electing Shares). No adjustment in the Conversion Rate will be made until such adjustment would require an increase or decrease of at least one percent of such rate, provided that any adjustment that would otherwise be made will be carried forward and taken into account in the computation of any subsequent adjustment.

If this Security is a Registrable Security (as defined in the Indenture), then the Holder of this Security [if this security is a global security, then insert (including any Person that has a beneficial interest in this Security)] and the Common Stock of the Company issuable upon conversion hereof is entitled to the benefits of a Registration Rights Agreement, dated as of December 18, 2002 (the "Registration Rights Agreement") between the Company and the Initial Purchaser. Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the Holders from time to time of the Registrable Securities that it will, at its expense, (a) within 90 days after the Issue Date file a shelf registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Registrable Securities, (b) use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the Commission within 180 days after the Issue Date of the Securities, provided, however, that the Company may, upon written notice to all the Holders, postpone having the Shelf Registration Statement declared effective for a reasonable period not to exceed 90 days if the Company possesses material non-public information, the disclosure of which would have a material adverse effect on the Company and its subsidiaries taken as a whole, and (c) use its reasonable best efforts to maintain such Shelf Registration Statement effective under the Securities Act until the earliest of (i) two years after the effective date of the Shelf Registration Statement, (ii) the expiration of the period referred to in Rule 144(k) of the Securities Act with respect to Registrable Securities held by non-affiliates of the Company and (iii) until there are no outstanding Registrable Securities (the "Effectiveness Period"). The Company will be permitted to suspend the use of the prospectus which is part of the Shelf Registration Statement during certain periods of time as provided in the Registration Rights Agreement.

If (i) on or prior to the 90th day following the Issue Date, a Shelf Registration Statement has not been filed with the Commission, or (ii) on or prior to the 180th day following the Issue Date, such Shelf Registration Statement is not declared effective (each, a "Registration Default"), additional interest ("Liquidated Damages") will accrue on this Restricted Security from and including the day following such Registration Default to but excluding the day on which such Registration Default has been cured. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date, as applicable, in respect of the Restricted Securities following the date on which such Liquidated Damages begin to accrue, and will accrue at a rate per annum equal to one-quarter of one percent (0.25%) of the principal amount of the Restricted Securities to and including the 90th day following such Registration Default and at a rate per annum equal to one-half of one percent (0.50%) thereof from and after the 91st day following such Registration Default. Pursuant to the Registration Rights Agreement, in the event that the Shelf Registration Statement ceases to be effective (or the Holders of Registrable Securities are otherwise prevented or restricted by the Company from effecting sales pursuant thereto) (an "Effective Failure") during the Effectiveness

Period for more than 30 days, whether or not consecutive, during any 90-day period or for more than 90 days, whether or not consecutive, during any 12-month period, then the Liquidated Damages will accrue at a rate per annum equal to an additional one-half of one percent (0.50%) of the principal amount of the Restricted Securities from the 31st day of the applicable 90-day period or the 91st day of the applicable 12-month period until the earlier of (A) such time as the Effective Failure is cured or (B) the Effectiveness Period expires.

Whenever in this Security there is a reference, in any context, to the payment of the principal of, premium, if any, or interest on, or in respect of, any Security, such mention shall be deemed to include mention of the payment of Liquidated Damages payable as described in the preceding paragraph to the extent that, in such context, Liquidated Damages are, were or would be payable in respect of such Security and express mention of the payment of Liquidated Damages (if applicable) in any provisions of this Security shall not be construed as excluding Liquidated Damages in those provisions of this Security where such express mention is not made.

If this Security is a Registrable Security and the Holder of this Security [if this security is a global security, then insert (including any Person that has a beneficial interest in this security)] elects to sell this Security pursuant to the Shelf Registration Statement then, by its acceptance hereof, such Holder of this Security agrees to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities which are the subject of such election.

If a Change in Control occurs, the Holder of this Security, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase this Security (or any portion of the principal amount hereof that is at least $1,000 or an integral multiple of $1,000 in excess thereof, provided that the portion of the principal amount of this Security to be Outstanding after such repurchase is at least equal to U.S.$1,000) at a Repurchase Price equal to 100% of the principal amount thereof plus interest accrued but unpaid to but excluding the Repurchase Date. At the option of the Company, the Repurchase Price may be paid in cash or, subject to the conditions provided in the Indenture, by delivery of shares of Common Stock having a fair market value equal to the Repurchase Price (less any cash payments) or a combination thereof. For purposes of this paragraph, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices Per Share for the five consecutive Trading Days ending on the third Trading Day prior to the Repurchase Date.

Whenever in this Security there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Security shall not be construed as excluding the Repurchase Price so payable in those provisions of this Security when such express mention is not made.

[The following paragraph shall appear in each Global Security:

In the event of a deposit or withdrawal of an interest in this Security, including an exchange, transfer, redemption, repurchase or conversion of this Security in part only, the

Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the Applicable Procedures. **]**

[The following paragraph shall appear in each Security that is not a Global Security:

In the event of redemption, repurchase or conversion of this Security in part only, a new Security or Securities for the unredeemed, unrepurchased or unconverted portion hereof will be issued in the name of the Holder hereof. **]**

If an Event of Default shall occur and be continuing, the principal of all the Securities, together with accrued interest to the date of declaration, may be declared due and payable in the manner and with the effect provided in the Indenture. Upon payment (i) of the amount of principal so declared due and payable, together with accrued interest to the date of declaration, and (ii) of interest on any overdue principal and, to the extent permitted by applicable law, overdue interest, all of the Company's obligations in respect of the payment of the principal of and interest on the Securities shall terminate.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with either (a) the written consent of the Holders of not less than a majority in principal amount of the Securities at the time Outstanding, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented and entitled to vote at such meeting. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued in exchange therefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Security or such other Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity and the Trustee shall not have received from the Holders of a majority in principal amount of the Securities Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof, premiums if any, or interest (including Liquidated Damages) hereon on or after the respective due dates

expressed herein or for the enforcement of the right to convert this Security as provided in the Indenture.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest (including Liquidated Damages) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable on the Security Register upon surrender of this Security for registration of transfer at the Corporate Trust Office of the Trustee or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York (which shall initially be an office or agency of the Trustee), or at such other offices or agencies as the Company may designate, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees by the Registrar. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to recover any tax or other governmental charge payable in connection therewith.

Prior to due presentation of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered, as the owner thereof for all purposes, whether or not such Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse for the payment of the principal (and premium, if any) or interest on this Security and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any indenture supplemental thereto or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of consideration for the issue hereof, expressly waived and released.

THE INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Security, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	as tenant in common	UNIF GIFT MIN ACT	____ Custodian ____
TEN ENT	as tenants by the entireties (Cust)		(Cust) (Minor)
JT TEN	as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

ELECTION OF HOLDER TO REQUIRE REPURCHASE

(1) Pursuant to Section 13.1 of the Indenture, the undersigned hereby elects to have this Security repurchased by the Company.

(2) The undersigned hereby directs the Trustee or the Company to pay it or _____ an amount in cash or, at the Company's election, Common Stock valued as set forth in the Indenture, equal to 100% of the principal amount to be repurchased (less any cash payments) (as set forth below), or a combination of cash and Common Stock, plus interest accrued to, but excluding, the Repurchase Date, as provided in the Indenture.

Dated:

_____

_____
Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

_____
Signature Guaranteed

Principal amount to be repurchased (at least U.S. $1,000 or an integral multiple of $1,000 in excess thereof):_____

Remaining principal amount following such repurchase (not less than U.S. $1,000):
_____

NOTICE: The signature to the foregoing Election must correspond to the Name as written upon the face of this Security in every particular, without alteration or any change whatsoever.

SECTION 2.3 Form of Certificate of Authentication .

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:_____

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION
as Trustee

By: _____
Authorized Signatory

SECTION 2.4 Form of Conversion Notice .

CONVERSION NOTICE

The undersigned Holder of this Security hereby irrevocably exercises the option to convert this Security, or any portion of the principal amount hereof (which is U.S.$1,000 or an integral multiple of U.S.$1,000 in excess thereof, provided that the unconverted portion of such principal amount is U.S. $1,000 or any integral multiple of U.S. $1,000 in excess thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that such shares, together with a check in payment for any fractional share and any Securities representing any unconverted principal amount hereof, be delivered to and be registered in the name of the undersigned unless a different name has been indicated below. If shares of Common Stock or Securities are to be registered in the name of a Person other than the undersigned, (a) the undersigned will pay all transfer taxes payable with respect thereto and (b) signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

Dated:_____

_____
Signature(s)

If shares or Securities are to be registered in the name of a Person other than the Holder, please print such Person's name and address:

_____
(Name)

_____

_____
(Address)

_____
Social Security or other Identification Number, if any

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad - 15 under the Securities Exchange Act of 1934.

_____

[Signature Guaranteed]

If only a portion of the Securities is to be converted, please indicate:

1. Principal amount to be converted: U.S. $ _____

2. Principal amount and denomination of Securities representing unconverted principal amount to be issued:

Amount: U.S. $_____ Denominations: U.S. $_____

(U.S.$1,000 or any integral multiple of U.S.$1,000 in excess thereof, provided that the unconverted portion of such principal amount is U.S. $1,000 or any integral multiple of U.S. $1,000 in excess thereof)

SECTION 2.5 Form of Assignment .

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or other identifying number of assignee) the within Security, and hereby irrevocably constitutes and appoints _____as attorney to transfer the said Security on the books of the Company, with full power of substitution in the premises.

Dated:_____

_____

Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad - 15 under the Securities Exchange Act of 1934.

_____

Signature Guaranteed

ARTICLE III

THE SECURITIES

SECTION 3.1 Title and Terms .

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is limited to U.S. $300,000,000 (or $345,000,000 if the Initial Purchaser Option set forth in Section 2 of the Purchase Agreement is exercised in full (the "Initial Purchaser Option")), except for Securities authenticated and delivered pursuant to Section 3.4, 3.5, 3.6, 8.5, 12.2 or 13.3(5) in exchange for, or in lieu of, other Securities previously authenticated and delivered under this Indenture.

The Securities shall be known and designated as the "2.00% Convertible Senior Notes due December 15, 2007" of the Company. Their Stated Maturity shall be December 15, 2007 and they shall bear interest on their principal amount from December 18, 2002, payable semi-annually in arrears on June 15 and December 15 in each year, commencing June 15, 2003, at the rate of 2.00% per annum until the principal thereof is due and at the rate of 2.00% per annum on any overdue principal and, to the extent permitted by law, on any overdue interest; provided, however, that payments shall only be made on a Business Day as provided in Section 1.12.

The principal of, premium, if any, and interest on the Securities shall be payable as provided in the form of Security set forth in Section 2.2, and the Repurchase Price, whether payable in cash or in shares of Common Stock or a combination thereof, shall be payable at such places as are identified in the Company Notice given pursuant to Section 13.3 (any city in which any Paying Agent is located being herein called a "Place of Payment").

The Registrable Securities are entitled to the benefits of a Registration Rights Agreement as provided by Section 10.11 and in the form of Security set forth in Section 2.2. The Securities are entitled to the payment of Liquidated Damages as provided by Section 10.11.

At any time after June 20, 2004 and before December 20, 2005, the Securities shall be subject to Provisional Redemption by the Company, in whole or in part, subject to the conditions and as otherwise provided in Article XI and in the form of Security set forth in Section 2.2.

At any time on or after December 20, 2005, the Securities shall be redeemable at the option of the Company, in whole or in part, subject to the conditions and as otherwise provided in Article XI and in the form of Security set forth in Section 2.2.

The Securities shall be convertible as provided in Article XII (any city in which any Conversion Agent is located being herein called a "Place of Conversion").

The Securities shall be subject to repurchase by the Company at the option of the Holders as provided in Article XIII.

SECTION 3.2 Denominations .

The Securities shall be issuable only in registered form, without coupons, in denominations of U.S. $1,000 and integral multiples of U.S. $1,000 in excess thereof.

SECTION 3.3 Execution, Authentication, Delivery and Dating .

The Securities shall be executed on behalf of the Company by an Officer of the Company. Any such signature may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee or to its order for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and make available for delivery such Securities as in this Indenture provided.

Each Security shall be dated the date of its authentication.

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

SECTION 3.4 Global Securities; Non-global Securities; Book-entry Provisions .

(1) *Global Securities*

(i) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(ii) Except for exchanges of Global Securities for definitive, non-Global Securities at the sole discretion of the Company, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary (i) has notified the Company that it is unwilling, unable or no longer qualified to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so or (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security. In such event, if a successor Depositary for such Global Security is not appointed by the Company within 90 days

after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of an Officer's Certificate directing the authentication and delivery of Securities, will authenticate and deliver, Securities, in any authorized denominations in an aggregate principal amount equal to the principal amount of such Global Security in exchange for such Global Security.

(iii) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depositary or its nominee to the Trustee, as Security Registrar, for exchange or cancellation, as provided in this Article III. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, in each case, as provided in Section 3.5, then either (A) such Global Security shall be so surrendered for exchange or cancellation, as provided in this Article III, or (B) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Security Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security, the Trustee shall, subject to Section 3.5 (3) and as otherwise provided in this Article III, authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depositary or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Securities that are not in the form of Global Securities. The Trustee shall be entitled to rely upon any order, direction or request of the Depositary or its authorized representative which is given or made pursuant to this Article III if such order, direction or request is given or made in accordance with the Applicable Procedures.

(iv) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article III or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof, in which case such Security shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(v) The Depositary or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members and such owners of beneficial interests in a Global Security will not be considered the owners or holders thereof.

(2) *Non-global Securities*

Securities issued upon the events described in Section 3.4(l)(ii) shall be in definitive, fully registered form, without interest coupons, and shall bear the Restricted Securities Legend if and as required by this Indenture.

SECTION 3.5 Registration; Registration of Transfer and Exchange; Restrictions on Transfer .

(1) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers and exchanges of Securities as herein provided.

Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 10.2 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, and subject to the other provisions of this Section 3.5, Securities may be exchanged for other Securities of any authorized denomination and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any such office or agency. Whenever any Securities are so surrendered for exchange, and subject to the other provisions of this Section 3.5, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive. Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Security Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, the Trustee and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt and entitled to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

No service charge shall be made to a Holder for any registration of transfer or exchange of Securities except as provided in Section 3.6, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 8.5, 12.2 or 13.3 (other than where the shares of Common Stock are to be issued or delivered in a name other than that of the Holder of the Security) not involving any transfer and other than any stamp and other duties, if any, which may be imposed in connection with any such transfer or exchange by the United States or any political subdivision thereof or therein, which shall be paid by the Company.

In the event of a redemption of the Securities, neither the Company nor the Securities Registrar will be required (a) to register the transfer of or exchange Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the

Securities called for such redemption or (b) to register the transfer of or exchange any Security, or portion thereof, called for redemption.

(2) Certain Transfers and Exchanges . Notwithstanding any other provision of this Indenture or the Securities, transfers and exchanges of Securities and beneficial interests in a Global Security of the kinds specified in this Section 3.5(2) shall be made only in accordance with this Section 3.5(2).

(i) Restricted Global Security to Restricted Non-Global Security . In the event that non-Global Securities are to be issued pursuant to Section 3.4(1)(ii) in connection with any transfer of Securities, such transfer may be effected only in accordance with the provisions of this Clause (2)(i) and subject to the Applicable Procedures. Upon receipt by the Trustee, as Security Registrar, of (A) a Company Order from the Company directing the Trustee, as Security Registrar, to (x) authenticate and deliver one or more Securities of the same aggregate principal amount as the beneficial interest in the Restricted Global Security to be transferred, such instructions to contain the name or names of the designated transferee or transferees, the authorized denomination or denominations of the Securities to be so issued and appropriate delivery instructions and (y) decrease the beneficial interest of a specified Agent Member's account in a Restricted Global Security by a specified principal amount not greater than the principal amount of such Restricted Global Security, and (B) such other certifications, legal opinions or other information as the Company or the Trustee may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, then the Trustee, as Security Registrar, shall decrease the principal amount of the Restricted Global Security by the specified amount and authenticate and deliver Securities in accordance with such instructions from the Company as provided in Section 3.4(1)(iii).

(ii) Restricted Non-Global Security to Restricted Global Security . If the Holder of a Restricted Security (other than a Global Security) wishes at any time to transfer all or any portion of such Restricted Security to a Person who wishes to take delivery thereof in the form of a beneficial interest in the Restricted Global Security, such transfer may be effected only in accordance with the provisions of this Clause (2)(ii) and subject to the Applicable Procedures. Upon receipt by the Trustee, as Security Registrar, of such Restricted Security as provided in Section 3.5(1) and instructions from the Company directing that a beneficial interest in the Restricted Global Security in a specified principal amount not greater than the principal amount of such Security be credited to a specified Agent Member's account, then the Trustee, as Security Registrar, shall cancel such Restricted Security (and issue a new Restricted Security in respect of any untransferred portion thereof) as provided in Section 3.5(1) and increase the principal amount of the Restricted Global Security by the specified principal amount as provided in Section 3.4(1)(iii).

(iii) Exchanges Between Global Security and Non-global Security . A beneficial interest in a Global Security may be exchanged for a Security that is not a Global Security only as provided in Section 3.4 or only if such exchange occurs in connection with a transfer effected in accordance with Clause 2(i) above, provided that, if such interest is a beneficial interest in the Restricted Global Security, then such interest shall be exchanged for a Restricted Security (subject in each case to Section 3.5(3)). A Security that is not a Global

Security may be exchanged for a beneficial interest in a Global Security only if such exchange occurs in connection with a transfer effected in accordance with Clause (2)(ii) above.

(3) Securities Act Legends . All Securities issued pursuant to this Indenture, and all Successor Securities, shall bear the Restricted Securities Legend and shall be subject to the restrictions on transfer specified therein, subject to the following:

(i) subject to the following Clauses of this Section 3.5(3), a Security or any portion thereof which is exchanged, upon transfer or otherwise, for a Global Security or any portion thereof shall bear the Restricted Securities Legend borne by such Global Security for which the Security was exchanged;

(ii) subject to the following Clauses of this Section 3.5(3), a new Security that is not a Global Security and is issued in exchange for another Security (including a Global Security) or any portion thereof, upon transfer or otherwise, shall bear the Restricted Securities Legend borne by the Security for which the new Security was exchanged;

(iii) any Securities that are sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act (including the Shelf Registration Statement), together with their Successor Securities shall not bear a Restricted Securities Legend; the Company shall inform the Trustee in writing of the effective date of any such registration statement registering the Securities under the Securities Act and shall notify the Trustee, in writing, at any time when prospectuses must be delivered with respect to Securities to be sold pursuant to such registration statement. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned registration statement;

(iv) at any time after the Securities may be freely transferred without registration under the Securities Act or without being subject to transfer restrictions pursuant to the Securities Act, a new Security that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security (other than a Global Security) or any portion thereof that bears such a legend if the Trustee has received an Unrestricted Securities Certificate, satisfactory to the Trustee and duly executed by the Holder of such Security bearing a Restricted Securities Legend or his attorney duly authorized in writing, and after such date and receipt of such certificate, the Trustee shall authenticate and deliver such new Security in exchange for or in lieu of such other Security as provided in this Article III;

(v) a new Security that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security or any portion thereof that bears such a legend if, in the Company's judgment, placing such a legend upon such new Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the direction of the Company, shall authenticate and deliver such a new Security as provided in this Article III; and

(vi) notwithstanding the foregoing provisions of this Section 3.5(3), a Successor Security of a Security that does not bear a Restricted Securities Legend shall not bear such legend unless the Company has reasonable cause to believe that such Successor Security is

a “restricted security” within the meaning of Rule 144, in which case the Trustee, at the direction of the Company, shall authenticate and deliver a new Security bearing a Restricted Securities Legend in exchange for such Successor Security as provided in this Article III.

(4) Any stock certificate representing shares of Common Stock issued upon conversion of the Securities shall bear the Restricted Securities Legend borne by such Securities, to the extent required by this Indenture, unless such shares of Common Stock have been sold pursuant to a registration statement that has been declared effective under the Securities Act (and that continues to be effective at the time of such transfer) or sold pursuant to Rule 144(k) of the Securities Act, or unless otherwise agreed by the Company in writing with written notice thereof to the transfer agent for the Common Stock. With respect to the transfer of shares of Common Stock issued upon conversion of the Securities that are restricted hereunder, any deliveries of certificates, legal opinions or other instruments that would be required to be made to the Security Registrar in the case of a transfer of Securities, as described above, shall instead be made to the transfer agent for the Common Stock.

(5) Neither the Trustee, the Paying Agent nor any of their agents shall (i) have any duty to monitor compliance with or with respect to any Federal or state or other securities or tax laws or (ii) have any duty to obtain documentation on any transfers or exchanges other than as specifically required hereunder.

SECTION 3.6 Mutilated, Destroyed, Lost or Stolen Securities .

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there be delivered to the Company and to the Trustee:

(1) evidence to their satisfaction of the destruction, loss or theft of any Security, and

(2) such security or indemnity as may be satisfactory to the Company and the Trustee to save each of them and any agent of either of them harmless, then, in the absence of actual notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion, but subject to any conversion rights, may, instead of issuing a new Security, pay such Security, upon satisfaction of the conditions set forth in the preceding paragraph.

Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto (other than any stamp and other duties, if any, which may be imposed in connection therewith by the United States or any political subdivision thereof or therein,

which shall be paid by the Company) and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies of any Holder with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7 Payment of Interest; Interest Rights Preserved .

Subject to the last paragraph of this Section, interest or Liquidated Damages on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest or Liquidated Damages on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security, the date of the proposed payment and the Special Record Date, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements reasonably satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. The Special Record Date for the payment of such Defaulted Interest shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at such Holder's address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing and following provisions of this Section and Section 3.5, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Interest on any Security that is converted in accordance with Section 12.2 during a Record Date Period shall be payable in accordance with the provisions of Section 12.2.

SECTION 3.8 Persons Deemed Owners .

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, any Paying Agent and any agent of the Company, the Trustee or any Paying Agent may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 3.7) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee, any Paying Agent nor any agent of the Company, the Trustee or any Paying Agent shall be affected by notice to the contrary.

SECTION 3.9 Cancellation .

All Securities surrendered for payment, redemption, repurchase, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered to the Trustee shall be canceled promptly by the Trustee (or its agent). No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.9. The Trustee shall dispose of all canceled Securities in accordance with applicable law and its customary practices in effect from time to time.

SECTION 3.10 Computation of Interest .

Interest on the Securities (including any Liquidated Damages) shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 3.11 CUSIP Numbers .

The Company in issuing Securities may use “CUSIP” numbers (if then generally in use) in addition to serial numbers; if so, the Trustee shall use such CUSIP numbers in addition to serial numbers in notices of redemption and repurchase as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such CUSIP numbers either as printed on the Securities or as contained in any notice of a redemption or repurchase and that reliance may be placed only on the serial or other identification numbers printed on the Securities, and any such redemption or repurchase shall not be affected by any defect in or omission of such CUSIP numbers.

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.1 Satisfaction and Discharge of Indenture .

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of conversion, or registration of transfer or exchange, or replacement of Securities herein expressly provided for and any right to receive Liquidated Damages as provided in the Registration Rights Agreement and in the form of Security set forth in Section 2.2 and the Company's obligations to the Trustee pursuant to Section 6.7), and the Trustee, at the expense of the Company, shall execute proper instruments in form and substance reasonably satisfactory to the Trustee acknowledging satisfaction and discharge of this Indenture, when

(1) Either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee or its agent for cancellation (other than Securities referred to in clauses (A) and (B) of clause (1)(i) above)

(a) have become due and payable, or

(b) will have become due and payable at their Stated Maturity within one year, or

(c) are to be called for redemption within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

(d) and the Company, in the case of clause (a), (b) or (c) above, has deposited or caused to be deposited with the Trustee as trust funds (immediately available to the Holders in the case of clause (a)) in trust for the purpose an amount in cash sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest (including any Liquidated Damages) to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the obligations of the Company to any Authenticating Agent under Section 6.12, the obligation of the Company to pay Liquidated Damages, if money shall have been deposited with the Trustee pursuant to clause (1)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 and the obligations of the Company and the Trustee under Section 3.5 and Article XII shall survive.

SECTION 4.2 Application of Trust Money .

Subject to the provisions of the last paragraph of Section 10.3, all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust for the sole benefit of the Holders, and such monies shall be applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent, to the Persons entitled thereto, of the principal, premium, if any, and interest (including any Liquidated Damages) for whose payment such money has been deposited with the Trustee.

All moneys deposited with the Trustee pursuant to Section 4.1 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed or assessed against all money deposited with the Trustee pursuant to Section 4.1 (other than income taxes and franchise taxes incurred or payable by the Trustee and such other taxes, fees or charges incurred or payable by the Trustee that are not directly the result of the deposit of such money with the Trustee).

ARTICLE V

REMEDIES

SECTION 5.1 Events of Default .

"Event of Default," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of the principal of or premium, if any, on any Security at its Maturity; or

(2) default in the payment of any interest (including any Liquidated Damages) upon any Security when it becomes due and payable, and continuance of such default for a period of 30 days; or

(3) failure by the Company to give a Company Notice in accordance with Section 13.3; or

(4) default in the performance of any covenant of the Company in this Indenture (other than a covenant a default in the performance of which is specifically dealt with elsewhere in this Section) and continuance of such default for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) a default in the payment when due (either at its stated maturity or upon acceleration thereof, and after expiration of any applicable grace period) under any bonds, debentures, notes or other evidences of indebtedness for money borrowed (or guarantee thereof) by the Company or any Significant Subsidiary (an "Instrument") with an aggregate principal amount in excess of U.S. $75,000,000, whether such indebtedness now exists or shall hereafter be created, and such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within a period of 30 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such default to be cured or waived or such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

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

(7) the commencement by the Company or any Significant Subsidiary of a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by either to the entry of a decree or order for relief in respect of the Company or any Significant Subsidiary in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against either, or the filing by either of a petition or answer or consent seeking reorganization or similar relief under any applicable Federal or state law, or the consent by either to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary or of any substantial part of the property of

either, or the making by either of an assignment for the benefit of creditors, or the admission by either in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action.

SECTION 5.2 Acceleration of Maturity; Rescission and Annulment .

If an Event of Default (other than an Event of Default specified in Section 5.1(6) or 5.1(7) with respect to the Company) occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal and all accrued interest thereon shall become immediately due and payable. If an Event of Default specified in Section 5.1(6) or 5.1(7) with respect to the Company occurs, the principal of, and accrued interest on, all the Securities shall become immediately due and payable without any declaration or other Act of the Holders or any act on the part of the Trustee.

At any time after such declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article V provided, the Holders of a majority in principal amount of the Outstanding Securities, by written notice to the Company and the Trustee, may, on behalf of all Holders, rescind and annul such declaration and its consequences if:

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(i) all overdue interest on all Securities,

(ii) the principal of and premium, if any, on any Securities that have become due otherwise than by such declaration of acceleration and any interest thereon at the rate borne by the Securities,

(iii) to the extent permitted by applicable law, interest upon overdue interest at a rate of 2.00% per annum, and

(iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

(2) all Events of Default, other than the nonpayment of the principal of and any premium and interest on, Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13; and

(3) such rescission and annulment would not conflict with any judgment or decree issued in appropriate judicial proceedings regarding the payment by the Trustee to the Holders of the amounts referred to in 5.2(1).

No rescission or annulment referred to above shall affect any subsequent default or impair any right consequent thereon.

SECTION 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee .

The Company covenants that if:

(1) default is made in the payment of any interest (including any Liquidated Damages) on any Security when it becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of or premium, if any, on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee pay to it, for the benefit of the Holders of such Securities the whole amount then due and payable on such Securities for principal and interest (including any Liquidated Damages) and interest on any overdue principal and premium, if any, and, to the extent permitted by applicable law, on any overdue interest (including any Liquidated Damages), at a rate of 2.00% per annum, and in addition thereto, such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.4 Trustee May File Proofs of Claim .

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or the creditors of either, the Trustee (irrespective of whether the principal of, and any interest on, the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Securities and take such other actions, including participating as a member, voting or otherwise, of any official committee of creditors appointed in such matter, and to file such other papers or documents, in each of the foregoing cases, as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the

reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of Securities allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 6.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding; provided, however, that the Trustee may, on behalf of such Holders, vote for the election of a trustee in bankruptcy or similar official.

SECTION 5.5 Trustee May Enforce Claims Without Possession of Securities .

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which judgment has been recovered.

SECTION 5.6 Application of Money Collected .

Any money collected by the Trustee pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, premium, if any, or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7;

SECOND: To the payment of the amounts then due and unpaid for principal of, premium, if any, or interest (including Liquidated Damages, if any) on, the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium, if any, and interest (including Liquidated Damages, if any), respectively;

THIRD: To such other Person or Persons, if any, to the extent entitled thereto; and

FOURTH: Any remaining amounts shall be repaid to the Company.

SECTION 5.7 Limitation on Suits .

No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of an Event of Default that is continuing at the time of such institution;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee, and if requested, shall have provided, reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity (or if requested, receipt of indemnity) has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Holders of a majority in principal amount of the Outstanding Securities, it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert .

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of, premium, if any, and (subject to Section 3.7) interest (including Liquidated Damages, if any) on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repurchase, on the Redemption Date or Repurchase Date, as the case may be), and to convert such Security in accordance with Article XII, and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder.

SECTION 5.9 Restoration of Rights and Remedies .

If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions

hereunder and thereafter all rights and remedies of the Trustee and such Holders shall continue as though no such proceeding had been instituted.

SECTION 5.10 Rights and Remedies Cumulative .

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11 Delay or Omission Not Waiver .

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or (subject to the limitations contained in this Indenture) by the Holders of Securities as the case may be.

SECTION 5.12 Control by Holders of Securities .

Subject to Section 6.3, the Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) the Trustee need not take any action that might involve it in personal liability or be unjustly prejudicial to the Holders of Securities not consenting.

SECTION 5.13 Waiver of Past Defaults .

The Holders, either (i) through the written consent of not less than a majority in principal amount of the Outstanding Securities or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except a default (A) in the payment of the principal of, premium, if any, or interest (including Liquidated Damages) on any Security, or (B) in respect of a covenant or

provision hereof which under Article VIII cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 5.14 Undertaking for Costs .

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of, premium, if any, or interest on any Security on or after the respective Stated Maturity or Maturities expressed in such Security (or, in the case of redemption or repurchase, on or after the Redemption Date or Repurchase Date, as the case may be) or for the enforcement of the right to convert any Security in accordance with Article XII.

SECTION 5.15 Waiver of Stay, Usury or Extension Laws .

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, usury or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede by reason of such law the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

SECTION 6.1 Certain Duties and Responsibilities .

(1) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture, but not to verify the contents thereof.

(2) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(3) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this paragraph (3) shall not be construed to limit the effect of paragraph (1) of this Section;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(4) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(5) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

SECTION 6.2 Notice of Defaults .

Within 90 days after the occurrence of any default hereunder as to which the Trustee has received written notice, the Trustee shall give to all Holders of Securities, in the manner provided in Section 1.6, notice of such default, unless such default shall have been cured or

waived; provided, however, that, except in the case of a default in the payment of the principal of, premium, if any, or interest on any Security the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders; and provided, further, that in the case of any default of the character specified in Section 5.1(4), no such notice to Holders of Securities shall be given until at least 60 days after the occurrence thereof or, if applicable, the expiration of the cure period specified therein. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.3 Certain Rights of Trustee .

Subject to the provisions of Section 6.1:

(1) the Trustee may rely, and shall be protected in acting or refraining from acting, upon any resolution, Officer's Certificate, other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document (collectively, the "Documents") believed by it to be genuine and to have been signed or presented by the proper party or parties, and the Trustee need not investigate any fact or matter stated in such Documents;

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

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

(4) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities pursuant to this Indenture, unless such Holders shall have offered, and, if requested by the Trustee, delivered to the Trustee reasonable security against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

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

or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

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

SECTION 6.4 Not Responsible for Recitals or Issuance of Securities .

The recitals contained herein and in the Securities (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture, of the Securities or of the Common Stock issuable upon the conversion of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 6.5 May Hold Securities, Act as Trustee under Other Indentures .

The Trustee, any Authenticating Agent, any Paying Agent, any Conversion Agent or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Conversion Agent or such other agent.

The Trustee may become and act as trustee under other indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

SECTION 6.6 Money Held in Trust .

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

SECTION 6.7 Compensation and Reimbursement .

The Company agrees:

(1) to pay to the Trustee from time to time such reasonable compensation as the Company and the Trustee shall from time to time agree in writing for its acceptance of this Indenture and for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee (including costs and expenses of enforcing this Indenture and defending itself against any claim (whether asserted by the Company, any Holder of Securities or any other Person) or liability in

connection with the exercise of any of its powers or duties hereunder) in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify the Trustee (and its directors, officers, employees and agents) for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs, expenses and reasonable attorneys' fees of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee shall have a lien prior to the Securities on all money or property held or controlled by the Trustee to secure the Company's payment obligations in this Section 6.7, except that held in trust to pay principal and interest (including Liquidated Damages) on the Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(6) or Section 5.1 (7), the expenses (including the reasonable charges of its counsel) and the compensation for the services are intended to constitute expenses of the administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee.

SECTION 6.8 Corporate Trustee Required; Eligibility .

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, and the Trustee and its parent corporation shall have (or be part of a holding company group with) a combined capital and surplus of at least U.S. $50,000,000, subject to supervision or examination by Federal or state authority, and in good standing. The Trustee or an Affiliate of the Trustee shall maintain an established place of business in the Borough of Manhattan, The City of New York. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article and a successor shall be appointed pursuant to Section 6.9.

SECTION 6.9 Resignation and Removal; Appointment of Successor .

(1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.10.

(2) The Trustee may resign at any time by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(3) The Trustee may be removed at any time by an Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee and the Company. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(4) The Trustee may be removed at any time by the Company and the Company may appoint a successor Trustee pursuant to this Article, provided, that (i) there is not an Event of Default that is continuing at the time of removal, (ii) the successor Trustee appointed by the Company meets the eligibility requirements of Section 6.8, and (iii) such removal and resignation shall not become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.10.

(5) If at any time:

(i) the Trustee shall cease to be eligible under Section 6.8 and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 5.14, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(6) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee and shall comply with the applicable requirements of this Section and Section 6.10. If no successor Trustee shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by this Section and Section 6.10, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(7) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders of Securities in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 6.10 Acceptance of Appointment by Successor .

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article.

SECTION 6.11 Merger, Conversion, Consolidation or Succession to Business .

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including the trust created by this Indenture), shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 6.12 Authenticating Agents .

The Trustee may, with the consent of the Company, appoint an Authenticating Agent or Agents acceptable to the Company with respect to the Securities, which Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon exchange or substitution pursuant to this Indenture.

Securities authenticated by an Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder, and every reference in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee’s certificate of authentication shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate

of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be subject to acceptance by the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent and subject to supervision or examination by government or other fiscal authority. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.12, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.12.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 6.12, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.12, the Trustee may appoint a successor Authenticating Agent which shall be subject to acceptance by the Company. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.12.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.12.

If an Authenticating Agent is appointed with respect to the Securities pursuant to this Section 6.12, the Securities may have endorsed thereon, in addition to or in lieu of the Trustee's certification of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION
as Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

SECTION 6.13 Disqualification; Conflicting Interests .

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

SECTION 6.14 Preferential Collection of Claims Against Company .

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

ARTICLE VII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 7.1 Company May Consolidate, Etc. Only on Certain Terms .

The Company shall not consolidate with or merge into any other Person or convey, transfer, sell or lease (other than a mere grant of security interest) all its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer, sell or lease (other than a mere grant of security interest) such Person's properties and assets substantially as an entirety to the Company unless:

(1) the Person formed by such consolidation or into or with which the Company is merged or the Person to which the properties and assets of the Company are so conveyed, transferred, sold or leased (other than a mere grant of security interest) shall be a corporation, limited liability company, partnership or trust organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and, if other than the Company, shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of, premium, if any, and interest (including Liquidated Damages, if any) on all of the Securities as applicable, and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in all material respects in accordance with Article XII;

(2) immediately after giving effect to such transaction no Event of Default, and no event that after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease (other than a mere grant of security interest) and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with, together with any documents required under Section 8.3.

SECTION 7.2 Successor Substituted .

Upon any consolidation of the Company with, or merger of the Company into any other Person or any conveyance, transfer or lease (other than a mere grant of security interest) of all or substantially all the properties and assets of the Company in accordance with Section 7.1, the successor Person formed by such consolidation or into or with which the Company is merged or to which such conveyance, transfer or lease (other than a mere grant of security interest) is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE VIII

SUPPLEMENTAL INDENTURES

SECTION 8.1 Supplemental Indentures Without Consent of Holders of Securities .

Without the consent of any Holders of Securities the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company herein and in the Securities as permitted by Article VII of this Indenture; or

(2) to add to the covenants of the Company for the benefit of the Holders of Securities or to surrender any right or power herein conferred upon the Company; or

(3) to secure the Securities; or

(4) to make provision with respect to the conversion rights of Holders of Securities pursuant to Section 12.11 or to make provision with respect to the repurchase rights of Holders of Securities pursuant to Section 13.5; or

(5) to make any changes or modifications to this Indenture necessary in connection with the registration of any Registrable Securities under the Securities Act as contemplated by Section 10.11, provided such action pursuant to this clause (5) shall not adversely affect the interests of the Holders of Securities in any material respect; or

(6) to comply with the requirements of the Trust Indenture Act or the rules and regulations of the Commission thereunder in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, as contemplated by this Indenture or otherwise; or

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee; or

(8) to provide for uncertificated Securities; or

(9) to cure any ambiguity, to correct or supplement any provision herein that may be inconsistent with any other provision herein or that is otherwise defective, or to make any other provisions with respect to matters or questions arising under this Indenture as the Company and the Trustee may deem necessary or desirable, provided such action pursuant to this clause (9) shall not adversely affect the interests of the Holders of Securities in any material respect.

Upon Company Request, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and subject to and upon receipt by the Trustee of the documents described in Section 8.3 hereof, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained.

Notwithstanding any other provision of the Indenture or the Securities, the Registration Rights Agreement and the obligation to pay Liquidated Damages thereunder may be amended, modified or waived in accordance with the provisions of the Registration Rights Agreement.

SECTION 8.2 Supplemental Indentures with Consent of Holders of Securities .

Except as set forth in Section 8.1, with either (i) the written consent of the Holders of not less than a majority in principal amount of the Outstanding Securities, by the Act of said Holders delivered to the Company and the Trustee, or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; provided, however, that no such supplemental indenture shall, without the consent or affirmative vote of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount of, or the premium, if any, or the rate of interest payable thereon, or reduce the amount payable upon a redemption or mandatory repurchase, or change the place or currency of payment of the principal of, premium, if any, or interest on any Security (including any payment of Liquidated Damages (except as may be effected through an amendment of the Registration Rights Agreement in accordance with its terms) or Redemption Price or Repurchase Price in respect of such Security) or impair the right to institute suit for the enforcement of any payment in respect of any Security on or after the Stated Maturity thereof (or, in the case of redemption or any repurchase, on or after the Redemption Date or Repurchase Date, as the case may be); or

(2) reduce the requirements of Section 9.4 for quorum or voting, or reduce the percentage in principal amount of the Outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

(3) modify any of the provisions of this Section or Section 5.13 or 10.12, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby;

(4) modify the ranking of the Securities in a manner adverse to the Holders; or

(5) modify the Company's right to redeem the Securities in a manner adverse to the Holders; or

(6) modify the provisions of Article XII or XIII in a manner adverse to the Holders; or

(7) modify the provisions of Section 10.9 in a manner adverse to the Holder.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 8.3 Execution of Supplemental Indentures .

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that such supplemental indenture has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 8.4 Effect of Supplemental Indentures .

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder appertaining thereto shall be bound thereby.

SECTION 8.5 Reference in Securities to Supplemental Indentures .

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company and the Trustee, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

SECTION 8.6 Notice of Supplemental Indentures .

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Section 8.2, the Company shall give notice to all Holders of Securities of such fact, setting forth in general terms the substance of such supplemental indenture, in the manner provided in Section 1.6. Any failure of the Company to give such notice, or any defect therein, shall not in any way impair or affect the validity of any such supplemental indenture.

ARTICLE IX

MEETINGS OF HOLDERS OF SECURITIES

SECTION 9.1 Purposes for Which Meetings May Be Called .

A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities.

SECTION 9.2 Call, Notice and Place of Meetings .

(1) The Trustee, with the Company's consent (prior to an Event of Default but not thereafter), may at any time call a meeting of Holders of Securities for any purpose specified in Section 9.1, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.6, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(2) In case at any time the Company, pursuant to a Board Resolution, or, in an Event of Default, the Holders of at least 10% in principal amount of the Outstanding Securities, shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 9.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or, in an Event of Default, the Holders of Securities in the amount specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (1) of this Section.

SECTION 9.3 Persons Entitled to Vote at Meetings .

To be entitled to vote at any meeting of Holders of Securities, a Person shall be (i) a Holder of one or more Outstanding Securities, or (ii) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any

representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.4 Quorum; Action .

The Persons entitled to vote a majority in principal amount of the Outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting (subject to repeated applications of this sentence). Notice of the reconvening of any adjourned meeting shall be given as provided in Section 9.2 (1), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the principal amount of the Outstanding Securities that shall constitute a quorum.

Subject to the foregoing, at the reconvening of any meeting adjourned for a lack of a quorum, the Persons entitled to vote 25% in principal amount of the Outstanding Securities at the time shall constitute a quorum for the taking of any action set forth in the notice of the original meeting.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the proviso to Section 8.2 and except to the extent Section 10.12 requires a different vote) shall be effectively passed and decided if passed or decided by the lesser of (i) the Holders of not less than a majority in principal amount of Outstanding Securities and (ii) the Persons entitled to vote not less than a majority in aggregate principal amount of Outstanding Securities represented and entitled to vote at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities whether or not present or represented at the meeting. The Trustee shall, in the name and at the expense of the Company, notify all the Holders of Securities of any such resolutions or decisions pursuant to Section 1.6.

SECTION 9.5 Determination of Voting Rights; Conduct and Adjournment of Meetings .

(1) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 1.4

and the appointment of any proxy shall be proved in the manner specified in Section 1.4 or by having the signature of the Person executing the proxy guaranteed by any bank, broker or other eligible institution participating in a recognized medallion signature guarantee program.

(2) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 9.2(1), in which case the Company or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting.

(3) At any meeting, each Holder of a Security or proxy shall be entitled to one vote for each U.S. $1,000 principal amount of Securities held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

(4) Any meeting of Holders of Securities duly called pursuant to Section 9.2 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 9.6 Counting Votes and Recording Action of Meetings .

The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amounts at Stated Maturity and serial numbers of the Outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 9.2 and, if applicable, Section 9.4. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE X

COVENANTS

SECTION 10.1 Payment of Principal, Premium and Interest .

The Company covenants and agrees that it will duly and punctually pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities in accordance with the terms of the Securities and this Indenture. The Company will deposit or cause to be deposited with the Trustee or its nominee, no later than the opening of business on the date of the Stated Maturity of any Security or no later than the opening of business on the due date for any installment of interest, all payments so due, which payments shall be in immediately available funds on the date of such Stated Maturity or due date, as the case may be.

SECTION 10.2 Maintenance of Offices or Agencies .

The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where the Securities may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the Borough of Manhattan, The City of New York.

The Company may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; provided, however, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of, premium, if any, and interest on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 10.3, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment and conversion, which shall initially be the Corporate Trust Office of the Trustee, where Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 1.6, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

The Company hereby initially designates the Trustee as Paying Agent, Security Registrar and Conversion Agent, and the Corporate Trust Office of the Trustee as one such office or agency of the Company for each of the aforesaid purposes.

SECTION 10.3 Money for Security Payments to Be Held in Trust .

If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, premium, if any, or interest on any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal, premium, if any, or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and the Company will promptly notify the Trustee, in writing, of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, no later than the opening of business on each due date of the principal of, premium, if any, or interest on any Securities, deposit with the Trustee a sum in funds immediately payable on the payment date sufficient to pay the principal, premium, if any, or interest so becoming due, such sum to be held for the benefit of the Persons entitled to such principal, premium, if any, or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee, in writing, of any failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of, premium, if any, or interest on Securities for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee written notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal, premium, if any, or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on any Security and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and

all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

SECTION 10.4 Existence .

Subject to Article VII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 10.5 [INTENTIONALLY LEFT BLANK] .

SECTION 10.6 Payment of Taxes and Other Claims .

The Company shall pay, and shall cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary, and, subject to Sections 12.8 and 13.3(2), all stamps and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange or conversion of any Securities or with respect to this Indenture except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders.

SECTION 10.7 Registration and Listing .

The Company will effect all registrations with, and obtain all approvals by, all governmental authorities that may be necessary under any United States Federal or state law (including the Securities Act, the Exchange Act and state securities and Blue Sky laws) before the shares of Common Stock issuable upon conversion of Securities are issued and delivered, and qualified or listed as contemplated under the Registration Rights Agreement.

Nothing in this Section will limit the application of Section 10.11.

SECTION 10.8 Statement by Officers as to Default .

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officer’s Certificate, stating whether or not to the reasonable best knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

The Company will deliver to the Trustee, forthwith upon becoming aware of any default or any Event of Default under the Indenture, an Officer's Certificate specifying with particularity such default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

Any notice required to be given under this Section 10.8 shall be delivered to the Trustee at its Corporate Trust Office.

SECTION 10.9 Delivery of Certain Information .

At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder of a Restricted Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Restricted Securities or such holder of shares of Common Stock issued upon conversion of Restricted Securities, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act (or any successor provision thereto) in connection with the resale of any such security; provided, however, that the Company shall not be required to furnish such information in connection with any request made on or after the date that is two years from the later of (i) the date such a security (or any such predecessor security) was last acquired from the Company or (ii) the date such a security (or any such predecessor security) was last acquired from an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act (or any successor provision thereto). "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

SECTION 10.10 Resale of Certain Securities .

During the period beginning on the last date of original issuance of the Securities and ending on the date that is two years from such date (or such shortened period under Rule 144(k) under the Securities Act or any successor rule), the Company will not, and will not permit any of its subsidiaries or other "affiliates" (as defined under Rule 144 under the Securities Act or any successor provision thereto) to, resell (i) any Securities that constitute "restricted securities" under Rule 144 or (ii) any securities into which the Securities have been converted under this Indenture that constitute "restricted securities" under Rule 144, that in either case have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

SECTION 10.11 Registration Rights .

The Company agrees that the Holders from time to time of Registrable Securities (as defined below) are entitled to the benefits of the Registration Rights Agreement.

Whenever in this Indenture there is mentioned, in any context, the payment of the principal of, premium, if any, or interest on, or in respect of, any Security, such mention shall be

deemed to include mention of the payment of Liquidated Damages provided for in this Section to the extent that, in such context, Liquidated Damages are, were or would be payable in respect thereof pursuant to the provisions of this Section and express mention of the payment of Liquidated Damages (if applicable) in any provisions hereof shall not be construed as excluding Liquidated Damages in those provisions hereof where such express mention is not made.

For the purposes of the Registration Rights Agreement, "Registrable Securities" means all or any portion of the Securities issued from time to time under this Indenture in registered form and the shares of Common Stock issuable upon conversion, repurchase or redemption of such Securities; provided, however, that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

If a Security, or the shares of Common Stock issuable upon conversion of a Security, is a Registrable Security, and the Holder thereof elects to sell such Registrable Security pursuant to the Shelf Registration Statement then, by its acceptance thereof, the Holder of such Registrable Security will have agreed to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities which are the subject of such election.

For the purposes of the Registration Rights Agreement, the term "Holder" means any Person that is the record owner of Registrable Securities (and includes any Person that has a beneficial interest in any Registrable Security in book entry form).

If Liquidated Damages are payable under the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of Liquidated Damages that is payable and (ii) the date on which Liquidated Damages are payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable. If Liquidated Damages have been paid by the Company directly to the persons entitled to them, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

SECTION 10.12 Waiver of Certain Covenants .

The Company may omit in any particular instance to comply with any covenant or condition set forth in Sections 10.4 (other than with respect to the existence of the Company (subject to Article VII)) and 10.6, inclusive (other than a covenant or condition which under Article VIII cannot be modified or amended without the consent of the Holder of each Outstanding Security affected), if before the time for such compliance the Holders shall, through (i) the written consent of not less than a majority in principal amount of the Outstanding Securities or (ii) the adoption of a resolution at a meeting of Holders of the Outstanding Securities at which a quorum is present by the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee or any Paying or Conversion Agent in respect of any such covenant or condition shall remain in full force and effect.

ARTICLE XI

REDEMPTION OF SECURITIES

SECTION 11.1 Right of Redemption .

The Securities may be redeemed in accordance with the provisions of the form of Security set forth in Section 2.2.

SECTION 11.2 Applicability of Article .

Redemption of Securities at the election of the Company or otherwise, as permitted or required by any provision of the Securities or this Indenture, shall be made in accordance with such provision and this Article XI.

SECTION 11.3 Election to Redeem; Notice to Trustee .

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company of any of the Securities, the Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date.

SECTION 11.4 Selection by Trustee of Securities to Be Redeemed .

If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected by the Trustee within five Business Days after it receives the notice described in 11.3, from the Outstanding Securities not previously called for redemption, by lot or by such other method as the Trustee may deem fair and appropriate.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection. The Trustee shall promptly notify the Company and each Security Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

SECTION 11.5 Notice of Redemption .

Notice of redemption shall be given in the manner provided in Section 1.6 to the Holders of Securities to be redeemed not less than 30 nor more than 60 days prior to the Redemption Date, and such notice shall be irrevocable.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price, and accrued interest (including Liquidated Damages, if any), if any, to, but excluding, the Redemption Date,

(3) if less than all Outstanding Securities are to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities which will be outstanding after such partial redemption,

(4) that on the Redemption Date the Redemption Price, and accrued interest (including Liquidated Damages, if any), if any, to, but excluding, the Redemption Date, will become due and payable upon each such Security to be redeemed, and that interest thereon shall cease to accrue on and after said date,

(5) whether the redemption is a Provisional Redemption or an optional redemption,

(6) if the redemption is a Provisional Redemption, the amount of the Make-Whole Payment,

(7) whether the Make-Whole Payment will be paid in Common Stock, cash or a combination of cash of Common Stock (and the applicable ratio of cash and Common Stock),

(8) the Conversion Rate, the date on which the right to convert the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion, and

(9) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued interest (including Liquidated Damages, if any), if any, to, but excluding, the Redemption Date.

In case of a partial redemption, the notice shall specify the serial and CUSIP numbers (if any) and the portions thereof called for redemption and that transfers and exchanges may occur on or prior to the Redemption Date.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company’s written request (which request shall be delivered to the Trustee simultaneously with notification of the Redemption Date pursuant to Section 11.3), by the Trustee in the name of and at the expense of the Company. Notice of redemption of Securities to be redeemed at the election of the Company received by the Trustee shall be given by the Trustee to each Paying Agent in the name of and at the expense of the Company.

SECTION 11.6 Deposit of Redemption Price .

On or prior to the Redemption Date, the Company shall deposit with the Trustee (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money (or if applicable, Common Stock or a combination thereof, with respect to the Make-Whole Payment) (which shall be in immediately available funds on such Redemption Date) sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest (including Liquidated Damages, if any) to the Redemption Date on, all the Securities which are to be redeemed on that date other than any Securities called for redemption on that date which have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.7) be paid to the Company or, if then held by the Company, shall be discharged from such trust.

SECTION 11.7 Securities Payable on Redemption Date .

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price, including accrued interest) such Securities shall cease to bear interest. Upon surrender of any Security for redemption in accordance with said notice such Security shall be paid by the Company at the Redemption Price together with accrued and unpaid interest (including Liquidated Damages, if any) to but excluding the Redemption Date; provided, however, that installments of interest on Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal amount of, premium, if any, and, to the extent permitted by applicable law, accrued interest on such Security shall, until paid, bear interest from the Redemption Date at a rate of 2.00% per annum and such Security shall remain convertible until the Redemption Price of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

Any Security that is to be redeemed only in part shall be surrendered at the Corporate Trust Office or an office or agency of the Company designated for that purpose pursuant to Section 10.2 (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as

requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

SECTION 11.8 Conversion Arrangement on Call for Redemption .

In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities by an agreement with one or more investment bankers or other purchasers (the "Purchasers") to purchase such securities by paying to the Trustee in trust for the Holders, on or before the Redemption Date, an amount not less than the applicable Redemption Price, together with interest accrued and unpaid to but excluding the Redemption Date, of such Securities. Notwithstanding anything to the contrary contained in this Article XI, the obligation of the Company to pay the Redemption Price, together with interest accrued and unpaid to but excluding the Redemption Date, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such Purchasers. If such an agreement is entered into (a copy of which shall be filed with the Trustee prior to the close of business on the Business Day immediately prior to the Redemption Date), any Securities called for redemption that are not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, and consistent with any agreement or agreements with such Purchasers, to be acquired by such Purchasers from such Holders and (notwithstanding anything to the contrary contained in Article XII) surrendered by such Purchasers for conversion, all as of immediately prior to the close of business on the Redemption Date (and the right to convert any such Securities shall be extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it by the Purchasers to the Holders in the same manner as it would monies deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such Purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such Purchasers, including the costs and expenses, including reasonable legal fees, incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

ARTICLE XII

CONVERSION OF SECURITIES

SECTION 12.1 Conversion Privilege and Conversion Rate .

Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, each U.S. $1,000 principal amount of Securities may be converted into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100th of a share) of Common Stock of the Company at the Conversion Rate, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall commence on the initial issuance date of the Securities and expire at the close of business on the date of Maturity (unless such

Securities have been previously redeemed or repurchased), subject, in the case of conversion of any Global Security, to any Applicable Procedures. In case a Security or portion thereof is called for redemption at the election of the Company or the Holder thereof exercises his right to require the Company to repurchase the Security, such conversion right in respect of the Security, or portion thereof so called, shall expire at the close of business on the second Business Day immediately preceding the Redemption Date or the Repurchase Date, as the case may be, unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be (in each case subject as aforesaid to any Applicable Procedures with respect to any Global Security).

The rate at which shares of Common Stock shall be delivered upon conversion (herein called the "Conversion Rate") shall be initially 21.2766 shares of Common Stock for each U.S.$1,000 principal amount of Securities. The Conversion Rate shall be adjusted in certain instances as provided in this Article XII.

SECTION 12.2 Exercise of Conversion Privilege .

In order to exercise the conversion privilege, the Holder of any Security to be converted shall surrender such Security, duly endorsed in blank, at any office or agency of the Company maintained for that purpose pursuant to Section 10.2, accompanied by a duly signed conversion notice substantially in the form set forth in Section 2.4 stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted. Each Security surrendered for conversion (in whole or in part) during the Record Date Period shall (except in the case of any Security or portion thereof which has been called for redemption, except pursuant to a call for Provisional Redemption, on a Redemption Date, or is repurchasable on a Repurchase Date, occurring, in either case, during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the close of business on the third Business Day following such Interest Payment Date and, as a result, the right to convert such Security would otherwise terminate in such period if not exercised) be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of such Security (or part thereof, as the case may be) being surrendered for conversion. The interest so payable on such Interest Payment Date with respect to any Security (or portion thereof, if applicable) that is surrendered for conversion during the Record Date Period shall be paid to the Holder of such Security as of such Regular Record Date in an amount equal to the interest that would have been payable on such Security if such Security had been converted as of the close of business on such Interest Payment Date. Interest payable on any Interest Payment Date in respect of any Security surrendered for conversion on or after such Interest Payment Date shall be paid to the Holder of such Security as of the Regular Record Date next preceding such Interest Payment Date, notwithstanding the exercise of the right of conversion. Except as provided in this paragraph and subject to the last paragraph of Section 3.7, no cash payment or adjustment shall be made upon any conversion on account of any interest accrued from the Interest Payment Date next preceding the conversion date, in respect of any Security (or part thereof, as the case may be) surrendered for conversion, or on account of any dividends on the Common Stock issued upon conversion. The Company's delivery to the Holder of the number of shares of Common Stock (and cash in lieu of fractions thereof, as

provided in this Indenture) into which a Security is convertible will be deemed to satisfy the Company's obligation to pay the principal amount of the Security.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall issue and deliver to the Trustee, for delivery to the Holder (unless a different Person is indicated on the Conversion Notice), a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share, as provided in Section 12.3.

All shares of Common Stock delivered upon such conversion of Restricted Securities shall bear restrictive legends substantially in the form of the legends required to be set forth on the Restricted Securities pursuant to Section 3.5 and shall be subject to the restrictions on transfer provided in such legends. Neither the Trustee nor any agent maintained for the purpose of such conversion shall have any responsibility for the inclusion or content of any such restrictive legends on such Common Stock; provided, however, that the Trustee or any agent maintained for the purpose of such conversion shall have provided, to the Company or to the Company's transfer agent for such Common Stock, prior to or concurrently with a request to the Company to deliver such Common Stock, written notice that the Securities delivered for conversion are Restricted Securities.

In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations in an aggregate principal amount equal to the unconverted portion of the principal amount of such Security. A Security may be converted in part, but only if the principal amount of such Security to be converted is any integral multiple of U.S. $1,000 and the principal amount of such security to remain Outstanding after such conversion is equal to U.S. $1,000 or any integral multiple of $1,000 in excess thereof.

If shares of Common Stock to be issued upon conversion of a Restricted Security, or Securities to be issued upon conversion of a Restricted Security in part only, are to be registered in a name other than that of the beneficial owner of such Restricted Security, then such Holder must deliver to the Conversion Agent a Surrender Certificate, dated the date of surrender of such Restricted Security and signed by such beneficial owner, as to compliance with the restrictions on transfer applicable to such Restricted Security. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the beneficial owner, shares of Common Stock or Securities issued upon conversion of any such Restricted Security not so accompanied by a properly completed Surrender Certificate.

SECTION 12.3 Fractions of Shares .

No fractional shares of Common Stock shall be issued upon conversion of any Security or Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any Security or Securities (or specified portions thereof), the Company shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a share) in an amount equal to the same fraction of the Closing Price Per Share at the close of business on the day of conversion.

SECTION 12.4 Adjustment of Conversion Rate .

The Conversion Rate shall be subject to adjustments from time to time as follows:

(1) In case the Company shall pay or make a dividend or other distribution on shares of any class of capital stock payable in shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be increased by dividing the Conversion Rate in effect immediately prior to such date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If, after any such date fixed for determination, any dividend or distribution is not in fact paid, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would have been in effect if such determination date had not been fixed. For the purposes of this paragraph (1), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(2) In case the Company shall issue rights, options or warrants to all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (8) of this Section 12.4) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights, options or warrants (other than any rights, options or warrants that by their terms will also be issued to any Holder upon conversion of a Security into shares of Common Stock without any action required by the Company or any other Person), the Conversion Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing the Conversion Rate in effect immediately prior to such date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock that the aggregate of the offering price of the total number of shares of

Common Stock so offered for subscription or purchase would purchase at such current market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If, after any such date fixed for determination, any such rights, options or warrants are not in fact issued, or are not exercised prior to the expiration thereof, the Conversion Rate shall be immediately readjusted, effective as of the date such rights, options or warrants expire, or the date the Board of Directors determines not to issue such rights, options or warrants, to the Conversion Rate that would have been in effect if the unexercised rights, options or warrants had never been granted or such determination date had not been fixed, as the case may be. For the purposes of this paragraph (2), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not issue any rights, options or warrants in respect of shares of Common Stock held in the treasury of the Company.

(3) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(4) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class of capital stock or other property (including cash or assets or securities, but excluding (i) any rights, options or warrants referred to in paragraph (2) of this Section, (ii) any dividend or distribution paid exclusively in cash, other than those referred to in paragraphs 5 and 6 below, (iii) any dividend or distribution referred to in paragraph (1) of this Section and (iv) any consideration distributed in any merger or consolidation to which Section 12.11 applies), the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (8) of this Section 12.4) of the Common Stock on the date fixed for such determination less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution filed with the Trustee) of the portion of the assets, shares or evidences of indebtedness so distributed applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such adjustment to become effective immediately prior to the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such distribution. If after any such date fixed for determination, any such distribution is not in fact made, the Conversion Rate shall be immediately readjusted, effective as

of the date that the Board of Directors determines not to make such distribution, to the Conversion Rate that would have been in effect if such determination date had not been fixed.

In the event the then fair market value (as so determined) of the portion of the evidences of indebtedness, shares of any class of capital stock or other property so distributed is equal to or greater than the current market price per share of the Common Stock on such date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of a Security shall have the right to receive upon conversion the amount of such evidences of indebtedness, shares of any class of capital stock or other property such Holder would have received had such Holder converted each Security on such date.

(5) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding cash distributed upon a merger or consolidation to which Section 12.11 applies) in an aggregate amount that, combined together with (I) the aggregate amount of any other all-cash distributions to all holders of its Common Stock made exclusively in cash within the 365-day period preceding the date of payment of such distribution and in respect of which no adjustment pursuant to this paragraph (5) or paragraph (6) of this Section 12.4 has been made and (II) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of any non-cash consideration payable in respect of any tender offer by the Company or any of its Subsidiaries for all or any portion of the Common Stock concluded within the 365-day period preceding the date of payment of such distribution and in respect of which no adjustment pursuant to paragraph (6) of this Section 12.4 has been made (the "combined cash and tender amount") exceeds 10% of the product of the current market price per share (determined as provided in paragraph (8) of this Section 12.4) of the Common Stock on the date for the determination of holders of shares of Common Stock entitled to receive such distribution times the number of shares of Common Stock outstanding on such date (the "aggregate current market price"), then, and in each such case, immediately after the close of business on such date for determination, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for determination of the stockholders entitled to receive such distribution by a fraction (i) the numerator of which shall be equal to the current market price per share (determined as provided in paragraph (8) of this Section) of the Common Stock on the date fixed for such determination less an amount equal to the quotient of (x) the excess of such combined cash and tender amount over 10% of such aggregate current market price divided by (y) the number of shares of Common Stock outstanding on such date for determination and (ii) the denominator of which shall be equal to the current market price per share (determined as provided in paragraph (8) of this Section 12.4) of the Common Stock on such date fixed for determination.

(6) In case a tender offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) that combined together with (I) the aggregate of the cash plus the fair market value (as determined by the Board

of Directors, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of such tender offer, of any non-cash consideration payable in respect of any other tender offer by the Company or any Subsidiary for all or any portion of the Common Stock expiring within the 365-day period preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this paragraph (6) or paragraph (5) of this Section 12.4 has been made and (II) the aggregate amount of any cash distributions to all holders of the Common Stock within 365-day period preceding the expiration of such tender offer and in respect of which no adjustment pursuant to paragraph (5) of this Section has been made (the "combined tender and cash amount") exceeds 10% of the product of the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 12.4) as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered shares) as of the Expiration Time, then, and in each such case immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate immediately prior to the close of business on the date of the Expiration Time by a fraction (i) the numerator of which shall be equal to (A) the product of (I) the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 12.4) on the date of the Expiration Time multiplied by (II) the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time less (B) the combined tender and cash amount, and (ii) the denominator of which shall be equal to the product of (A) the current market price per share of the Common Stock (determined as provided in paragraph (8) of this Section 12.4) on the date of the Expiration Time multiplied by (B) the number of shares of Common Stock outstanding (including any tendered shares) as of the Expiration Time less the number of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares").

(7) The reclassification of Common Stock into securities other than Common Stock (other than any reclassification upon a consolidation or merger to which Section 12.11 applies) shall be deemed to involve (a) a distribution of such securities other than Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be "the date fixed for the determination of stockholders entitled to receive such distribution" and "the date fixed for such determination" within the meaning of paragraph (4) of this Section), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective," as the case may be, and "the day upon which such subdivision or combination becomes effective" within the meaning of paragraph (3) of this Section 12.4).

(8) For the purpose of any computation under paragraphs (2), (4), (5) or (6) of this Section 12.4, the current market price per share of Common Stock on any date shall be calculated by the Company and be the average of the daily Closing Prices Per Share for the five consecutive Trading Days selected by the Company commencing not more than 10 Trading Days before, and ending not later than the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. For purposes of

this paragraph, the term "'ex date," when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way in the applicable securities market or on the applicable securities exchange without the right to receive such issuance or distribution.

(9) No adjustment in the Conversion Rate shall be required unless such adjustment (plus any adjustments not previously made by reason of this paragraph (9)) would require an increase or decrease of at least one percent in such rate; provided, however, that any adjustments which by reason of this paragraph (9) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(10) The Company may make such increases in the Conversion Rate, for the remaining term of the Securities or any shorter term, in addition to those required by paragraphs (1), (2), (3), (4), (5) and (6) of this Section 12.4, as it considers to be advisable in order to avoid or diminish any income tax to any holders of shares of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for income tax purposes. The Company shall have the power to resolve any ambiguity or correct any error in this paragraph (10) and its actions in so doing shall, absent manifest error, be final and conclusive.

(11) Notwithstanding the foregoing provisions of this Section, no adjustment of the Conversion Rate shall be required to be made (a) upon the issuance of shares of Common Stock pursuant to any present or future plan for the reinvestment of dividends, (b) upon a change in the par value of the Common Stock, or (c) because of a tender or exchange offer of the character described in Rule 13e-4(h)(5) under the Exchange Act or any successor rule thereto.

(12) To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during such period, and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive; provided, however, that no such increase shall be taken into account for purposes of determining (i) whether the Closing Price Per Share of the Common Stock equals or exceeds 105% of the Conversion Price in connection with an event which would otherwise be a Change of Control pursuant to Section 13.4 or (ii) whether the Closing Price Per Share of the Common Stock exceeds 150% of the Conversion Price in connection with redemption of the Securities in accordance with the provisions in the form of Security set forth in Section 2.2 hereof. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall give notice of the increase to the Holders in the manner provided in Section 1.6 at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(13) If Holders of the Securities exercise the right of conversion after the date the rights issued under the Company's stock rights agreement, dated as of October 21, 1999, separate from the underlying Common Stock and are therefore not entitled to receive the common stock rights that would otherwise be attributable to the shares of Common Stock

received upon conversion, the Conversion Rate will be adjusted as though such rights were being distributed to holders of Common Stock on the date of such separation. If such an adjustment is made and such rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment will be made to the Conversion Rate on an equitable basis.

SECTION 12.5 Notice of Adjustments of Conversion Rate .

Whenever the Conversion Rate is adjusted as herein provided:

(1) the Company shall compute the adjusted Conversion Rate in accordance with Section 12.4 and shall prepare a certificate signed by its principal financial officer, Comptroller or Treasurer of the Company setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall promptly be filed with the Trustee and with each Conversion Agent; and

(2) upon each such adjustment, a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall be required, and as soon as practicable after it is required, such notice shall be provided by the Company to all Holders in accordance with Section 1.6.

Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder of Securities desiring inspection thereof at its office during normal business hours, and shall not be deemed to have knowledge of any adjustment in the Conversion Rate unless and until a Responsible Officer of the Trustee shall have received such a certificate. Until a Responsible Officer of the Trustee receives such a certificate, the Trustee and each Conversion Agent may assume without inquiry that the last Conversion Rate of which the Trustee has knowledge remains in effect.

SECTION 12.6 Notice of Certain Corporate Action .

In case:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable (i) otherwise than exclusively in cash or (ii) exclusively in cash in an amount that would require any adjustment pursuant to Section 12.4; or

(2) the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(3) of any reclassification of the Common Stock, or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any stockholders of the Company is required, or of the conveyance, sale, transfer or lease (other than a mere grant of security interest) of all or substantially all of the assets of the Company; or

(4) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 10.2, and shall cause to be provided to all Holders in accordance with Section 1.6, at least 20 days (or 10 days in any case specified in clause (1) or (2) above and 30 days for clause (3) above) prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, conveyance, transfer, sale, lease (other than a mere grant of security interest), dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up. Neither the failure to give such notice or the notice referred to in the following paragraph nor any defect therein shall affect the legality or validity of the proceedings described in clauses (1) through (4) of this Section 12.6. If at the time the Trustee shall not be the Conversion Agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

The Company shall cause to be filed at the Corporate Trust Office and each office or agency maintained for the purpose of conversion of Securities pursuant to Section 10.2, and shall cause to be provided to all Holders in accordance with Section 1.6, notice of any tender offer by the Company or any Subsidiary for all or any portion of the Common Stock at or about the time that such notice of tender offer is provided to the public generally.

SECTION 12.7 Company to Reserve Common Stock .

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of Common Stock then issuable upon the conversion of all Outstanding Securities.

SECTION 12.8 Taxes on Conversions .

Except as provided in the next sentence, the Company will pay all stamp taxes and other duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any tax or duty that may be payable in respect of (i) income of the Holder, or (ii) any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 12.9 Covenant as to Common Stock .

The Company agrees that all shares of Common Stock that may be delivered upon conversion of Securities, upon such delivery, will have been duly authorized and validly issued and will be fully paid and nonassessable and, except as provided in Section 12.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

SECTION 12.10 Cancellation of Converted Securities .

All Securities delivered for conversion shall be delivered to the Trustee or its agent to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9.

SECTION 12.11 Provision in Case of Consolidation, Merger or Sale of Assets .

In case of any consolidation or merger of the Company with or into any other Person or any merger of another Person with or into the Company (other than a merger that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease (other than a mere grant of security interest) of all or substantially all of the assets of the Company (other than a sale of all or substantially all of the assets of the Company that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company), the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then Outstanding shall have the right thereafter, during the period such Security shall be convertible as specified in Section 12.1, to convert such Security only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (other than a mere grant of security interest) by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such consolidation, merger, conveyance, sale, transfer or lease (other than a mere grant of security interest), assuming such holder of Common Stock of the Company (i) is not (A) a Person with which the Company consolidated or merged with or into or which merged into or with the Company or to which such conveyance, sale, transfer or lease (other than a mere grant of security interest) was made, as the case may be (a "Constituent Person"), or (B) an Affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (other than a mere grant of security interest) (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (other than a mere grant of security interest) is not the same for each share of Common Stock of the Company held immediately prior to such consolidation, merger, conveyance, sale, transfer or lease (other than a mere grant of security interest) by others than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-electing Share"), then for the purpose of this Section 12.11 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (other than a mere grant of security interest) by the holders of each Non-electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the

Non-electing Shares). Such supplemental indenture shall provide for adjustments that, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. The above provisions of this Section 12.11 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases (other than a mere grant of security interest). Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Security as provided in Section 1.6 promptly upon such execution.

Neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Securities upon the conversion of their Securities after any such consolidation, merger, conveyance, transfer, sale or lease (other than a mere grant of security interest) or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Officer's Certificate or an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

SECTION 12.12 Rights Issued in Respect of Common Stock .

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"):

(i) are deemed to be transferred with such shares of Common Stock,

(ii) are not exercisable, and

(iii) are also issued in respect of future issuances of Common Stock

shall not be deemed distributed for purposes of Section 12.4(2) until the occurrence of the earliest Trigger Event. In addition, in the event of any distribution of rights or warrants, or any Trigger Event with respect thereto, that shall have resulted in an adjustment to the Conversion Rate under Section 12.4(2), (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of any such rights or warrants all of which shall have expired without exercise by any holder thereof, the Conversion Price shall be readjusted as if such issuance had not occurred.

SECTION 12.13 Responsibility of Trustee for Conversion Provisions .

The Trustee, subject to the provisions of Section 6.1, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether

any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee, subject to the provisions of Section 6.1, nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 6.1, nor any Conversion Agent shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of Section 6.1, and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE XIII

REPURCHASE OF SECURITIES AT THE OPTION OF THE HOLDER UPON A CHANGE IN CONTROL

SECTION 13.1 Right to Require Repurchase .

In the event that a Change in Control (as hereinafter defined) shall occur, then each Holder shall have the right, at the Holder's option, but subject to the provisions of Section 13.2, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, all of such Holder's Securities not theretofore called for redemption, or any portion of the principal amount thereof that is equal to U.S. $1,000 or any integral multiple of U.S. $1,000 in excess thereof (provided that no single Security may be repurchased in part unless the portion of the principal amount of such Security to be Outstanding after such repurchase is equal to U.S. $1,000 or integral multiples of U.S. $1,000 in excess thereof), on the date (the "Repurchase Date") that is 45 days after the date of the Company Notice (as defined in Section 13.3) at a purchase price equal to 100% of the principal amount of the Securities to be repurchased plus interest accrued but unpaid to, but excluding, the Repurchase Date (the "Repurchase Price"); provided, however, that installments of interest on Securities whose Stated Maturity is on or prior to the Repurchase Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 3.7. Such right to require the repurchase of the Securities shall not continue after a discharge of the Company from its obligations with respect to the Securities in accordance with Article IV, unless a Change in Control shall have occurred prior to such discharge. At the option of the Company, the Repurchase Price may be paid in cash or, subject to the fulfillment by the Company of the conditions set forth Section 13.2, by delivery of shares of Common Stock having a fair market value equal to the Repurchase Price (less any cash payments), or a combination of cash and Common Stock. Whenever in this Indenture (including Sections 2.2, 3.1, 5.1(1) and 5.8) there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any

provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made.

SECTION 13.2 Conditions to the Company's Election to Pay the Repurchase Price in Common Stock .

The Company may, at its option, pay the Repurchase Price in cash, in Common Stock or a combination thereof. To the extent the Repurchase Price is paid in Common Stock, the Company may elect to pay such amount by delivery of shares of Common Stock pursuant to Section 13.1 if and only if the following conditions shall have been satisfied:

(1) The shares of Common Stock deliverable in payment of the Repurchase Price less any cash payments shall have a fair market value as of the Repurchase Date of not less than the Repurchase Price less any cash payments. For purposes of Section 13.1 and this Section 13.2, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices Per Share of the Common Stock for the five consecutive Trading Days ending on the third Trading Day prior to the Repurchase Date;

(2) The Repurchase Price shall be paid only in cash in the event any shares of Common Stock to be issued upon repurchase of Securities hereunder (i) require registration under any Federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase and if such registration is not completed or does not become effective prior to the Repurchase Date, and/or (ii) require registration with or approval of any governmental authority under any state law or any other Federal law before such shares may be validly issued or delivered upon repurchase and if such registration is not completed or does not become effective or such approval is not obtained prior to the Repurchase Date;

(3) Payment of the Repurchase Price may not be made in Common Stock unless such stock is, or shall have been, listed on a national securities exchange or approved for quotation on The Nasdaq National Market, in either case, on or prior to the Repurchase Date; and

(4) All shares of Common Stock that may be issued upon repurchase of Securities will be issued out of the Company's authorized but unissued Common Stock and, will upon issue, be duly and validly issued and fully paid and non-assessable and free of any preemptive or similar rights.

If all of the conditions set forth in this Section 13.2 are not satisfied in accordance with the terms thereof, the Repurchase Price shall be paid by the Company only in cash.

SECTION 13.3 Notices; Method of Exercising Repurchase Right, Etc .

(1) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, on or before the 30th day after the occurrence of a Change in Control, the Company or, at the request (and expense) of the Company on or before the 15th day after such occurrence, the Trustee, shall give to all Holders of Securities, in the manner provided in Section 1.6, notice (the "Company Notice") of the occurrence of the Change of Control and of the

repurchase right set forth herein arising as a result thereof . The Company shall also deliver a copy of such Company Notice to the Trustee.

Each Company Notice shall state:

(i) the Repurchase Date,

(ii) the date by which the repurchase right must be exercised,

(iii) the Repurchase Price, and whether the Repurchase Price shall be paid by the Company in cash or by delivery of shares of Common Stock or a combination thereof (and the applicable ratio of cash and Common Stock),

(iv) a description of the procedure that a Holder must follow to exercise a repurchase right, and the place or places where such Securities are to be surrendered for payment of the Repurchase Price and accrued interest (including Liquidated Damages, if any), if any to the Repurchase Date,

(v) that on the Repurchase Date the Repurchase Price, and accrued interest (including Liquidated Damages, if any), if any to the Repurchase Date, will become due and payable upon each such Security designated by the Holder to be repurchased, and that interest thereon shall cease to accrue on and after said date,

(vi) the Conversion Rate then in effect, the date on which the right to convert the principal amount of the Securities to be repurchased will terminate and the place or places where such Securities may be surrendered for conversion, and

(vii) the place or places that the Security certificate with the Election of Holder to Require Repurchase as specified in Section 2.2 shall be delivered, and if the Security is a Restricted Securities certificate the place or places that the Surrender Certificate required by Section 13.3(9) shall be delivered.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder' s right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Securities.

If any of the foregoing provisions or other provisions of this Article XIII are inconsistent with applicable law, such law shall govern.

(2) To exercise a repurchase right, a Holder shall deliver to the Trustee on or before the 30th day after the date of the Company Notice (i) irrevocable written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be repurchased (and, if any Security is to repurchased in part, the serial number thereof, the portion of the principal amount thereof to be repurchased and the name of the Person in which the portion thereof to remain Outstanding after such repurchase is to be registered) and a statement that an election to exercise the repurchase right is being made thereby, and, in the event that any portion of the Repurchase Price shall be paid in shares of Common Stock, the name or names (with addresses) in which the certificate or certificates for

shares of Common Stock shall be issued, and (ii) the Securities with respect to which the repurchase right is being exercised. Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the repurchase right is being exercised shall continue until the close of business on the second Business Day before the Repurchase Date.

(3) In the event a repurchase right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee the Repurchase Price in cash or shares of Common Stock or a combination thereof, as provided above, for payment to the Holder on the Repurchase Date, together with accrued and unpaid interest to the Repurchase Date payable with respect to the Securities as to which the repurchase right has been exercised; provided, however, that installments of interest that mature on or prior to the Repurchase Date shall be payable in cash to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date.

(4) If any Security (or portion thereof) surrendered for repurchase shall not be so paid on the Repurchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Repurchase Date at the rate of 2.00% per annum, and each Security shall remain convertible into Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

(5) Any Security that is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Security so surrendered.

(6) Any issuance of shares of Common Stock in respect of any portion of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the Repurchase Date and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such repurchase shall be deemed to have become on the Repurchase Date the holder or holders of record of the shares represented thereby; provided, however, that any surrender for repurchase on a date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificate or certificates for such shares are to be issued as the record holder or holders thereof for all purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any Common Stock issued upon repurchase of any Security declared prior to the Repurchase Date.

(7) No fractions of shares shall be issued upon repurchase of Securities. If more than one Security shall be repurchased from the same Holder and any portion of the Repurchase Price shall be payable in shares of Common Stock, the number of full shares that shall be issuable

upon such repurchase shall be computed on the basis of the aggregate principal amount of the Securities so repurchased. Instead of any fractional share of Common Stock that would otherwise be issuable on the repurchase of any Security or Securities, the Company will deliver to the applicable Holder its check for the current market value of such fractional share. The current market value of a fraction of a share is determined by multiplying the current market price of a full share by the fraction, and rounding the result to the nearest cent. For purposes of this Section, the current market price of a share of Common Stock is the Closing Price Per Share of the Common Stock on the Trading Day immediately preceding the Repurchase Date.

(8) Any issuance and delivery of certificates for shares of Common Stock on repurchase of Securities shall be made without charge to the Holder of Securities being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the securities represented thereby; provided, however, that the Company shall not be required to pay any tax or duty that may be payable in respect of (i) income of the Holder or (ii) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the Holder of the Securities being repurchased, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

(9) If shares of Common Stock to be delivered upon repurchase of a Security are to be registered in a name other than that of the beneficial owner of such Security, then such Holder must deliver to the Trustee a Surrender Certificate, dated the date of surrender of such Restricted Security and signed by such beneficial owner, as to compliance with the restrictions on transfer applicable to such Restricted Security. Neither the Trustee nor any Registrar or Transfer Agent or other agents shall be required to register in a name other than that of the beneficial owner shares of Common Stock issued upon repurchase of any such Restricted Security not so accompanied by a properly completed Surrender Certificate.

(10) All Securities delivered for repurchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9.

SECTION 13.4 Certain Definitions .

For purposes of this Article XIII,

(1) the term “beneficial owner” shall be determined in accordance with Rule 13d-3, as in effect on the date of the original execution of this Indenture, promulgated by the Commission pursuant to the Exchange Act;

(2) a “Change in Control” shall be deemed to have occurred at the time, after the original issuance of the Securities, of:

(i) the acquisition by any Person (including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act) of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of

shares of capital stock of the Company entitling such person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in the elections of directors, other than any such acquisition by the Company, any Subsidiary of the Company or any employee benefit plan of the Company; or

(ii) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company, or any conveyance, sale, transfer or lease (other than a mere grant of security interest) of all or substantially all of the assets of the Company to another Person (other than (a) any such transaction (x) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which the holders of 50% or more of the total voting power of all shares of the Company's capital stock entitled to vote generally in the election of directors immediately prior to such transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after such transaction or (b) any transaction which is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock into solely shares of common stock of the surviving entity);

(iii) provided, however, that a Change in Control shall not be deemed to have occurred if (I) the Closing Price Per Share of the Common Stock for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the date of the Change in Control or the date of the public announcement of the Change in Control (in the case of a Change in Control under clause (i) above) or the period of 10 consecutive Trading Days ending immediately before the Change in Control (in the case of a Change in Control under clause (ii) above) shall, in the case of each of such five Trading Days, equal or exceed 105% of the Conversion Price of the Securities in effect on each of such five Trading Days or (II) all of the consideration (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in a merger or consolidation otherwise constituting a Change of Control under clause (i) and/or clause (ii) above consists of shares of common stock, depository receipts or other certificates representing common equity interests traded on a national securities exchange or quoted on The Nasdaq National Market (or will be so traded or quoted immediately following such merger or consolidation) and as a result of such merger or consolidation the Securities become convertible solely into such common stock, depository receipts or other certificates representing common equity interests;

(3) the term "Conversion Price" shall equal U.S.$1,000 divided by the Conversion Rate (rounded to the nearest cent); and

(4) for purposes of Section 13.4(2)(i), the term "person" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act, as in effect on the date of the original execution of this Indenture.

SECTION 13.5 Consolidation, Merger, etc .

In the case of any merger, consolidation, conveyance, sale, transfer or lease (other than a mere grant of security interest) of all or substantially all of the assets of the Company to which Section 12.11 applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive shares of stock and other securities or property or assets (including cash) which includes shares of Common Stock of the Company or common stock of another Person that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate fair market value of such shares of stock and other securities, property and assets (including cash) (as determined by the Company, which determination shall be conclusive and binding), then the Person formed by such consolidation or resulting from such merger or combination or which acquires the properties or assets (including cash) of the Company, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of Holders to cause the Company to repurchase the Securities following a Change in Control, including without limitation the applicable provisions of this Article XIII and the definitions of the Common Stock and Change in Control, as appropriate, and such other related definitions set forth herein as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply in the event of a subsequent Change in Control to the common stock and the issuer thereof if different from the Company and Common Stock of the Company (in lieu of the Company and the Common Stock of the Company).

ARTICLE XIV

HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY; NON-RECOURSE

SECTION 14.1 Company to Furnish Trustee Names and Addresses of Holders .

The Company will furnish or cause to be furnished to the Trustee:

(1) semi-annually, not more than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities as of such Regular Record Date, and

(2) at such other times as the Trustee may reasonably request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

provided, however, that no such list need be furnished so long as the Trustee is acting as Security Registrar.

SECTION 14.2 Preservation of Information .

(1) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 14.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list, if any, furnished to it as provided in Section 14.1 upon receipt of a new list so furnished.

(2) After this Indenture has been qualified under the Trust Indenture Act, the rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights, and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(3) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

SECTION 14.3 Reports by Trustee .

(1) After this Indenture has been qualified under the Trust Indenture Act, the Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

(2) After this Indenture has been qualified under the Trust Indenture Act, a copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which the Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when the Securities are listed on any stock exchange.

SECTION 14.4 Reports by Company .

After this Indenture has been qualified under the Trust Indenture Act, the Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

ARTICLE XV

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 15.1 Indenture and Securities Solely Corporate Obligations .

No recourse for the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Security and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any past, present or future incorporator, stockholder, employee, agent, officer, or director or subsidiary, as such, of the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

GILEAD SCIENCES, INC.,

By: /s/ JOHN MILLIGAN
Name: John Milligan
Title: Sr. VP and CFO

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION
as Trustee

By: /s/ JAMES NAGY
Name: James Nagy
Title: Assistant Vice President

ANNEX A — Form of Unrestricted Securities Certificate

UNRESTRICTED SECURITIES CERTIFICATE

(For removal of Restricted Securities Legend pursuant to Section 3.5(3))

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION
560 Mission Street, 13th Floor
San Francisco, California 94105

JPMorgan
Institutional Trust Services Window
4 New York Plaza, Ground Floor
New York, New York 10004-2413

RE: 2.00% CONVERTIBLE SENIOR NOTES DUE DECEMBER 15, 2007 OF GILEAD SCIENCES, INC. (THE "SECURITIES")

Reference is made to the Indenture, dated as of December 18, 2002 (the "Indenture"), from Gilead Sciences, Inc. (the "Company") to J.P. Morgan Trust Company, National Association, as Trustee. Terms used herein and defined in the Indenture or in Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to U.S.$_____ principal amount of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No. 375558 AC 7

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Security, they are held through the Depositary or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be exchanged for Securities bearing no Restricted Securities Legend pursuant to Section 3.5(3) of the Indenture. In connection with such exchange, the Owner hereby certifies that the exchange is occurring after a period of at least two years has elapsed since the Issue Date, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company. The Owner also acknowledges that any future transfers of the Specified Securities must comply with all applicable securities laws of the States of the United States and other jurisdictions.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchaser.

Dated: _____

(Print the name of the Undersigned, as such term is defined in the third paragraph of this certificate.)

By: _____
Name: _____
Title: _____

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

ANNEX B — Form of Surrender Certificate

In connection with the certification contemplated by Section 12.2 or 13.3(9) relating to compliance with certain restrictions relating to transfers of Restricted Securities, such certification shall be provided substantially in the form of the following certificate, with only such changes thereto as shall be approved by the Company and Goldman, Sachs & Co.:

CERTIFICATE

GILEAD SCIENCES, INC.

2.00% CONVERTIBLE SENIOR NOTES DUE DECEMBER 15, 2007

This is to certify that as of the date hereof with respect to U.S. $_____ principal amount of the above-captioned securities surrendered on the date hereof (the "Surrendered Securities") for registration of transfer, or for conversion or repurchase where the securities issuable upon such conversion or repurchase are to be registered in a name other than that of the undersigned Holder (each such transaction being a "transfer"), the undersigned Holder (as defined in the Indenture) certifies that the transfer of Surrendered Securities associated with such transfer complies with the restrictive legend set forth on the face of the Surrendered Securities for the reason checked below:

_____ The transfer of the Surrendered Securities complies with Rule 144A under the Securities Act; or

_____ The transfer of the Surrendered Securities complies with Rule 144 under the United States Securities Act of 1933, as amended (the "Securities Act"); or

_____ The transfer of the Surrendered Securities has been made to an institution that is an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act in a transaction exempt from the registration requirements of the Securities Act and a signed letter containing certain representations and agreements relating to restrictions on transfer of the Securities has been delivered (and if such transfer is for an aggregate principal amount less than $250,000 an opinion of counsel acceptable to the Company if requested by the Company, that such transfer is exempt from registration); or

_____ The transfer of the Surrendered Securities has been made pursuant to an exemption from registration under the Securities Act and an opinion of counsel has been delivered to the Company with respect to such transfer.

[Name of Holder]

Dated: _____
*To be dated the date of surrender

Exhibit 4.6

Gilead Sciences, Inc.

2.00% Convertible Senior Notes due December 15, 2007

Registration Rights Agreement

December 18, 2002

Goldman, Sachs & Co.,
85 Broad Street,
New York, New York 10004.

Ladies and Gentlemen:

Gilead Sciences, Inc., a Delaware corporation (the "Company"), proposes to issue and sell to the Purchaser (as defined herein) upon the terms set forth in the Purchase Agreement (as defined he rein) its 2.00% Convertible Senior Notes due December 15, 2007 (the "Securities"). As an inducement to the Purchaser to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Purchaser thereunder, the Company agrees with the Purchaser for the benefit of Holders (as defined herein) from time to time of the Registrable Securities (as defined herein) as follows:

1. *Definitions* .

(a) Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement. As used in this agreement (the "Agreement"), the following defined terms shall have the following meanings:

"Act" or "Securities Act" means the United States Securities Act of 1933, as amended.

" Affiliate" of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

" *Closing Date"* means the First Time of Delivery as defined in the Purchase Agreement.

" *Commission"* means the United States Securities and Exchange Commission, or any other federal agency at the time administering the Exchange Act or the Securities Act, whichever is the relevant statute for the particular purpose.

" *Common Stock"* means the Company's common stock, par value $0.001 per share, together with any associated preferred stock purchase rights.

"DTC" means The Depository Trust Company.

"*Effective Date"* has the meaning assigned thereto in Section 2(b)(i) hereof.

"*Effective Failure"* has the meaning assigned thereto in Section 7(b) hereof.

"*Effectiveness Period"* has the meaning assigned thereto in Section 2(b)(i) hereof.

"Effective Time" means the time at which the Commission declares the Shelf Registration Statement effective or at which the Shelf Registration Statement otherwise becomes effective.

"Electing Holder" has the meaning assigned thereto in Section 3(a)(iii) hereof.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

"Holder" means, any person that is the record owner of Registrable Securities (and includes any person that has a beneficial interest in any Registrable Security in book-entry form).

"Indenture" means the Indenture, dated as of December 18, 2002, between the Company and J.P. Morgan Trust Company, National Association, as amended and supplemented from time to time in accordance with its terms.

"*Liquidated Damages"* has the meaning assigned thereto in Section 7(a) hereof.

"*Managing Underwriters"* means the investment banker or investment bankers and manager or managers that shall administer an underwritten offering, if any, conducted pursuant to Section 6 hereof.

"NASD Rules" means the Rules of the National Association of Securities Dealers, Inc., as amended from time to time.

"Notice and Questionnaire" means a Notice of Registration Statement and Selling Securityholder Questionnaire substantially in the form of Appendix A hereto.

The term *"person"* means an individual, partnership, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"*Prospectus*" means the prospectus (including, without limitation, any preliminary prospectus, any final prospectus and any prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Act) included in the Shelf Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement and by all other amendments and supplements to such prospectus, including all material incorporated by reference in such prospectus and all documents filed after the date of such prospectus by the Company under the Exchange Act and incorporated by reference therein.

"*Purchase Agreement*" means the purchase agreement, dated as of December 13, 2002, between the Purchaser and the Company relating to the Securities.

"*Purchaser*" means Goldman, Sachs & Co.

"*Registrable Securities*" means all or any portion of the Securities issued from time to time under the Indenture in registered form and the shares of Common Stock issuable upon conversion, repurchase or redemption of such Securities; provided , however , that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

"*Registration Default*" has the meaning assigned thereto in Section 7(a) hereof.

"*Restricted Security*" means any Security or share of Common Stock issuable upon conversion thereof except any such Security or share of Common Stock that (i) has been effectively registered under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with Section • of the Indenture.

"*Rules and Regulations*" means the published rules and regulations of the Commission promulgated under the Securities Act or the Exchange Act, as in effect at any relevant time.

"*Shelf Registration*" means a registration effected pursuant to Section 2 hereof.

"*Shelf Registration Statement*" means a "shelf" registration statement filed under the Securities Act providing for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities pursuant to Rule 415 under the Securities Act and/or any similar rule that may be adopted by the Commission, filed by the Company pursuant to the provisions of Section 2 of this Agreement, including the Prospectus contained therein, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"Trust Indenture Act" means the Trust Indenture Act of 1939, or any successor thereto, and the rules, regulations and forms promulgated thereunder, as the same shall be amended from time to time.

The term *"underwriter"* means any underwriter of Registrable Securities in connection with an offering thereof under a Shelf Registration Statement.

(b) Wherever there is a reference in this Agreement to a percentage of the "principal amount" of Registrable Securities or to a percentage of Registrable Securities, Common Stock shall be treated as representing the principal amount of Securities that was surrendered for conversion or exchange in order to receive such number of shares of Common Stock.

2. *Shelf Registration* .

(a) The Company shall, no later than 90 calendar days following the Closing Date, file with the Commission a Shelf Registration Statement relating to the offer and sale of the Registrable Securities by the Holders from time to time in accordance with the methods of distribution elected by such Holders and set forth in such Shelf Registration Statement and, thereafter, shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Act no later than 180 calendar days following the Closing Date; *provided* , *however* , that the Company may, upon written notice to all Holders, postpone having the Shelf Registration Statement declared effective for a reasonable period not to exceed 90 days if the Company possesses material non-public information, the disclosure of which would have a material adverse effect on the Company and its subsidiaries taken as a whole; *provided, further*, however, that no Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement or to use the Prospectus forming a part thereof for resales of Registrable Securities unless such Holder is an Electing Holder.

(b) The Company shall use its reasonable best efforts:

(i) to keep the Shelf Registration Statement continuously effective in order to permit the Prospectus forming a part thereof to be usable by Holders until the earliest of (1) the sale of all Registrable Securities registered under the Shelf Registration Statement; (2) the expiration of the period referred to in Rule 144(k) under the Act with respect to all Registrable Securities held by Persons that are not Affiliates of the Company; and (3) two years from the date (the "Effective Date") such Shelf Registration Statement is declared effective (such period being referred to herein as the "Effectiveness Period");

(ii) after the Effective Time of the Shelf Registration Statement, as promptly as is practicable upon the request of any Holder of Registrable Securities that is not then an Electing Holder, to take any action reasonably necessary to enable such Holder to use the Prospectus forming a part thereof for offers and resales of Registrable Securities, including, without limitation, any action necessary to identify such Holder as a selling securityholder in the Shelf Registration Statement; *provided, however,* that nothing in this subparagraph shall relieve such Holder of the obligation to return a

completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(ii) hereof; and

(iii) if at any time the Securities, pursuant to Article • of the Indenture, are convertible into securities other than Common Stock, to cause, or to cause any successor under the Indenture to cause, such securities to be included in the Shelf Registration Statement no later than the date on which the Securities may then be convertible into such securities.

The Company shall be deemed not to have used its reasonable best efforts to keep the Shelf Registration Statement effective during the periods specified in Section 2(b) above if the Company voluntarily takes any action that would result in Holders of Registrable Securities covered thereby not being able to offer and sell any of such Registrable Securities during that period, unless such action is (A) required by applicable law and the Company thereafter promptly complies with the requirements of paragraph 3(j) below or (B) permitted pursuant to Section 2(c) below.

(c) The Company may suspend the use of the Prospectus for a period not to exceed 30 days in any 90-day period or an aggregate of 90 days in any 12-month period if the Board of Directors of the Company shall have determined in good faith that because of valid business reasons (not including avoidance of the Company's obligations hereunder), including the acquisition or divestiture of assets, pending corporate developments and similar events, it is in the best interests of the Company to suspend such use, and prior to suspending such use the Company provides the Holders with written notice of such suspension, which notice need not specify the nature of the event giving rise to such suspension.

3. *Registration Procedures* . In connection with the Shelf Registration Statement, the following provisions shall apply:

(a) (i) Not less than 30 calendar days prior to the Effective Time of the Shelf Registration Statement, the Company shall mail the Notice and Questionnaire to the Holders of Registrable Securities. No Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement as of the Effective Time, and no Holder shall be entitled to use the Prospectus forming a part thereof for offers and resales of Registrable Securities at any time, unless such Holder has returned a completed and signed Notice and Questionnaire to the Company by the deadline for response set forth therein; *provided, however* , Holders of Registrable Securities shall have at least 28 calendar days from the date on which the Notice and Questionnaire is first mailed to such Holders to return a completed and signed Notice and Questionnaire to the Company.

(ii) After the Effective Time of the Shelf Registration Statement, the Company shall, upon the request of any Holder of Registrable Securities that is not then an Electing Holder, promptly send a Notice and Questionnaire to such Holder. The Company shall not be required to take any action to name such Holder as a selling securityholder in the Shelf Registration Statement or to enable such Holder to use the

Prospectus forming a part thereof for offers or resales of Registrable Securities until such Holder has returned a completed and signed Notice and Questionnaire to the Company.

(iii) The term "Electing Holder" shall mean any Holder of Registrable Securities that has returned a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(i) or 3(a)(ii) hereof.

(b) The Company shall furnish to each Electing Holder, prior to the Effective Time, a copy of the Shelf Registration Statement initially filed with the Commission, and shall furnish to such Holders, prior to the filing thereof with the Commission, copies of each amendment thereto and each amendment or supplement, if any, to the Prospectus included therein, and shall use its reasonable best efforts to reflect in each such document, at the Effective Time or when so filed with the Commission, as the case may be, such comments as such Holders and Counsel to the Holders reasonably may propose.

(c) Subject to the Company's rights under Section 2(c), the Company shall as promptly as practicable take such action as may be necessary so that (i) each of the Shelf Registration Statement and any amendment thereto and the Prospectus forming a part thereof and any amendment or supplement thereto (and each report or other document incorporated therein by reference in each case) complies in all material respects with the Securities Act and the Exchange Act and the respective rules and regulations thereunder, (ii) each of the Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) the Prospectus forming a part of the Shelf Registration Statement, as supplemented, if applicable, does not at any time during the Effectiveness Period include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company shall as promptly as is practicable advise each Electing Holder, and shall confirm such advice in writing if so requested by any such Electing Holder:

(i) when a Shelf Registration Statement and any amendment thereto has been filed with the Commission and when a Shelf Registration Statement or any post-effective amendment thereto has become effective, in each case making a public announcement thereof by release made to Reuters Economic Services and Bloomberg Business News;

(ii) of any request by the Commission for amendments to the Shelf Registration Statement or supplements to the Prospectus included therein or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included in the Shelf Registration Statement for sale in any jurisdiction or the initiation of any proceeding for such purpose; and

(v) of the happening of any event or the existence of any state of facts that requires the making of any changes in the Shelf Registration Statement or the Prospectus included therein so that, as of such date, such Shelf Registration Statement and Prospectus do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading (which advice shall be accompanied by an instruction to such Holders to suspend the use of the Prospectus until the requisite changes have been made).

(e) The Company shall use its reasonable best efforts to prevent the issuance, and if issued to obtain the withdrawal at the earliest possible time, of any order suspending the effectiveness of the Shelf Registration Statement.

(f) The Company shall furnish to each Electing Holder, without charge, at least one copy of the Shelf Registration Statement and all post-effective amendments thereto, including financial statements and schedules, and, if such Electing Holder so requests in writing, all reports, other documents and exhibits that are filed with or incorporated by reference in the Shelf Registration Statement.

(g) The Company shall, during the Effectiveness Period, deliver to each Electing Holder, without charge, as many copies of the Prospectus (including each preliminary Prospectus) included in the Shelf Registration Statement and any supplement thereto as such Electing Holder may reasonably request; and the Company consents (except during the periods specified in Section 2(c) above or during the continuance of any event described in Section 3(d)(v) above) to the use of the Prospectus and any supplement thereto by each of the Electing Holders in connection with the offering and sale of the Registrable Securities covered by the Prospectus and any supplement thereto during the Effectiveness Period.

(h) Prior to any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company shall (i) register or qualify or cooperate with the Electing Holders and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "blue sky" laws of such jurisdictions within the United States as any Electing Holder may reasonably request, (ii) keep such registrations or qualifications in effect and comply with such laws so as to permit the continuance of offers and sales in such jurisdictions for so long as may be necessary to enable any Electing Holder or underwriter, if any, to complete its distribution of Registrable Securities pursuant to the Shelf Registration Statement, and (iii) take any and all other actions necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities; *provided* , *however* , that in no event shall the Company be obligated to (A) qualify as a foreign corporation or as a dealer in

securities in any jurisdiction where it would not otherwise be required to so qualify but for this Section 3(h) or (B) file any general consent to service of process in any jurisdiction where it is not as of the date hereof so subject.

(i) Unless any Registrable Securities shall be in book-entry only form, the Company shall cooperate with the Electing Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Shelf Registration Statement, which certificates, if so required by any securities exchange upon which any Registrable Securities are listed, shall be penned, lithographed or engraved, or produced by any combination of such methods, on steel engraved borders, and which certificates shall be free of any restrictive legends and in such permitted denominations and registered in such names as Electing Holders may request in connection with the sale of Registrable Securities pursuant to the Shelf Registration Statement.

(j) Subject to the Company's exercise of its rights under Section 2(c), upon the occurrence of any fact or event contemplated by paragraph 3(d)(v) above, the Company shall as promptly as practicable prepare a post-effective amendment to any Shelf Registration Statement or supplement to the related Prospectus or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Company notifies the Electing Holders of the occurrence of any fact or event contemplated by paragraph 3(d)(v) above, the Electing Holder shall suspend the use of the Prospectus until the requisite changes to the Prospectus have been made.

(k) Not later than the Effective Time of the Shelf Registration Statement, the Company shall provide a CUSIP number for the Registrable Securities that are debt securities.

(l) The Company shall use its reasonable best efforts to comply with all applicable Rules and Regulations, and to make generally available to its securityholders as soon as practicable, but in any event not later than eighteen months after (i) the effective date (as defined in Rule 158(c) under the Securities Act) of the Shelf Registration Statement, (ii) the effective date of each post-effective amendment to the Shelf Registration Statement, and (iii) the date of each filing by the Company with the Commission of an Annual Report on Form 10-K that is incorporated by reference in the Shelf Registration Statement, an earning statement of the Company and its subsidiaries complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158).

(m) Not later than the Effective Time of the Shelf Registration Statement, the Company shall cause the Indenture to be qualified under the Trust Indenture Act; in connection with such qualification, the Company shall cooperate with the Trustee under the Indenture and the Holders (as defined in the Indenture) to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the Trust

Indenture Act; and the Company shall execute, and shall use reasonable efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner. In the event that any such amendment or modification referred to in this Section 3(m) involves the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) In the event of an underwritten offering conducted pursuant to Section 6 hereof, the Company shall, if requested, promptly include or incorporate in a Prospectus supplement or post-effective amendment to the Shelf Registration Statement such information as the Managing Underwriters reasonably agree should be included therein and to which the Company does not reasonably object and shall make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post-effective amendment.

(o) The Company shall enter into such customary agreements (including an underwriting agreement in customary form in the event of an underwritten offering conducted pursuant to Section 6 hereof) and take all other appropriate action in order to expedite and facilitate the registration and disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures substantially identical in substance to those set forth in Section 5 hereof with respect to all parties to be indemnified pursuant to Section 5 hereof.

(p) The Company shall:

(i) Make available for inspection by any Electing Holders, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, if any, and any attorney, accountant or other agent retained by any such Electing Holders or any such underwriters (collectively, the "Inspectors"), at the offices where normally kept, during reasonable business hours at such time or times as shall be mutually convenient for the Company and the Inspectors as a group, all financial and other records, pertinent corporate documents and instruments of the Company and its subsidiaries (collectively, the "Records") as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information reasonably requested by any such Inspector in connection with such Shelf Registration Statement. Records that the Company determines, in good faith, to be confidential and any Records that it notifies the Inspectors are confidential shall not be disclosed or used by any Inspector, unless (A) the disclosure of such Records is necessary to avoid or correct a material misstatement or material omission in such Shelf Registration Statement, (B) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (C) disclosure of such information is made in a court proceeding or required by law or (D) the information in such Records has been made generally available to the public other than through the acts of such Inspector or as a

result of a breach of this Agreement; provided, however, that prior notice shall be provided as soon as practicable to the Company of the potential disclosure of any information by such Inspector pursuant to clauses (B) or (C) of this sentence to permit the Company to obtain a protective order (or waive the provisions of this paragraph (i)) and that such Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of any Electing Holder or Inspector; provided, further, that prior to the disclosure to any Inspector of any Records that the Company determines, in good faith, to be confidential, the Company may require such Inspector to execute a confidentiality agreement whereby such Inspector shall agree to the limitations on the disclosure of the Record to the extent provided above;

(ii) in connection with any underwritten offering conducted pursuant to Section 6 hereof, make such representations and warranties to the Managing Underwriters, in form, substance and scope as are customarily made by issuers to underwriters in primary underwritten offerings of equity and convertible debt securities and covering matters including, but not limited to, those set forth in the Purchase Agreement;

(iii) in connection with any underwritten offering conducted pursuant to Section 6 hereof, obtain opinions of counsel to the Company (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters) addressed to the underwriters, covering such matters as are customarily covered in opinions requested in primary underwritten offerings of equity and convertible debt securities.In addition, counsel to the Company shall provide a letter to the underwriters stating that nothing came to such counsel's attention that as of each Time of Delivery and as of the Effective Time of the Shelf Registration Statement or most recent post-effective amendment thereto, as the case may be, the Shelf Registration Statement, including the documents incorporated by reference therein, contained any untrue statement of a material fact or the omission of a material fact required to be stated therein or necessary to make the statements therein not misleading and the Prospectus, including the documents incorporated by reference therein, contained any untrue statement of a material fact or the omission of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;;

(iv) in connection with any underwritten offering conducted pursuant to Section 6 hereof, obtain "cold comfort" letters and updates thereof from the independent public accountants of the Company (and, if necessary, from the independent public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Shelf Registration Statement), addressed to the underwriters, in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with primary underwritten offerings;

(v) in connection with any underwritten offering conducted pursuant to Section 6 hereof, deliver such documents and certificates as may be reasonably requested by the Managing Underwriters, if any, including, without limitation, certificates to evidence compliance with Section 3(j) hereof and with any conditions contained in the underwriting agreement or other agreements entered into by the Company.

(q) The Company will use its best efforts to cause the Common Stock issuable upon conversion of the Securities to be listed for quotation on the Nasdaq National Market System or other stock exchange or trading system on which the Common Stock primarily trades on or prior to the Effective Time of the Shelf Registration Statement hereunder.

(r) The Company shall use reasonable best efforts to take all other steps necessary to effect the registration, offering and sale of the Registrable Securities covered by the Shelf Registration Statement contemplated hereby.

4. *Registration Expenses.* Except as otherwise provided in Section 3, the Company shall bear all fees and expenses incurred in connection with the performance of its obligations under Sections 2, 3 and 6 hereof and shall bear or reimburse the Electing Holders for the reasonable fees and disbursements of a single counsel selected by a plurality of all Electing Holders who own an aggregate of not less than 25% of the Registrable Securities covered by the Shelf Registration Statement to act as counsel therefor in connection therewith ("Counsel to the Holders"). Each Electing Holder shall pay all underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of such Electing Holder's Registrable Securities pursuant to the Shelf Registration Statement.

5. *Indemnification and Contribution.*

(a) *Indemnification by the Company* . Upon the registration of the Registrable Securities pursuant to Section 2 hereof, the Company shall indemnify and hold harmless each Electing Holder and each underwriter, selling agent or other securities professional, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each person who controls such Electing Holder, underwriter, selling agent or other securities professional within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such person being sometimes referred to as an "Indemnified Person") against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Shelf Registration Statement under which such Registrable Securities are registered under the Securities Act, or any Prospectus contained therein or furnished by the Company to any Indemnified Person, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company hereby agrees to reimburse such Indemnified Person for any legal or other expenses reasonably

incurred by it in connection with investigating or defending any such action or claim as such expenses are incurred; *provided , however* , that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Shelf Registration Statement or Prospectus, or amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person expressly for use therein; *provided , further* , that the Company shall not be liable to any Indemnified Person under the indemnity agreement in this subsection (a) with respect to any preliminary prospectus to the extent that any such loss, claim, damage or liability of such Indemnified Person results from the fact that such Indemnified Person sold Registrable Securities to a person as to whom it shall be established that there was not sent or given, at or prior to the written confirmation of such sale, a copy of the final prospectus (excluding documents incorporated by reference) in any case where such delivery is required by the Securities Act if the Company has previously furnished copies thereof in sufficient quantity and on a timely basis to such Indemnified Party and the loss, claim, damage or liability of such Indemnified Person results from an untrue statement or alleged untrue statement of material fact or omission or alleged omission of a material fact contained in the preliminary prospectus which was identified in writing (including email) at or prior to the time of delivery of the final prospectus to such Indemnified Party and corrected in the final prospectus; *provided, further* , that the Company shall not be liable to any Indemnified Person under the indemnity agreement in this subsection (a) to the extent that it shall be established that any such loss, claim, damage or liability of such Indemnified Person results from the fact that such Indemnified Person sold Registrable Securities after such Indemnified Person had received written notice from the Company that the use of such Prospectus was suspended as provided in Section 3 (d)(v) hereof and such loss, claim, damage or liability was directly caused by the events or the existence of any state of facts that gave rise to such suspension.

(b) *Indemnification by the Electing Holders and any Agents and Underwriters* . Each Electing Holder agrees, as a consequence of the inclusion of any of such Electing Holder's Registrable Securities in such Shelf Registration Statement, and each underwriter, selling agent or other securities professional, if any, which facilitates the disposition of Registrable Securities shall agree, as a consequence of facilitating such disposition of Registrable Securities, severally and not jointly, to (i) indemnify and hold harmless the Company, its directors, officers who sign any Shelf Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in such Shelf Registration Statement or Prospectus, or any amendment or supplement, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Electing Holder, underwriter, selling agent or other securities professional expressly for

use therein, and (ii) reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) *Notices of Claims, Etc* . Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under this Section 5, notify such indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under the indemnification provisions of or contemplated by subsection (a) or (b) above. In case any such action shall be brought against any indemnified party and it shall notify an indemnifying party of the commencement thereof, such indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, such indemnifying party shall not be liable to such indemnified party under this Section 5 for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) *Contribution* . If the indemnification provided for in this Section 5 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or by such indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation (even if the Electing Holders or any underwriters, selling agents or other securities professionals or all of

them were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 5(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Electing Holders and any underwriters, selling agents or other securities professionals in this Section 5(d) to contribute shall be several in proportion to the percentage of principal amount of Registrable Securities registered or underwritten, as the case may be, by them and not joint.

(e) Notwithstanding any other provision of this Section 5, in no event will any (i) Electing Holder be required to undertake liability to any person under this Section 5 for any amounts in excess of the dollar amount of the proceeds to be received by such Holder from the sale of such Holder's Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to any Shelf Registration Statement under which such Registrable Securities are to be registered under the Securities Act and (ii) underwriter, selling agent or other securities professional be required to undertake liability to any person hereunder for any amounts in excess of the discount, commission or other compensation payable to such underwriter, selling agent or other securities professional with respect to the Registrable Securities underwritten by it and distributed to the public.

(f) The obligations of the Company under this Section 5 shall be in addition to any liability which the Company may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 5 shall be in addition to any liability which such Indemnified Person may otherwise have to the Company. The remedies provided in this Section 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity.

6. *Underwritten Offering.* Any Holder of Registrable Securities who desires to do so may sell Registrable Securities (in whole or in part) in an underwritten offering; *provided* that (i) the Electing Holders of at least 33-1/3% in aggregate principal amount of the Registrable Securities then covered by the Shelf Registration Statement shall request such an offering and (ii) at least such aggregate principal amount of such Registrable Securities shall be included in such offering; and *provided further* that the Company shall not be obligated to cooperate with more than one underwritten offering during the Effectiveness Period. Upon receipt of such a request, the Company shall provide all Holders of Registrable Securities written notice of the request, which notice shall inform such Holders that they have the opportunity to participate in the offering. In any such underwritten offering, the investment banker or bankers and manager or managers that will administer the offering will be selected by, and the underwriting arrangements with respect thereto (including the size of the offering) will be approved by, the holders of a majority of the Registrable Securities to be included in such offering; *provided , however* , that such investment bankers and managers and underwriting arrangements must be

reasonably satisfactory to the Company. No Holder may participate in any underwritten offering contemplated hereby unless (a) such Holder agrees to sell such Holder's Registrable Securities to be included in the underwritten offering in accordance with any approved underwriting arrangements, (b) such Holder completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such approved underwriting arrangements, and (c) if such Holder is not then an Electing Holder, such Holder returns a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(ii) hereof within a reasonable amount of time before such underwritten offering. The Holders participating in any underwritten offering shall be responsible for any underwriting discounts and commissions and fees and, subject to Section 4 hereof, expenses of their own counsel. The Company shall pay all expenses customarily borne by issuers in an underwritten offering, including but not limited to filing fees, the fees and disbursements of its counsel and independent public accountants and any printing expenses incurred in connection with such underwritten offering. Notwithstanding the foregoing or the provisions of Section 3(n) hereof, upon receipt of a request from the Managing Underwriter or a representative of holders of a majority of the Registrable Securities to be included in an underwritten offering to prepare and file an amendment or supplement to the Shelf Registration Statement and Prospectus in connection with an underwritten offering, the Company may delay the filing of any such amendment or supplement for up to 90 days if the Board of Directors of the Company shall have determined in good faith that the Company has a bona fide business reason for such delay.

7. *Liquidated Damages.*

(a) Pursuant to Section 2(a) hereof, the Company may, upon written notice to all the Holders, postpone having the Shelf Registration Statement declared effective for a reasonable period not to exceed 90 days if the Company possesses material non-public information, the disclosure of which would have a material adverse effect on the Company and its subsidiaries taken as a whole. Notwithstanding any such postponement, if (i) on or prior to the 90th day following the Closing Date, a Shelf Registration Statement has not been filed with the Commission or (ii) on or prior to the 180th day following the Closing Date, such Shelf Registration Statement is not declared effective by the Commission (each, a "Registration Default"), the Company shall be required to pay liquidated damages ("Liquidated Damages"), from and including the day following such Registration Default until such Shelf Registration Statement is either so filed or so filed and subsequently declared effective, as applicable, at a rate per annum equal to an additional one-quarter of one percent (0.25%) of the principal amount of Registrable Securities, to and including the 90th day following such Registration Default and one-half of one percent (0.5%) thereof from and after the 91st day following such Registration Default.

(b) In the event that the Shelf Registration Statement ceases to be effective (or the Holders of Registrable Securities are otherwise prevented or restricted by the Company from effecting sales pursuant thereto) (an "Effective Failure") for more than 30 days, whether or not consecutive, in any 90-day period, or for more than 90 days, whether or not consecutive, during any 12-month period, then the Company shall pay Liquidated Damages at a rate per annum

equal to an additional one-half of one percent (0.5%) of the principal amount of Registrable Securities from the 31st day upon which an Effective Failure occurs in any 90-day period or the 91st day upon which an Effective Failure occurs in any 12-month period, as the case may be, until the earlier of (i) the time the Shelf Registration Statement again becomes effective or the Holders of Registrable Securities are again able to make sales under the Shelf Registration Statement or (ii) the time the Effectiveness Period expires. For the purpose of determining an Effective Failure, days on which the Company has been obligated to pay Liquidated Damages in accordance with the foregoing in respect of a prior Effective Failure within the applicable 90-day or 12-month period, as the case may be, shall not be included.

(c) In the event the Company fails to file a post-effective amendment to the Shelf Registration Statement, or the post-effective amendment is not declared effective, within the periods required by Section 2, the Company shall pay Liquidated Damages at a rate per annum equal to an additional one-half of one percent (0.5%) of the principal amount of Registrable Securities from and including the date of such Registration Default until such time as such Registration Default is cured.

(d) Any amounts to be paid as Liquidated Damages pursuant to paragraphs (a), (b) or (c) of this Section 7 shall be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date (as defined in the Indenture), as applicable, following (i) in the case of said paragraph (a) and (c), the date of such Registration Default or (ii) in the case of said paragraph (b), the 31st day upon which an Effective Failure occurs in any 90-day period or the 91st day upon which an Effective Failure occurs in any 12-month period, as the case may be. Such Liquidated Damages will accrue (1) in respect of the Securities at the rates set forth in paragraphs (a), (b) or (c) of this Section 7, as applicable, on the principal amount of the Securities and (2) in respect of the Common Stock issued upon conversion of the Securities, at the rates set forth in paragraphs (a), (b) or (c) of this Section 7, as applicable, applied to the Conversion Price (as defined in the Indenture) at that time.

(e) Except as provided in Section 8(b) hereof, the Liquidated Damages as set forth in this Section 7 shall be the exclusive monetary remedy available to the Holders of Registrable Securities for such Registration Default or Effective Failure. In no event shall the Company be required to pay Liquidated Damages in excess of the applicable maximum amount of one-half of one percent (0.5%) set forth above, regardless of whether one or multiple Registration Defaults exist. No Holder shall be entitled to Liquidated Damages hereunder unless such Holder has complied with its obligations to furnish information and documents required by this Agreement.

8. *Miscellaneous.*

(a) *Other Registration Rights.* The Company may grant registration rights that would permit any person that is a third party the right to piggy–back on any Shelf Registration Statement, *provided* that if the Managing Underwriter of any underwritten offering conducted pursuant to Section 6 hereof notifies the Company and the Electing Holders that the total amount of securities which the Electing Holders and the holders of such piggy–back rights intend to include in any Shelf Registration Statement is so large as to materially threaten the success of such offering (including the price at which such securities can be sold), then, subject to any rights existing as of the date hereof, the amount, number or kind of securities to be offered for the account of holders of such piggy–back rights

will be reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount, number and kind recommended by the Managing Underwriter prior to any reduction in the amount of Registrable Securities to be included in such Shelf Registration Statement.

(b) *Specific Performance.* The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations hereunder and that the Purchaser and the Holders from time to time may be irreparably harmed by any such failure, and accordingly agree that the Purchaser and such Holders, in addition to any other remedy to which they may be entitled at law or in equity and without limiting the remedies available to the Electing Holders under Section 7 hereof, shall be entitled to compel specific performance of the obligations of the Company under this Registration Rights Agreement in accordance with the terms and conditions of this Registration Rights Agreement, in any court of the United States or any State thereof having jurisdiction.

(c) *Amendments and Waivers.* This Agreement, including this Section 8(c), may be amended, and waivers or consents to departures from the provisions hereof may be given, only by a written instrument duly executed by the Company and the holders of a majority in aggregate principal amount of Registrable Securities then outstanding. Each Holder of Registrable Securities outstanding at the time of any such amendment, waiver or consent or thereafter shall be bound by any amendment, waiver or consent effected pursuant to this Section 8(c), whether or not any notice, writing or marking indicating such amendment, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(d) *Notices.* All notices and other communications provided for or permitted hereunder shall be given as provided in the Indenture.

(e) *Parties in Interest.* The parties to this Agreement intend that all Holders of Registrable Securities shall be entitled to receive the benefits of this Agreement and that any Electing Holder shall be bound by the terms and provisions of this Agreement by reason of such election with respect to the Registrable Securities which are included in a Shelf Registration Statement. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and any Holder from time to time of the Registrable Securities to the aforesaid extent. In the event that any transferee of any Holder of Registrable Securities shall acquire Registrable Securities, in any manner, whether by gift, bequest, purchase, operation of law or otherwise, such transferee shall, without any further writing or action of any kind, be entitled to receive the benefits of and, if an Electing Holder, be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement to the aforesaid extent.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be

deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(i) *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

(j) *Survival* . The respective indemnities, agreements, representations, warranties and other provisions set forth in this Agreement or made pursuant hereto shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Electing Holder, any director, officer or partner of such Holder, any agent or underwriter, any director, officer or partner of such agent or underwriter, or any controlling person of any of the foregoing, and shall survive the transfer and registration of the Registrable Securities of such Holder.

Please confirm that the foregoing correctly sets forth the agreement between the Company and you.

Very truly yours,

Gilead Sciences, Inc.

By: **/s/ John F. Milligan, Ph.D.**
Name: John F. Milligan
Title: Senior Vice President and
Chief Financial Officer

Accepted as of the date hereof:
Goldman, Sachs & Co.

/s/ Goldman, Sachs & Co.
(Goldman, Sachs & Co.)

Appendix A

Gilead Sciences, Inc.

INSTRUCTION TO DTC PARTICIPANTS

_____, *20__*

URGENT - IMMEDIATE ATTENTION REQUESTED

DEADLINE FOR RESPONSE: **_____**

The Depository Trust Company ("DTC") has identified you as a DTC Participant through which beneficial interests in the Gilead Sciences, Inc. (the "Company") 2.00% Convertible Senior Notes due December 15, 2007 (the "Securities") are held.

The Company is in the process of registering the Securities under the Securities Act of 1933 for resale by the beneficial owners thereof. In order to have their Securities included in the registration statement, beneficial owners must complete and return the enclosed Notice of Registration Statement and Selling Securityholder Questionnaire.

It is important that beneficial owners of the Securities receive a copy of the enclosed materials as soon as possible as their rights to have the Securities included in the registration statement depend upon their returning the Notice and Questionnaire by _____. Please forward a copy of the enclosed documents to each beneficial owner that holds interests in the Securities through you. If you require more copies of the enclosed materials or have any questions pertaining to this matter, please contact Gregg Alton, Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, California 94404, (650) 574-3000 or (650) 522-5783.

Gilead Sciences, Inc.

Notice of Registration Statement
and
Selling Securityholder Questionnaire

_____, 20__

Gilead Sciences, Inc. (the " *Company* ") has filed with the United States Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the " *Shelf Registration Statement* ") for the registration and resale under Rule 415 of the United States Securities Act of 1933, as amended (the " *Securities Act* "), of the Company's 2.00% Convertible Senior Notes due December 15, 2007 (the " *Securities* ") and the shares of common stock, par value $0.001 per share (the " *Common Stock* "), issuable upon conversion thereof, in accordance with the Registration Rights Agreement, dated as of the date of original issuance of the Securities (the " *Registration Rights Agreement* "), between the Company and the purchaser named therein. A copy of the Registration Rights Agreement is attached hereto. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

In order to have Registrable Securities included in the Shelf Registration Statement (or a supplement or amendment thereto), this Notice of Registration Statement and Selling Securityholder Questionnaire (" *Notice and Questionnaire* ") must be completed, executed and delivered to the Company at the address set forth herein for receipt ON OR BEFORE_____. Beneficial owners of Registrable Securities who do not complete, execute and return this Notice and Questionnaire by such date (i) will not be named as selling securityholders in the Shelf Registration Statement and (ii) may not use the Prospectus forming a part thereof for resales of Registrable Securities.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and related Prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and related Prospectus.

The term " *Registrable Securities* " is defined in the Registration Rights Agreement to mean all or any portion of the Securities issued from time to time under the Indenture in registered form and the shares of Common Stock issuable upon conversion of such Securities; provided , however , that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

The term " Restricted Security " is defined in the Registration Rights Agreement to mean any Security or share of Common Stock issuable upon conversion thereof except any such Security or share of Common Stock which (i) has been effectively registered under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with the Indenture.

ELECTION

The undersigned holder (the "Selling Securityholder") of Registrable Securities hereby elects to include in the Shelf Registration Statement the Registrable Securities beneficially owned by it and listed below in Item (3). The undersigned, by signing and returning this Notice and Questionnaire, agrees to be bound with respect to such Registrable Securities by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement, including, without limitation, Section 5 of the Registration Rights Agreement, as if the undersigned Selling Securityholder were an original party thereto.

Upon any sale of Registrable Securities pursuant to the Shelf Registration Statement, the Selling Securityholder will be required to deliver to the Company and the Trustee the Notice of Transfer (completed and signed) set forth in Exhibit 1 to this Notice and Questionnaire.

The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

(1) (a) Full Legal Name of Selling Securityholder:

_____

(b) Full Legal Name of Registered Holder (if not the same as in (a) above) of Registrable Securities Listed in Item (3) Below:

_____

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) Through Which Registrable Securities Listed in Item (3) Below are Held:

_____

(2) Address for Notices to Selling Securityholder:

_____

_____

_____

Telephone: _____

Fax: _____

Contact Person: _____

(3) Beneficial Ownership of Securities:

Except as set forth below in this Item (3), the undersigned Selling Securityholder does not beneficially own any Securities or shares of Common Stock issued upon conversion, repurchase or redemption of any Securities.

(a) Principal amount of Registrable Securities (as defined in the Registration Rights Agreement) beneficially owned:

_____

CUSIP No(s). of such Registrable Securities: _____

Number of shares of Common Stock (if any) issued upon conversion, repurchase or redemption of Registrable Securities:

_____

(b) Principal amount of Securities other than Registrable Securities beneficially owned:

_____

CUSIP No(s). of such other Securities: _____

Number of shares of Common Stock (if any) issued upon conversion of such other Securities:

(c) Principal amount of Registrable Securities which the undersigned wishes to be included in the Shelf Registration Statement:

_____

CUSIP No(s). of such Registrable Securities to be included in the Shelf Registration Statement:

Number of shares of Common Stock (if any) issued upon conversion of Registrable Securities which are to be included in the Shelf Registration Statement: _____

(4) Beneficial Ownership of Other Securities of the Company:

Except as set forth below in this Item (4), the undersigned Selling Securityholder is not the beneficial or registered owner of any shares of Common Stock or any other securities of the Company, other than the Securities and shares of Common Stock listed above in Item (3).

State any exceptions here:

(5) Relationships with the Company:

Except as set forth below, neither the Selling Securityholder nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

(6) Plan of Distribution:

Except as set forth below, the undersigned Selling Securityholder intends to distribute the Registrable Securities listed above in Item (3) only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned Selling Securityholder or, alternatively, through underwriters, broker-dealers or agents. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the Selling Securityholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of hedging the positions they assume. The Selling Securityholder may also sell Registrable Securities short and deliver Registrable Securities to close out such short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here:

:

Note: In no event may such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

By signing below, the Selling Securityholder acknowledges that it understands its obligation to comply, and agrees that it will comply, with the prospectus delivery and other provisions of the Securities Act and the Exchange Act and the rules and regulations thereunder, particularly Regulation M.

In the event that the Selling Securityholder transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Notice and Questionnaire and the Registration Rights Agreement.

By signing below, the Selling Securityholder consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Shelf Registration Statement and related Prospectus. The Selling Securityholder understands that such information will be relied upon by the Company in connection with the preparation of the Shelf Registration Statement and related Prospectus.

In accordance with the Selling Securityholder's obligation under Section 3(a) of the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the Selling Securityholder agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein which may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains in effect. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing, by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery as follows:

To the Company:

Gilead Sciences, Inc.
c/o Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Attention: Joshua D. Gillespie, Esq.

Once this Notice and Questionnaire is executed by the Selling Securityholder and received by the Company, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives, and assigns of the Company and the Selling Securityholder (with respect to the Registrable Securities beneficially owned by such Selling Securityholder and listed in Item (3) above). This Agreement shall be governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: _____

_____

Selling Securityholder
(Print/type full legal name of beneficial owner of Registrable Securities)

By _____
Name:
Title:

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE FOR RECEIPT ON OR BEFORE _____, ____ TO THE COMPANY AT:

Gilead Sciences, Inc.
c/o Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Attention: Joshua D. Gillespie, Esq.

Exhibit 1
to Appendix A

NOTICE OF TRANSFER PURSUANT TO REGISTRATION STATEMENT

Gilead Sciences, Inc.
c/o Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306

Attention: Joshua D. Gillespie, Esq.

J.P. Morgan Trust Company, National Association
560 Mission Street, 13th Floor
San Francisco, California 94105

Attention: Institutional Trust Services

Re: Gilead Sciences, Inc. (the "Company")
2.00% Convertible Senior Notes due December 2007, (the "Notes")

Dear Sirs:

Please be advised that _____ has transferred $_____ aggregate principal amount of the above-referenced Notes or shares of the Company's common stock, issued upon conversion, repurchase or redemption of Notes, pursuant to an effective Registration Statement on Form S-3 (File No. 333-____) filed by the Company.

We hereby certify that the prospectus delivery requirements, if any, of the Securities Act of 1933, as amended, have been satisfied with respect to the transfer described above and that the above-named beneficial owner of the Notes or common stock is named as a selling securityholder in the Prospectus dated _____, or in amendments or supplements thereto, and that the aggregate principal amount of the Notes or number of shares of common stock transferred are **[a portion of]** the Notes or shares of common stock listed in such Prospectus as amended or supplemented opposite such owner's name.

Dated:

Very truly yours,

_____
(Name)

By: _____
(Authorized Signature)

GILEAD WORLD MARKETS, LTD. and PPG
TENOFOVIR DF MANUFACTURING SUPPLY AGREEMENT

THE PARTIES HEREBY ACKNOWLEDGE THE FOLLOWING:

THIS SUPPLY AGREEMENT ("Agreement") is entered into as January 1, 2003 (the "Effective Date"), by and between PPG-Sipsy S.A.S., a French company having a place of business at Z.I. la Croix Cadeau, B.P. 79, 49242 Avrille Cedex, France ("PPG") and Gilead World Markets, Ltd., a company operating under the laws of the Cayman Islands, having its principal place of business at Queensgate House, South Church Street, PO Box 1234GT, Grand Cayman ("GWM"). PPG and GWM may be referred to singly as "Party" and collectively as "Parties" in this Agreement.

WHEREAS, PPG is a known manufacturer of active pharmaceutical ingredients with expertise in "cGMP" manufacturing, and GWM and its designees manufacture and market pharmaceutical products for human use, including tenofovir disoproxil fumarate 300 mg ("Viread®");

WHEREAS, PPG and GWM desire to establish mutually agreeable terms for the commercial supply of tenofovir disoproxil fumarate ("Product") as an active pharmaceutical ingredient by PPG to GWM.

NOW, THEREFORE, in consideration of (i) PPG's agreement to manufacture Product and supply to GWM for the monetary amounts set forth in this Agreement; (ii) the promises, covenants, agreements and other valuable consideration hereinafter set forth, and intending to be legally bound, the Parties hereby agree as follows:

1. **AGREEMENT ACCEPTANCE:** PPG has read and understands this Agreement and understands that it will govern PPG's written acceptance of any order for or delivery of any Product. All terms and conditions with respect to an order for Product proposed by PPG which are different from or in addition to this Agreement and are not agreed to in writing by GWM are expressly rejected by GWM, and shall not become a part of this Agreement or such order. GWM has read and understands this Agreement and shall purchase the Product manufactured by PPG and pay for the supply of the Product in accordance with the terms and provisions of this Agreement. With the exception of any Product delivery pursuant to the ***, and the *** , any delivery of Product after the Effective Date of this Agreement shall be governed by the terms of this Agreement. Any modifications to this Agreement shall, prior to their implementation, be mutually agreed upon by the parties hereto and shall be made in accordance with Section 28.

   Neither the General Sales Conditions of PPG nor the General Purchase Conditions of GWM shall apply to the supply of the Product by PPG to GWM.

2. **TERM:** The term of this Agreement shall begin as of January 1, 2003, and shall remain in effect until December 31, ******* (the "Initial Term"), and thereafter for subsequent ******* renewal terms (each a "Renewal Term"), unless terminated at the end of the Initial Term or any Renewal Term by either Party with at least ******* prior written notice or unless otherwise terminated according to Section 12 "Termination" of this Agreement.

3. **SUPPLY:** During the term of this Agreement, PPG shall manufacture Product for GWM for use in Viread® . During the term of this Agreement, PPG is obligated to manufacture Product at the location and in the quantities set forth herein.

   a) PPG will manufacture the Product for GWM only from its facility located at ******* , or such other facilities as the Parties agree to in writing .

*** Portions of this page have been omitted pursuant to a request for Confidential Treatment and filed separately with the Commission.

b) During the Initial Term and any Renewal Term GWM will purchase and PPG shall deliver at least the quantities set forth in Exhibit A. *** will result in *** to the *** for such *** the *** the invoice for which will be issued in the calendar year for which the *** of the *** as described in Section 12, then *** will be *** to the quantities of Product ordered *** such *** in addition to *** as described in Section 12.

c) *Forecasting:* On the first day of each *** GWM shall provide to PPG the projected need for Product for *** the *** period commencing *** from the date of forecast. The quantities indicated in the first *** period of the *** projection will be an affirmative obligation for GWM to purchase, and an affirmative obligation for PPG to supply Product within the limits of *** The quantities indicated in the second *** period of the *** projection will be considered as a forecast only. With the exception of calendar year 2003 for which *** , notwithstanding anything in this Agreement, PPG's *** in any given *** period shall be *** indicated in *** in which the *** period falls.

d) *Acceptance:* PPG shall respond to each order received from GWM within *** calendar days of receipt. The response shall include PPG's inability to comply with, or confirmation of the delivery dates and quantities set forth in the order.

e) Each shipment of Product hereunder will be delivered to a facility of GWM, or a GWM designee, and in such quantities as designated by GWM on its purchase order (the "GWM Purchase Order"), material transfer request, or by subsequent written instruction given by GWM and in accordance with the instructions for shipping and packaging included in such GWM Purchase Order (each facility so designated shall be a "GWM Location"). Any other additional terms and conditions provided on such GWM Purchase Orders shall not apply as the terms and conditions of this Agreement shall apply alone.

f) If PPG is unable to supply sufficient quantities of the Product to meet either its minimum obligations under Section 3(b), or any GWM Purchase Order (whether or not accepted by PPG), or should either Party perceive that a shortfall in delivery of Product by PPG is likely to occur for any reason, the Parties shall discuss appropriate steps to alleviate such a shortfall *** . GWM shall have the right *** . Any quantities *** to meet such a shortfall shall be *** and *** in which the shortfall occurs. If GWM must *** a *** any costs beyond the Base Price, as agreed by the Parties and as described in Exhibit B, for the shortfall quantity, but limited to a total cost of not more than *** of the Base Price. Repeated shortfalls may be considered a material breach of this Agreement, as described in section 12 of this Agreement.

g) If release and/or shipment of any quantity is delayed after PPG has accepted an order, through the fault of PPG, by more than *** the quantity shall be considered a shortfall, and treated as above in Section 3(f). If such delay is caused by GWM, GWM shall make *** to remediate the fault as soon as reasonably practicable.

4. **GOOD MANUFACTURING PRACTICES:** PPG expressly warrants that all goods covered by this Agreement will be manufactured in accordance with current good manufacturing practices ("cGMP") as established by the United States Food and Drug Administration (the "FDA"), and the European Agency for Evaluation of Medicinal Products ("EMEA") for the manufacture of pharmaceutical materials, as well as other applicable rules and regulations of the FDA, EMEA, and other governmental or regulatory agencies of the United States or the European Union. Each Party shall promptly notify the other of any new instructions or specifications required by the FDA, the Federal Food, Drug and Cosmetic Act, the Federal Public Health Service Act or other applicable rules and regulations of the United States or the European Union, and shall confer with each other with respect to the best means to comply with such requirements and shall allocate any costs of implementing such changes on an equitable basis. Upon written request of GWM, PPG will permit representatives of GWM to observe such manufacture, or any government inspection of PPG's manufacturing process for the Product, at mutually agreeable times and PPG shall permit GWM to inspect copies of PPG's manufacturing records, including its batch records, for the purposes of assuring Product quality and compliance with agreed-upon manufacturing procedures.

5. **MANUFACTURING PROCESS AND BATCH RELEASE TESTING:** GWM shall make available to PPG, free of charge, all such know-how, information, and technical assistance if needed by PPG so as to allow PPG to manufacture TENOFOVIR DF (the "Product") to the standard of GWM as will be more precisely described by GWM in writing to PPG before the start of manufacturing of the Product. PPG shall manufacture the Product in conformance with the specifications (the "Specifications") set forth in the Gilead Sciences Tenofovir DF Contract Manufacturing Manual which is in effect on the Effective Date of this Agreement, and as thereafter amended (the "Contract Manufacturing Manual"), and according to the manufacturing process description as set forth in the Contract Manufacturing Manual. PPG shall test each batch of Product for conformance to the specifications according to the Standard Test Methods as set forth in the Contract Manufacturing Manual.

6. **RAW MATERIALS:** Raw materials used in the manufacture of Product will conform to the specifications set forth in the Contract Manufacturing Manual (the "Raw Material Specifications") and such conformance will be verified in accordance with the testing standards and procedures specified therein. PPG agrees that it will facilitate changes to the Raw Material Specifications that are necessary or appropriate in light of FDA or other regulatory requirements. PPG shall not be liable hereunder if the raw materials meet the Raw Material Specifications and the Product fails to meet the Specifications because the raw material specifications are inadequate.

7. **CHANGE IN MANUFACTURING PROCESS:** PPG shall obtain GWM's prior written approval before implementing any planned change in the materials, equipment, process, or procedures used to manufacture the Product that would constitute a change under cGMP, would impact the validation status of the process, or would constitute noncompliance with the manufacturing process set forth in the Contract Manufacturing Manual. PPG shall disclose all proposed changes in such manufacturing materials, equipment, process, or procedure to GWM at a level sufficient to allow GWM to practice such changed manufacturing process. GWM shall notify PPG in writing with reasonable notice of any change in the materials, equipment, process, analytical methods, specifications, or procedures to be used in the manufacture of the Product whether such changes are to be reflected as updates to the Contract Manufacturing Manual or otherwise. PPG shall provide GWM with an authentic copy of the current Master Batch Record for the preparation of the Product.

   The cost of implementing any amendment or change of whatever nature to the procedures or specifications described in the Contract Manufacturing Manual as it exists on the Effective Date of this Agreement, as well as any extra costs resulting from the implementation of such change, shall be borne by *** through an *** which the Parties shall negotiate in good faith.

8. **PROCESS IMPROVEMENTS: ***** agrees to communicate promptly to ******* any idea and substantial improvement (patented or unpatented) made or developed solely or jointly by ******* arising from its activities under this Agreement and relating to the processing or manufacture of the Product ("Improvement"). All rights and title to Improvements that have no foreseeable uses other than those related to the processing or manufacture of the Product shall be assigned to ******* , which shall have only the right to utilize such Improvements in the manufacture of the Product. All rights and title to Improvements (patented or unpatentable) that have applications other than those related to the processing or manufacture of the Product and that do not contain specific know-how of ******* developed prior to the Effective Date, shall be assigned to ******* , which shall have only the right to utilize such improvements in the processing and manufacture of the Product and any structurally related Gilead pharmaceutical compound. ******* grants to ******* a royalty-free worldwide exclusive license limited to processing or manufacture of the Product and any structurally related Gilead pharmaceutical compound for Improvements that have applications other than those related to the processing or manufacture of the Product, but do not contain specific ******* know-how developed prior to the Effective Date. If ******* contracts out the processing or manufacture of the Product, or structurally related Gilead pharmaceutical compounds to any third party, any Improvement may be disclosed to such contract manufacturer but rights to use the same shall be restricted to the processing and manufacture of the Product, or structurally related Gilead pharmaceutical compounds, and the Parties hereto will discuss in good faith an appropriate remuneration to ******* before implementing any such disclosure to said third party.

9. **QUALITY CONTROL SAMPLE AND DOCUMENTATION:** Manufacture of the Product shall at all times be in strict conformance with the Specifications and such conformance will be verified in accordance with the testing procedures specified therein. Prior to the delivery of any batch of Product, PPG shall provide GWM with (i) a quality control sample of such to be held by GWM for analytical reference, (ii) written confirmation that the batch records for such batch have been reviewed and approved by PPG's quality assurance unit (Certificate of Compliance), and (iii) a Certificate of Analysis confirming that such batch meets Specifications. Quality control sampling, unless otherwise specified by GWM in writing, shall be in accordance with the most current Drug Substance Sampling/Testing Plan contained in the Contract Manufacturing Manual.

10. **QUANTITY AND PRICE: Subject** to adjustment as provided in this Agreement, GWM shall pay to PPG the prices in Exhibit B. Using Exhibit B, "Invoice" price is set on *** of each calendar year for the subsequent calendar year using the ******* plus the forecast given by GWM for the second ******* in accordance with Section 3.c. Adjustment will be made ******* based on ******* such year, with a corresponding ******* of that calendar year based on the ******* .

    PPG agrees that if process improvements are discovered and mutually agreed upon in accordance with Sections 7 and 8, and which have a material effect on Product manufacturing cost, the Parties will negotiate in good faith ******* .

11. **SHIPPING, BILLING AND PAYMENT** : Unless otherwise agreed by the Parties in writing, all shipments shall be shipped *** (Incoterms 2000), pursuant to written instructions provided by GWM to PPG. However, *** shall be responsible for the *** . PPG will package and ship the Products in accordance with PPG's customary practices for pharmaceutical compounds, unless otherwise specified by GWM. Within *** calendar days of receipt of such shipping instructions from GWM, PPG shall ship the invoiced amount of Product to its destination. All invoices from PPG to GWM covering Product shipped to GWM shall be stated, and all payments to PPG by GWM shall be made in *** . Payments due to PPG shall be made by wire transfer to the bank account of PPG of which PPG shall advise GWM from time to time. The invoices will be issued upon completion of the batches and issuance of the applicable quality control sample/s in accordance with Section 9. PPG's invoice shall be paid by GWM not later than *** calendar days following the later of (i) the receipt of the applicable invoice, or (ii) receipt of the Certificate of Analysis and Certificate of Compliance. Any invoiced amount which is not paid within *** of its due date shall be assessed a late payment fee at the rate of *** or the maximum rate permitted by applicable law with respect to such obligations, whichever is less. At *** credit terms can be adjusted *** as justified by *** .

12. **TERMINATION** : Either Party may terminate this Agreement for a material breach by the other Party. A material breach may be encountered if either Party: (a) repudiates or breaches a *** of this Agreement; or (b) fails to perform services or deliver goods as provided in this Agreement. Termination under this section must be performed by giving the breaching Party written Notice, specifying the circumstances of the breach, including the provisions of this Agreement that are breached. The breaching Party, if such a breach has indeed occurred, has *** calendar days to cure such breach of this Agreement.

    If the breach has not been cured at the end of the *** calendar day period or if the breaching Party is not making diligent, good faith efforts to cure such breach, then, upon immediate Notice to the breaching Party, the breaching Party shall be in default and the non-breaching Party may terminate this Agreement. If the breaching Party is making diligent, good faith efforts to cure such breach, the breaching Party shall be granted an additional *** calendar day period to cure said breach. Unless the termination is on the grounds of a material breach resulting *** , GWM shall purchase raw material and intermediates at PPG's actual cost and inventories of the Product at the purchase price then in effect according to provisions of Appendix B hereto as amended during the performance of this Agreement. Otherwise, GWM shall have the right, but not the obligation, to purchase such raw materials, intermediates and inventories of the Product pursuant to Section 10 as GWM may determine in its sole discretion.

    In the event that either Party becomes bankrupt, the other Party may, with immediate Notice to the first Party, terminate the Agreement with no liabilities whatsoever, subject to relevant legislation and provisions herein contained.

    GWM may terminate this Agreement in whole or in part at any time by giving *** days written notice to PPG, if GWM, in its sole discretion, determines that *** or if any *** a *** on *** or *** of the *** or *** of *** . GWM may terminate this Agreement if any *** that *** any *** the result of which is *** the *** or to *** on the *** . Should GWM terminate this Agreement due to the reasons contained in this Article, PPG shall take reasonable measures to cease any ongoing production and limit further expenses associated with such ongoing production. GWM shall purchase raw material and intermediates at PPG's actual cost and inventories of the Product at the purchase price then in effect according to provisions of Appendix B hereto as amended during the performance of this Agreement, and will reimburse PPG for reasonable expenses incurred by PPG with respect to the remainder of said GWM Purchase Order prior to the effective date of the termination.

    Except as otherwise set forth in this Agreement, termination of this Agreement shall not release any Party hereto from any payment, liability or other obligation existing at the date of termination.

13 . **LIMITED WARRANTY:** PPG warrants that Product delivered hereunder will (i) be manufactured by PPG in accordance with cGMP and other applicable FDA, EMEA, and other rules and regulations of the United States or the European Union, (ii) be manufactured in accordance with the agreed-upon manufacturing procedures described in the master batch records supplied to GWM in accordance with the provisions of Section 7, as may be modified and disclosed to GWM in accordance with the provisions of Section 7, (iii) conform to the Specifications set forth in the Contract Manufacturing Manual at the time of Product manufacture, and (iv) be provided in compliance with all applicable laws and regulations as more fully set forth in Section 4 above. GWM's remedies and PPG's liability with respect to these warranties are set forth below. THESE ARE THE ONLY REPRESENTATIONS OR WARRANTIES PPG MAKES AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, UNDER STATUTE OR ARISING OTHERWISE IN LAW FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION, ANY OTHER WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE DISCLAIMED BY PPG. IF ANY PRODUCT FAILS TO CONFORM TO THE WARRANTIES HEREIN, PPG'S EXCLUSIVE OBLIGATION AND GWM'S (OR GWM'S AFFILIATES') EXCLUSIVE REMEDY (SUBJECT TO SECTIONS 12 AND 17) SHALL BE AS SET FORTH IN SECTION 14. EXCEPT AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, IN NO EVENT WILL PPG BE LIABLE UNDER ANY THEORY OF RECOVERY (WHETHER BASED ON NEGLIGENCE OF ANY KIND, STRICT LIABILITY OR TORT) FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO, ARISING FROM OR RESULTING FROM ANY USE MADE OF THE PRODUCT. Nothing in this Section 13 is intended as a limitation of indemnification obligations of PPG pursuant to Section 15, or the recall obligations of PPG under section 17.

14. **REJECTION:** GWM may reject Product delivered by PPG for failure to comply with the warranties in Section 13 by giving PPG written notice, upon which the Parties will cooperate to determine whether rejection was necessary or justified. PPG will notify GWM promptly as to whether it accepts GWM's basis for any rejection. If the Parties disagree whether the Product batch did not comply with the warranties, they will submit a sample of such Product batch and applicable documentation to a mutually acceptable independent third party laboratory. Such third party laboratory shall determine whether such Product batch conforms with the warranties, and such determination shall be final, binding and determinative as to whether rejection of such Product batch was justified. The Party against whom the third party tester rules shall bear all costs of the third party testing. If GWM has given notice of rejection, at GWM's request PPG shall use best efforts to replace such rejected Product. If the third party tester rules that a rejected batch meets the warranties, GWM will purchase such batch, irrespective of whether PPG has already replaced it. If PPG accepts GWM's basis for rejection or the third party tester rules that a rejected batch did not meet the warranties, PPG will not charge GWM for such batch or for shipping, insurance or freight costs therefor, or shall promptly refund any such amounts already paid by GWM. At its election, GWM may ***, until and unless it is finally determined that the batch complied with the warranties in Section 13.

15. **INDEMNIFICATION BY PPG:** PPG agrees to indemnify, hold harmless and defend GWM and GWM's directors, officers, employees and agents, and the directors, officers, employees and agents of any GWM parent, subsidiary, or related company (the "GWM Indemnitees") from and against any and all losses, liabilities, judgments, damages, costs, reasonable fees, and expenses, including reasonable attorneys' fees (collectively, "Losses") resulting from any third party claim, demand, action, suit or proceeding (collectively, "Third Party Claim") arising out of (i) PPG's manufacture of Product which fails to comply with PPG's obligations under this Agreement, (ii) the transportation, storage or use of the Product by PPG while the Product is in its control, or (iii) any negligent or wrongful act or omission of PPG or any PPG Indemnitee relating to this Agreement, including without limiting the generality of the foregoing any Losses whatsoever with respect to Third Party Claims of death or injury to person or damage to property, provided that GWM provides PPG with prompt notice of any such Third Party Claim and the exclusive ability to defend (with the reasonable cooperation of GWM) or settle any such Third Party Claim, ***except*** to the extent that PPG has a right of indemnification or defense with respect to any such Loss or Third Party Claim pursuant to Section 16.

16. **INDEMNIFICATION BY GWM:** GWM agrees to indemnify, hold harmless, and defend PPG and PPG's directors, officers, employees and agents, and the directors, officers, employees and agents of any PPG parent, subsidiary, or related company (the "PPG Indemnitees") from and against any and all Losses resulting from Third Party Claims arising out of (i) the *** relating to the manufacture of the Product made available by GWM to PPG, (ii) possession, use, transformation, or sale of the Product by any person other than a PPG Indemnitee, or (iii) any negligent or wrongful act or omission of GWM or any GWM Indemnitee relating to this Agreement, including without limiting the generality of the foregoing any Losses whatsoever with respect to Third Party Claims of death or injury to person or damage to property, provided that PPG provides GWM with prompt notice of any such Third Party Claim and the exclusive ability to defend (with the reasonable cooperation of PPG) or settle any such Third Party Claim, ***except*** to the extent that GWM has a right of indemnification or defense with respect to any such Loss or Third Party Claim pursuant to Section 15.

17. **RECALLS AND ADVERSE EVENTS:** If there is a recall or there are adverse events for Product that may be related to the processing or manufacture of Product by PPG, PPG shall provide at GWM's cost any assistance reasonably requested by GWM in connection with such recall or adverse events. If Product is recalled due to a breach of the warranty in Section 13, PPG shall be responsible for reasonable out-of-pocket expenses incurred in connection with such recall or seizure including loss of Viread® , notification, transportation, destruction expenses and replacement costs ******* .

18. **NO IMPLIED LICENSES:** No right, express or implied, is granted by this Agreement to either Party to use in any manner the name of the other or any other trade name or trademark or other intellectual property rights of the other in connection with the performance of the work covered by this Agreement.

19. **INDEPENDENT CONTRACTORS: Each** Party hereto shall act as an independent contractor and nothing in this Agreement shall be construed as to give either Party the authority to act for, bind, or commit the other Party in any way whatsoever.

20. **FORCE MAJEURE:** Neither Party shall be liable for failure to perform or for delay in performing any of its obligations under this Agreement, if such failure or delay is caused by lack of supply of materials through no fault of such Party, an act of God, riot, fire, explosion, flood, hostilities of war, executive legislation or administrative order, or other conditions reasonably beyond the control of such Party, provided that the Party experiencing the delay promptly notifies the other Party of the delay and uses and continues to use best efforts to overcome such cause. If such cause shall continue for a period of ******* and is not overcome by the Party whose performance is affected, the Party not subject to the force majeure may ******* without liability from the date of expiration of such period, except as provided in ******* . Specifically excluded from this provision is any interference, caused by ******* or ******* , of the ability of PPG to perform any of its obligations. PPG shall inform GWM of such interference, its extent and duration, without delay. Any interference, caused by ******* or ******* , of the ability of PPG to perform its obligations for more than ******* shall constitute a shortfall, as per Sections 3(f) and 3(g) of this Agreement.

21. **NONASSIGNABILITY:** Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that: (a) GWM may make such an assignment or transfer without the other Party's consent if such assignment or transfer is to a successor to substantially all of the business of GWM relating to the Product, whether in a merger, sale of stock, sale of assets, or other similar transaction, and (b) PPG may make such an assignment or transfer without prior written consent, provided that in such event GWM shall have the option to ******* , with a minimum of *** written notice ******* . ******* shall leave GWM without liability beyond the ******* . Any assignment or transfer or attempted assignment or transfer by either Party in violation of the terms of this Section 21 shall be null and void and of no legal effect. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators, and assigns of the Parties hereto.

22. **GOVERNING LAW:** This Agreement are made in accordance with and shall be governed by and construed, interpreted, enforced, and applied under the laws of ******* , excluding its choice of law rules and excluding the United Nations' Convention on Contracts for the Sale of Goods. Should any part of this Agreement be in conflict with any applicable law, all other provisions of this order shall remain in force and the Parties hereto shall mutually and in good faith modify the invalid or unenforceable provisions so as to maintain essentially the spirit hereof and the original will of the Parties.

23. **SEVERABILITY:** In the event any term of this Agreement is held to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed modified or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the valid or enforceable portion thereof and the remaining terms of this Agreement will remain in full force and effect, unless the invalid or unenforceable provisions are of such essential importance to this Agreement that it is reasonably assumed that the Parties would not have entered into this Agreement without the invalid terms.

24. **WAREHOUSING:** After ownership of the Product has transferred to GWM and upon agreement by both Parties, PPG agrees to hold supplies of the Product at PPG's facility ******* , until further shipping instructions are available from GWM. Storage of the Product shall be in accordance with cGMP and other applicable FDA, EMEA, and other rules and regulations of the United States, and the European Union. ******* shall bear the cost of any insurance against loss of the Product while it is maintained at PPG's facility. GWM will make all appropriate efforts to move the Product from PPG's facility in a reasonable period of time.

25. **NOTIFICATION POLICY:** The terms and conditions of the ******* shall apply the processing and manufacture of Product under this Agreement, with GWM to be substituted for ******* for such purposes.

26. **NOTICES:** All notices under this Agreement shall be in writing and shall be delivered personally, sent for next day delivery by internationally recognized courier service or transmitted by facsimile (transmission confirmed), with confirmation by next day delivery by an internationally recognized courier service, to the following addresses and facsimiles of the respective Parties or such other address or facsimile as is notified pursuant to this Section 26:

If to GWM:

Gilead World Markets, Ltd.
Queensgate House
South Church Street
PO Box 1234GT
Grand Cayman
Attention: Gregg H. Alton, Director
Facsimile: ***

With a copy to:

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, CA 94404
USA
Attention: Associate Director, Chemical Manufacturing
Facsimile: ***

If to PPG:

PPG-Sipsy
Z.I. la Croix Cadeau
B.P. 79
49242 Avrille Cedex, France
Attention: European Operations Manager
Fax: ***

With a copy to:

PPG Industries, Inc.
One PPG Place, 36 E
Pittsburgh, PA 15272 USA
Attention: General Manager, Fine Chemicals
Fax: ***

27. **CONFIDENTIALITY:** "Confidential Information" means all proprietary or confidential information, data, know-how, results, trade secrets, techniques, inventions, ideas, process, formulas, drawings, or diagrams disclosed by one Party to the other Party in the course of negotiating or performing under this Agreement, whether or not marked or identified as confidential or proprietary, and GWM's Confidential Information shall include all "Confidential Information" of Gilead Sciences, Inc. as defined in and disclosed to PPG's predecessor in interest pursuant to the Confidential Disclosure Agreement made and effective as of January 1, 1998 by and between Gilead Sciences, Inc. and PPG-Sipsy (as successor in interest to Sipsy Chimie Fine S.C.A.), except for any such information that (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, its employees or contractors in breach hereof, generally known or available; (ii) is known by the receiving Party at the time of receiving such information, as evidenced by its contemporaneous written records; (iii) is hereafter furnished to the receiving Party by a Third Party, as a matter of right and without restriction on disclosure; or (iv) is independently developed by the receiving Party without reference to such Confidential Information, as shown by independent, contemporaneous, written records. During the term of this Agreement, *** , each Party will maintain all Confidential Information of the other Party received by it under this Agreement in confidence and, without prior written permission of the other Party, shall not disclose any such Confidential Information of the other Party to any third party or use any such Confidential Information for any purposes or to an extent other than as necessary or permitted for performance under this Agreement. The Parties shall disclose Confidential Information of the other Party only to its employees, agents, consultants, affiliates, or sublicensees who need such information for performance under this Agreement and who are subject to binding obligations to hold in confidence and not make use of such Confidential Information of the other Party for any purpose other than those permitted by this Agreement, that are at least as restrictive as those of this Section 27. Each Party will protect the confidentiality of the other Party's Confidential Information using the same standard of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care. Each Party will notify the other Party promptly upon discovery of any unauthorized use or disclosure of the Confidential Information of the other Party.

Notwithstanding any other provision of this Agreement, each Party (or its affiliate, if applicable) may disclose Confidential Information if such disclosure: (i) is in response to a valid order of a court or other governmental body of the United States or a foreign country, or any political subdivision thereof; provided, however, that the receiving Party shall first have given notice to the other Party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued; (ii) is otherwise required by governmental law, rule or regulation, including without limitation rules or regulations of the U.S. Securities and Exchange Commission, or by rules of the National Association of Securities Dealers; provided, however, that the receiving Party shall first have given notice to the other Party hereto in order to allow such Party the opportunity to seek confidential treatment of the Confidential Information; or (iii) is otherwise necessary to prosecute or defend litigation, comply with applicable governmental regulations, make governmental patent or regulatory filings, or otherwise enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such enforcement.

If this Agreement terminates or expires, each Party will, at the other Party's election, promptly return or destroy all Confidential Information received by it from the other Party and shall certify in writing to such other Party the completion thereof.

28. **ENTIRE AGREEMENT; AMENDMENTS:** This Agreement together with the attachments, exhibits, or supplements specifically referenced in this Agreement constitutes the entire, final, complete, and exclusive agreement between the Parties and supersedes all previous agreements or representations, written or oral, with respect to the subject matter of this Agreement. This Agreement may not be modified, amended, waived, discharged, or terminated orally, but only by an instrument in writing signed by a duly authorized representative of each Party. SUBJECT TO SUCH AMENDMENT, THE TERMS AND CONDITIONS SET FORTH HEREIN CONSTITUTE THE FINAL COMPLETE, EXCLUSIVE, AND ENTIRE AGREEMENT BETWEEN GWM AND PPG WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY TERM OR CONDITION IN ANY AGREEMENT, CONFIRMATION, OR OTHER DOCUMENT FURNISHED BY GWM OR PPG WHICH IS IN ANY WAY INCONSISTENT WITH THE TERMS SET FORTH HEREIN IS HEREBY EXPRESSLY REJECTED.

29. **INSURANCE:** Each party shall maintain at is own cost insurance policies with respect to its activities and obligations under this Agreement that are commercially reasonable as to terms, coverage and coverage limits in view of the scope of such party's activities and obligations under this Agreement. At the other party's request, each party will supply certificates of insurance evidencing such coverages.

30. **SURVIVAL:** The provisions of Sections 8, 12 (with respect to the last sentence only), 13, 14, 15, 16, 17, 18, 19, 22, 23, 26, 27, 28, 29 and 30 shall survive the termination or expiration of this Agreement.

GILEAD WORLD MARKETS, LTD.

By: /s/ Mark L. Perry

Name: Mark L. Perry

Date: January 2, 2003

Title: Managing Director

Accepted and Acknowledged by:

PPG-SIPSY

By: /s/ Rene DeVaumas

Name: Rene DeVaumas

Date: December 18, 2002

Title: President, PPG-Sipsy

Exhibit A
Tenofovir DF Purchase Quantities

Calendar Year	***
2003	***
2004	***
***	***

Exhibit B:
Tenofovir DF Base Prices

***	Base Price ***
***	***
***	***

Using the above table "Invoice" price is set on *** of each calendar year for the subsequent calendar year using the *** plus the forecast given by GWM for the second *** in accordance with Section 3(c). Adjustment will be made *** based on *** such year, with a corresponding *** of that calendar year based on the *** .

***

*** Portions of this page have been omitted pursuant to a request for Confidential Treatment and filed separately with the Commission.

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Exhibit 21.1

SUBSIDIARIES OF GILEAD SCIENCES, INC.

Name of Subsidiary	Country or State of Incorporation
Gilead Sciences Limited	Ireland
Gilead Irish Holdings Limited	Cayman Islands
Gilead World Markets, Ltd.	Cayman Islands
Gilead International, Ltd.	Cayman Islands
Gilead International Holdings, Ltd.	Cayman Islands
Gilead Sciences GmbH	Germany
Gilead Sciences Sarl	France
Gilead Sciences S.r.l.	Italy
Gilead Sciences, S.L.	Spain
Gilead Sciences, Lda.	Portugal
Gilead Sciences Ltd.	United Kingdom
Gilead Sciences International Ltd.	United Kingdom
Gilead Sciences PTY Limited	Australia
Gilead Sciences B.V.	Netherlands
Gilead Sciences Hellas EPE	Greece
Simbolo Acquisition Sub, Inc.	Delaware

QuickLinks

Exhibit 21.1

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Exhibit 23.1

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 33-46058, 33-62060, 33-81670, 333-08085, 333-08083, 333-47520, 333-58893, 333-64628, 333-84713, 333-84719, 333-102911 and 333-102912) pertaining to the 1991 Stock Option Plan, 1987 Incentive Stock Option Plan, 1987 Supplemental Stock Option Plan, Employee Stock Purchase Plan, and 1995 Non-Employee Directors' Stock Option Plan of Gilead Sciences, Inc., the NeXstar Pharmaceuticals, Inc. 1993 Incentive Stock Plan, NeXstar Pharmaceuticals, Inc. 1995 Director Option Plan, Vestar, Inc. 1988 Stock Option Plan, Triangle Pharmaceuticals, Inc. 1996 Stock Incentive Plan, and Option Agreements, dated August 5, 2002, between Triangle Pharmaceuticals, Inc. and Daniel G. Welch, and the Registration Statements (Form S-3 Nos. 333-54350 and 333-87167) of Gilead Sciences, Inc. and in the related Prospectuses, as applicable, of our report dated January 24, 2003, with respect to the consolidated financial statements and schedule of Gilead Sciences, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2002.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 12, 2003

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Exhibit 23.1

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

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Exhibit 23.2

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the inclusion in the Annual Report on Form 10-K of Gilead Sciences, Inc. of our report dated January 12, 2001 relating to the financial statements of Proligo LLC for the thirteen-month period ended December 31, 2000, which is incorporated by reference in this Annual Report on Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

Denver, Colorado
March 11, 2003

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Exhibit 23.2

CONSENT OF INDEPENDENT ACCOUNTANTS

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Exhibit 99.1

CERTIFICATION

Pursuant to Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002 (18 U.S.C. § 1350, as adopted), John C. Martin, the Chief Executive Officer of Gilead Sciences, Inc. (the "Company"), and John F. Milligan, the Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2002, to which this Certification is attached as Exhibit 99.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods covered by the Annual Report.

Dated: March 11, 2003

/s/ JOHN C. MARTIN	/s/ JOHN F. MILLIGAN
John C. Martin Chief Executive Officer	John F. Milligan Chief Financial Officer

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Exhibit 99.1

CERTIFICATION

End of Filing