

MANKIND CORP  
Form 424B5  
November 27, 2006

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The information in this prospectus supplement and the accompanying prospectus is not complete and may be changed. This prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

This filing is made pursuant to Rule 424(b)(5)  
Under the Securities Act of 1933  
In connection with Registration No. 333-138373

**Subject to Completion,  
Preliminary Prospectus Supplement dated November 27, 2006**

**PROSPECTUS SUPPLEMENT  
(To Prospectus dated November 7, 2006)**

**17,500,000 Shares**

**MannKind Corporation  
Common Stock**

We are offering 17,500,000 shares of our common stock to be sold in this offering.

Our common stock is quoted on the Nasdaq Global Market under the symbol MNKD. On November 24, 2006, the last reported sale price for our common stock was \$17.44 per share.

The underwriters have reserved up to 8,750,000 shares in this offering for sale to our chairman, chief executive officer and principal stockholder, Alfred E. Mann, at a price equal to the greater of the public offering price in this offering or the market value of our common stock immediately preceding the pricing of this offering as determined by applicable Nasdaq rules. The underwriters will not receive any underwriting discount on the sale of common stock sold directly to Mr. Mann. The number of shares that Mr. Mann will be allocated in this offering will depend on market conditions and could be more or less than the amount initially reserved for allocation.

In addition, concurrently with this offering of our common stock, we are offering \$100,000,000 principal amount of % Senior Convertible Notes due 2013 (or \$115,000,000 principal amount of notes if the underwriters exercise their over-allotment option in full), which we refer to herein as the note offering. Although this common stock offering is not contingent upon the note offering and the note offering is not contingent upon this common stock offering, we currently anticipate raising approximately \$405,200,000 in aggregate gross proceeds from the two offerings. However, amounts sold in each offering may vary based on market conditions relating to that particular security.

**Investing in our common stock involves certain risks. See Risk Factors beginning on page S-7 of this prospectus supplement and incorporated by reference in this prospectus supplement and the accompanying prospectus.**

|                                       | <b>Per Share</b> | <b>Total</b> |
|---------------------------------------|------------------|--------------|
| Public offering price                 | \$               | \$           |
| Price to Alfred E. Mann               | \$               | \$           |
| Underwriting discounts <sup>(1)</sup> | \$               | \$           |
| Proceeds before expenses, to us       | \$               | \$           |

(1) The underwriters will not receive any underwriting discount on the sale of our shares of common stock to Alfred E. Mann.

We have granted the underwriters an option to purchase up to an additional 2,625,000 shares for a period of 30 days to cover over-allotments, if any.

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

*Joint Book-Running Managers*

**JPMorgan**

**Merrill Lynch & Co.**

*Co-Managers*

**Wachovia Securities**

**CIBC World Markets**

**Leerink Swann & Company**

The date of this prospectus supplement is December , 2006.

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**You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any free writing prospectus that we authorize to be distributed to you. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus is accurate only as of the date on those respective**

**documents. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus when making your investment decision. You should also read and consider the information in the documents we have referred you to in the sections of the prospectus entitled **Where You Can Find More Information** and **Incorporation by Reference**.**

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This prospectus supplement and the accompanying prospectus are part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. This prospectus supplement provides you with the specific details regarding this offering, including the number of shares to be offered, the price per share, and the risks of investing in our common stock. The accompanying prospectus provides you with more general information, some of which does not apply to the offering of our common stock. To the extent information in this prospectus supplement is inconsistent with the accompanying prospectus or any of the documents incorporated by reference into this prospectus supplement and the accompanying prospectus, you should rely on this prospectus supplement. You should read and consider the information in this prospectus supplement, the accompanying prospectus and any free writing prospectus, together with the additional information described under the headings **Where You Can Find More Information** and **Incorporation by Reference** in the accompanying prospectus.

This prospectus supplement and the accompanying prospectus have not been approved by the Financial Services Authority. The notes may not be offered or sold to any person in the United Kingdom except where the offer is exempt from the general prohibition against the offer of securities to the public under section 85 of the Financial Services and Markets Act 2000, or FMSA, by virtue of one or more of the criteria set out in section 86 of FMSA.

This prospectus supplement and the accompanying prospectus is directed only at (i) persons outside the United Kingdom, (ii) persons who have professional experience in matters relating to investments and who are investment professionals within the meaning of Article 19(5) of FMSA (Financial Promotion) Order 2005 of the United Kingdom (the Financial Promotion Order), (iii) persons who fall within Article 49(2)(a) through (d) (high net worth companies, unincorporated associations, etc.) of the Financial Promotion Order, or (iv) any other persons to whom this prospectus supplement and the accompanying prospectus for the purposes of Section 21 of FSMA can otherwise lawfully be made (all such persons together being referred to as Relevant Persons), and must not be acted on or relied upon by persons other than Relevant Persons.

Unless the context otherwise requires, references to **MannKind** or the company, **we**, **us**, and **our** in this prospectus supplement and the accompanying prospectus mean MannKind Corporation and its wholly owned subsidiaries.

Technosphere® and MedTone® are registered trademarks of MannKind Corporation. We have also applied for or registered company trademarks in other jurisdictions, including Europe and Japan. This prospectus supplement also include references to registered service marks and trademarks of other entities.

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**PROSPECTUS SUPPLEMENT SUMMARY**

*This summary highlights selected information contained elsewhere or incorporated by reference in this prospectus supplement. This summary does not contain all the information that you should consider before investing in our common stock. You should read the entire prospectus supplement, the accompanying prospectus and any free writing prospectus carefully, including Risk Factors, the financial statements and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus before making an investment decision. This prospectus supplement contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from the results anticipated in these forward-looking statements as a result of factors described under the Risk Factors section and elsewhere in this prospectus supplement and in the risk factors set forth under Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2005 and each of our Quarterly Reports on Form 10-Q for the periods ended March 31, 2006, June 30, 2006 and September 30, 2006, and elsewhere in the documents incorporated by reference.*

**MannKind Corporation**

**Overview**

MannKind Corporation is a biopharmaceutical company focused on the discovery, development and commercialization of therapeutic products for diseases such as diabetes and cancer. Our lead investigational product candidate, the Technosphere Insulin System, is currently in Phase 3 clinical trials in the United States, Europe and Latin America to study its safety and efficacy in the treatment of diabetes. This therapy consists of a proprietary dry powder formulation of insulin that is inhaled into the deep lung using our proprietary inhaler. We believe that the performance characteristics, unique kinetics, convenience and ease of use of the Technosphere Insulin System may have the potential to change the way diabetes is treated. According to the Centers for Disease Control, diabetes affects approximately 20.8 million patients in the United States. Furthermore, we believe that not one diabetes drug is included among the top 20 best-selling drugs in the United States. We believe there is a large unmet medical need to treat diabetes patients with a convenient and effective insulin regimen.

We believe our Technosphere Insulin System will address some of the shortcomings of traditional insulin therapies. In particular, we have observed in our clinical trials to date that the Technosphere Insulin System produces a profile of insulin levels in the bloodstream that approximates the insulin profile normally seen in healthy individuals immediately following the beginning of a meal, but which is absent in patients with diabetes. Specifically, Technosphere Insulin is rapidly absorbed into the bloodstream following inhalation, reaching peak levels within 12 to 14 minutes. As a result of this rapid onset of action, most of the glucose-lowering activity of Technosphere Insulin occurs within the first three hours of administration which is generally when glucose becomes available from a meal instead of the much longer duration of action observed when insulin is injected subcutaneously. We believe that the relatively short duration of action of Technosphere Insulin reduces the need for patients to snack between meals in order to manage ongoing blood glucose excursions. Indeed, in our clinical trials, we have observed that patients using Technosphere Insulin have achieved significant reductions in post-meal glucose excursions and significant improvements in overall glucose control, as measured by decreases in glycosylated hemoglobin, or HbA1c, levels, without the weight gain typically associated with insulin therapy.

In our clinical trials to date, we have observed no difference in pulmonary function between patients treated with Technosphere Insulin and patients treated with standard diabetes care. However, the longest study that we have completed so far is a six-month trial. In September 2006, we completed patient enrollment in a pivotal, two-year, Phase 3, safety study of Technosphere Insulin that will compare the pulmonary function of diabetes patients

randomized to either Technosphere Insulin or standard diabetes care. We are continuing to enroll patients in three other major Phase 3 clinical trials, two of which are pivotal efficacy trials. Based on our discussions with the Food and Drug Administration, or FDA, we plan to accumulate two years of controlled safety data before we file a new drug application for the Technosphere Insulin System. We anticipate that our entire clinical trial program, including several special population studies, will involve more

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than 4,500 patients. Larger populations and longer durations of exposure may be necessary depending on the safety profile of our product.

Our Technosphere Insulin System utilizes our proprietary Technosphere formulation technology, which is based on a class of organic molecules that are designed to self-assemble into small particles onto which drug molecules can be loaded. In October 2006, we filed an investigational new drug application, or IND, in respect of our cancer immunotherapy program. This IND has received FDA clearance and we are also developing additional Technosphere-based products for the delivery of other drugs. We plan to initiate Phase 1 clinical trials of a therapeutic cancer vaccine by the end of 2006.

We are a development stage enterprise and have incurred significant losses since our inception in 1991. As of September 30, 2006, we have incurred a cumulative net loss of \$716.6 million. To date, we have not generated any product revenues and have funded our operations primarily through the sale of equity securities.

We do not anticipate sales of any product prior to regulatory approval and commercialization of our Technosphere Insulin System. We currently do not have the required approvals to market any of our product candidates, and we may not receive any approvals. We may not be profitable even if we succeed in commercializing any of our product candidates. We expect to make substantial and increasing expenditures and to incur additional operating losses for at least the next several years as we:

- continue the clinical development and commercialization of our Technosphere Insulin System for the treatment of diabetes;

- expand our manufacturing operations for our Technosphere Insulin System to meet our currently anticipated commercial production needs;

- expand our other research, discovery and development programs;

- expand our proprietary Technosphere platform technology and develop additional applications for the pulmonary delivery of other drugs; and

- enter into sales and marketing collaborations with other companies, if available on commercially reasonable terms, or develop these capabilities ourselves.

Our business is subject to significant risks, including but not limited to the risks inherent in our ongoing clinical trials and the regulatory approval process, the results of our research and development efforts, competition from other products and technologies and uncertainties associated with obtaining and enforcing patent rights.

## **Recent Developments**

On September 16, 2006, we announced the results of a Phase 3 clinical study of Technosphere Insulin in patients with type 2 diabetes. This study was designed to evaluate whether our Technosphere Insulin System demonstrated similar safety and efficacy compared to patients treated with insulin aspart, an injected rapid-acting insulin analog, or RAA. The study included 308 patients with type 2 diabetes who were randomized to receive either Technosphere Insulin or RAA at meal times, in each case together with insulin glargine, a long-acting insulin, as basal insulin. After six months of treatment, both patient groups achieved statistically significant reductions in HbA1c levels, with the Technosphere Insulin patient group achieving an average 1.05% reduction and the injected RAA patient group achieving an average 1.30% reduction. Significantly fewer patients experienced hypoglycemia in the Technosphere Insulin patient group than in the injected RAA patient group. Additionally, after six months of treatment, the

Technosphere Insulin patient group experienced average weight loss of 1.7 pounds compared with the injected RAA patient group, which experienced average weight gain of 0.5 pounds. Pulmonary function did not differ between the two patient groups after six months of treatment and after a six-month withdrawal period. These results are consistent with our previous studies on Technosphere Insulin that demonstrated improvement in glycemic control with no effect on lung function.

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**Company Information**

We were incorporated in the State of Delaware on February 14, 1991. Our principal executive offices are located at 28903 North Avenue Paine, Valencia, California 91355, and our telephone number at that address is (661) 775-5300. MannKind Corporation and the MannKind Corporation logo are our service marks. Our website address is <http://www.mannkindcorp.com>. The information contained in, and that can be accessed through, our website is not incorporated into and does not form a part of this prospectus.

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**THE OFFERING**

|  |   |
|--|---|
| Common stock offered by us in this offering        | 17,500,000 shares   |
| Common stock to be outstanding after this offering | 67,395,691 shares   |
| Use of proceeds                                    | We intend to use the net proceeds to us from this offering and the concurrent note offering to fund the costs of our clinical trials programs and other research and development activities, to expand our manufacturing operations, both on-going and planned, and for general corporate purposes, including working capital and repayment of \$70.0 million in principal amount of indebtedness, plus accrued interest, owed to Alfred E. Mann pursuant to an outstanding note. We may also use a portion of the net proceeds to in-license, invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plan, commitments or agreements with respect to any acquisitions as of the date of this prospectus supplement. This offering is not contingent on the concurrent note offering. See Use of Proceeds. |
| Nasdaq Global Market Symbol                        | MNKD  |
| Risk factors                                       | See Risk Factors beginning on page S-7 for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.   |
| Transfer Agent                                     | Mellon Investor Services  |

The number of shares of our common stock to be outstanding immediately after the closing of this offering is based on 49,895,691 shares of our common stock outstanding as of September 30, 2006, but excludes:

an aggregate of 5,891,800 shares of our common stock issuable upon exercise of stock options outstanding as of September 30, 2006, having a weighted average exercise price of \$13.46 per share, of which options to purchase 2,604,125 shares were exercisable as of that date at a weighted average exercise price of \$12.46 per share;

an aggregate of 3,026,659 shares of common stock reserved for issuance upon the exercise of warrants outstanding as of September 30, 2006, with a weighted average exercise price of \$12.23 per share, all of which are exercisable as of that date;

an aggregate of 823,102 of our common stock issuable upon vesting of restricted stock units as of September 30, 2006, granted under our 2004 Equity Incentive Plan;

an aggregate of 6,300,143 shares of our common stock reserved for future issuance under our 2004 Equity Incentive Plan, 2004 Non-Employee Directors Stock Option Plan and 2004 Employee Stock Purchase Plan as of September 30, 2006; and

shares of common stock reserved for issuance upon conversion of the convertible notes concurrently being offered by us in connection with our note offering.

Unless otherwise noted, the information in this prospectus supplement assumes that the underwriters' over-allotment option will not be exercised.

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**Sale of Common Stock in this Offering to Alfred E. Mann**

The underwriters have reserved up to 8,750,000 shares of common stock for sale to our chairman, chief executive officer and principal stockholder, Alfred E. Mann, at a price equal to the greater of the public offering price in this offering or the market value of our common stock immediately preceding the pricing of the common stock offering as determined by applicable Nasdaq rules.

**Concurrent Convertible Note Offering**

Concurrently with this offering of our common stock, we are offering \$100.0 million principal amount of % Senior Convertible Notes due 2013 (or \$115.0 million principal amount of notes if the underwriters exercise their over-allotment option in full). We refer to that offering herein as the note offering. The underwriters have reserved up to \$50.0 million of the notes in the note offering for sale to Alfred E. Mann. For additional details regarding the note offering, see Concurrent Note Offering.

**Common Stock and Concurrent Convertible Note Offering**

The concurrent note offering is being conducted as a separate public offering by means of a separate prospectus supplement. Although this common stock offering is not contingent upon the note offering and the note offering is not contingent upon this common stock offering, we currently anticipate raising approximately \$405.2 million in aggregate gross proceeds from the two offerings. However, amounts sold in each offering may vary based on market conditions relating to that particular security.

Unless otherwise noted, for presentation purposes, the information in this prospectus supplement assumes Alfred E. Mann will purchase 8,750,000 shares of our common stock in this offering and will purchase \$50.0 million of the notes offered in the concurrent note offering. The underwriters will not receive any underwriting discount on the sale of common stock or notes to Mr. Mann. The number of shares or amount of notes that Mr. Mann will be allocated in the offerings will depend on market conditions and the number of shares could be more or less than the amount initially reserved for allocation. We cannot provide any assurance as to the exact number of shares of common stock or notes that Mr. Mann will be allocated, if any. Any shares of our common stock or notes not allocated by the underwriters to Mr. Mann in the offerings may be sold by the underwriters to the public on the terms set forth in applicable prospectus supplements.

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**RISK FACTORS**

*Investing in our common stock involves a high degree of risk. You should consider carefully the risk factors described below and all other information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus before deciding to invest in our securities. If any of the following risks actually occur, they may materially harm our business, financial condition, operating results and cash flow. As a result, the market price of our common stock could decline, and you could lose all or part of your investment. Additional risks and uncertainties that are not yet identified or that we think are immaterial may also materially harm our business, operating results and financial condition and could result in a complete loss of your investment.*

**Certain risks related to regulatory approvals**

**Our product candidates must undergo rigorous preclinical and clinical testing and we must obtain regulatory approvals, which could be costly and time-consuming and subject us to unanticipated delays or prevent us from marketing any products.**

Our research and development activities, as well as the manufacturing and marketing of our product candidates, including our Technosphere Insulin System, are subject to regulation, including regulation for safety, efficacy and quality, by the FDA in the United States and comparable authorities in other countries. FDA regulations and the regulation of comparable foreign regulatory authorities are wide-ranging and govern, among other things:

product design, development, manufacture and testing;

product labeling;

product storage and shipping;

pre-market clearance or approval;

advertising and promotion; and

product sales and distribution.

Clinical testing can be costly and take many years, and the outcome is uncertain and susceptible to varying interpretations. We expect, based on our discussions with the FDA and on our understanding of the interactions between the FDA and other pharmaceutical companies developing inhaled insulin delivery systems, that we will need safety data covering at least two years from patients treated with our Technosphere Insulin System and that we must complete a two-year carcinogenicity study and an additional six-month carcinogenicity study of Technosphere Insulin in rodents to obtain approval, among other requirements. We cannot be certain when or under what conditions we will undertake further clinical trials. The clinical trials of our product candidates may not be completed on schedule, the FDA or foreign regulatory agencies may order us to stop or modify our research, or these agencies may not ultimately approve any of our product candidates for commercial sale. The data collected from our clinical trials may not be sufficient to support regulatory approval of our various product candidates, including our Technosphere Insulin System. Even if we believe the data collected from our clinical trials are sufficient, the FDA has substantial discretion in the approval process and may disagree with our interpretation of the data. For example, even if we obtain statistically significant results with respect to the primary endpoint in a pivotal clinical study (102) of the Technosphere Insulin System, the FDA may deem the results uninterpretable because of issues related to the

open-label, non-inferiority design of the study. Our failure to adequately demonstrate the safety and efficacy of any of our product candidates would delay or prevent regulatory approval of our product candidates, which could prevent us from achieving profitability.

The requirements governing the conduct of clinical trials and manufacturing and marketing of our product candidates, including our Technosphere Insulin System, outside the United States vary widely from country to country. Foreign approvals may take longer to obtain than FDA approvals and can require, among other things, additional testing and different clinical trial designs. Foreign regulatory approval processes include all of the

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risks associated with the FDA approval processes. Some of those agencies also must approve prices of the products for government reimbursement. Approval of a product by the FDA does not ensure approval of the same product by the health authorities of other countries. In addition, changes in regulatory policy in the United States or in foreign countries for product approval during the period of product development and regulatory agency review of each submitted new application may cause delays or rejections.

The process of obtaining FDA and other required regulatory approvals, including foreign approvals, is expensive, often takes many years and can vary substantially based upon the type, complexity and novelty of the products involved. We are not aware of any precedent for the successful commercialization of products based on our technology. On January 26, 2006, the FDA approved the first inhaled insulin product, Exubera. This may impact the development and registration of our Technosphere Insulin System in many ways, including: the approval of Exubera may increase the difficulty of enrolling patients in our clinical trials; Exubera may be viewed as standard of care by the FDA and used as a reference for the safety/efficacy evaluations of our Technosphere Insulin System; and the approval standards set for Exubera may be applied to other products that follow including our Technosphere Insulin System. The FDA has advised us that it will regulate our Technosphere Insulin System as a combination product because of the complex nature of the system that includes the combination of a new drug (Technosphere Insulin) and a new medical device (the MedTone inhaler used to administer the insulin). The FDA indicated that the review of a future drug marketing application for our Technosphere Insulin System will involve three separate review groups of the FDA: (1) the Metabolic and Endocrine Drug Products Division; (2) the Pulmonary Drug Products Division; and (3) the Center for Devices and Radiological Health within the FDA that reviews medical devices. We currently understand that the Metabolic and Endocrine Drug Products Division will be the lead group and will obtain consulting reviews from the other two FDA groups. The FDA has not made an official final decision in this regard, however, and we can make no assurances at this time about what impact FDA review by multiple groups will have on the review and approval of our product or whether we are correct in our understanding of how the Technosphere Insulin System will be reviewed and approved.

Also, questions that have been raised about the safety of marketed drugs generally, including pertaining to the lack of adequate labeling, may result in increased cautiousness by the FDA in reviewing new drugs based on safety, efficacy, or other regulatory considerations and may result in significant delays in obtaining regulatory approvals. Such regulatory considerations may also result in the imposition of more restrictive drug labeling or marketing requirements as conditions of approval, which may significantly affect the marketability of our drug products. FDA review of our Technosphere Insulin System as a combination product therapy may lengthen the product development and regulatory approval process, increase our development costs and delay or prevent the commercialization of our Technosphere Insulin System.

We are developing our Technosphere Insulin System as a new treatment for diabetes utilizing unique, proprietary components. As a combination product, any changes to either the MedTone inhaler, the Technosphere material or the insulin, including new suppliers, could possibly result in FDA requirements to repeat certain clinical studies. This means, for example, that switching to an alternate delivery system could require us to undertake additional clinical trials and other studies, which could significantly delay the development and commercialization of our Technosphere Insulin System. Our product candidates that are currently in development for the treatment of cancer also face similar obstacles and costs.

We currently expect that our inhaler will be reviewed for approval as part of the New Drug Application, or NDA, for our Technosphere Insulin System. No assurances exist that we will not be required to obtain separate device clearances or approval for use of our inhaler with our Technosphere Insulin System. This may result in our being subject to medical device review user fees and to other device requirements to market our inhaler and may result in significant delays in commercialization. Even if the device component is approved as part of our NDA for the Technosphere Insulin System, numerous device regulatory requirements still apply to the device part of the

drug-device combination.

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**Risks related to our common stock and this offering**

**Our management will have broad discretion in how we use the net proceeds of this offering and the note offering.**

We have not determined the specific allocation of the net proceeds from this offering and the concurrent note offering. Our management will have broad discretion over the use and investment of the net proceeds, and, accordingly, investors in this offering will need to rely upon the judgment of our management with respect to the use of proceeds, with only limited information concerning management's specific intentions. Our management may spend a portion or all of the net proceeds in ways that our securityholders may not desire or that may not yield a favorable return. The failure of our management to apply the net proceeds from this offering and the concurrent note offering effectively could harm our business, financial condition and results of operations.

**Our stock price is volatile.**

The stock market, particularly in recent years, has experienced significant volatility particularly with respect to pharmaceutical and biotechnology stocks, and this trend may continue. The volatility of pharmaceutical and biotechnology stocks often does not relate to the operating performance of the companies represented by the stock. Our business and the market price of our common stock may be influenced by a large variety of factors, including:

the progress and results of our clinical trials;

announcements by us or our competitors concerning their clinical trial results, acquisitions, strategic alliances, technological innovations and newly approved commercial products;

the availability of critical materials used in developing and manufacturing our Technosphere Insulin System or other product candidates;

developments or disputes concerning our patents or proprietary rights;

developments in our litigation with our former Chief Medical Officer;

the expense and time associated with, and the extent of our ultimate success in, securing regulatory approvals;

changes in securities analysts' estimates of our financial and operating performance;

general market conditions and fluctuations for emerging growth and pharmaceutical market sectors;

sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;

discussion of our Technosphere Insulin System, our other product candidates, competitors' products, or our stock price by the financial and scientific press, the healthcare community and online investor communities such as chat rooms; and

general economic, political or stock market conditions.

Any of these risks, as well as other factors, could cause the market price of our common stock to decline.

**If other biotechnology and biopharmaceutical companies or the securities markets in general encounter problems, the market price of our common stock could be adversely affected.**

Public companies in general and companies included on the Nasdaq Global Market in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. There has been particular volatility in the market prices of securities of biotechnology and other life sciences companies, and the market prices of these companies have often fluctuated because of problems or successes in a given market segment or because investor interest has shifted to other segments. These broad market and industry factors may cause the market price of our common stock to

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decline, regardless of our operating performance. We have no control over this volatility and can only focus our efforts on our own operations, and even these may be affected due to the state of the capital markets.

In the past, following periods of large price declines in the public market price of a company's securities, securities class action litigation has often been initiated against that company. Litigation of this type could result in substantial costs and diversion of management's attention and resources, which would hurt our business. Any adverse determination in litigation could also subject us to significant liabilities.

**Our chairman, chief executive officer and principal stockholder can individually control our direction and policies, and his interests may be adverse to the interests of our other stockholders. After his death, his stock will be left to his funding foundations for distribution to various charities, and we cannot assure you of the manner in which those entities will manage their holdings.**

Alfred E. Mann has been our primary source of financing to date. At September 30, 2006, Mr. Mann beneficially owned approximately 48.9% of our outstanding shares of capital stock. Members of Mr. Mann's family beneficially owned at least an additional 2.0% of our outstanding shares of common stock, although Mr. Mann does not have voting or investment power with respect to these shares. The underwriters have reserved up to 8,750,000 shares in this offering and up to \$50.0 million of the notes in the concurrent note offering for sale to Mr. Mann. By virtue of his holdings, Mr. Mann can and will continue to be able to effectively control the election of the members of our board of directors, our management and our affairs and prevent corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets that may be favorable from our standpoint or that of our other stockholders or cause a transaction that we or our other stockholders may view as unfavorable.

Subject to compliance with federal and state securities laws and the lockup restrictions described in "Underwriting - No Sales of Similar Securities," Mr. Mann is free to sell the shares of our stock he holds at any time. Upon his death, we have been advised by Mr. Mann that his shares of our capital stock will be left to the Alfred E. Mann Medical Research Organization, or AEMMRO, and AEM Foundation for Biomedical Engineering, or AEMFBE, not-for-profit medical research foundations that serve as funding organizations for Mr. Mann's various charities, including the Alfred Mann Foundation, or AMF, and the Alfred Mann Institutes at the University of Southern California and at the Technion-Israel Institute of Technology, and that may serve as funding organizations for any other charities that he may establish. The AEMMRO is a membership foundation consisting of six members, including Mr. Mann, four of his children and Dr. Joseph Schulman, the director of AMF. The AEMFBE is a membership foundation consisting of five members, including Mr. Mann and the same four of his children. Although we understand that the members of AEMMRO and AEMFBE have been advised of Mr. Mann's objectives for these foundations, once Mr. Mann's shares of our capital stock become the property of the foundations, we cannot assure you as to how those shares will be distributed or how they will be voted.

**The future sale of our common stock could negatively affect our stock price.**

As of September 30, 2006, we had approximately 49.9 million shares of common stock outstanding. Substantially all of these shares are available for public sale, subject in some cases to volume and other limitations or delivery of a prospectus. If our common stockholders sell substantial amounts of common stock in the public market, or the market perceives that such sales may occur, the market price of our common stock may decline. Furthermore, if we were to include in a company-initiated registration statement shares held by our stockholders pursuant to the exercise of their registrations rights, the sale of those shares could impair our ability to raise needed capital by depressing the price at which we could sell our common stock.

In addition, we will need to raise substantial additional capital in the future to fund our operations. If we raise additional funds by issuing equity securities, the market price of our common stock may decline and our existing

stockholders may experience significant dilution.

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**Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.**

We are incorporated in Delaware. Certain anti-takeover provisions of Delaware law and our certificate of incorporation and amended and restated bylaws, as currently in effect, may make a change of control of our company more difficult, even if a change in control would be beneficial to our stockholders. Our anti-takeover provisions include provisions such as a prohibition on stockholder actions by written consent, the authority of our board of directors to issue preferred stock without stockholder approval, and supermajority voting requirements for specified actions. In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits stockholders owning 15% or more of our outstanding voting stock from merging or combining with us in certain circumstances. These provisions may delay or prevent the acquisition of us, even if the acquisition may be considered beneficial by some of our stockholders. In addition, they may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

**Because we do not expect to pay dividends in the foreseeable future, you must rely on stock appreciation for any return on your investment.**

We have paid no cash dividends on any of our capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future, and payment of cash dividends, if any, will also depend on our financial condition, results of operations, capital requirements and other factors and will be at the discretion of our board of directors. Furthermore, we may in the future become subject to contractual restrictions on, or prohibitions against, the payment of dividends. Accordingly, the success of your investment in our common stock will likely depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value after the offering or even maintain the price at which you purchased your shares, and you may not realize a return on your investment in our common stock.

**You will experience immediate dilution in the book value per share of the common stock you purchase.**

Since the price per share of our common stock being offered is substantially higher than the book value per share of our common stock, you will suffer substantial dilution in the net tangible book value of the common stock you purchase in this offering. Based on an assumed offering price to the public of \$17.44 per share, if you purchase shares of common stock in this offering, you will suffer immediate and substantial dilution of \$12.11 per share in the net tangible book value of the common stock. See the section entitled "Dilution" below for a more detailed discussion of the dilution you will incur if you purchase common stock in this offering.

**A substantial number of shares of our outstanding common stock may be sold in this offering, which could cause the price of our common stock to decline.**

Pursuant to this offering, we will sell, assuming the underwriter's option to purchase up to 2,625,000 additional shares from us is exercised in full, 20,125,000 shares, or approximately 40.3%, of our outstanding common stock as of September 30, 2006. This sale and any future sales of a substantial number of shares of our common stock in the public market, or the perception that such sales may occur, could adversely affect the price of our common stock. We cannot predict the effect, if any, that market sales of those shares of common stock or the availability of those shares of common stock for sale will have on the market price of our common stock.





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**FORWARD-LOOKING STATEMENTS**

This prospectus supplement and the accompanying prospectus, including the documents that we incorporate by reference herein and therein, contain statements that are not strictly historical in nature and are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements are subject to the safe harbor created by Section 27A of the Securities Act and Section 21E of the Exchange Act and may include, but are not limited to, statements about:

the progress or success of our research, development and clinical programs;

the timing of completion of enrollment in our clinical trials, the timing of the interim analyses and the timing or success of the commercialization of our Technosphere Insulin System, or any other products or therapies that we may develop;

our ability to market, commercialize and achieve market acceptance for our Technosphere Insulin System, or any other products or therapies that we may develop;

our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;

our estimates for future performance; our estimates regarding anticipated operating losses, future revenues, capital requirements and our needs for additional financing;

scientific studies and the conclusions we draw from them; and

our ability to successfully enter into strategic business collaborations.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, goal, intends, may, plans, potential, predicts, projects, should, will, would, the negative words or similar expressions intended to identify forward-looking statements. These statements reflect our views as of the date on which they were made with respect to future events and are based on assumptions and subject to risks and uncertainties. The underlying information and expectations are likely to change over time. Given these uncertainties, you should not place undue reliance on these forward-looking statements as actual events or results may differ materially from those projected in the forward-looking statements due to various factors, including, but not limited to, those set forth under the heading Risk Factors in this prospectus supplement, in the accompanying prospectus and in our SEC filings. These forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement.

You should rely only on the information contained, or incorporated by reference, in this prospectus supplement, the accompanying prospectus, the registration statement of which this prospectus supplement is a part, the documents incorporated by reference herein, and any applicable prospectus supplement and understand that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. Before deciding to purchase our securities, you should carefully consider the risk factors

discussed here or incorporated by reference, in addition to the other information set forth in this prospectus supplement, the accompanying prospectus and in the documents incorporated by reference.

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**USE OF PROCEEDS**

We estimate the net proceeds to us from the sale of the common stock will be approximately \$297.4 million, based on an assumed offering price to the public and to Alfred E. Mann of \$17.44 per share, the closing price of our common stock on the Nasdaq Global Market on November 24, 2006 (or approximately \$340.9 million if the underwriters exercise their over-allotment option in full), after payment of underwriting discounts and commissions and estimated expenses of this offering. Each \$1.00 increase or decrease in the assumed offering price of the common stock of \$17.44 per share would increase or decrease, respectively, the net proceeds from the common stock offering by approximately \$17.1 million, after deducting the underwriting discount and estimated expenses of the offering. We estimate that the net proceeds from the sale of the notes in the concurrent note offering will be approximately \$98.3 million (or \$112.8 million if the underwriters exercise their over-allotment option in full), after payment of underwriting discounts and commissions and estimated expenses of the offering.

Though this common stock offering is not contingent upon the concurrent note offering and the note offering is not contingent upon this common stock offering, we currently anticipate raising approximately \$405.2 million in aggregate gross proceeds from the two offerings. However, amounts sold in each offering may vary based on market conditions relating to that particular security. Additionally, the underwriters have reserved up to 8,750,000 shares in this common stock offering and up to \$50.0 million of notes in the concurrent note offering for sale to Alfred E. Mann. The underwriters will not receive any underwriting discount or commission on the sale of common stock or notes to Mr. Mann. The number of shares or amount of notes that Mr. Mann will be allocated in the offerings will depend on market conditions and the number of shares could be more or less than the amount initially reserved for allocation. We cannot provide any assurance as to the exact number of shares of common stock or notes that Mr. Mann will be allocated, if any.

We intend to use the net proceeds to us from this offering and of the concurrent note offering to fund the costs of our clinical trials programs and other research and development activities, to expand our manufacturing operations, both on-going and planned, and for general corporate purposes, including working capital and repayment of \$70.0 million in principal amount of indebtedness, plus accrued interest, owed to Alfred E. Mann pursuant to an outstanding note. This indebtedness accrues interest at the lesser of London Interbank Offered Rate plus 3% per annum and the maximum rate permissible by law, and matures one year from the date of each advance. We may also use a portion of the net proceeds to in-license, invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plan, commitments or agreements with respect to any acquisitions as of the date of this prospectus supplement. Pending these uses, we intend to invest the net proceeds in investment-grade, interest-bearing securities. As of the date of this prospectus supplement, we cannot specify with certainty all of the particular uses for the net proceeds to us from these offerings. Accordingly, we will retain broad discretion over the use of these proceeds.

**Table of Contents****CAPITALIZATION**

The following table shows our cash and cash equivalents and marketable securities and capitalization as of September 30, 2006:

on an actual basis;

on an as-adjusted basis to give effect to our issuance and sale of 17,500,000 shares of common stock offering at an assumed offering price to the public and to Alfred E. Mann of \$17.44 per share, based on the closing sale price of our common stock on the Nasdaq Global Market on November 24, 2006, after deducting the underwriting discount and estimated offering expenses payable by us, and (ii) the (a) receipt by us of \$20.0 million in cash that was borrowed pursuant to our loan arrangement with Alfred E. Mann after September 30, 2006 and (b) the repayment on the date of this offering of all amounts owed under our loan arrangement with Mr. Mann (\$70.0 million in principal amount of indebtedness plus approximately \$0.9 million in accrued interest); and

on a pro forma as-adjusted basis to give effect to (i) both our issuance and sale of 17,500,000 shares of common stock in this offering and our concurrent issuance of \$100.0 million aggregate principal amount of notes in the notes offering, after deducting the underwriting discount and estimated offering expenses payable by us, and (ii) the (a) receipt by us of \$20.0 million in cash that was borrowed pursuant to our loan arrangement with Alfred E. Mann after September 30, 2006 and (b) the repayment on the date of this offering of all amounts owed under our loan arrangement with Mr. Mann (\$70.0 million in principal amount of indebtedness plus approximately \$0.9 million in accrued interest)

This table should be read with our financial statements and the related notes incorporated by reference in this prospectus supplement and the accompanying prospectus.

| (in thousands, except for share and per share data)  | Actual    | As of September 30, 2006  |  |
|--|-----------|---|--|
|  |           | As-Adjusted<br>(This Offering<br>and Debt<br>Repayment) <sup>(1)(2)</sup> | Pro Forma<br>As-Adjusted<br>(Both<br>Offerings<br>and Debt<br>Repayment) <sup>(1)(2)</sup> |
| Cash, cash equivalents and marketable securities   | \$ 50,093 | \$ 296,541  | \$ 394,830   |
| Note payable to principal stockholder <sup>(3)</sup>   | 50,000    |   |  |
| Deferred compensation and other liabilities  | 24        | 24  | 24   |
| Senior convertible notes   |           |   | 100,000  |
| Stockholders' equity:  |           |   |  |
| Undesignated preferred stock, \$0.01 par value,<br>10,000,000 shares authorized; no shares issued or outstanding   |           |   |  |
| Common stock, \$0.01 par value; 90,000,000 shares authorized;<br>49,895,691 shares issued and outstanding; 67,395,691 shares<br>issued and outstanding as-adjusted; 67,395,691 shares issued<br>and outstanding pro forma as-adjusted <sup>(1)</sup> | 499       | 674   | 674  |

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|  |            |            |            |
|--|------------|------------|------------|
| Additional paid-in capital                       | 778,053    | 1,075,237  | 1,075,237  |
| Deficit accumulated during the development stage | (716,581)  | (716,581)  | (716,581)  |
| Total stockholders' equity                       | 61,971     | 359,330    | 359,330    |
| Total capitalization                             | \$ 111,995 | \$ 359,354 | \$ 459,354 |

(1) The number of shares of common stock is based on the actual number of shares outstanding as of September 30, 2006, but excludes:

an aggregate of 5,891,800 shares of our common stock issuable upon exercise of stock options outstanding as of September 30, 2006, having a weighted average exercise price of \$13.46 per share, of

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which options to purchase 2,604,125 shares were exercisable as of that date at a weighted average exercise price of \$12.46 per share;

an aggregate of 3,026,659 shares of common stock reserved for issuance upon the exercise of warrants outstanding as of September 30, 2006, with a weighted average exercise price of \$12.23 per share, all of which are exercisable as of that date;

an aggregate of 823,102 of our common stock issuable upon vesting of restricted stock units as of September 30, 2006, granted under our 2004 Equity Incentive Plan;

an aggregate of 6,300,143 shares of our common stock reserved for future issuance under our 2004 Equity Incentive Plan, 2004 Non-Employee Directors Stock Option Plan and 2004 Employee Stock Purchase Plan as of September 30, 2006; and

shares of common stock reserved for issuance upon conversion of the convertible notes concurrently being offered by us in this offering.

- (2) Each \$1.00 increase or decrease in the assumed offering price of the common stock of \$17.44 per share would increase or decrease, respectively, the amount of total stockholders equity and total capital by approximately \$17.1 million, assuming the sale and issuance of 17,500,000 shares of common stock offered by us as set forth on the cover of this prospectus supplement, remains the same, after deducting the estimated underwriting discount and estimated offering expenses.
- (3) The amount of Note payable to principal stockholder in the Actual column reflects the \$50.0 million in principal amount outstanding as of September 30, 2006 and does not reflect the additional \$20.0 million in principal amount that has since been borrowed by us and will also be repaid with the proceeds from this offering.

**Table of Contents****PRICE RANGE OF COMMON STOCK**

Our common stock is traded on the Nasdaq Global Market under the symbol MNKD. The following table sets forth, during the periods indicated, the high and low sales prices per share of our common stock, as reported on the Nasdaq Global Market:

|  | <b>Common Stock<br/>Price</b> |            |
|--|-------------------------------|------------|
|  | <b>High</b>                   | <b>Low</b> |
| Year ended December 31, 2004               |                               |            |
| Third Quarter (beginning July 28, 2004)    | \$ 24.31                      | \$ 10.71   |
| Fourth Quarter                             | \$ 20.40                      | \$ 14.32   |
| Year ended December 31, 2005               |                               |            |
| First Quarter                              | \$ 16.15                      | \$ 11.67   |
| Second Quarter                             | \$ 15.98                      | \$ 8.58    |
| Third Quarter                              | \$ 13.94                      | \$ 8.42    |
| Fourth Quarter                             | \$ 13.85                      | \$ 10.60   |
| Year ended December 31, 2006               |                               |            |
| First Quarter                              | \$ 21.74                      | \$ 11.20   |
| Second Quarter                             | \$ 21.74                      | \$ 16.42   |
| Third Quarter                              | \$ 21.48                      | \$ 16.26   |
| Fourth Quarter (through November 24, 2006) | \$ 21.68                      | \$ 16.42   |

The last reported sale price of our common stock on the Nasdaq Global Market on November 24, 2006 was \$17.44. As of November 22, 2006, there were approximately 206 stockholders of record of our common stock

**DIVIDEND POLICY**

We have never declared or paid cash dividends. We do not anticipate declaring or paying cash dividends in the foreseeable future. Instead, we will retain our earnings, if any, for the future operation and expansion of our business.

**Table of Contents****DILUTION**

If you invest in our common stock, your interest will be diluted to the extent of the difference between the offering price per share you pay in this offering and the net tangible book value per share of our common stock immediately after this offering. Our net tangible book value as of September 30, 2006 was approximately \$62.0 million, or \$1.24 per share of common stock. Net tangible book value per share is equal to our total tangible assets minus total liabilities, all divided by the number of shares of common stock outstanding as of September 30, 2006. After giving effect to the sale by us of the 17,500,000 shares of common stock we are offering, assuming an offering price to the public and to Alfred E. Mann of \$17.44 per share and after deducting underwriting discounts and commissions and our estimated offering expenses, our as-adjusted net tangible book value would have been approximately \$359.3 million, or \$5.33 per share of common stock. This represents an immediate increase in net tangible book value of \$4.09 per share to our existing stockholders and an immediate dilution of \$12.11 per share to new investors. The following table illustrates this calculation on a per-share basis.

|   |         |          |
|---|---------|----------|
| Offering price per share  |         | \$ 17.44 |
| Net tangible book value per share as of September 30, 2006        | \$ 1.24 |          |
| Increase per share attributable to the offering                   | 4.09    |          |
| As-adjusted net tangible book value per share after this offering |         | 5.33     |
| Dilution per share to new investors                               |         | \$ 12.11 |

A \$1.00 increase in the assumed offering price of \$17.44 per share would increase our as-adjusted net tangible book value to \$376.4 million, representing an immediate increase in net tangible book value of \$4.34 per share to our existing stockholders, and an immediate dilution of \$12.86 per share to new investors in this offering, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus supplement, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. A \$1.00 decrease in the assumed offering price of \$17.44 per share would decrease our as-adjusted net tangible book value to \$342.3 million, representing an immediate increase in net tangible book value of \$3.84 per share to our existing stockholders, and an immediate dilution of \$11.36 per share to new investors in this offering, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus supplement, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. The as-adjusted information discussed above is illustrative only and will adjust based on the actual offering price and other terms of this offering determined at pricing.

If the underwriters exercise their option to purchase additional shares in full, the as-adjusted net tangible book value as of September 30, 2006 would have been \$5.75 per share, representing an increase to existing stockholders of \$4.51 per share, and there will be an immediate dilution of \$11.69 per share to new investors.

The foregoing table does not take into account dilution to new investors that could occur upon the exercise of outstanding options and warrants having a per-share exercise price less than the offering price per share in this offering or for the shares of common stock reserved for issuance upon conversion of the convertible notes concurrently being offered by us in connection with our note offering. As of September 30, 2006, there were:



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an aggregate of 5,891,800 shares of our common stock issuable upon exercise of stock options outstanding, having a weighted average exercise price of \$13.46 per share, of which options to purchase 2,604,125 shares were exercisable as of that date at a weighted average exercise price of \$12.46 per share;

an aggregate of 3,026,659 shares of common stock reserved for issuance upon the exercise of warrants outstanding, with a weighted average exercise price of \$12.23 per share, all of which are exercisable as of that date;

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an aggregate of 823,102 of our common stock issuable upon vesting of restricted stock units granted under our 2004 Equity Incentive Plan; and

an aggregate of 6,300,143 shares of our common stock reserved for future issuance under our 2004 Equity Incentive Plan, 2004 Non-Employee Directors Stock Option Plan and 2004 Employee Stock Purchase Plan.

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**MATERIAL U.S. FEDERAL INCOME TAX  
CONSEQUENCES FOR NON-U.S. HOLDERS**

The following is a summary of certain material U.S. federal income tax consequences of the purchase, ownership and disposition of our common stock by non-U.S. holders as we define that term below. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, or Code, U.S. Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those set forth below. We have not sought any ruling from the Internal Revenue Service, or IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with such statements and conclusions. Except as provided in the discussion of estate tax, the term non-U.S. holder means a beneficial owner of our common stock that, for U.S. federal income tax purposes, is not a partnership or any other entity taxable as a partnership, or any of the following:

an individual citizen or resident of the U.S.;

a corporation or other entity taxable as a corporation for U.S. federal income tax purposes created or organized in the U.S. or under the laws of the U.S., any state thereof, or the District of Columbia;

an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust that (a) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (b) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

This summary is limited to holders who hold our common stock as a capital asset. This summary also does not address the tax consequences arising under the laws of any foreign, state or local jurisdiction. In addition, this discussion does not address tax consequences applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

banks, insurance companies, or other financial institutions;

tax-exempt organizations;

dealers in securities or currencies;

traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;

persons that are partnerships or other pass-through entities;

persons that own, or are deemed to own, more than 5% of our company, except to the extent specifically set forth below;

certain former citizens or long-term residents of the U.S.;

persons who hold the notes as a position in a hedging transaction, straddle, conversion transaction or other risk reduction transaction; or

persons deemed to sell the common stock under the constructive sale provisions of the Code.

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

#### **Distributions on Common Stock**

If we make cash or other property distributions on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings

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and profits, as determined under U.S. federal income tax principles. Distributions in excess of our earnings and profits will constitute a return of capital that will first be applied against and reduce the non-U.S. holder's adjusted tax basis in our common stock, but not below zero. Any remaining excess will be treated as gain realized on the sale or other disposition of the common stock and will be treated as described under **Gain on Disposition of Common Stock** below.

Dividends paid to a non-U.S. holder that are not effectively connected with the non-U.S. holder's conduct of a trade or business in the U.S. will generally be subject to withholding of U.S. federal income tax at the rate of 30%, or if a tax treaty applies, a lower rate specified by the treaty. Non-U.S. holders should consult their tax advisers regarding their entitlement to benefits under a relevant income tax treaty.

Dividends that are effectively connected with a non-U.S. holder's conduct of a trade or business in the U.S. and, if an income tax treaty applies, are attributable to a permanent establishment in the U.S., are taxed on a net income basis at the regular graduated U.S. federal income tax rates in much the same manner as if the non-U.S. holder were a

U.S. person, as defined under the Code. In such cases, we will not have to withhold U.S. federal income tax if the non-U.S. holder complies with applicable certification requirements. In addition, if the non-U.S. holder is a corporation, a branch profits tax equal to 30% (or lower applicable treaty rate) may be imposed on a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders should consult any applicable tax treaties that may provide for different rules.

To claim the benefit of a tax treaty or an exemption from withholding because the dividends are effectively connected with the conduct of a trade or business in the U.S., a non-U.S. holder must either (a) provide a properly executed IRS Form W-8BEN or Form W-8ECI (as applicable) before the payment of dividends or (b) if our common stock is held through certain foreign intermediaries, satisfy the relevant certification requirements of applicable U.S. Treasury Regulations. These forms must be periodically updated. Non-U.S. holders may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund.

## **Gain on Disposition of Common Stock**

A non-U.S. holder generally will not be subject to U.S. federal income tax or any withholding thereof with respect to gain recognized on a sale or other disposition of our common stock unless one of the following applies:

the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the U.S. and, if an income tax treaty applies, is attributable to a permanent establishment maintained by the non-U.S. holder in the U.S.; in these cases, the non-U.S. holder will generally be taxed on its net gain derived from the disposition at the regular graduated U.S. federal income tax rates in much the same manner as if the non-U.S. holder were a U.S. person and, if the non-U.S. holder is a foreign corporation, the branch profits tax described above may also apply;

the non-U.S. holder is an individual who is present in the U.S. for 183 days or more in the taxable year of the disposition and meets certain other requirements; in this case, the non-U.S. holder will be subject to U.S. federal income tax at a rate of 30% (or a reduced rate under an applicable treaty) on the amount by which capital gains (including gain recognized on a sale or other disposition of our common stock) allocable to U.S. sources exceed capital losses allocable to U.S. sources; or

our common stock constitutes a United States real property interest by reason of our status as a United States real property holding corporation, or USRPHC, for U.S. federal income tax purposes at any time during the shorter of the 5-year period ending on the date you dispose of our common stock or the period you held our common stock.

The determination of whether we are a USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our business assets. If we are or in the future become a USRPHC, then if at such time our common stock is regularly traded on an established securities market within the meaning of Section 897(c)(3) of the Code, such common stock will be treated as a United States real property interest with respect to a non-U.S. holder only if they own directly or indirectly more than 5% of

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such stock at any time during the applicable period. We expect that our common stock will be regularly traded on an established securities market. If we are or become a USRPHC, and a non-U.S. holder owned directly or indirectly more than 5% of our common stock at any time during the applicable period, or our common stock were not considered to be regularly traded on an established securities market, then any gain recognized by a non-U.S. holder on the sale or other disposition of our common stock would be treated as effectively connected with a U.S. trade or business (except for purposes of the branch profits tax) and would be subject to U.S. federal income tax at regular graduated U.S. federal income tax rates in much the same manner as if the non-U.S. holder were a U.S. person. In addition, if we are or become a USRPHC, and our common stock is not regularly traded on an established securities market, the non-U.S. holder would be subject to withholding at a rate of 10% on the gross proceeds realized with respect to the sale or other disposition of our common stock and any amount withheld in excess of the tax owed, as determined in accordance with the preceding sentence, may be refundable if the required information is timely furnished to the IRS.

## **Federal Estate Tax**

Common stock owned or treated as owned by an individual who is a non-U.S. holder at the time of death will be included in such individual's gross estate for U.S. federal estate tax purposes, unless an applicable estate tax or other treaty provides otherwise.

## **Backup Withholding and Information Reporting**

In general, you will not be subject to backup withholding and information reporting with respect to payments that we make to you, provided that we do not have actual knowledge or reason to know that you are a U.S. person and you have given us an appropriate statement certifying, under penalties of perjury, that you are not a U.S. person. In addition, you will not be subject to backup withholding or information reporting with respect to the proceeds of the sale of a share of common stock within the U.S. or conducted through certain U.S.-related financial intermediaries, if the payor receives the statement described above and does not have actual knowledge or reason to know that you are a U.S. person or you otherwise establish an exemption. However, we may be required to report annually to the IRS and to you the amount of, and the tax withheld with respect to, any dividends paid to you, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which you reside. You generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the IRS in a timely manner.

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**CONCURRENT NOTE OFFERING**

We are concurrently offering \$100.0 million aggregate principal amount, or \$115.0 million aggregate principal amount if the underwriter exercises its option in full, of senior convertible notes due 2013. The notes will bear interest at the rate of % per year on the principal amount of the notes, payable in cash semiannually in arrears on June and December of each year, beginning June , 2007. The notes will mature on December , 2013. The underwriters have reserved \$50.0 million of the notes for sale to Alfred E. Mann, although we can provide no assurance as to the amount of notes he will be allocated, if any.

Holders may convert, at any time prior to the close of business on the business day immediately preceding the stated maturity date of the notes, any outstanding notes into shares of our common stock. The notes are convertible at a conversion rate of shares per \$1,000 principal amount of notes, which is equal to a conversion price of approximately \$ per share, subject to adjustment.

Upon a fundamental change of our company, each holder may require us to purchase all or a portion of such holder's notes at a price equal to the principal plus accrued and unpaid interest, if any. If certain fundamental changes occur, we will pay, to the extent described in the supplemental indenture, a make whole premium on notes converted in connection with a fundamental change by increasing the conversion rate applicable to the notes.

The notes:

will be our general, unsecured, senior obligations and will rank equally in right of payment with our other unsecured senior debt;

will effectively rank junior in right of payment to any of our existing and future secured debt, to the extent of the value of the assets securing such debt; and

will effectively rank junior in right of payment to any existing and future debt and other liabilities of our subsidiaries, including trade payables.

As of September 30, 2006, we had no outstanding secured debt and our subsidiaries had no outstanding liabilities to which the notes would rank effectively junior.

The terms of the supplemental indenture under which the notes will be issued do not limit our ability to incur additional debt, including senior debt and subordinated debt.



**Table of Contents****UNDERWRITING**

We intend to offer the shares through the underwriters. J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives of the underwriters named below. Subject to the terms and conditions described in a purchase agreement among us and the underwriters, the underwriters severally have agreed to purchase from us the number of shares listed opposite their names below.

| <b>Underwriter</b>                                    | <b>Number<br/>of Shares</b> |
|---|-----------------------------|
| J.P. Morgan Securities Inc.                           |                             |
| Merrill Lynch, Pierce, Fenner & Smith<br>Incorporated |                             |
| Wachovia Capital Markets, LLC                         |                             |
| CIBC World Markets Corp.                              |                             |
| Leerink Swann & Co., Inc.                             |                             |
| Total   | 17,500,000                  |

The underwriters have agreed to purchase all of the shares sold under the purchase agreement if any of these shares are purchased. If an underwriter defaults, the purchase agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the purchase agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

The underwriters have reserved up to 8,750,000 shares of common stock for sale to our chairman, chief executive officer and principal stockholder, Alfred E. Mann, at a price equal to the greater of the public offering price in this offering or the market value of our common stock immediately preceding the pricing of the common stock offering as determined by applicable Nasdaq rules. The underwriters will not receive any underwriting discount on the sale of common stock directly to Mr. Mann. The number of shares that Mr. Mann will be allocated in this offering will depend on market conditions and could be more or less than the amount initially reserved for allocation. We cannot provide any assurance as to the exact number of shares of common stock that Mr. Mann will be allocated, if any. Any shares of our common stock not allocated by the underwriters to Mr. Mann may be sold by the underwriters to the public on the terms set forth in this prospectus supplement.

**Commissions and Discounts**

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price on the cover page of this prospectus supplement and to dealers at that price less a concession not in excess of \$     per share. After the public offering, the public offering price, concession and discount may be changed.

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The following table shows the public offering price, underwriting discount and proceeds before expenses to us.

|  | <b>Per<br/>Share</b> | <b>Without<br/>Option</b> | <b>With<br/>Option</b> |
|--|----------------------|---------------------------|------------------------|
| Public offering price                  | \$                   | \$                        | \$                     |
| Price to Alfred E. Mann <sup>(1)</sup> | \$                   | \$                        | \$                     |
| Underwriting discount                  | \$                   | \$                        | \$                     |
| Proceeds, before expenses, to us       | \$                   | \$                        | \$                     |

- (1) The underwriters will not receive any underwriting discount on the sale of our shares of common stock to Alfred E. Mann.

The estimated expenses of this offering, not including the underwriting discount payable by us, will be approximately \$210,750.

**Quotation on the Nasdaq Global Market**

The shares are quoted on the Nasdaq Global Market under the symbol MNKD.

**Overallotment Option**

We have granted to the underwriters an option to purchase up to 2,625,000 additional shares at the public offering price less the underwriting discount. The underwriters may exercise this option for 30 days from the date of this prospectus supplement solely to cover any overallotments. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the purchase agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

**No Sales of Similar Securities**

We and our executive officers and directors have agreed, with exceptions, not to sell or transfer any of our common stock for 90 days after the date of this prospectus supplement without first obtaining the written consent of J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated. Specifically, we and these individuals have agreed not to directly or indirectly:

offer, pledge, announce the intention to sell, sell or contract to sell any of our common stock;

sell any option or contract to purchase any of our common stock;

purchase any option or contract to sell any of our common stock;

grant any option, right or warrant for the sale of any of our common stock;

otherwise dispose of or transfer any of our common stock; or

enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any of our common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

The restrictions described in the preceding paragraph do not apply to:

shares we issue in this common stock offering, the notes we issue in the concurrent note offering or shares issued upon conversion of such notes;

grants of equity awards we make under our existing equity incentive plans;

shares we issue upon the exercise of options granted under our equity incentive plans or under other options, warrants or other rights outstanding as of the date hereof;

bona fide gifts by our executive officers and directors;

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transfers by our executive officers and directors to trusts for the direct or indirect benefit of such individuals or the immediate family of any such individual (for these purposes immediate family shall mean any relationship by blood, marriage or adoption, not more remote than first cousin);

provided that, in the case of transfers by our executive officers and directors:

Merrill Lynch and J.P. Morgan Securities Inc. receive a signed lockup agreement for the balance of the 90 day restriction period from each donee, trustee, distributee, or transferee, as the case may be,

any such transfer shall not involve a disposition for value,

such transfers are not required to be reported in any public report or filing with the SEC, or otherwise, and

the individual subject to the lockup does not otherwise voluntarily effect any such public report or filing regarding such transfers.

Additionally, the restrictions do not apply to up to 422,987 shares of our common stock held by certain of our officers and directors that may be sold pursuant to the terms of 10b5-1 trading plans in existence as of the date of this prospectus supplement or that may be adopted following the completion of this offering.

Notwithstanding the foregoing, if:

during the last 17 days of the 90-day period, we issue an earnings release or material news or a material event relating to us occurs; or

prior to the expiration of the 90-day period, we announce that we will release earnings results or we become aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day period,

the lockup restrictions will continue to apply until the expiration of the 18-day period beginning on our issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless J.P. Morgan Securities Inc. and Merrill Lynch waive, in writing, such extension.

This lockup provision applies to our common stock and to securities convertible into or exchangeable or exercisable for our common stock. It also applies to common stock owned or acquired during the lockup period by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

Our executive officers and directors have also agreed during the lockup period not to make any demand for or exercise any right with respect to, the registration of any shares of our common stock or any security convertible into or exercisable or exchangeable for our common stock.

**Price Stabilization, Short Positions**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

If the underwriters create a short position in the common stock in connection with the offering, i.e., if they sell more shares than are listed on the cover of this prospectus supplement, the representatives may reduce that short position by

purchasing shares in the open market. Purchases of the common stock to stabilize its price or to reduce a short position may cause the price of the common stock to be higher than it might be in the absence of such purchases.

Neither we nor any of the underwriters makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the common stock. In addition, neither we nor any of the underwriters makes any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

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**Passive Market Making**

In connection with this offering, underwriters and selling group members may engage in passive market making transactions in the common stock on the Nasdaq Global Select Market in accordance with Rule 103 of Regulation M under the Exchange Act during a period before the commencement of offers or sales of common stock and extending through the completion of distribution. A passive market maker must display its bid at a price not in excess of the highest independent bid of that security. However, if all independent bids are lowered below the passive market maker's bid, that bid must then be lowered when specified purchase limits are exceeded.

**Internet Distribution**

Merrill Lynch may facilitate internet distribution for this offering to certain of its internet subscription customers. Merrill Lynch may allocate a limited number of shares for sale to its online brokerage customers. An electronic prospectus supplement is available on the internet website maintained by Merrill Lynch. Other than the prospectus supplement in electronic format, the information on the Merrill Lynch website is not part of this prospectus supplement.

In addition, a prospectus supplement in electronic format may be made available on the website maintained by J.P. Morgan Securities Inc. and may also be made available on websites maintained by other underwriters. The underwriters may agree to allocate a number of shares to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the lead managers to underwriters that may make internet distributions on the same basis as other allocations.

**Other Relationships**

From time to time, the underwriters and certain of their affiliates may in the future engage in transactions with, and perform investment banking and/or commercial banking services, for us and our affiliates in the ordinary course of business.

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**LEGAL MATTERS**

Certain legal matters relating to the shares of common stock being offered hereby will be passed upon for us by Cooley Godward Kronish LLP, San Diego, California. Latham & Watkins LLP, Costa Mesa, California is representing the underwriters in connection with this offering.

**EXPERTS**

The consolidated financial statements and management's report on the effectiveness of internal control over financial reporting incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2005 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

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This filing is made pursuant to Rule 424(b)(3)  
Under the Securities Act of 1933  
In connection with Registration No. 333-138373

**PROSPECTUS**

**\$500,000,000**

**MANNKIND CORPORATION**

**COMMON STOCK  
WARRANTS  
DEBT SECURITIES**

From time to time, we may sell up to an aggregate of \$500,000,000 of our common stock, warrants or debt securities. We will specify in any accompanying prospectus supplement the terms of any offering.

Our common stock is traded on the NASDAQ Global Market under the trading symbol MNKD. The applicable prospectus supplement will contain information, where applicable, as to other listings, if any, on the NASDAQ Global Market or other securities exchange of the securities covered by the prospectus supplement.

Our principal executive offices are located at 28903 North Avenue Paine, Valencia, California 91355, and our telephone number at that address is (661) 775-5300.

You should read this prospectus and any prospectus supplement carefully before you invest.

**INVESTING IN OUR SECURITIES INVOLVES A HIGH DEGREE OF RISK. SEE THE SECTIONS ENTITLED RISK FACTORS IN OUR MOST RECENT ANNUAL REPORT ON FORM 10-K AND IN OUR MOST RECENT QUARTERLY REPORT ON FORM 10-Q, BOTH AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, AND BOTH OF WHICH ARE INCORPORATED HEREIN BY REFERENCE IN THEIR ENTIRETY.**

**This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement.**

The securities may be sold directly by us to investors, through agents designated from time to time or to or through underwriters or dealers. For additional information on the methods of sale, you should refer to the section entitled Plan of Distribution. If any underwriters are involved in the sale of any securities with respect to which this prospectus is

being delivered, the names of such underwriters and any applicable discounts or commissions and over allotment options will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

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

The date of this Prospectus is November 7, 2006.

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You should rely only on the information contained or incorporated by reference in this prospectus and any applicable prospectus supplement. We have not authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus and any applicable prospectus supplement. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus and any applicable prospectus supplement. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell and is seeking offers to buy only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information contained in this prospectus is accurate only as of the date on the front of this prospectus and that any information we have incorporated by reference or included in any prospectus supplement is accurate only as of the date given in the document incorporated by reference or the prospectus supplement, as applicable, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any sale of our securities. Our business, financial condition, results of operations and prospects may have changed since that date.

Technosphere® and MedTone® are our registered trademark in the United States. We have also applied for or registered company trademarks in other jurisdictions, including Europe and Japan. This document also contains trademarks and service marks owned by other companies that are the property of their respective owners. Use or display by us of other parties' trademarks, trade dress or products in this prospectus is not intended to, and does not imply a relationship with, or endorsements or sponsorship of, us by the trademark or trade dress owners.

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf registration process, we may sell common stock, warrants or debt securities in one or more offerings up to a total dollar amount of \$500,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell common stock, warrants or debt securities, we will provide a prospectus supplement that will contain more specific information about the securities offered. We may also use a prospectus supplement to add, update or change any of the information contained in this prospectus or in the documents we have incorporated by reference into this prospectus. This prospectus, together with any applicable prospectus supplement and the materials we have incorporated by reference into this prospectus and the prospectus supplement, includes all material information relating to this offering. Please carefully read both this prospectus and any applicable prospectus supplement together with the additional information described below under **Where You Can Find More Information** before buying any securities in this offering.

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**SUMMARY**

*The following summary provides an overview of selected information relating to this offering and does not contain all the information that you should consider before investing in our securities. You should carefully read this prospectus, all documents incorporated by reference, any prospectus supplement, and the additional information described under the caption WHERE YOU CAN FIND MORE INFORMATION, beginning on page 21, before buying securities in this offering. References in this prospectus to MannKind, the Company, we, us and our refer to MannKind Corporation and its subsidiary, on a consolidated basis, unless the context requires otherwise.*

**MannKind Corporation**

MannKind Corporation is a biopharmaceutical company focused on the discovery, development and commercialization of therapeutic products for diseases such as diabetes and cancer. Our lead investigational product candidate, the Technosphere Insulin System, is currently in Phase 3 clinical trials in the United States, Europe and Latin America to study its safety and efficacy in the treatment of diabetes. This therapy consists of a proprietary dry powder formulation of insulin that is inhaled into the deep lung using our proprietary inhaler. We believe that the performance characteristics, unique kinetics, convenience and ease of use of the Technosphere Insulin System may have the potential to change the way diabetes is treated.

In particular, we have observed in our clinical trials to date that the Technosphere Insulin System produces a profile of insulin levels in the bloodstream that approximates the insulin profile normally seen in healthy individuals immediately following the beginning of a meal, but which is absent in patients with diabetes. Specifically, Technosphere Insulin is rapidly absorbed into the bloodstream following inhalation, reaching peak levels within 12 to 14 minutes. As a result of this rapid onset of action, most of the glucose-lowering activity of Technosphere Insulin occurs within the first three hours of administration which is generally when glucose becomes available from a meal instead of the much longer duration of action observed when insulin is injected subcutaneously. We believe that the relatively short duration of action of Technosphere Insulin reduces the need for patients to snack between meals in order to manage ongoing blood glucose excursions. Indeed, in our clinical trials, we have observed that patients using Technosphere Insulin have achieved significant reductions in post-meal glucose excursions and significant improvements in overall glucose control, as measured by decreases in HbA1c levels, without the weight gain typically associated with insulin therapy.

In our clinical trials to date, we have observed no difference in pulmonary function between patients treated with Technosphere Insulin and patients treated with standard diabetes care. However, the longest study that we have completed so far is a six-month trial. In September 2006, we completed patient enrollment in a pivotal, two-year, Phase 3, safety study of Technosphere Insulin that will compare the pulmonary function of diabetes patients randomized to either Technosphere Insulin or standard diabetes care. We are continuing to enroll patients in three other major Phase 3 clinical trials, two of which are pivotal efficacy trials. Based on our discussions with the Food and Drug Administration, we plan to accumulate two years of controlled safety data before we file a new drug application for the Technosphere Insulin System. We anticipate that our entire clinical trial program, including several special population studies, will involve more than 4,500 patients. Larger populations and longer durations of exposure may be necessary depending on the safety profile of our product.

Our Technosphere Insulin System utilizes our proprietary Technosphere formulation technology, which is based on a class of organic molecules that are designed to self-assemble into small particles onto which drug molecules can be loaded. We are also developing additional Technosphere-based products for the delivery of other drugs. We plan to initiate Phase 1 clinical trials of a therapeutic cancer vaccine by the end of 2006.

We are a development stage enterprise and have incurred significant losses since our inception in 1991. As of September 30, 2006, we have incurred a cumulative net loss of \$716.6 million. To date, we have not generated any product revenues and have funded our operations primarily through the sale of equity securities.

We do not anticipate sales of any product prior to regulatory approval and commercialization of our Technosphere Insulin System. We currently do not have the required approvals to market any of our product candidates, and we may not receive any approvals. We may not be profitable even if we succeed in commercializing

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any of our product candidates. We expect to make substantial and increasing expenditures and to incur additional operating losses for at least the next several years as we:

continue the clinical development and commercialization of our Technosphere Insulin System for the treatment of diabetes;

expand our manufacturing operations for our Technosphere Insulin System to meet our currently anticipated commercial production needs;

expand our other research, discovery and development programs;

expand our proprietary Technosphere platform technology and develop additional applications for the pulmonary delivery of other drugs; and

enter into sales and marketing collaborations with other companies, if available on commercially reasonable terms, or develop these capabilities ourselves.

Our business is subject to significant risks, including but not limited to the risks inherent in our ongoing clinical trials and the regulatory approval process, the results of our research and development efforts, competition from other products and technologies and uncertainties associated with obtaining and enforcing patent rights.

## **Risk Factors**

An investment in our securities involves a high degree of risk. Prior to making a decision about investing in our securities, you should carefully consider the specific risk factors discussed in the sections entitled Risk Factors contained in any applicable prospectus supplement and our filings with the SEC and incorporated by reference in this prospectus, together with all of the other information contained in this prospectus, any applicable prospectus supplement, or incorporated by reference in this prospectus. These risks and uncertainties are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us, or that we currently view as immaterial, may also impair our business. If any of the risks or uncertainties described in our SEC filings or any prospectus supplement or any additional risks and uncertainties actually occur, our business, financial condition and results of operations could be materially and adversely affected. In that case, the trading price of our securities could decline and you might lose all or part of your investment.

## **The Securities We May Offer**

We may offer shares of our common stock, various series of debt securities and/or warrants to purchase any of these securities, with a total value of up to \$500,000,000, from time to time under this prospectus at prices and on terms to be determined by market conditions at the time of offering. This prospectus provides you with a general description of the securities we may offer. Each time we offer a type or series of securities, we will provide a prospectus supplement that will describe the specific amounts, prices and other important terms of the securities, including, to the extent applicable:

designation or classification;

aggregate principal amount or aggregate offering price;

maturity, if applicable;

original issue discount, if any;

rates and times of payment of interest, dividends or other payments, if any;

redemption, conversion, exercise, exchange or sinking fund terms, if any;

ranking;

restrictive covenants, if any;

voting or other rights, if any; and

certain federal income tax considerations.



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A prospectus supplement also may add, update or change information contained in this prospectus or in documents we have incorporated by reference. However, no prospectus supplement shall offer a security that is not registered and described in this prospectus at the time of its effectiveness.

**This prospectus may not be used to offer or sell securities unless it is accompanied by a prospectus supplement.**

We may sell the securities directly to or through agents, underwriters or dealers. We, and our agents, dealers or underwriters, reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities through agents or underwriters, we will include in the applicable prospectus supplement:

- the name of those agents or underwriters;
- applicable fees, discounts and commissions to be paid to them;
- details regarding over-allotment options, if any; and
- the net proceeds to us.

*Common Stock.* We may issue shares of our common stock from time to time. Holders of our common stock are entitled to one vote per share on all matters submitted to a vote of stockholders. Subject to any preferences of any of our preferred stock that may be outstanding, holders of our common stock are entitled to dividends when and if declared by our board of directors.

*Warrants.* We may issue warrants for the purchase of common stock or debt securities in one or more series, from time to time. We may issue warrants independently or together with common stock or debt securities, and the warrants may be attached to or separate from these securities. In this prospectus, we have summarized certain general features of the warrants. We urge you, however, to read the prospectus supplement related to the series of warrants being offered, as well as the warrant agreements that contain the terms of the warrants. Forms of the warrant agreements and forms of warrants containing the terms of the warrants being offered have been filed as exhibits to the registration statement of which this prospectus is a part, and supplemental agreements and forms of warrants containing the terms of the warrants being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports we file with the SEC.

We will evidence each series of warrants by warrant certificates that we will issue under a separate agreement. We will enter into the warrant agreements with a warrant agent. Each warrant agent will be a bank that we select. We will state the name and address of the warrant agent in the applicable prospectus supplement relating to a particular series of warrants.

*Debt Securities.* We may offer debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. The senior debt securities will rank equally with any other unsecured and unsubordinated debt. The subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner described in the instrument governing the debt, to all of our senior indebtedness. Convertible debt securities will be convertible into or exchangeable for our common stock or our other securities. Conversion may be mandatory or at your option and would be at prescribed conversion rates.

The debt securities will be issued under one or more documents called indentures, which are contracts between us and a national banking association, as trustee. In this prospectus, we have summarized certain general features of the debt securities. We urge you, however, to read the prospectus supplement related to the series of debt securities being

offered, as well as the complete indentures that contain the terms of the debt securities. Indentures have been filed as exhibits to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports we file with the SEC.

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**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for the periods indicated:

| <b>Fiscal the Year Ended December 31,</b> |             |             |             |             | <b>Nine<br/>Months<br/>Ended<br/>September 30,</b> |
|---|-------------|-------------|-------------|-------------|--|
| <b>2001</b>                               | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b>  |

Ratio of earnings to fixed charges

For the purpose of this table, earnings consist of income (loss) from continuing operations before income taxes, extraordinary items, cumulative effect of accounting changes, equity in net losses of affiliates and fixed charges and fixed charges consist of interest expense and the portion of operating lease expense that represents interest. For the fiscal years ended December 31, 2001, 2002, 2003, 2004 and 2005, and the nine months ended September 30, 2006, we had no earnings. Our earnings for those periods were insufficient to cover fixed charges by \$48.2 million, \$206.3 million, \$65.9 million, \$76.0 million, \$114.3 million and \$158.6 million, respectively.

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Statements contained in this prospectus, in the documents incorporated by reference herein and in any prospectus supplement that are not strictly historical in nature are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements are subject to the safe harbor created by Section 27A of the Securities Act and Section 21E of the Exchange Act and may include, but are not limited to, statements about:

the progress or success of our research, development and clinical programs;

the timing of completion of enrollment in our clinical trials, the timing of the interim analyses and the timing or success of the commercialization of our Technosphere Insulin System, or any other products or therapies that we may develop;

our ability to market, commercialize and achieve market acceptance for our Technosphere Insulin System, or any other products or therapies that we may develop;

our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;

our estimates for future performance; our estimates regarding anticipated operating losses, future revenues, capital requirements and our needs for additional financing;

scientific studies and the conclusions we draw from them; and

our ability to successfully enter into strategic business collaborations.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, goal, intends, may, plans, potential, predicts, projects, should, will, would, the negative words or similar expressions intended to identify forward-looking statements. These statements reflect our views as of the date on which they were made with respect to future events and are based on assumptions and subject to risks and uncertainties. The underlying information and expectations are likely to change over time. Given these uncertainties, you should not place undue reliance on these forward-looking statements as actual events or results may differ materially from those projected in the forward-looking statements due to various factors, including, but not limited to, those set forth under the heading Risk Factors in any applicable prospectus supplement and in our SEC filings. These forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement.

You should rely only on the information contained, or incorporated by reference, in this prospectus, the registration statement of which this prospectus is a part, the documents incorporated by reference herein, and any applicable prospectus supplement and understand that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. Before deciding to purchase our securities, you should carefully consider the risk factors discussed here or incorporated by reference, in addition to

the other information set forth in this prospectus, any accompanying prospectus supplement and in the documents incorporated by reference.

### **USE OF PROCEEDS**

Except as described in any prospectus supplement, we currently intend to use the net proceeds from the sale of the securities offered hereby to fund the costs of our clinical trials program and other research and development activities and expand our manufacturing operations, both on-going and planned, and for general corporate purposes, including working capital and repayment of outstanding indebtedness. We may also use a portion of the net proceeds to in-license, invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plans, commitments or agreements with respect to any acquisitions as of the date

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of this prospectus other than our agreement to license certain technology from the Technion Research and Development Foundation Ltd, an Israeli corporation affiliated with the Technion-Israel Institute of Technology. Pending these uses, we intend to invest the net proceeds in investment-grade, interest-bearing securities.

## **DESCRIPTION OF COMMON STOCK**

Our authorized capital stock consists of 90,000,000 shares of common stock, \$0.01 par value, and 10,000,000 shares of preferred stock, \$0.01 par value. As of September 30, 2006, there were 49,895,691 shares of common stock outstanding and no shares of preferred stock outstanding.

### **Voting Rights**

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of our stockholders, including the election of our directors. Under our amended and restated certificate of incorporation and bylaws, our stockholders will not have cumulative voting rights. Accordingly, the holders of a majority of our outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose. In all other matters, an action by our common stockholders requires the affirmative vote of the holders of a majority of our outstanding shares of common stock entitled to vote.

### **Dividends**

Subject to preferences that may be applicable to any outstanding shares of our preferred stock, holders of our common stock are entitled to receive ratably any dividends our board of directors declares out of funds legally available for that purpose. Any dividends on our common stock will be non-cumulative.

### **Liquidation, Dissolution or Winding Up**

If we liquidate, dissolve or wind up, the holders of our common stock are entitled to share ratably in all assets legally available for distribution to our stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any outstanding shares of our preferred stock.

### **Rights and Preferences**

Our common stock has no preemptive, conversion or subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of any outstanding shares of our preferred stock, which we may designate and issue in the future.

### **Anti-Takeover Effects of Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws**

#### ***Delaware takeover statute***

We are subject to Section 203 of the Delaware General Corporation Law, or DGCL, which regulates acquisitions of some Delaware corporations. In general, Section 203 prohibits, with some exceptions, a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date of the transaction in which the person became an interested stockholder, unless:

the board of directors of the corporation approved the business combination or the other transaction in which the person became an interested stockholder prior to the date of the business combination or other transaction;

upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding shares owned by persons who are directors and also officers of the corporation and shares issued under employee stock plans under which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

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on or subsequent to the date the person became an interested stockholder, the board of directors of the corporation approved the business combination and the stockholders of the corporation authorized the business combination at an annual or special meeting of stockholders by the affirmative vote of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding stock of the corporation not owned by the interested stockholder.

Section 203 of the DGCL generally defines a "business combination" to include any of the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the corporation's assets or outstanding stock involving the interested stockholder;

in general, any transaction that results in the issuance or transfer by the corporation of any of its stock to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of its stock owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an "interested stockholder" as any person who, together with the person's affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock.

Section 203 of the DGCL could depress our stock price and delay, discourage or prohibit transactions not approved in advance by our board of directors, such as takeover attempts that might otherwise involve the payment to our stockholders of a premium over the market price of our common stock.

***Amended and restated certificate of incorporation and bylaw provisions***

Our amended and restated certificate of incorporation and amended and restated bylaws include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in our control or our management, including, but not limited to the following:

Our board of directors can issue up to 10,000,000 shares of preferred stock with any rights or preferences, including the right to approve or not approve an acquisition or other change in our control.

Our amended and restated certificate of incorporation provides that all stockholder actions must be effected at a duly called meeting of holders and not by written consent.

Our amended and restated bylaws provide that special meetings of the stockholders may be called only by the Chairman of our board of directors, by our Chief Executive Officer, by our board of directors upon a resolution adopted by a majority of the total number of authorized directors or, under certain limited circumstances, by the holders of at least 5% of our outstanding voting stock.

Our amended and restated bylaws provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide



timely notice in writing and also specify requirements as to the form and content of a stockholder's notice. These provisions may delay or preclude stockholders from bringing matters before a meeting of our stockholders or from making nominations for directors at a meeting of stockholders, which could delay or deter takeover attempts or changes in our management.

Our amended and restated certificate of incorporation provides that, subject to the rights of the holders of any outstanding series of preferred stock, all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum. In addition, our amended and restated certificate of incorporation provides that our board of directors may fix the number of directors by resolution.

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Our amended and restated certificate of incorporation does not provide for cumulative voting for directors. The absence of cumulative voting may make it more difficult for stockholders who own an aggregate of less than a majority of our voting stock to elect any directors to our board of directors.

These and other provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. However, these provisions could delay or discourage transactions involving an actual or potential change in control of us or our management, including transactions in which our stockholders might otherwise receive a premium for their shares over market price of our stock and may limit the ability of stockholders to remove our current management or approve transactions that our stockholders may deem to be in their best interests and, therefore, could adversely affect the price of our common stock.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Mellon Investor Services. Mellon Investor Services address is 400 South Hope Street, Suite 400, Los Angeles, California 90071.

## **DESCRIPTION OF WARRANTS**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the warrants that we may offer under this prospectus, which may consist of warrants to purchase common stock or debt securities and may be issued in one or more series. Warrants may be offered independently or together with common stock or debt securities offered by any prospectus supplement, and may be attached to or separate from those securities. While the terms we have summarized below will generally apply to any future warrants we may offer under this prospectus, we will describe the particular terms of any warrants that we may offer in more detail in the applicable prospectus supplement. The terms of any warrants we offer under a prospectus supplement may differ from the terms we describe below.

We will issue the warrants under a warrant agreement which we will enter into with a warrant agent to be selected by us. We have filed forms of the warrant agreements and the related warrant certificates for each type of warrant we may offer under this prospectus as exhibits to the registration statement of which this prospectus is a part. We use the term *warrant agreement* to refer to any of these warrant agreements. We use the term *warrant agent* to refer to the warrant agent under any of these warrant agreements. The warrant agent will act solely as an agent of ours in connection with the warrants and will not act as an agent for the holders or beneficial owners of the warrants.

The following summaries of material provisions of the warrants and the warrant agreements are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement applicable to a particular series of warrants. We urge you to read the applicable prospectus supplement related to the warrants that we sell under this prospectus, as well as the complete warrant agreements that contain the terms of the warrants.

### **General**

We will describe in the applicable prospectus supplement the terms relating to a series of warrants.

If warrants for the purchase of common stock are offered, the applicable prospectus supplement will describe the following terms, to the extent applicable:

the offering price and the aggregate number of warrants offered;

the total number of shares that can be purchased if a holder of the warrants exercises them;

the number of shares of common stock that can be purchased if a holder exercises the warrant and the price at which such common stock may be purchased upon exercise, including, if applicable, any provisions for changes to or adjustments in the exercise price and in the securities or other property receivable upon exercise;

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the terms of any rights to redeem or call, or accelerate the expiration of, the warrants;

the date on which the right to exercise the warrants begins and the date on which that right expires;

certain federal income tax consequences of holding or exercising the warrants; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

If warrants for the purchase of debt securities are offered, the applicable prospectus supplement will describe the following terms, to the extent applicable:

the offering price and the aggregate number of warrants offered;

the currencies in which the warrants are being offered;

the designation, denominations and terms of the series of debt securities that can be purchased if a holder exercises a warrant;

the principal amount of the series of debt securities that can be purchased if a holder exercises a warrant and the price at which and currencies in which such principal amount may be purchased upon exercise;

the terms of any rights to redeem or call the warrants;

the date on which the right to exercise the warrants begins and the date on which such right expires;

certain federal income tax consequences of holding or exercising the warrants; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

Warrants will be in registered form only.

If the warrants are offered attached to common stock or debt securities, the applicable prospectus supplement will also describe the date on and after which the holder of the warrants can transfer them separately from the related common stock or debt securities.

A holder of warrant certificates may exchange them for new certificates of different denominations, present them for registration of transfer and exercise them at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Until any warrants to purchase common stock are exercised, holders of the warrants will not have any rights of holders of the underlying common stock, including any rights to receive dividends or to exercise any voting rights, except to the extent set forth under **Warrant Adjustments** below. Until any warrants to purchase debt securities are exercised, the holder of the warrants will not have any of the rights of holders of the debt securities that can be purchased upon exercise, including any rights to receive payments of principal, premium or interest on the underlying debt securities or to enforce covenants in the applicable indenture.

**Exercise of Warrants**

Each holder of a warrant is entitled to purchase the number of shares of common stock or principal amount of debt securities at the exercise price described in the applicable prospectus supplement. After the close of business on the

day when the right to exercise terminates (or a later date if we extend the time for exercise), unexercised warrants will become void.

A holder of warrants may exercise them by following the general procedure outlined below:

delivering to the warrant agent the payment required by the applicable prospectus supplement to purchase the underlying security;

properly completing and signing the reverse side of the warrant certificate representing the warrants; and

delivering the warrant certificate representing the warrants to the warrant agent within five business days of the warrant agent receiving payment of the exercise price.

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If you comply with the procedures described above, your warrants will be considered to have been exercised when the warrant agent receives payment of the exercise price, subject to the transfer books for the securities issuable upon exercise of the warrant not being closed on such date. After you have completed those procedures and subject to the foregoing, we will, as soon as practicable, issue and deliver to you the common stock or debt securities that you purchased upon exercise. If you exercise fewer than all of the warrants represented by a warrant certificate, a new warrant certificate will be issued to you for the unexercised amount of warrants. Holders of warrants will be required to pay any tax or governmental charge that may be imposed in connection with transferring the underlying securities in connection with the exercise of the warrants.

## **Amendments and Supplements to the Warrant Agreements**

We may amend or supplement a warrant agreement without the consent of the holders of the applicable warrants to cure ambiguities in the warrant agreement, to cure or correct a defective provision in the warrant agreement, or to provide for other matters under the warrant agreement that we and the warrant agent deem necessary or desirable, so long as, in each case, such amendments or supplements do not materially adversely affect the interests of the holders of the warrants.

## **Warrant Adjustments**

Unless the applicable prospectus supplement states otherwise, the exercise price of, and the number of securities covered by, a common stock warrant will be adjusted proportionately if we subdivide or combine our common stock. In addition, unless the applicable prospectus supplement states otherwise, if we without receiving payment:

issue capital stock or other securities convertible into or exchangeable for common stock, or any rights to subscribe for, purchase or otherwise acquire any of the foregoing, as a dividend or distribution to holders of our common stock;

issue any evidence of our indebtedness or rights to subscribe for or purchase our indebtedness to holders of our common stock; or

issue common stock or additional stock or other securities or property to holders of our common stock by way of spinoff, split-up, reclassification, combination of shares or similar corporate rearrangement,

then the holders of common stock warrants will be entitled to receive upon exercise of the warrants, in addition to the securities otherwise receivable upon exercise of the warrants and without paying any additional consideration, the amount of stock and other securities and property such holders would have been entitled to receive had they held the common stock issuable under the warrants on the dates on which holders of those securities received or became entitled to receive such additional stock and other securities and property.

Except as stated above, the exercise price and number of securities covered by a common stock warrant and the amounts of other securities or property to be received, if any, upon exercise of those warrants, will not be adjusted or provided for if we issue those securities or any securities convertible into or exchangeable for those securities, or securities carrying the right to purchase those securities or securities convertible into or exchangeable for those securities.

Holders of common stock warrants may have additional rights under the following circumstances:

certain reclassifications, capital reorganizations or changes of the common stock;

certain share exchanges, mergers, or similar transactions involving us and which result in changes of the common stock; or

certain sales or dispositions to another entity of all or substantially all of our property and assets.

If one of the above transactions occurs and holders of our common stock are entitled to receive stock, securities or other property with respect to or in exchange for their securities, the holders of the common stock warrants then outstanding will be entitled to receive upon exercise of their warrants the kind and amount of shares of stock and

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other securities or property that they would have received upon the applicable transaction if they had exercised their warrants immediately before the transaction.

### **DESCRIPTION OF DEBT SECURITIES**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. While the terms we have summarized below will apply generally to any future debt securities we may offer under this prospectus, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. The terms of any debt securities we offer under a prospectus supplement may differ from the terms we describe below. However, no prospectus supplement shall fundamentally change the terms that are set forth in this prospectus or offer a security that is not registered and described in this prospectus at the time of its effectiveness. As of the date of this prospectus, we have no outstanding registered debt securities.

We will issue the senior debt securities under the senior indenture that we will enter into with the trustee named in the senior indenture. We will issue the subordinated debt securities under the subordinated indenture that we will enter into with the trustee named in the subordinated indenture. We have filed forms of these documents as exhibits to the registration statement which includes this prospectus. We use the term *indentures* in this prospectus to refer to both the senior indenture and the subordinated indenture.

The indentures will be qualified under the Trust Indenture Act of 1939, as amended, or Trust Indenture Act. We use the term *debenture trustee* to refer to either the trustee under the senior indenture or the trustee under the subordinated indenture, as applicable.

The following summaries of material provisions of the senior debt securities, the subordinated debt securities and the indentures are subject to, and qualified in their entirety by reference to, all the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements related to the debt securities that we sell under this prospectus, as well as the indenture that contains the terms of the debt securities. Except as we may otherwise indicate, the terms of the senior indenture and the subordinated indenture are identical.

#### **General**

We will describe in each applicable prospectus supplement the terms relating to a series of debt securities, including:

the title;

the principal amount being offered, and if a series, the total amount authorized and the total amount outstanding;

any limit on the amount that may be issued;

whether or not we will issue the series of debt securities in global form, the terms and who the depositary will be;

the maturity date;

whether and under what circumstances, if any, we will pay additional amounts on any debt securities held by a person who is not a United States person for tax purposes, and whether we can redeem the debt securities if we have to pay such additional amounts;



the annual interest rate, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;

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the terms of the subordination of any series of subordinated debt;

the place where payments will be payable;

restrictions on transfer, sale or other assignment, if any;

our right, if any, to defer payment of interest and the maximum length of any such deferral period;

the date, if any, after which, and the price at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemptions provisions;

the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder's option to purchase, the series of debt securities and the currency or currency unit in which the debt securities are payable;

whether the indenture will restrict our ability or the ability of our subsidiaries to:

incur additional indebtedness;

issue additional securities;

create liens;

pay dividends or make distributions in respect of our capital stock or the capital stock of our subsidiaries;

redeem capital stock;

place restrictions on our subsidiaries' ability to pay dividends, make distributions or transfer assets;

make investments or other restricted payments;

sell or otherwise dispose of assets;

enter into sale-leaseback transactions;

engage in transactions with stockholders or affiliates;

issue or sell stock of our subsidiaries; or

effect a consolidation or merger;

whether the indenture will require us to maintain any interest coverage, fixed charge, cash flow-based, asset-based or other financial ratios;

a discussion of certain material or special United States federal income tax considerations applicable to the debt securities;

information describing any book-entry features;

provisions for a sinking fund purchase or other analogous fund, if any;

whether the debt securities are to be offered at a price such that they will be deemed to be offered at an original issue discount as defined in paragraph (a) of Section 1273 of the Internal Revenue Code;

the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, including any additional events of default or covenants provided with respect to the debt securities, and any terms that may be required by us or advisable under applicable laws or regulations.

### **Conversion or Exchange Rights**

We will set forth in the applicable prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our common stock or our other securities. We will include provisions as to

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whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

## **Consolidation, Merger or Sale**

The indentures do not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of all or substantially all of our assets. However, any successor to or acquiror of such assets must assume all of our obligations under the indentures or the debt securities, as appropriate. If the debt securities are convertible for our other securities or securities of other entities, the person with whom we consolidate or merge or to whom we sell all of our property must make provisions for the conversion of the debt securities into securities that the holders of the debt securities would have received if they had converted the debt securities before the consolidation, merger or sale.

## **Events of Default Under the Indenture**

The following are events of default under the indentures with respect to any series of debt securities that we may issue:

if we fail to pay interest when due and payable and our failure continues for 90 days and the time for payment has not been extended or deferred;

if we fail to pay the principal, premium or sinking fund payment, if any, when due and payable and the time for payment has not been extended or delayed;

if we fail to observe or perform any other covenant contained in the debt securities or the indentures, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days after we receive notice from the debenture trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series; and

if specified events of bankruptcy, insolvency or reorganization occur.

If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the last bullet point above, the debenture trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the debenture trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default specified in the last bullet point above occurs with respect to us, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the debenture trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any waiver shall cure the default or event of default.

Subject to the terms of the indentures, if an event of default under an indenture shall occur and be continuing, the debenture trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the debenture trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt

securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the debenture trustee, or exercising any trust or power conferred on the debenture trustee, with respect to the debt securities of that series, provided that:

the direction so given by the holder is not in conflict with any law or the applicable indenture; and

subject to its duties under the Trust Indenture Act, the debenture trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

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A holder of the debt securities of any series will only have the right to institute a proceeding under the indentures or to appoint a receiver or trustee, or to seek other remedies if:

the holder has given written notice to the debenture trustee of a continuing event of default with respect to that series;

the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request, and such holders have offered reasonable indemnity to the debenture trustee to institute the proceeding as trustee; and

the debenture trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 90 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or interest on, the debt securities.

We will periodically file statements with the debenture trustee regarding our compliance with specified covenants in the indentures.

**Modification of Indenture; Waiver**

We and the debenture trustee may change an indenture without the consent of any holders with respect to specific matters:

to fix any ambiguity, defect or inconsistency in the indenture;

to comply with the provisions described above under Consolidation, Merger or Sale ;

to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act;

to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in the indenture;

to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided under General to establish the form of any certifications required to be furnished pursuant to the terms of the indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;

to evidence and provide for the acceptance of appointment hereunder by a successor trustee;

to provide for uncertificated debt securities and to make all appropriate changes for such purpose;

to add to our covenants such new covenants, restrictions, conditions or provisions for the protection of the holders, and to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default; or

to change anything that does not materially adversely affect the interests of any holder of debt securities of any series.

In addition, under the indentures, the rights of holders of a series of debt securities may be changed by us and the debenture trustee with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, we and the debenture trustee may only make the following changes with the consent of each holder of any outstanding debt securities affected:

extending the fixed maturity of the series of debt securities;

reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any debt securities; or

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reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver.

### **Discharge**

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

register the transfer or exchange of debt securities of the series;

replace stolen, lost or mutilated debt securities of the series;

maintain paying agencies;

hold monies for payment in trust;

recover excess money held by the debenture trustee;

compensate and indemnify the debenture trustee; and

appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the debenture trustee money or government obligations sufficient to pay all the principal of, any premium and interest on, the debt securities of the series on the dates payments are due.

### **Form, Exchange and Transfer**

We will issue the debt securities of each series only in fully registered form without coupons and, unless we otherwise specify in the applicable prospectus supplement, in denominations of \$1,000 and any integral multiple thereof. The indentures provide that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company or another depository named by us and identified in a prospectus supplement with respect to that series. See [Legal Ownership of Securities](#) for a further description of the terms relating to any book-entry securities.

At the option of the holder, subject to the terms of the indentures and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indentures and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will make no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.



We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

If we elect to redeem the debt securities of any series, we will not be required to:

issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or

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register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

### **Information Concerning the Debenture Trustee**

The debenture trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the debenture trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs.

Subject to this provision, the debenture trustee is under no obligation to exercise any of the powers given it by the indentures at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

### **Payment and Paying Agents**

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in a prospectus supplement, we will designate the corporate trust office of the debenture trustee in the City of New York as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the debenture trustee for the payment of the principal of or any premium or interest on any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

### **Governing Law**

The indentures and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

### **Subordination of Subordinated Debt Securities**

The subordinated debt securities will be unsecured and will be subordinate and junior in priority of payment to certain of our other indebtedness to the extent described in a prospectus supplement. The subordinated indenture does not limit the amount of subordinated debt securities that we may issue. It also does not limit us from issuing any other secured or unsecured debt.

## **LEGAL OWNERSHIP OF SECURITIES**

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee maintain for this purpose as the holders of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as indirect holders of those securities.

As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

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### **Book-Entry Holders**

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary's book-entry system. These participating institutions, which are referred to as participants, in turn hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary's book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not legal holders, of the securities.

### **Street Name Holders**

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not legal holders, of those securities.

### **Legal Holders**

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with depositary participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the legal holders, and not the indirect holders, of the securities. Whether and how the holders contact the indirect holders

is up to the legal holders.

**Special Considerations for Indirect Holders**

If you hold securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

how it handles securities payments and notices;

whether it imposes fees or charges;

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how it would handle a request for the holders' consent, if ever required;

whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;

how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and

if the securities are in book-entry form, how the depository's rules and procedures will affect these matters.

## **Global Securities**

A global security is a security that represents one or any other number of individual securities held by a depository. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depository. Unless we specify otherwise in the applicable prospectus supplement, The Depository Trust Company, New York, New York, known as DTC, will be the depository for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depository, its nominee or a successor depository, unless special termination situations arise. We describe those situations below under "Special Situations When a Global Security Will Be Terminated." As a result of these arrangements, the depository, or its nominee, will be the sole registered owner and legal holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depository or with another institution that does. Thus, an investor whose security is represented by a global security will not be a legal holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

## **Special Considerations for Global Securities**

As an indirect holder, an investor's rights relating to a global security will be governed by the account rules of the investor's financial institution and of the depository, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a legal holder of securities and instead deal only with the depository that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

An investor cannot cause the securities to be registered in his or her name and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below.

An investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above.

An investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form.

An investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective.

The depositary's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in a global security. We and any applicable trustee have no

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responsibility for any aspect of the depositary's actions or for its records of ownership interests in a global security. We and the trustee also do not supervise the depositary in any way.

The depositary may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well.

Financial institutions that participate in the depositary's book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities. There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

## **Special Situations when a Global Security Will Be Terminated**

In a few special situations described below, the global security will terminate, and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks or brokers to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

The global security will terminate when the following special situations occur:

if the depositary notifies us that it is unwilling, unable or no longer qualified to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;

if we notify any applicable trustee that we wish to terminate that global security; or

if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the prospectus supplement. When a global security terminates, the depositary, and not we or any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

## **PLAN OF DISTRIBUTION**

We may sell the common stock warrants or debt securities to or through underwriters or dealers, through agents, or directly to one or more purchasers. A prospectus supplement or supplements will describe the terms of the offering of the securities, including:

the name or names of any underwriters, if any;

the purchase price of the securities and the proceeds we will receive from the sale;

any over-allotment options under which underwriters may purchase additional securities from us;

any agency fees or underwriting discounts and other items constituting agents' or underwriters' compensation;



any public offering price;

any discounts or concessions allowed or reallocated or paid to dealers; and

any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement are underwriters of the securities offered by the prospectus supplement.

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If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may change from time to time. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we will pay the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, our agent will act on a best-efforts basis for the period of its appointment.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

We may provide agents and underwriters with indemnification against civil liabilities related to this offering, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we offer, other than common stock, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in overallotment, stabilizing transactions, short covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Overallotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any underwriters who are qualified market makers on the NASDAQ Global Market may engage in passive market making transactions in the common stock, warrants and debt securities on the NASDAQ Global Market in accordance with Rule 103 of Regulation M, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the securities. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded.

## **LEGAL MATTERS**

The validity of the securities being offered hereby will be passed upon for us by Cooley Godward Kronish LLP, San Diego, California.

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**EXPERTS**

The financial statements and management's report on the effectiveness of internal control over financial reporting incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

We are a reporting company and file annual, quarterly and current reports, proxy statements and other information with the SEC. We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities we are offering under this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits which are part of the registration statement. For further information with respect to us and the securities we are offering under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. You may read and copy any document we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the Public Reference Room. Our SEC filings are also available at the SEC's website at [www.sec.gov](http://www.sec.gov). We maintain a website at [www.mannkindcorp.com](http://www.mannkindcorp.com). Information contained in our website does not constitute a part of this prospectus.

**INCORPORATION BY REFERENCE**

The SEC allows us to incorporate by reference information that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus, while information that we file later with the SEC will automatically update and supersede the information in this prospectus. We incorporate by reference into this registration statement and prospectus the documents listed below, and any future filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial registration statement but prior to effectiveness of the registration statement and after the date of this prospectus but prior to the termination of the offering of the securities covered by this prospectus (other than current reports or portions thereof furnished under Item 2.02 or Item 7.01 of Form 8-K):

our Annual Report on Form 10-K for the year ended December 31, 2005;

our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006;

our Current Reports on Form 8-K filed on February 22, 2006, May 31, 2006 and October 18, 2006; and

the description of our common stock set forth in our registration statement on Form 8-A, filed with the SEC on July 23, 2004, including any amendments or reports filed for the purposes of updating this description.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any requests for documents to:

Investor Relations  
MannKind Corporation  
28903 North Avenue Paine  
Valencia, CA 91355  
(661) 775-5300

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**17,500,000 Shares**

**MannKind Corporation**

**Common Stock**

**PROSPECTUS SUPPLEMENT**

**JPMorgan**

**Merrill Lynch & Co.**

**Wachovia Securities**

**CIBC World Markets**

**Leerink Swann & Company**

**The date of this prospectus supplement is December , 2006**