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

FORM 10-Q

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

For the quarterly period ended December 31, 2012

OR

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

For the transition period from to .

Commission File Number: 001-35285

Biota Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**59-1212264**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

12270 Wilkins Avenue, Rockville, MD 20852
(Address of principal executive offices, including zip code)

(301) 770-3099
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ☐

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

Large accelerated filer	☐	Accelerated filer	x
Non-accelerated filer	☐	Smaller reporting company	☐

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

The number of shares outstanding of the registrant's common stock, par value $0.10 per share, at January 31, 2013, was 28,352,329 shares.

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PART I. FINANCIAL INFORMATION
ITEM 1. Financial Statements

Biota Pharmaceuticals, Inc.
Condensed Consolidated Balance Sheets
(unaudited)
(in thousands, except per share amounts)

	December 31,2012	June 30,2012
ASSETS		
Current assets		
Cash and cash equivalents	$ 74,111	$ 53,790
Accounts receivable	11,383	5,966
Prepaid and other current assets	2,495	1,374
Total current assets	87,989	61,130
Non-current assets:		
Property and equipment, net	4,454	4,944
Intangible assets, net	1,312	1,804
Deferred tax assets	2,427	1,419
Total non-current assets	8,193	8,167
Total assets	$ 96,182	$ 69,297
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 4,466	$ 2,851
Accrued expenses	5,649	6,133
Accrued severance obligations	4,423	-
Deferred revenue	881	398
Deferred tax liabilities	1,526	130
Total current liabilities	16,945	9,512
Non-current liabilities:		
Other liabilities, net of current portion	275	504
Total non-current liabilities	275	504
Total liabilities	17,220	10,016
Stockholders' equity:		
Common stock, $0.10 par value; 200,000,000 shares authorized 34,219,690 shares issued and 182,350,316 shares outstanding at December 31, 2012 and June 30, 2012, respectively	3,422	100,394
Additional paid-in capital	234,384	668
Treasury stock, 5,867,361 and 1,816,178 at cost, at December 31, 2012 and June 30, 2012, respectively	(117,048)	(1,397)
Accumulated other comprehensive income	30,517	29,516
Accumulated deficit	(72,313)	(69,900)
Total stockholders' equity	78,962	59,281
Total liabilities and stockholders' equity	$ 96,182	$ 69,297

See accompanying notes to these financial statements.

Biota Pharmaceuticals, Inc.
Condensed Consolidated Statements of Operations
(unaudited)
(in thousands, except per share amounts)

	Three Months Ended December 31,		Six Months Ended December 31,	
	2012	**2011**	**2012**	**2011**
Revenue:				
Royalty revenue and milestones	$ 1,943	$ (1,047)	$ 1,927	$ 1,460
Revenue from services	8,208	3,121	9,681	4,732
Other	235	19	242	47
Total revenue	10,386	2,093	11,850	6,239
Operating expense:				
Cost of revenue	7,088	2,929	8,637	4,260
Research and development	4,046	5,727	8,647	12,056
General and administrative	7,077	1,853	10,268	3,651
Total operating expense	18,211	10,509	27,552	19,967
Loss from operations	(7,825)	(8,416)	(15,702)	(13,728)
Non-operating income:				
Gain recorded on merger	7,805	-	7,805	-
Research and development credit	4,428	-	4,428	-
Interest income	415	841	952	1,826
Income (loss) before tax	4,823	(7,575)	(2,517)	(11,902)
Income tax benefit	6	520	104	650
Net income (loss)	$ 4,829	$ (7,055)	$ (2,413)	$ (11,252)
Basic income (loss) per share	$ 0.17	$ (0.31)	$ (0.09)	$ (0.50)
Diluted income (loss) per share	$ 0.17	$ (0.31)	$ (0.09)	$ (0.50)
Basic weighted-average shares outstanding	28,137,346	22,695,081	28,137,346	22,695,081
Diluted weighted-average shares outstanding	28,352,329	22,695,081	28,137,346	22,695,081
Comprehensive income (loss):				
Net income (loss)	$ 4,829	$ (7,055)	$ (2,413)	$ (11,252)
Exchange differences on translation of foreign operations, net of tax	(285)	3,006	1,001	(3,066)
Total comprehensive income (loss)	$ 4,544	$ (4,049)	$ (1,412)	$ (14,318)

See accompanying notes to these financial statements.

Biota Pharmaceuticals, Inc.
Condensed Consolidated Statements of Stockholders' Equity
(unaudited)
(in thousands, except for share amounts)

	Common Stock		Additional Paid-in Capital	Treasury Shares		Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount		Shares	Amount			
Balances at July 1, 2011	181,417,556	$ 99,805	$ 740	(1,311,034)	$ (968)	$ (50,705)	$ 32,556	$ 81,428
Comprehensive income								
Exchange differences on translation of foreign operations							(3,066)	(3,066)
Net loss						(11,252)		(11,252)
Total Comprehensive income								(14,318)
New shares issued on exercise of options	232,155	353	(353)					-
Share-based compensation			279					279
Balances at December 31, 2011	181,703,711	$ 100,158	$ 666	(1,311,034)	$ (968)	$ (61,957)	$ 29,490	$ 67,389
Balances at July 1, 2012	182,350,316	$ 100,394	$ 668	(1,816,178)	$ (1,397)	$ (69,900)	$ 29,516	$ 59,281
Comprehensive income								
Exchange differences on translation of foreign operations							1,001	1,001
Net loss						(2,413)		(2,413)
Total Comprehensive income								(1,412)
New shares issued on exercise of options	413,335	410	(410)					-
New shares issued on vesting of options on merger	4,639,104	1,118	(1,118)					-
Acquisition of Nabi Biopharmaceuticals	(153,398,048)	(98,521)	233,367	(4,051,183)	(115,651)			19,195
Restricted stock units, net	214,983	21	(21)					-
Share-based compensation			1,898					1,898
Balances at December 31, 2012	34,219,690	$ 3,422	$ 234,384	(5,867,361)	$ (117,048)	$ (72,313)	$ 30,517	$ 78,962

See accompanying notes to the financial statements.

Biota Pharmaceuticals, Inc.
Condensed Consolidated Statements of Cash Flows
(unaudited)
(in thousands)

	Six Months Ended December 31,	
	2012	**2011**
Cash flows from operating activities:		
Net loss	$ (2,413)	$ (11,252)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,542	1,517
Share-based compensation	1,898	279
Gain recorded on merger	(7,805)	-
Change in operating assets and liabilities (net of liabilities acquired):		
Accounts receivables	(5,392)	(3,214)
Prepaid expenses and other current assets	(1,116)	(121)
Deferred tax assets	390	(649)
Deferred revenue	485	353
Accounts payable and accrued expenses	192	77
Accrued severance obligations	(522)	-
Net cash used in operating activities	(12,741)	(13,010)
Cash flows from investing activities:		
Cash acquired on merger	32,687	-
Purchases of property and equipment	(405)	(859)
Net cash provided by (used in) investing activities	32,282	(859)
Increase (decrease) in cash and cash equivalents	19,541	(13,869)
Cash and cash equivalent at beginning of period	53,790	74,177
Effects of exchange rate movements on cash and cash equivalents	780	(2,785)
Cash and cash equivalents at end of period	$ 74,111	$ 57,523
Supplemental cash flow disclosure:		
Proceeds from the issuance of common stock on merger	$ 27,000	$ -
Proceeds to settle accrued severance obligations and other accrued liabilities on merger	5,687	-
Cash acquired on merger	$ 32,687	$ -

See accompanying notes to these financial statements.

(1) Company Overview

Biota Pharmaceuticals, Inc., together with its wholly owned subsidiaries ("Biota", or the "Company") is a biopharmaceutical company focused on the discovery and development of innovative anti-infective products to prevent and treat a number of serious and potentially life-threatening viral and bacterial infectious diseases. The Company has been incorporated in the state of Delaware since 1969 and the corporate headquarters are located in Rockville, Maryland. On November 8, 2012, Nabi Biopharmaceuticals ("Nabi") merged with Biota Holdings Limited, which was previously listed on the Australian Stock Exchange (ASX:BTA), and the resulting company was renamed to Biota Pharmaceuticals, Inc.

The Company is currently focused on developing oral, small molecule compounds to treat a number of infections, with its most advanced programs being directed toward respiratory diseases, including those caused by influenza A and B, human rhinovirus ("HRV") and respiratory syncytial virus ("RSV"). In addition, it has research programs directed toward developing products to treat infections caused by hepatitis C virus ("HCV") and a broad spectrum of gram positive and gram negative bacterial infections.

The Company has developed a neuraminidase inhibitor, zanamivir, which is marketed worldwide by GlaxoSmithKline ("GSK") as Relenza™ for the prevention and treatment of influenza under a research and license agreement entered into with the Company in 1990. In addition, the Company co-owns a number of second-generation long-acting neuraminidase inhibitors ("LANI's") with Daiichi Sankyo, of which the lead product, laninamivir octanoate, was developed and is being marketed by Daiichi Sankyo as Inavir® Dry Powder Inhaler ("Inavir®") in Japan for the treatment of influenza A & B infections in adults and children. In November 2012, Daiichi Sankyo submitted an application for a label change in Japan to manufacture and market the influenza antiviral product Inavir® for the prevention of influenza infection. The Company has filed an Investigational New Drug application ("IND") with the United States Food and Drug Administration ("FDA") to develop laninamivir octanoate, and in 2011 entered into a $231 million contract with the U.S. Office of Biomedical Advanced Research and Development Authority ("BARDA") designed to provide up to $231 million for the completion of clinical development and United States ("U.S.") based manufacturing of laninamivir octanoate for the treatment of influenza A and B infections.

Although several of the Company's influenza products have been successfully developed and commercialized by other larger pharmaceutical companies under license agreements, the Company has not received regulatory approval for any product candidates it has developed independently, and does not have any commercialization capabilities. Therefore, it is possible that the Company may not successfully derive any significant product revenues from any of its existing or future development-stage product candidates.

Merger between Nabi Biopharmaceuticals and Biota Holdings Limited

On November 8, 2012, Nabi and Biota Holdings Limited completed a merger (the "Merger"), and renamed the resulting company Biota Pharmaceuticals, Inc. Former Biota Holdings Limited shareholders retained approximately 83% of the Company's shares of common stock, while former Nabi shareholders retained approximately 17% as consideration for Nabi's net assets, the vast majority of which was $27 million in net cash on hand on the date of the transaction. As Nabi had minimal ongoing activity with respect to its development programs and related operations at the time of the merger, the Company's future operations will be largely represented by the operations of Biota Holdings Limited. Further, due to the fact that former Biota Holdings Limited shareholders held a significant majority of the voting interest in the Company upon the completion of the merger, the merger has been accounted for as a "reverse merger", such that, notwithstanding the fact that Nabi was the legal acquirer, Biota Holdings Limited is considered the accounting acquirer for financial reporting purposes. Accordingly, the financial statements of Biota Holdings Limited are treated as the historical financial statements of the Company, with the operating results of Nabi being included from November 8, 2012. As a result of the reverse merger, historical common stock amounts and additional paid-in capital have been adjusted. See Note 7 for additional discussion of the merger.

(2) Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. In the opinion of the Company's management, all material adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Certain information and footnotes disclosure normally included in the financial statements prepared in accordance with generally accepted accounting principles in the U.S. (U.S. GAAP) have been condensed or omitted pursuant to instructions, rules and regulations prescribed by the U.S. Securities and Exchange Commission ('SEC'). However, except as disclosed herein, there has been no material change in the information disclosed in the notes to the consolidated financial statements included in our Form 8-K/A filed on January 23, 2013.

The period-end condensed consolidated balance sheet data were derived from audited financial statements, but does not include all disclosures required by U.S. GAAP.

For a more complete discussion of the Company's significant accounting policies and other information, this report should be read in conjunction with the consolidated financial statements for the year ended June 30, 2012 included in the Company's Form 8-K/A that was filed with the SEC on January 23, 2013.

Summary of Significant Accounting Policies

Principles of Consolidation and Presentation

The condensed consolidated financial statements include the financial statements of Biota Pharmaceuticals, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated on consolidation. The Company's fiscal year ends on June 30.

Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include the carrying amount of property and equipment, intangible assets, deferred income taxes, and obligations related to employee benefits. Actual results could differ from those estimates.

Recent Accounting Standards

In June 2011, the FASB issued ASU No. 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income. The new guidance allows an entity to present components of net income and other comprehensive income in one continuous statement, referred to as the statement of comprehensive income, or in two separate, but consecutive statements. The guidance eliminates the current option to report other comprehensive income and its components in the statement of changes in stockholders' equity. While the new guidance changes the presentation of comprehensive income, there are no changes to the components that are recognized in net income or other comprehensive income under current accounting guidance. The Company adopted the provisions of ASU 2011-05 in the first quarter of 2012, and has presented a single statement of comprehensive income.

In May 2011, the FASB issued ASU No. 2011-04, Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. generally accepted accounting principles (GAAP) and International Financial Reporting Standards (IFRS). This ASU is intended to result in convergence between U.S. GAAP and IFRS requirements for measurement of and disclosures about fair value. The guidance amends current fair value measurement and disclosure guidance to include increased transparency around valuation inputs and investment categorization. The Company adopted the provisions of ASU 2011-04 in the first quarter of 2012. Adoption of the new guidance did not have an impact on the Company's consolidated financial statements.

In December 2011, the FASB issued ASU 2011-11, which amended the disclosure requirements regarding offsetting assets and liabilities of derivatives, sale and repurchase agreements, reverse sale and repurchase agreements, and securities borrowing and securities lending arrangements. The enhanced disclosures will require entities to provide both net and gross information for these assets and liabilities. The amendment is effective for fiscal years beginning on or after January 1, 2013. The Company does not anticipate that this amendment will have a material impact on its consolidated financial statements.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with an initial maturity of 90 days or less to be cash equivalents.

Short-Term Investments

Short-term investments constitute all highly liquid investments with term to maturity from three months to 12 months. The carrying amount of short-term investments is equivalent to its fair value. The Company did not have any short-term investments at December 31, 2012 and June 30, 2012.

Concentration of Credit Risk and Other Risks and Uncertainties

Cash and accounts receivable consists of financial instruments that potentially subject the Company to concentration of credit risk to the extent of the amount recorded on the balance sheet. The Company's cash is invested with several large commercial banks located in the U.S. and Australia. The Company is exposed to credit risk in the event of default by one or more of the banks holding its cash or cash equivalents. The Company's investment policies and procedures are reviewed periodically by management and its audit committee to monitor credit risk.

Derivative Instruments and Hedging Activities

Derivative financial instruments

The Company may use derivative financial instruments from time-to-time to hedge its exposure to foreign exchange arising from operating, investing and financing activities. The Company does not hold or issue derivative financial instruments for trading purposes; however, derivatives that do not qualify for hedge accounting are accounted for as trading instruments.

Derivative financial instruments are recognized initially at fair value. Subsequent to initial recognition, derivative financial instruments are stated at fair value. The gain or loss on re-measurement to fair value is recognized immediately in the consolidated statement of operations. However, where derivatives qualify for hedge accounting, recognition of any resultant gain or loss depends on the nature of the item being hedged.

Cash flow hedges

Exposure to foreign exchange risks arises in the normal course of the Company's business and it is the Company's policy to hedge anticipated sales and purchases in foreign currencies. The amount of hedging activity used is in accordance with approved policy and internal forecasts.

Where a derivative financial instrument is designated as a hedge of the variability in cash flows of a recognized asset or liability, or a highly probable forecast transaction, the effective part of any unrealized gain or loss on the derivative financial instrument is recognized directly in stockholders' equity. When the forecast transaction subsequently results in the recognition of a non-financial asset or non-financial liability, the associated cumulative gain or loss is removed from stockholders' equity and included in the initial cost or other carrying amount of the non-financial asset or liability.

For cash flow hedges, other than those covered by the preceding statement, the associated cumulative gain or loss is removed from stockholders' equity and recognized in the consolidated statement of operations in the same period or periods during which the hedged forecast transaction affects the consolidated statement of operations and on the same line item as that hedged forecast transaction. The ineffective part of any gain or loss is recognized immediately in the consolidated statement of operations.

When a hedging instrument expires or is sold, terminated or exercised, or the Company revokes designation of the hedge relationship but the hedged forecast transaction is still probable to occur, the cumulative gain or loss at that point remains in stockholders' equity and is recognized in accordance with the above policy when the transaction occurs. If the hedged transaction is no longer expected to take place, then the cumulative unrealized gain or loss recognized in stockholders' equity is recognized immediately in the consolidated statements of operations.

Receivables

Accounts receivable are recorded at the invoiced amount. An allowance for doubtful accounts is estimated based on probable credit losses in the existing accounts receivable. The allowance is determined based on a review of individual accounts for collectability, generally focusing on those that are past due. The current year expense to adjust the allowance for doubtful accounts, if any, is recorded in the consolidated statement of operations. An allowance for uncollectible accounts receivable is estimated based on a combination of default history, aging analysis and any specific, known troubled accounts. When a receivable is finally established as uncollectible, it is written off against the allowance account for accounts receivables.

Property and Equipment

Property and equipment are recorded at acquisition cost, net of accumulated depreciation and impairment. Depreciation on property and equipment is calculated using the straight-line method over the estimated useful lives of the assets. The estimated useful life of machinery and equipment is three to 10 years. Leasehold improvements are amortized on the straight-line method over the shorter of the remaining lease term or estimated useful life of the asset. Maintenance and repairs are charged to operations as incurred.

Intangible Assets

Intangible assets generally consist of two elements:

Royalty prepayments

Royalty prepayments represent expenditures made to research institutions where the parties agreed to exchange future variable royalty payments in relation to intellectual property for a fixed payment. These prepayments have a finite useful life, usually being the expiration of the underlying patent or contract, and are carried at the present value of costs at acquisition date, less accumulated amortization. Amortization is based on the anticipated usage of the asset, determined with reference to expected sales of the related product over the contract or patent life.

Computer software

Costs incurred in acquiring software and licenses that are expected to provide future period financial benefits are capitalized to computer software. Amortization is calculated on a straight-line basis over periods ranging from one to three years.

Leased Assets

The Company accounts for its leases at their inception as either an operating or capital lease, depending on certain defined criteria. All of the Company's leases in effect at December 31, 2012 and June 30, 2012 are considered operating leases. The costs of operating leases are charged to the consolidated statement of operations on a straight-line basis over the lease term. Additionally, any incentives we receive are treated as a reduction of our costs over the term of the agreement. Leasehold improvements are capitalized at cost and amortized over the lesser of their expected useful life or the life of the lease, without assuming renewal features, if any, are exercised.

Impairment of Long-lived Assets

The Company reviews its tangible and intangible assets, including patents and licenses, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. In performing an impairment review, the Company estimates undiscounted cash flows from products that are covered by these patents and licenses. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition is less than the carrying amount of the asset. If the evaluation indicates that the carrying value of an asset is not recoverable from its undiscounted cash flows, an impairment loss is measured by comparing the carrying value of the asset to its fair value.

Severance Obligations and Employee Benefits

As a result of the purchase consideration and net assets acquired pursuant to the merger (see Note 7 to the consolidated financial statements), the Company recorded a $5.0 million accrual for severance obligations and employee benefits related to certain key officers and employees of Nabi upon completion of the merger. This accrual is classified as a current liability on the condensed consolidated balance sheet.

Research and Development Expense

Research and development expense includes, but is not limited to, the costs of activities associated with: drug discovery, such as medicinal chemistry, virology, microbiology, and biochemistry; drug target discover, such as molecular biology and modeling and structural biology; professional fees paid to third-party service providers in connection with conducting preclinical studies and treating patients enrolled in clinical trials and monitoring, accumulating and evaluating the related data; salaries and personnel-related expenses for our internal staff, including benefits and share-based compensation; the cost to develop, formulate and manufacture product candidates; legal fees associated with patents and intellectual property; consulting fees; license and sponsored research fees paid to third parties; and specialized information systems, depreciation and laboratory facility costs. Research and development costs do not include an allocation of any general and administrative expense. Research and development expenses are expensed as incurred.

The Company has received reimbursement for certain research and development activities pursuant to collaborations with other corporate entities, as well as for services performed pursuant to government grants and contracts, which the Company records as revenues in its consolidated statement of operations.

Income Taxes

The Company applies ASC 740 – *Income Taxes*, which established financial accounting and reporting requirements for the effects of income taxes that result from the Company's activities during the current and preceding years. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and operating losses and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted statutory tax rates expected to apply to taxable income in the jurisdictions and years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Where the Company determines that it is more likely than not that some portion or all of the deferred tax assets will not be realized in the future, the deferred tax assets are reduced by a valuation allowance. The valuation allowance is sufficient to reduce the deferred tax assets to the amount that the Company determines is more likely than not to be realized.

Revenue Recognition

Revenue consists primarily of royalty payments, license fees, milestone payments, payments for services performed pursuant to government grants and contracts as well as certain research and development activities pursuant to collaborations with other corporate entities.

Revenue from royalties is recognized upon sales of the underlying product by the relevant third party. The Company generally receives written confirmation of the amount of royalty revenue from its licensees' on a quarterly basis.

Revenue for services performed pursuant to contract or grants is recognized as revenue when earned, typically when the underlying services or activities are rendered. The Company analyzes cost reimbursable grants and contracts to determine whether it should report such reimbursements as revenue, or as an offset to the related research and development expenses incurred. For costs incurred and revenues generated from third parties where the Company is deemed to be the principal participant, such as the BARDA contract, it recognizes revenue and costs using the gross basis of accounting; otherwise it uses the net basis of accounting.

Revenue for collaborative research and development activities typically consists of fees for services, or payments when specific milestones are met and match underlying activities occurring during the term of the arrangement.

For milestones that are deemed substantive, the Company recognizes the contingent revenue when: (i) the milestones have been achieved; (ii) no further performance obligations with respect to the milestones exist; and (iii) collection is reasonably assured. A milestone is considered substantive if all of the following conditions are met: (i) the milestone is non-refundable; (ii) achievement of the milestone was not reasonably assured at the inception of the arrangement; (iii) substantive effort is involved to achieve the milestone; and (iv) the amount of the milestone appears reasonable in relation to the effort expended with the other milestones in the arrangement and the related risk associated with achievement of the milestone. If a milestone is deemed not to be substantive, the Company recognizes the portion of the milestone payment as revenue that correlates to activities already performed; the remaining portion of the milestone payment is deferred and recognized as revenue as the Company completes its performance obligations.

Foreign Currency

Functional and reporting currency

Items included in the Company's consolidated financial statements are measured using the currency of the primary economic environment in which the entity operates, referred to as the functional currency. The Company operates in several jurisdictions with functional currencies of the U.S. dollar, the Australian dollar, and U.K. Sterling. The consolidated financial statements are presented in U.S. dollars.

Transactions and balances

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the related transactions. Foreign exchange gains and losses resulting from the settlement of such transactions, as well as from the translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies, are recognized in the consolidated statements of operations.

The results and financial position of any operations that have a functional currency different from the U.S. dollar are translated into U.S. dollar amounts. Assets and liabilities are translated into U.S. dollars at exchange rates in effect at the balance sheet date. Income and expense items are translated at average rates for period.

All resulting exchange differences are recognized as accumulated other comprehensive income, a separate component of stockholders' equity.

On consolidation, exchange differences arising from the translation of any net investment in foreign entities are recorded in stockholders' equity as part of accumulated comprehensive income, net of related taxes.

Patent and License Expense

Legal fees incurred for patent application costs have been charged to expense and reported in research and development expense. Legal fees incurred for patents relating to commercialized products are capitalized and amortized over the life of the patents and reported in research and development expense.

Share-Based Compensation Expense

Share-based compensation expense related to stock options is determined at the grant date using an option pricing model based on the closing price of the Company's common stock on that date. The value of the award that is ultimately expected to vest is recognized as an expense on a straight-line basis over the employee's requisite service period.

Net Income (Loss) per Share

Basic and diluted income (loss) per share has been computed based on net income (loss) and the weighted-average number of common shares outstanding during the applicable period. For diluted net loss per share, common stock equivalents (shares of common stock issuable upon the exercise of stock options and warrants) are excluded from the calculation of diluted net loss per share as their inclusion would be anti-dilutive. The Company has excluded all options to purchase common stock in periods indicating a loss, as their effect is anti-dilutive.

The following table sets forth the computation of historical basic and diluted net income (loss) per share.

	Three Months Ended December 31,		Six Months Ended December 31,	
	2012	2011	2012	2011
Income (loss) (in thousands)	$ 4,829	$ (7,055)	$ (2,413)	$ (11,252)
Weighted average shares outstanding	28,137,346	181,627,507	28,137,346	181,627,507
Weighted average shares outstanding adjusted using exchange ratio (Note 7) used to compute basic earnings per share	28,137,346	22,695,081	28,137,346	22,695,081
Dilutive effect of restricted stock and stock options	214,983	-	-	-
Shares used to compute diluted earnings per share	28,352,329	22,695,081	28,137,346	22,695,081
Basic income (loss) per share	$ 0.17	$ (0.31)	$ (0.09)	$ (0.50)
Diluted income (loss) per share	$ 0.17	$ (0.31)	$ (0.09)	$ (0.50)
Diluted shares excluded in the calculation of diluted income (loss)	-	-	214,983	-

Total Comprehensive Income

Comprehensive income is defined as the total change in stockholders' equity during the period other than from transactions with stockholders, and for the Company, includes net income and cumulative translation foreign currency adjustments.

Segment Information

The Company currently reviews its business from a divisional perspective. All research and development activities relate to various anti-infective drug discovery and clinical development activities. Recently appointed senior management has assessed that research and development activities represent one reportable business segment. The Company operates globally in developing its projects at its laboratories in Australia and England.

The business segment information provided to the strategic steering committee for the reportable segments for the six months ended December 31, 2012 and 2011 are set out in the table below (in thousands):

Divisions	Research and Development		Corporate		Intersegment elimination		Total	
	2012	2011	2012	2011	2012	2011	2012	2011
External revenue	$ 9,689	$ 4,801	$ 6,823	$ 4,114	$ (4,662)	$ (2,676)	$ 11,850	$ 6,239
Intersegment revenue	-	-	(4,662)	(2,676)	4,662	2,676	-	-
Total segment revenue	$ 9,689	$ 4,801	$ 2,161	$ 1,438	-	-	$ 11,850	$ 6,239
EBITDA	$ (6,503)	$ (13,091)	$ 6,473	$ 1,124	-	-	$ (30)	$ (11,967)
Depreciation and amortization	$ 845	$ 842	$ 697	$ 675	-	-	$ 1,542	$ 1,517

Under recently appointed senior management, the Company is currently undertaking a thorough strategic, operational and financial review, the purpose of which is to determine how it will align and allocate its capital and human resources to its respective ongoing development programs in the future.

(3) Share-Based Compensation

A summary of stock option grants outstanding as of December 31, 2012, and the related activity during the six months ended December 31, 2012 is presented below:

	Number of Options		
Options	**Biota Holdings Limited**	**Nabi**	**Biota Pharmaceuticals, Inc.**
Outstanding at June 30, 2012	6,182,853	3,665,201	
Granted	686,365	-	
Exercised	(413,335)	-	
Forfeited	-	(20,000)	
Expired	(601)	(591,485)	
	6,455,282	3,053,716	
Adjustment for Consolidation of shares		(2,544,798)	
Vested and exercised upon merger	(6,455,282)	-	
Balance on November 8, 2012 (date of merger)	-	508,918	
Post-merger transactions:			
Granted	-	-	931,590
Outstanding at December 31, 2012	-	508,918	931,590
Exercisable at December 31, 2012	-	508,918	-

On November 8, 2012, and in connection with the merger and based upon stockholder approval, Nabi's board of directors approved a 1:6 reverse stock split of existing Nabi shares, which reduced the number of shares of common stock reserved for outstanding stock options to 508,918. The exercise price of all outstanding stock options as of that date have been adjusted to reflect the reverse stock split and are now between $11.22 and $99.90 per share, with terms expiring from March 27, 2013 to January 3, 2019.

Biota Holdings Limited had outstanding stock options to purchase 6,455,282 shares of its common stock at September 30, 2012. Upon approval of the merger with Nabi by the Supreme Court of Victoria on October 26, 2012, all of these outstanding stock options vested, resulting in the issuance of 4,639,104 shares of common stock and the vesting of 1,816,178 shares held by Biota Holdings Limited for this purpose. The related expense of $1.1 million associated with the issuance of shares of common stock has been recognized in full as a general and administrative expense in the consolidated statement of operations.

On November 12, 2012, the Company granted options to purchase 931,590 shares of common stock at an exercise price of $4.07. The grant becomes exercisable in three equal installments on the first, second and third anniversary of the grant date. The options have a 10 year term. The Company estimated the fair value of each stock option on the date of grant, using the Black-Scholes option-pricing formula, to be $2.72 using the following key assumptions:

Expected Term: The expected term represents the period over which the share-based awards are expected to be outstanding based on the Company's historical experience. The Company estimated an expected term of 5 years.

Risk-Free Interest Rate: The Company used a risk-free rate of 0.65%, based the risk-free interest rate used in the assumptions on the implied yield currently available on the U.S. Treasury zero-coupon issues with a remaining term equivalent to the stock option award's expected term.

Expected volatility: The Company used an expected volatility factor of 83.84%, based on the historical price of its common stock over the most recent period commensurate with the expected term of the stock option award.

Expected Dividend Yield: The Company does not intend to pay cash dividends on common stock for the foreseeable future. Accordingly, it assumed a dividend yield of zero.

The Company amortizes share-based compensation expense over the option's vesting period using the straight-line attribution approach. For the three and six months periods ended December 31, 2012, the Company recognized approximately $0.1 million of share-based compensation expense related to the issuance of stock option grants.

A summary of outstanding restricted stock awards as of December 31, 2012, and the related activity during the six month period ending December 31, 2012 is presented below:

	Number of Awards	
Awards	**Nabi**	**Biota Pharmaceuticals, Inc.**
Unvested at June 30, 2012	196,254	
Vested and shares issued	(196,254)	
Balance on November 8, 2012 (date of merger)	-	
Post-merger transactions:		
Granted	-	214,983
Outstanding at December 31, 2012	Nil	214,983

On November 12, 2012, the Company granted 214,983 of restricted stock awards with an average fair value of $4.07. The restricted shares vest over three equal installments upon 90 days, and on the first and second anniversaries of the grant date. For the three month and six month periods ended December 31, 2012, the Company recognized approximately $0.2 million of share-based compensation expense related to the issuance of restricted stock units. As of December 31, 2012, there was $3.1 million of unrecognized compensation expense related to unvested share-based compensation arrangements. This expense is expected to be recognized over the next two years as the restricted shares vest.

(4) Income Taxes

The Company is subject to income tax in the U.S., Australia and the United Kingdom (U.K.). A reconciliation of the (benefit) provision for income taxes, with the amount computed by applying the statutory company tax rate of 35% to the income (loss) before income taxes for the three and six month periods ended December 31, 2012, are set out in the tables below (in thousands):

	Three Months Ended December 31,	
	2012	**2011**
Income (loss) before income taxes	$ 4,823	$ (7,519)
Computed by applying standard income tax rate of 35%	1,688	(2,632)
Differences in foreign tax rates to standard rate	(257)	379
Non qualifying research and development expenditure	2,662	1,904
Non-assessable income:		
Australian research and development credit	(1,561)	-
UK research and development incentive	(949)	-
Gain on merger	(3,015)	-
Disallowed expenses (income):		
Share-based compensation	512	11
Non-taxable amortization	144	(569)
Other	(449)	(23)
State taxes, net of federal benefit	261	-
Change in valuation allowance	958	410
Income tax benefit	$ (6)	$ (520)

	Six Months Ended December 31,	
	2012	**2011**
Loss before income taxes	$ (2,517)	$ (11,902)
Computed by applying standard income tax rate of 35%	(881)	(4,166)
Differences in foreign tax rates to standard rate	110	239
Non qualifying research & development expenditure	2,947	2,490
Non-assessable income:		
Australian research and development credit	(1,561)	-
UK research and development incentive	(523)	-
Gain on merger	(3,015)	-
Disallowed expenses (income):		
Share-based compensation	568	134
Non-taxable amortization	2	(139)
Other	(16)	6
State taxes, net of federal benefits	261	-
Change in valuation allowance	2,004	786
Income tax benefit	$ (104)	$ (650)

Significant components of deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting and tax purposes. A valuation allowance has been established, as the Company has determined that the realization of such assets is not more likely than not.

As of December 31, 2012, the Company's foreign subsidiaries have no positive accumulated earnings. As such, no federal or state income taxes have been provided on the losses of its foreign subsidiaries under ASC 740. If in the future there are positive earnings generated from the Company's foreign subsidiaries, the Company will evaluate whether to record any applicable federal and state income taxes on such earnings.

As of December 31, 2012 the Company has accumulated gross U.S. net operating losses of $180 million, which expire at various dates through 2032, U.S. research and experimental tax credit carry forwards of approximately $13 million ($11.3 million, net of unrecognized tax benefit) that expire in varying amounts through 2026, and U.S. alternative minimum tax credit carry forwards of $0.9 million. As of December 31, 2012, the Company also has accumulated Australian tax losses of A$59 million and accumulated UK tax losses of STG19 million available for carry forward against future earnings, which under relevant tax laws do not expire but may not be available under certain circumstances. A full valuation allowance has been established against the tax losses in the U.S. due to the volatility of earnings and the potential unavailability of the losses in some circumstances, including changes in ownership due to U.S. tax rules. The application of these rules may result in a complete elimination of the use of these tax attributes in the future, or subject such tax attributes to an annual limitation that may result in income tax loss and credit carry forwards expiring before the Company is able to fully utilize them. The Company is in the process of conducting a study to determine the impact of these tax rules. As a valuation allowance against all of the Company's U.S. net deferred tax assets and Australian and UK tax losses has been established there is no current impact on these consolidated financial statements as a result of the application of these tax provisions.

The assets not subject to a valuation allowance relate to temporary differences arising on Australian balance sheet amounts that are expected to reverse where sufficient Australian taxable income will be available to utilize them.

Uncertain Tax Positions

The Company is subject to income taxes in the U.S., various states, and several foreign jurisdictions. Significant judgment is required in evaluating the Company's tax positions and determining the provision for income taxes. The Company has established reserves for tax-related uncertainties based on estimates of whether, and to the extent to which, additional taxes may be due. These reserves are established when the Company believes that certain positions might be challenged despite its belief that its tax return positions are fully supportable. The Company adjusts these reserves in light of changing facts and circumstances, such as the outcome of a tax audit. The provision for income taxes includes the impact of reserve provisions and changes to reserves that are considered appropriate.

The Company is subject to tax audits in all jurisdictions for which it files tax returns. Tax audits by their very nature are often complex and can require several years to complete. Under the tax statute of limitations application to the Internal Revenue Code ("IRC"), the Company is no longer subject to U.S. federal income tax examinations by the Internal Revenue Services ("IRS") for years before 2008. However, because the Company is carrying forward income tax attributes, such as net operating losses and tax credits from 2002 and earlier tax years, these attributes can still be audited in the future when used on an income tax return filed. Tax attributes carried forward from 2002 and earlier tax years recently utilized in tax years for which the statute of limitations have not yet expired are also subject to audit. Under the statute of limitations applicable to most state income tax laws, the Company is no longer subject to state income tax examinations by tax authorities for years before 2008 in states in which we have filed income tax returns. Certain states may take the position that the Company is subject to income tax in such states even though the Company has not filed income tax returns in such states and, depending on the varying state income tax statutes and administrative practices, the statute of limitations in such states may extend to years before 2008. The Company began foreign operations in 1985. The Company is subject to foreign tax examinations by tax authorities for all years of operations.

The Company has an unrecognized U.S. tax benefit of $2.5 million as of December 31, 2012. Any potential interest and penalties on unrecognized tax benefits were not significant. Unrecognized tax benefits are shown as a reduction in net deferred tax assets in the accompanying consolidated balance sheets.

(5) Research and Development Credit

An application for a claim of $4.4 million was made by the Company's subsidiary, Biota Holdings Limited, under the Australian Government's Research and Development tax incentive when Biota Holdings Limited submitted its tax return for its fiscal year ended June 30, 2012. This amount was recorded as a contingent asset as of June 30, 2012. On November 7, 2012, Biota Holdings Limited received cash for this claim. Although the credit is administered by the Australian government, it is not linked to the level of taxable income and is effectively a government grant. As such, the Company obtained an immediate benefit and therefore, the entire amount has been recognized within non-operating income in the consolidated statement of operations for the three and six month periods ending December 31, 2012.

For the current fiscal year, the Company does not expect to receive a research and development credit as its revenue is expected to exceed the qualifying revenue threshold.

(6) Licenses, Royalty Collaborative and Contractual Arrangements

Royalty agreements

The Company entered into a royalty-bearing research and license agreement with GSK in 1990 for the development and commercialization of zanamivir, a neuraminidase inhibitor (NI) marketed by GSK as Relenza™ to treat influenza. Under the terms of the agreement, the Company licensed zanamivir to GSK on an exclusive, worldwide basis and is entitled to receive royalty payments of 7% of GSK's annual net sales of Relenza™ in the U.S., Europe, Japan and certain other countries as well as 10% of GSK's annual net sales of Relenza™ in Australia, New Zealand, South Africa and Indonesia. Royalties earned by the Company under this agreement for the three month period ending December 31, 2012 and 2011, were $1.0 million and $(1.6) million, respectively, and royalties earned for the six month period ending December 31, 2012 and 2011 were $1.0 million and $0.7 million, respectively. Beginning in 2014, the patents on Relenza™ will begin to expire in certain countries and are scheduled to fully expire in 2019.

The Company also generates royalty revenue from the sale of Inavir® in Japan, pursuant to a collaboration and license agreement that the Company entered into with Daiichi Sankyo related to the development and commercialization of second generation, long-acting NI's ("LANI"), including laninamivir octanoate. In September 2010, laninamivir octanoate was approved for sale by the Japanese Ministry of Health and Welfare for the treatment of influenza in adults and children, which Daiichi Sankyo markets as Inavir®. Under the agreement, the Company currently receives a 4% royalty on net sales of Inavir® in Japan. Royalties earned by the Company under this agreement for the three month periods ending December 31, 2012 and 2011, were $0.9 million and $0.5 million, respectively, and royalties earned for the six month periods ending December 31, 2012 and 2011 were $0.9 million and $0.7 million, respectively. Under the collaboration and license agreement, the Company and Daiichi Sankyo co-own the related intellectual property, and have agreed to share equally in any royalties, license fees, or milestone or other payments received from any third party licenses outside of Japan, the specific terms of which have yet to be finalized. Patents on laninamivir octanoate in Japan generally expire in 2027.

Collaborative and contract arrangements

On March 31, 2011, the Company's wholly owned subsidiary, Biota Scientific Management Pty Ltd., was awarded a contract by the U.S. Office of Biomedical Advanced Research and Development Authority ("BARDA"). BARDA is part of the U.S. Office of the Assistant Secretary for Preparedness and Response ("ASPR") within the U.S. Department of Health and Human Services ("HHS"). The BARDA contract is for the late-stage development of laninamivir octanoate on a cost-plus-fixed-fee basis, the total of which is not to exceed $231.2 million. Pursuant to the BARDA contract, reimbursable costs include, but are not limited to, those incurred by the Company for clinical development, scale-up, formulation and manufacture leading to the potential licensure of laninamivir octanoate by the FDA. The BARDA contract is designed to fund and provide the Company with technical and clinical data, and U.S. based manufacturing to support the filing of a U.S. new drug application ("NDA") with the FDA for laninamivir octanoate. The performance period of the BARDA contract commenced on March 31, 2011, and continues for five years.

The Company is considered an active participant in the BARDA contract, with exposure to significant risks and rewards of commercialization relating to the development of laninamivir octanoate. Therefore, revenues from the contract and costs associated with the contract are recorded and recognized on a gross basis in the consolidated statement of operations.

Revenue earned by the Company under the BARDA contract for the three month periods ending December 31, 2012 and 2011, were $7.9 million and $3.1 million, respectively, and revenue earned for the six month periods ending December 31, 2012 and 2011 were $9.2 million and $4.5 million, respectively. Revenue totaling $18.4 million has been recognized to-date pursuant to this contract.

(7) Merger

Summary

On April 22, 2012, Nabi and Biota Holdings Limited entered into a merger implementation agreement (the "Agreement"), which was subsequently amended on August 6, 2012 and further amended on September 17, 2012. Pursuant to the terms and subject to the conditions set forth in the Agreement, Biota Holdings Limited became a wholly owned subsidiary of Nabi on November 8, 2012. As outlined in Note 1, Nabi then changed its name to Biota Pharmaceuticals, Inc.

Reverse Stock Split

On November 8, 2012, as contemplated by the Agreement and as approved by Nabi's stockholders and board of directors, Nabi filed a Certificate of Amendment to its Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to affect a reverse stock split of Nabi's common stock at a ratio of 1:6. As a result of the reverse stock split, each six shares of Nabi common stock issued and outstanding immediately prior to the reverse stock split were automatically combined into and became one share of Nabi common stock. Also, as a result of the reverse stock split, the per share exercise price of, and the number of shares of common stock underlying, of Company stock options outstanding immediately prior to the reverse stock split were automatically proportionally adjusted based on the one-for-six split ratio in accordance with the terms of such options. The reverse stock split did not alter the par value of the Nabi common stock or modify any voting rights or other terms of the common stock. Following the reverse stock split, 0.5 million stock options remained outstanding.

Exchange Ratio

Upon completion of the merger, each outstanding share of Biota Holdings Limited ordinary shares converted into the right to receive 0.1249539870 shares of Nabi common stock as determined pursuant to the exchange ratio, as calculated pursuant to the terms of the Transaction Agreement, as amended. Pursuant to the various agreements, Biota Holdings Limited stockholders received shares in Nabi common stock representing approximately 83% of the outstanding combined stock of the resulting combined company. Nabi stockholders continued to own their existing Nabi common stock, which represented approximately 17% of the outstanding combined stock of the resulting combined company. The issued share capital upon completion of the merger comprised of the following:

	No. of Shares
Ex-Nabi stockholders	4,720,999
Ex-Biota Holdings Limited stockholders	23,416,347
Total	28,137,346

Purchase Consideration and Net Assets Acquired

Due to the fact that former Biota Holdings Limited stockholders held a majority of the ongoing voting interest in the Company upon completion of the merger, the merger has been accounted for as a 'reverse merger', whereby Biota Holdings Limited is treated as the acquirer for financial accounting purposes, with Nabi being treated as the acquired company. In addition, members of the Company's management and board of directors are principally drawn from the Biota Holdings Limited business, and the majority of the ongoing business is related to the Biota Holdings Limited business.

The purchase consideration in a reverse merger is determined with reference to the value of equity that the accounting acquirer (in this case Biota Holdings Limited,) issues to the stockholders of the accounting acquiree (Nabi, in this case) to give them their interest in the combined entity. Further, as a result of the merger, stock options to purchase an aggregate of 0.5 million shares of Nabi common stock that were held by officers and directors of Nabi immediately vested (see Note 3 to the consolidated financial statements). The fair values of the Nabi outstanding stock options were determined using the Black-Scholes option pricing model with the following assumptions: a strike price range between $11.34 – $99.91; a volatility range between 78.79% – 99.62%; a risk-free interest rate range between 0.12% – 0.87%; and an expected life range of 0.3 – 6.1 years.

The purchase price, based on the price per share of the Company's common stock as of the date of the merger is as follows:

Number of shares issued to Nabi stockholders		4,720,999
Fair value per share, using volume weighted share price on November 9, 2012	$	4.0168
Implied purchase consideration (in thousands)	$	18,963
Number of stock options outstanding to former Nabi employees		508,918
Fair value per option	$	0.456
Implied purchase consideration (in thousands)	$	232
Total implied purchase consideration (in thousands)	$	19,195

The net assets acquired consist of (in thousands):

Cash	$	32,687
Accrual for severance obligations and employee benefits		(4,977)
Accounts payable		(694)
Other liabilities		(16)
Net cash received	$	27,000
Excess of net assets acquired over total fair value purchase consideration/gain recorded on merger	$	7,805

No purchase consideration has been allocated to the residual value of any of Nabi's drug development programs, including NicVAX® or any next-generation nicotine vaccine, or the potential royalty of Phoslyra that was sold to a third party in 2006, due to the significant uncertainty associated with future cash flows from these assets.

Pursuant to the Agreement, Biota Holdings Limited received net cash of $27 million from Nabi, while Nabi stockholders received a proportion of the combined entity based on the Biota Holdings Limited share price upon completion of the merger. Movements in the Biota Holdings Limited share price and the U.S. and Australian dollar exchange rates between the date of the determination of the exchange ratio and the date of the completion of the merger, coupled with changes in the fair value of certain assets and liabilities, have resulted in the net assets acquired exceeding the calculated purchase consideration. The gain recorded on the merger of $7.8 million is recognized as non-operating income in the condensed consolidated statements of operations.

Acquisition-related Costs

Acquisition-related costs related to the merger, including adviser, investment banking, legal, accounting and various other costs of $1.3 million and $4.6 million have been included as a general and administrative expense for the three and six month periods ended December 31, 2012, respectively. Total acquisition-related costs were approximately $6.5 million.

Pro forma Financial Information

The following table presents selected unaudited financial information, as if the merger with Nabi had occurred on July 1, 2011 (in thousands, expect per share data).

	Three Months Ended December 31,		Six Months Ended December 31,	
	2012	2011	2012	2011
Pro forma net revenue	$ 1,018	$ 2,984	$ 13,114	$ 8,160
Pro forma net loss	$ (1,124)	$ (8,989)	$ (10,898)	$ (13,164)
Pro forma basic loss per share	$ (0.03)	$ (0.31)	$ (0.38)	$ (0.46)
Pro forma diluted loss per share	$ (0.03)	$ (0.31)	$ (0.38)	$ (0.46)

(8) Commitments and contingencies

Government Contracts and Research Grants

Revenue for services performed pursuant to government contracts is recognized when earned, typically when the underlying services or activities are rendered. Invoices are generally submitted monthly. The accuracy and appropriateness of costs charged to government contracts are subject to regulation, audit and possible disallowance by government agencies. Accordingly, costs billed or billable to government customers are subject to potential adjustment upon audit by such agencies.

Grant funding is initially recognized as deferred income and then recorded as revenue to match the costs that they are intended to compensate for. Revenue recognized in relation to these grants was $0.6 million and $0.8 million for the three and six month periods ended December 31, 2012, and $0.1 million and $0.3 million for the three and six month periods ended December 31, 2011, respectively.

Changes in government policies, priorities or funding levels through agency or program budget reductions by the U.S. Congress or executive agencies could materially adversely affect the Company’s financial condition or results of operations if such changes negatively impacted our contract with BARDA. Furthermore, contracts with the U.S. government may be terminated or suspended by the U.S. government at any time, with or without cause. Such contract suspensions or terminations could result in expenses or charges not being reimbursed, or otherwise adversely affect the Company’s financial condition and/or results of operations.

ITEM 2: Management's Discussion and Analysis of Financial Condition and Results of Operations

FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements. These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. In most cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expect," "plan," "intend," "anticipate," "believe," "estimate," "project," "predict," "forecast," "potential," "likely" or "possible", as well as the negative of such expressions, and similar expressions intended to identify forward-looking statements. These forward-looking statements include, without limitation, statements relating to:

- *our expectation that we will not incur any additional costs in the future related to the merger;*
- *the anticipated completion of management's ongoing strategic, operational and financial review around the end of the first calendar quarter of 2013;*
- *the planned design, size and timing of when we anticipate initiating a 636-patient, randomized, placebo-controlled Phase 2 clinical trial of laninamivir octanoate in mid-2013;*
- *our anticipation that revenue and the related cost of providing services under our BARDA contract will continue to increase assuming the program continues to advance further into clinical development;*
- *our anticipation that we will generally incur future net losses from operations due to our intention to continue to support the research and the preclinical and clinical development of our product candidates;*
- *our anticipation that we will not qualify for the research and development credit for the current fiscal year;*
- *our future financing requirements, the factors that may influence the timing and amount of these requirements, and our ability to fund them;*
- *the number of months that our current cash, cash equivalents and anticipated future proceeds from existing royalty-bearing licenses, our contract with BARDA, and other existing license and collaboration agreements will allow us to operate; and*
- *our plan to continue to finance our operations with our existing cash, cash equivalents and proceeds from existing or potential future royalty-bearing licenses, government contracts, or collaborative research and development arrangements or through future equity and/or debt financings or other financing vehicles.*

These statements reflect our current views with respect to future events and are based on assumptions and subject to key risks and uncertainties including, without limitation: BARDA, or we, not terminating or significantly amending our existing contract to developlaninamivir octanoatein the U.S.; GSK or Daiichi Sankyo continuing to generate net sales from Relenza™ and Inavir®, respectively, and otherwise continuing to fulfill their obligations under our royalty-bearing license agreements with them in the future; we, BARDA, the FDA, a data safety monitoring board, or an institutional review board, delaying, limiting, suspending or terminating the clinical development of laninamivir octanoate at any time for a lack of safety, tolerability, anti-viral activity, commercial viability, regulatory or manufacturing issues, or any other reason whatsoever; the results of research activities related our product candidates being unfavorable, delayed or terminated; the safety or efficacy data from ongoing or future preclinical studies of any of our product candidates not supporting further development of that product candidate; our capacity for successfully recruiting and managing clinical trials on a timely basis; our ability to comply with extensive government regulations in various countries and regions that we expect to conduct clinical trials in that are applicable to our business; our ability to satisfactorily manage the integration of the recent merger and our operations in the future; our ability to maintain and or recruit sufficient human resources, including executive management and key employees; our ability to secure manage and retain qualified third-party clinical research, preclinical research, data management and contract manufacturing organizations who we rely on to assist us in the design, development and implementation of the clinical development of our product candidates, including laninamivir octanoate; such third-party contract research, data management and manufacturing organizations not fulfilling their contractual obligations or otherwise performing satisfactorily in the future; our ability to maintain sufficient quantities of preclinical and clinical trial material on hand to complete our preclinical studies or clinical trials on a timely basis; our ability, or that of our clinical research organizations or clinical investigators to enroll patients in our clinical trials on a timely basis; our failure to obtain regulatory approval to advance the clinical development of or to market our product candidates; our ability to protect and maintain our proprietary intellectual property rights from unauthorized use by others or not infringing on the intellectual property rights of others; the condition of the financial equity and debt markets and our ability to raise sufficient funding in such markets; our ability to manage our current cash reserves as planned; changes in general economic business or competitive conditions; and other statements contained elsewhere in this Quarterly Report on Form 10-Q (including the "Risk Factors" in Part II, Item 1A of this Quarterly Report).

There may be events in the future that we are unable to predict accurately, or over which we have no control. You should read this Form 10-Q and the documents that we reference herein and which been filed or incorporated by reference as exhibits completely and with the understanding that our actual future results may be materially different from what we expect. Our business, financial condition, results of operations, and prospects may change. We may not update these forward-looking statements, even though our situation may change in the future, unless we have obligations under the federal securities laws to update and disclose material developments related to previously disclosed information. We qualify all of the information presented in this Form 10-Q, and particularly our forward-looking statements, by these cautionary statements.

Biota is a registered trademark of Biota Holdings Limited. Relenza™ is a trademark of GlaxoSmithKline plc, Inavir® is a registered trademark of Daiichi Sankyo Company, Ltd, and TwinCaps® is a registered trademark of Hovione FarmaCiencia SA.

The following is a discussion and analysis of the major factors contributing to results of operations for the three and six months ended December 31, 2012, and financial conditions at that date, and should be read in conjunction with the financial statements and the notes thereto included in Item 1 of this Quarterly Report on Form 10-Q.

Company Overview

Biota Pharmaceuticals, Inc. together with its wholly owned subsidiaries ("Biota", the "Company", "us" or "we") is a biopharmaceutical company focused on the discovery and development of innovative anti-infective products to prevent and treat a number of serious and potentially life-threatening viral and bacterial infectious diseases. The Company has been incorporated in the state of Delaware since 1969 and the corporate headquarters are located in Rockville, Maryland. On November 8, 2012, Nabi Biopharmaceuticals ("Nabi") merged with Biota Holdings Limited, which was previously listed on the Australian Stock Exchange (ASX:BTA), and the resulting company was renamed Biota Pharmaceuticals, Inc.

We are currently focused on developing oral, small molecule compounds to treat a number of viral infections, with our most advanced programs being directed toward respiratory diseases, including those caused by influenza A and B, human rhinovirus ("HRV") and respiratory syncytial virus ("RSV"). We also have an early stage development program focused on developing non-nucleoside and nucleoside inhibitors targeting the RNA-dependent RNA polymerase of hepatitis C virus ("HCV"). In addition to our antiviral programs, we have several preclinical stage programs focused on developing novel antibiotics designed to treat serious and potentially life-threatening gram positive and gram negative bacterial infections.

We have patented a neuraminidase inhibitor, zanamivir, which is marketed worldwide by GlaxoSmithKline ("GSK") as Relenza™ for the prevention and treatment of influenza A and B under a royalty-bearing research and license agreement we entered into with GSK in 1990. In addition, we co-own a number of second-generation neuraminidase inhibitors and generate royalty revenue pursuant to a collaboration and license agreement that we entered into with Daiichi Sankyo related to the development and commercialization of second generation, long-acting neuraminidase inhibitors ("LANI's"), including laninamivir octanoate. In September 2010, laninamivir octanoate was approved for sale by the Japanese Ministry of Health and Welfare for the treatment of influenza A and B in adults and children. Laninamivir octanoate is marketed in Japan by Daiichi Sankyo as Inavir®. In November 2012, Daiichi Sankyo submitted an application for a label change in Japan to also manufacture and market the influenza antiviral product Inavir® for the prevention of influenza infection. We have filed an Investigational New Drug application ("IND") with the United States Food and Drug Administration ("FDA") to develop laninamivir octanoate, and in 2012 we entered into a $231 million contract with the U.S. Office of Biomedical Advanced Research and Development Authority ("BARDA") designed to provide support for clinical development and U.S. based manufacturing for laninamivir octanoate for the treatment of influenza A and B infections.

Although several of our influenza products have been successfully developed and commercialized by other larger pharmaceutical companies under license agreements, we have not received regulatory approval for any product candidates we have developed independently, and we do not have any commercialization capabilities. Therefore, it is possible that we may not successfully derive any significant product revenues from any of our existing or future development-stage product candidates.

We plan to continue to finance our operations with our existing cash and cash equivalents; proceeds from existing or potential future royalty-bearing licenses, government contracts, or collaborative research and development arrangements; future equity and/or debt financings; and, other financing vehicles. Our ability to continue our operations is dependent, in the near-term, upon managing our cash resources, our continued receipt of royalty revenues and service revenue the BARDA contract, entering into future collaboration or partnership agreements, the successful development of our product candidates, executing future financings and ultimately, upon the approval of our products for sale and achieving positive cash flows from operations. There can be no assurance that additional capital will be available on terms acceptable to us in the future, or that we will ever generate significant product revenue and become operationally profitable on a consistent basis.

Recent Corporate Developments

Merger between Nabi Biopharmaceuticals and Biota Holdings Limited. On November 8, 2012, we announced that Nabi and Biota Holdings Limited had completed a merger, resulting in Biota Holdings Limited becoming a wholly-owned subsidiary of Nabi, and the Company being renamed Biota Pharmaceuticals, Inc. Former Biota Holdings Limited shareholders retained approximately 83% of the Company's shares of common stock, while former Nabi shareholders retained approximately 17% as consideration for Nabi's net assets, which consisted primarily of $27 million in net cash on the date of the merger. Due to the fact that Nabi had minimal activity ongoing with respect to its development programs or related operations at the time of the merger, our future operations are materially represented by our wholly owned subsidiary, Biota Holdings Limited. Further, given that former Biota Holdings Limited shareholders held a majority of the ongoing voting interest in the Company upon the completion of the merger, the merger has been accounted for as a reverse merger, such that Biota Holdings Limited is considered the accounting acquirer for financial reporting purposes even though Nabi was the legal acquirer.

Reverse Stock Split. On November 8, 2012, and as approved by Nabi's stockholders, Nabi filed a Certificate of Amendment to its Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to affect a reverse stock split of Nabi common stock at a ratio of 1:6. As a result of the reverse stock split, each six shares of Nabi common stock issued and outstanding immediately prior to the reverse split were automatically combined into and became one share of Nabi common stock. Also, as a result of the reverse split, the per share exercise price of, and the number of shares of common stock underlying all stock options outstanding immediately prior to the reverse split were automatically proportionally adjusted based on the one-for-six split ratio in accordance with the terms of such options, warrants or other derivative securities, as the case may be. The reverse stock split did not alter the par value of the Nabi common stock or modify any voting rights or other terms of the common stock.

Changes in Senior Management. In connection with the merger of Nabi and Biota Holdings Limited, on November 14, 2012, we announced the appointment of Russell H. Plumb as our Chief Executive Officer and President, and Joseph M. Patti, M.S.P.H., Ph.D. as our Executive Vice President, Corporate Development & Strategy. Mr. Plumb also joined our board of directors.

Mr. Plumb previously served as President, Chief Executive Officer and Chief Financial Officer of Inhibitex, Inc., a publicly-traded clinical-stage drug development company, from December 2006 through February 2012, when it was acquired. Prior to its acquisition, Inhibitex had focused its resources in recent years on developing antiviral, small molecules, including compounds to treat hepatitis C virus (HCV) infection. From 2000 to December 2006, Mr. Plumb was the Chief Financial Officer of Inhibitex, during which time he oversaw numerous financing transactions, including the company's initial public offering in 2004.

Dr. Patti was a co-founder of Inhibitex, and served as its Chief Scientific Officer and Senior Vice President of Research and Development from 2007 through February 2012. Prior to that, he served as the Vice President, Preclinical Development and Chief Scientific Officer from 1998 to 2007 and Vice President of Research and Development from 2005 to 2007 of Inhibitex.

As a result of the appointment of Mr. Plumb as our Chief Executive Officer, management is currently undertaking a thorough strategic operational and financial review, the purpose of which is to determine how we will align and allocate our capital and human resources, if any, to our respective ongoing development programs in the future. We anticipate that this review will be completed around the end of the current quarter.

Peter Cook, who resigned as the Chief Executive Officer of Biota Holdings Limited upon the completion of the merger, continues to serve as one of our directors.

Laninamivir Octanoate Clinical Update. In January 2013, we initiated a Phase 1 clinical trial designed to assess the pharmacokinetics and metabolite profile of laninamivir octanoate following an inhaled dose administered via TwinCaps®. This study is a single center, single dose, open-label study in six healthy male subjects. It is anticipated that top-line results will be available in mid-2013. Based upon the current development status of laninamivir octanoate in the U.S. under the BARDA contract, we anticipate initiating a 636-patient, randomized, placebo-controlled Phase 2 clinical trial in mid-2013. The primary objective of the trial is to evaluate the safety and efficacy of two doses of inhaled laninamivir octanoate (40 and 80 mg) delivered via TwinCaps® in adults with symptomatic presumptive influenza A or B infection. The primary endpoint for this study is alleviation of influenza symptoms and fever after 24 hours.

Results of Operations

Three Months Ended December 31, 2012 and December 31, 2011

Summary. We reported net income of $4.8 million for the three months ended December 31, 2012 as compared to net loss of $7.0 million for the same three month period in 2011. The $11.8 million change from net loss in 2011 to net income in 2012 was primarily the result of an $8.2 million increase in revenue, the recording of a $7.8 million gain related to the merger, and the receipt of $4.4 million research and development credits, offset in part by a $7.7 million increase in total operating expenses, a $0.4 million decrease in interest income and a $0.5 million decrease in income tax benefits.

Although we reported net income in the most recent quarter, largely due to the gain we recorded as a result of the merger and the receipt of research and development credit, we generally expect to incur net losses in the near-term as we intend to continue to support research related to and the preclinical and clinical development of our product candidates.

Revenue. Revenue increased to $10.4 million for the three months ended December 31, 2012 from $2.1 million in the same period of 2011, primarily as a result of increased royalty revenue and service revenue in 2012. The following table summarizes the key components of our revenue for the three months ended December 31, 2012 and 2011:

	Three Months Ended December 31,	
	2012	2011
	(in millions)	
Royalty revenue – Relenza™	$ 1.0	$ (1.6)
– Inavir®	0.9	0.5
Service revenue under BARDA contract	7.9	3.1
Revenue under other contracts, grants and collaborations	0.6	0.1
Total revenue	$ 10.4	$ 2.1

The increase in royalty revenue in 2012 was attributable to increased sales of both Relenza™ and Inavir®, as well as the effect of negative royalty recorded in 2011 that reflected the return of products to GSK and an adjustment to royalties earned for calendar year 2011 that occurred in the three month period ended December 31, 2011. Service revenue under the BARDA contract increased in 2012 from 2011 due to the advancement of the laninamivir octanoate program toward Phase 2 clinical development and the expansion of the underlying activities covered under the contract. We anticipate that our revenue under the BARDA contract will continue to increase assuming the program continues to advance further into clinical development. Revenue under other contracts, grants and collaborations increased in 2012 due to a new government grant of $0.2 million.

Cost of Revenue. Cost of revenue represents expenses incurred by us in performing services and activities pursuant to government contracts or grants for which we record related revenue and expense on the gross basis of accounting. Cost of revenue increased to $7.1 million in the three months ended December 31, 2012 from $2.9 million in the same three month period in 2011 due principally to the advancement of the laninamivir octanoate program under the BARDA contract, and the expansion of the underlying activities covered under that contract. We anticipate that our cost of revenue under the BARDA contract will continue to increase assuming the program continues to advance further into clinical development.

Research and development expense. Research and development expense decreased to $4.0 million in the three months ended December 31, 2012 from $5.7 million in the same three month period in 2011. The following table summarizes the components of our research and development expense for the three months ended December 31, 2012 and 2011:

	Three Months Ended December 31,	
	2012	2011
	(in millions)	
Direct preclinical, clinical and product development expense	$ 1.4	$ 2.4
Other salaries, benefits and stock-based compensation expense	2.0	2.2
Depreciation and facility-related expense	0.6	0.9
Other indirect expense	-	0.2
Total research and development expense	$ 4.0	$ 5.7

Direct preclinical, clinical and product development expense decreased by $1.0 million from 2011 due largely to the completion of the vapendavir Phase 2 clinical trial during the quarter ended June 30, 2012, as well as preclinical costs associated with our antibacterial and hepatitis C programs incurred in 2011 that did not recur in 2012.

General and administrative expense. General and administrative expense increased to $7.1 million for the three months ended December 31, 2012 from $1.9 million for the same three month period in 2011. The following table summarizes the components of our general and administrative expense for the three months ended December 31, 2012 and 2011:

	Three Months Ended December 31,	
	2012	2011
	(in millions)	
Merger-related expense	$ 3.3	$ -
Salaries, benefits and share-based compensation expense	2.4	1.1
Professional and legal expense	0.4	0.3
Other expense	1.0	0.5
Total general and administrative expense	$ 7.1	$ 1.9

Merger-related expense increased due to the merger between Nabi and Biota Holdings Limited that was completed on November 8, 2012. We do not expect to incur any additional merger-related expense in the future. Salaries, benefits and stock-based compensation expense increased due to a $0.7 million increase primarily related to the addition of executive and administrative staff in the U.S., $0.3 million in separation costs and an increase in recruitment costs of $0.2 million in 2012. Other expense increased due to generally higher insurance, rent, and maintenance costs.

***Non-operating income*.** Non-operating income increased for the three months ended December 31, 2012 as compared to the same three month period in 2011, due to primarily to a $7.8 million gain we recognized related to the merger (see Note 7 to the consolidated financial statements), as well as the receipt of $4.4 million with respect to an Australian research and development credit (see Note 5 to the consolidated financial statements). Interest income decreased by $0.4 million due to lower available interest rates in 2012 as compared to 2011 as well as lower average cash balances held in 2012 compared to 2011. We do not expect to receive additional research and development credits for our 2013 fiscal year as we anticipate our revenue will exceed the qualifying revenue threshold.

Six Months Ended December 31, 2012 and December 31, 2011

Summary. We reported a net loss of $2.4 million for the six months ended December 31, 2012, as compared to net loss of $11.3 million for the same six month period in 2011. This $8.9 million decrease in net loss in 2012 was primarily the result of a $5.6 million increase in revenue, the recording of the $7.8 million gain we recorded pursuant to the merger, and the receipt of a $4.4 million research and development credits, offset in part by a $7.6 million increase in operating expense, a $0.9 million decrease in interest income and a $0.5 million decrease in income tax benefits

We expect to generally incur net losses in the near-term as we intend to continue to support the research and the preclinical and clinical development of our product candidates.

Revenue. Revenue increased to $11.9 million for the six months ended December 31, 2012 from $6.2 million in the same period of 2011, primarily as a result of increased royalty and service revenue in 2012. The following table summarizes the key components of our revenue for the six months ended December 31, 2012 and 2011:

	Six Months Ended December 31,	
	2012	2011
	(in millions)	
Royalty revenue – Relenza™	$ 1.0	$ 0.7
– Inavir®	0.9	0.7
Service revenue under BARDA contract	9.2	4.5
Revenue under other contracts, grants and collaborations	0.8	0.3
Total revenue	$ 11.9	$ 6.2

The increase in royalty revenue in 2012 was attributable to increased sales of Relenza™ and Inavir®. Service revenue under the BARDA contract increased in 2012 from 2011due to the advancement of the laninamivir octanoate program and the expansion of the underlying activities covered under the contract. We anticipate that our revenue under the BARDA contract will continue to increase assuming the program continues to advance further into clinical development. Revenue under other contracts, grants and collaborations increased in 2012 due to a new government grant of $0.2 million.

Cost of revenue. Cost of revenue represents expenses incurred by us in performing services pursuant to government contracts or grants for which we record related revenue and expense on the gross basis of accounting. Cost of revenue increased to $8.6 million in the six months ended December 31, 2012 from $4.3 million in the same six month period in 2012, due principally to the advancement of the laninamivir octanoate program under the BARDA contract, and the expansion of the underlying activities covered under the contract. We anticipate that our costs of providing services under the BARDA contract will continue to increase assuming the program continues to advance further into clinical development.

Research and development expense. Research and development expense decreased to $8.6 million in the six months ended December 31, 2012 from $12.1 million in the same six month period in 2011. The following table summarizes the components of our research and development expense for the six months ended December 31, 2012 and 2011:

	Six Months Ended December 31,	
	2012	2011
	(in millions)	
Direct preclinical, clinical and product development expense	$ 2.5	$ 5.3
Other salaries, benefits and share-based compensation expense	4.3	4.6
Depreciation and facility-related expense	1.8	1.8
Other indirect expense	-	0.4
Total research and development expense	$ 8.6	$ 12.1

Direct preclinical, clinical and product development expense decreased by $2.8 million in 2012 due largely to the completion of the vapendavir Phase 2 clinical trial during the quarter ended June 30, 2012, as well as preclinical costs associated with our antibacterial and hepatitis C programs that we incurred in 2011 but did not recur in the first six months of 2012. Other indirect expense in 2011 related to an exchange loss on a loan to our subsidiary Biota Europe, that did not recur in 2012.

General and administrative expense. General and administrative expense increased to $10.3 million for the six months ended December 31, 2012 from $3.7 million for the same six month period in 2011. The following table summarizes the components of our general and administrative expense for the six months ended December 31, 2012 and 2011:

	Six Months Ended December 31,	
	2012	2011
	(in millions)	
Merger-related expense	$ 4.6	$ -
Salaries, benefits and stock-based compensation expense	3.6	2.2
Professional and legal expense	0.7	0.5
Other expense	1.4	1.0
Total general and administrative expense	$ 10.3	$ 3.7

Merger-related expense increased due to the merger we completed on November 8, 2012. We do not expect to incur any additional merger-related costs in the future. Salaries, benefits and stock-based compensation expense increased due to a $0.7 million increase related to the addition of executive and administrative staff in the U.S., $0.3 million in separation costs and an increase in recruitment costs of $0.2 million in 2012. Other expense increased due to generally higher insurance, rent and maintenance costs.

Non-operating income. Non-operating income increased for the six months ended December 31, 2012 as compared to the same six month period in 2011, due to primarily to a $7.8 million gain we recorded related to the merger (see Note 7 to the consolidated financial statements), as well as the receipt of $4.4 million with respect to an Australian research and development credit (see Note 5 to the consolidated financial statements). Interest income decreased by $0.9 million due to lower available interest rates in 2012 as compared to 201, as well as lower average cash balances held in 2012 compared to 2011. We do not expect to receive additional research and development credits for our 2013 fiscal year as we anticipate our revenue will exceed the qualifying revenue threshold.

LIQUIDITY AND CAPITAL RESOURCES

For the six months ended December 31, 2012, cash and cash equivalents increased by $20.3 million, from $53.8 million to $74.1 million. This increase was primarily the result of $32.7 million of cash received as a result of the merger as described in Note 7 to the consolidated financial statements, offset in part by cash used for operating activities and other investing activities during the six months ended December 31, 2012.

Net cash used in operating activities was $12.7 million for the six months ended December 31, 2012, which reflected our net loss for the period of $2.4 million that included a gain of $7.8 million we recorded as a result of the merger and an increase in net operating assets of $6.1 million, offset in part by non-cash charges of $3.4 million and a net increase in operating liabilities of $0.2 million. Our net loss resulted largely from our provision of contract services; funding research and development activities including basic research: conducting preclinical studies; manufacturing and formulation expenses; incurring ongoing general and administrative expenses; as well as expenses associated with the merger, offset to a large degree by contract service, royalty and other revenue from grants and collaborations, a $7.8 million gain we recorded pursuant to the merger, the receipt of a $4.4 million research and development credit, and interest income. The net change in operating assets and liabilities reflects a $5.4 million increase in accounts receivable due to higher royalty and contract revenue, a $1.1 million increase in prepaid expenses, offset in part by a $0.5 million increase in deferred revenue and $0.2 million in accounts payable and a decrease of $0.5 million in accrued severance obligations.

Net cash provided from investing activities during the six months ended December 31, 2012 was $32.3 million, which was largely due to the gross cash of $32.7 million we received as pursuant to the merger, offset in part by $0.4 million for the purchase of laboratory and computer equipment.

At December 31, 2012, our cash and cash equivalents totaled $74.1 million. Our cash and cash equivalents are currently held in the form of short-term deposits with large U.S. and Australian banks.

Our future funding requirements are difficult to determine and will depend on a number of factors, including:

- the variability of future royalty revenue we may receive from existing royalty-bearing license agreements;
- continuing to receive sufficient revenue under our contract with BARDA to advance the development of laninamivir octanoate in the U.S.;
- the development timelines and plans for our product candidates, including any changes to those timelines, plans or our strategy;
- the variability, timing and costs associated with conducting clinical trials for our product candidates, the rate of enrolment in such clinical trials, and the results of these clinical trials:
- the variability, timing and costs associated with conducting preclinical studies, and the results of these studies;
- the cost of scaling up, formulating and manufacturing preclinical and clinical trial materials to evaluate our product candidates;
- whether we receive regulatory approval to advance the clinical development of our product candidates in a timely manner, if at all;
- the cost and time to obtain regulatory approvals required to advance the development of our product candidates;
- the scope and size of our research and development efforts;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish in the future;
- the cost to maintain a corporate infrastructure to support being a publicly-traded company; and
- the cost of filing, prosecuting, and enforcing patent and other intellectual property claims.

Based on our current strategy and operating plan, and considering the potential costs associated with advancing the preclinical and clinical development of our product candidates, we believe that our existing cash, cash equivalents of $74.1 million as of December 31, 2012, along with the anticipated proceeds from existing royalty-bearing licenses, from our contract with BARDA, and from other existing license and collaboration agreements will enable us to operate for a period of at least 12 months from December 31, 2012.

We currently do not have any commitments for future funding, nor do we anticipate that we will generate significant revenue, aside from revenue from existing royalty-bearing arrangements, from the sale of any of our products in the foreseeable future. Therefore, in order to meet our anticipated liquidity needs beyond 12 months to support the development of our product candidates, or possibly sooner in the event we enter into other transactions or change our strategy or development plans, we may need to raise or secure additional capital. We would expect to do so primarily through the sale of additional common stock or other equity securities, as well as through proceeds from future licensing agreements, strategic collaborations, forms of debt financing, or any other financing vehicle. Funds from these sources may not be available to us on acceptable terms, if at all, and our failure to raise such funds could have a material adverse impact on our future business strategy, plans, financial condition and results of operations. If adequate funds are not available to us on acceptable terms in the future, we may be required to delay, reduce the scope of, or eliminate one or more of our research and development programs, or delay or curtail our preclinical studies and clinical trials. If additional capital is not available to us on acceptable terms, we may need to obtain funds through license agreements, or collaborative or partner arrangements pursuant to which we will likely relinquish rights to certain product candidates that we might otherwise choose to develop or commercialize independently, or be forced to enter into such arrangements earlier than we would prefer, which would likely result in less favorable transaction terms. Additional equity financings may be dilutive to holders of our common stock, and debt financing, if available, may involve significant payment obligations and restrictive covenants that restrict how we operate our business.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Note 2 to our condensed consolidated financial statements include a discussion of our significant accounting policies. A summary of the more significant policies follows:

Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include the carrying amount of property, plant and equipment, intangible assets, deferred income taxes, and obligations related to employee benefits. Actual results could differ from those estimates.

Revenue Recognition

Revenue consists primarily of royalty payments, license fees, milestone payments, payments for services performed pursuant to government grants and contracts as well as certain research and development activities pursuant to collaborations with other corporate entities.

Revenue from royalties is recognized upon sales of the underlying product by the relevant third party. The Company generally receives written confirmation of the amount of royalty revenue from its licensees' on a quarterly basis.

Revenue for services performed pursuant to contract or grants is recognized as revenue when earned, typically when the underlying services or activities are rendered. The Company analyzes cost reimbursable grants and contracts to determine whether it should report such reimbursements as revenue, or as an offset to the related research and development expenses incurred. For costs incurred and revenues generated from third parties where the Company is deemed to be the principal participant, such as the BARDA contract, it recognizes revenue and costs using the gross basis of accounting; otherwise it uses the net basis of accounting. Revenue for collaborative research and development activities typically consists of fees for services, or payments when specific milestones are met and match underlying activities occurring during the term of the arrangement.

For milestones that are deemed substantive, the Company recognizes the contingent revenue when: (i) the milestones have been achieved; (ii) no further performance obligations with respect to the milestones exist; and (iii) collection is reasonably assured. A milestone is considered substantive if all of the following conditions are met: (i) the milestone is non-refundable; (ii) achievement of the milestone was not reasonably assured at the inception of the arrangement; (iii) substantive effort is involved to achieve the milestone; and (iv) the amount of the milestone appears reasonable in relation to the effort expended with the other milestones in the arrangement and the related risk associated with achievement of the milestone. If a milestone is deemed not to be substantive, the Company recognizes the portion of the milestone payment as revenue that correlates to activities already performed; the remaining portion of the milestone payment is deferred and recognized as revenue as the Company completes its performance obligations.

The Company's revenue generating arrangements may include multiple elements and deliverables, including, but not limited to, licenses, options, research and development activities, participation on joint steering committees and royalties or profit share arrangements, among other elements.

Research and Development Expense

Research and development expense includes activities associated with: drug discovery, such as medicinal chemistry, virology, microbiology, and biochemistry; drug target discover, such as molecular biology and modeling and structural biology; professional fees paid to third-party service providers in connection with conducting preclinical studies and treating patients enrolled in clinical trials and monitoring, accumulating and evaluating the related data; salaries and personnel-related expenses for our internal staff, including benefits and share-based compensation; the cost to develop, formulate and manufacture product candidates; legal fees associated with patents and intellectual property; consulting fees; license and sponsored research fees paid to third parties; and specialized information systems, depreciation and laboratory facility costs. Research and development costs do not include an allocation of any general and administrative expense. With respect to contract services undertaken, the Company evaluates and estimates expenses on a percentage-of-completion basis. Research and development expenses are expensed as incurred.

The Company has received and expects to continue to receive revenue and reimbursement for certain research and development activities pursuant to collaborations with other corporate entities, as well as for services performed pursuant to government grants and contracts. For the three months ended December 31, 2012 and December 31, 2011, we recorded approximately $8.4 million and $3.2 million respectively. For the six months ended December 31, 2012 and December 31, 2012, we recorded approximately $10.0 million and $4.8 million respectively.

Share-Based Compensation Expense

Share-based compensation expense for stock options is determined at the grant date using an option pricing model based on the closing price of the Company's common stock on that date. The value of the award that is ultimately expected to vest is recognized as an expense on a straight-line basis over the employee's relevant service period.

ITEM 3: Quantitative and Qualitative Disclosures about Market Risk

Market risk represents the risk of changes to our income or expenses, or value of market risk sensitive items caused by fluctuations in interest rates and foreign exchange rates. Changes in these factors could cause fluctuations in our results of operations and cash flows.

Interest Rate and Credit Risk

Our exposure to interest rate risk is currently confined to interest earnings as our cash and cash equivalents are invested in liquid money market funds and short-term deposits. The primary objective of our investment activities is to preserve our capital to fund operations. We do not use derivative financial instruments to manage interest rate risk.

Our exposure for changes in interest rates therefore relates to the increase or decrease in the amount of interest income we can earn on our portfolio. Our future interest income may fall short of expectations due to changes in interest rates. Accordingly, we do not believe that we have material exposure to interest rate risk arising from our investments.

Our exposure to credit risk is managed through our policy which specifies credit quality standards for our cash deposits and limits the amount of credit exposure to any single party. We place our excess cash with high credit quality financial institutions in order to limit the amount of credit exposure.

Foreign Currency Rate Fluctuations

We conduct business in foreign countries. For U.S. reporting purposes, we translate all assets and liabilities of our non-U.S. entities at the period-end exchange rate and revenue and expenses at the average exchange rates in effect during the periods. The net effect of these translation adjustments is shown in the accompanying condensed consolidated financial statements as a component of stockholders' equity.

We generate a significant portion of our revenue and collect receivables in foreign currencies. Similarly, we incur expenditure in foreign currencies and fluctuations in the exchange rate of the U.S. dollar against major foreign currencies, including the Euro, British Pound, Japanese Yen and Australian dollar, which can result in foreign currency exchange gains and losses that may significantly impact our financial results. Continued currency exposure and fluctuation of these exchange rates could result in financial results that are not comparable from quarter to quarter.

Our policy is to substantially hedge anticipated transactions when net exposures are reasonably certain to occur. In respect to work performed under the BARDA contract we give priority to service providers who bill in U.S. dollars to match our contract, which is settled in U.S. dollars. Where appropriate, we utilize foreign currency contracts to mitigate potential foreign currency exposures and hold cash reserves in currencies in which those reserves are anticipated to be expended.

ITEM 4: Controls and Procedures

Our Chief Executive Officer currently acts as our Chief Financial Officer.

Evaluation of Disclosure Controls and Procedures

An evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Accounting Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Accounting Officer concluded that these disclosure controls and procedures were effective.

Changes in Internal Controls over Financial Reporting

We are currently in the process of integrating the Nabi and Biota Holdings Limited business operations, information systems and various processes, including our internal controls. In many respects, this involves bringing the business operations of Biota Holdings Limited under Nabi's pre-existing control framework. We started this effort during the three month period ended December 31, 2012, but additional work will continue in calendar 2013 and through the end of our fiscal year. There has been no change in our internal control over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met, and therefore, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. We do not expect that our disclosure controls and procedures or our internal control over financial reporting are able to prevent with certainty all errors and all fraud.

PART II – OTHER INFORMATION

ITEM 1A. RISK FACTORS

An investment in our securities involves a risk of loss. You should carefully consider each of the following risks, together with other information in this Quarterly Report, in evaluating our business, financial condition and our prospects. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impact our business and prospects. If any of the following risks actually occur, our business, financial condition, our ability to raise additional capital in the future could be materially harmed. In that case, the trading price of our common stock could decline, and you could lose all or part of your investment in us. You should also refer to the other information set forth in this Quarterly Report and in our Current Report on Form 8-K/A filed with the Securities and Exchange Commission on January 23, 2012, including our financial statements and the notes to those statements.

RISKS RELATED TO THE DEVELOPMENT OF OUR PRODUCT CANDIDATES

Our success depends largely upon our ability to advance our product candidates through the various stages of development, especially through the clinical trial process. If we are unable to successfully advance or develop our product candidates, our business will be materially harmed.

All of our product candidates are in early stages of development and their commercial viability remains subject to the successful outcome of current and future preclinical studies, clinical trials, regulatory approvals and the risks generally inherent in the development of pharmaceutical product candidates. Failure to advance the development of one or more of our product candidates may have a material adverse effect on our business. The success of our business ultimately depends upon our ability to successfully advance the development of our product candidates through preclinical studies and clinical trials, have these product candidates approved for sale by the United States Food and Drug Administration ("FDA") or regulatory authorities in other countries, and ultimately have our product candidates successfully commercialized by us or a strategic partner. We cannot assure you that the results of our ongoing research, preclinical studies or clinical trials will support or justify the continued development of our product candidates, or that we will receive approval from the FDA, or similar regulatory authorities in other countries, to advance the development of our product candidates**.**

Our product candidates must satisfy rigorous regulatory standards of safety and efficacy before we can advance or complete their clinical development or they can be approved for sale. To satisfy these standards, we must engage in expensive and lengthy studies and clinical trials, develop acceptable and cost effective manufacturing processes, and obtain regulatory approval of our product candidates. Despite these efforts, our product candidates may not:

- offer therapeutic or other medical benefits over existing drugs or other product candidates in development to treat the same patient population;
- be proven to be safe and effective in current and future preclinical studies or clinical trials;
- have the desired effects;
- be free from undesirable or unexpected effects;
- meet applicable regulatory standards;
- be capable of being formulated and manufactured in commercially suitable quantities and at an acceptable cost; or
- be successfully commercialized by us or by our collaborators.

Even if we demonstrate favorable results in preclinical studies and early-stage clinical trials, we cannot assure you that the results of late-stage clinical trials will be sufficient to support the continued development of our product candidates. A number of companies in the pharmaceutical and biopharmaceutical industries have experienced significant delays, setbacks and failures in all stages of development, including late-stage clinical trials, even after achieving promising results in preclinical testing or early-stage clinical trials. Accordingly, results from completed preclinical studies and early-stage clinical trials of our product candidates may not be predictive of the results we may obtain in later-stage trials. Furthermore, even if the data collected from preclinical studies and clinical trials involving any of our product candidates demonstrate a satisfactory safety and efficacy profile, such results may not be sufficient to obtain regulatory approval from the FDA in the U.S. or other similar regulatory agencies in other jurisdictions, which is required to market and sell the product.

Clinical trials are lengthy and expensive. We or our partners incur substantial expense for, and devote significant time to, preclinical testing and clinical trials, yet cannot be certain that the tests and trials will ever result in the commercial sale of a product. For example, clinical trials require adequate supplies of drug and sufficient patient enrolment. Delays in patient enrolment can result in increased costs and longer development times. Even if we or our collaborators successfully complete clinical trials for our product candidates, we or our partners might not file the required regulatory submissions in a timely manner and may not receive marketing approval for the product candidate. We cannot assure you that any of our product candidates will successfully progress further through the drug development process or will result in a commercially viable product.

The continuation of our BARDA contract with BARDA depends on our ability to meet key development milestones previously agreed to with BARDA and on our compliance with certain operating procedures and protocols. The termination or suspension of the BARDA contract could adversely affect our business and our ability to further develop and commercialize laninamivir octanoate.

We were awarded a contract for the late stage development of laninamivir octanoate. Under this contract, we are entitled to up to $231 million in funding, and we are relying on this funding to support the advanced development of laninamivir octanoate in the U.S. BARDA may suspend or terminate this contract should we fail to achieve key objectives or milestones, or fail to comply with the operating procedures and processes approved by BARDA and its audit agency, the Defense Contract Audit Agency. There can be no assurance that we will be able to achieve these milestones or continue to comply with these procedures and protocols, or whether we will be able to successfully develop laninamivir octanoate under the contract.

If the BARDA contract were terminated or suspended, we would likely not have access to sufficient resources to continue to fund the development and commercialization of laninamivir octanoate and our business could be adversely affected.

BARDA may not fully reimburse all the development costs required to support approval of laninamivir octanoate in The U.S. and we may need to expend additional financial resources to achieve a NDA filing, which could harm our financial condition.

Costs reimbursed by BARDA under our contract with it are currently capped at $231million. If we run over this budget or alter our plans, we may incur costs to deliver the scope of the contract plan.

If the actual or perceived therapeutic benefits or the safety profile of any of our product candidates, including laninamivir octanoate, are not equal to or superior to other competing anti-infective treatments approved for sale or in clinical development, we may terminate the development of any of our product candidates at any time, and our potential profitability could be harmed.

We are aware of a number of companies marketing or developing various classes of anti-infective product candidates for the treatment of influenza, HRV, RSV, HCV and bacterial infections. Many of these product candidates are either approved for sale or further advanced in clinical development than ours, therefore their time to approval and commercialization may be sooner than that for our product candidates. Accordingly, if at any time we believe that any of our product candidates may not provide meaningful therapeutic benefits, perceived or real, equal to or better than our competitor’s compounds, or we believe such product candidates may not have as favorable a safety profile as potentially competitive compounds, we may delay or terminate the future development of any of our product candidates at any time. We cannot provide any assurance that future development of any or our product candidates will demonstrate any meaningful therapeutic benefits over potentially competitive compounds currently approved for sale or in development or an acceptable safety profile sufficient to justify its continued development.

We also anticipate that several drugs, such as oseltamivir (Tamiflu®), would compete with laninamivir octanoate for the treatment of influenza. We also believe a number of antibiotics, such as vancomycin, which is marketed by a number of manufacturers including Abbott Laboratories; Cubicin® marketed by Cubist Pharmaceuticals, Inc.; Zyvox® marketed by Pfizer Inc. and Avelox® marketed by Bayer for the treatment of bacterial infections, would compete with certain of our antibacterial product candidates when and if they are successfully developed and approved for sale. Furthermore, at the time Biota's products are approved, many of these competing products may be generic drugs. Generic drugs are compounds that have no remaining patent protection, and generally have an average selling price substantially lower than drugs that are protected by patents and intellectual property rights. Unless a patented drug can differentiate itself from generic drugs treating the same condition or disease in a clinically meaningful manner, the existence of generic competition in any indication may impose significant pricing pressure on patented drugs. Accordingly, if at any time we believe that any of our product candidates may not provide meaningful therapeutic or safety benefits, perceived or real, over these generic drugs, we may delay or terminate its future development at any time. We cannot provide any assurance that later-stage clinical trials of our product candidates that may compete with generic drugs in the future will demonstrate any meaningful therapeutic or safety benefits over these generic drugs sufficient to justify its continued development. Further, if we successfully develop a product candidate and it is approved for sale, we cannot assure you that any real or perceived therapeutic benefits of our drug over generic drugs will result in it being prescribed by physicians or commanding a price higher than the existing generic drugs.

Our product candidates may exhibit undesirable side effects when used alone or in combination with other approved pharmaceutical products, which may delay or preclude their further development or regulatory approval, or limit their use if approved.

Throughout the drug development process, we must continually demonstrate the safety and tolerability of our product candidates to obtain regulatory approval to further advance their clinical development or to market them. Even if our product candidates demonstrate strong biologic activity and clear clinical efficacy, any unacceptable adverse side effects or toxicities, when administered alone or in the presence of other pharmaceutical products, which can arise at any stage of development, may outweigh their potential benefit. We may observe adverse or serious adverse events or drug-drug interactions in future preclinical studies or clinical trials of our product candidates, which could result in the delay or termination of their development, prevent regulatory approval, or limit their market acceptance if they are ultimately approved.

If the results of preclinical studies or clinical trials for our product candidates, including those that are subject to existing or future license or collaboration agreements, are unfavorable or delayed, we could be delayed or precluded from the further development or commercialization of our product candidates, which could materially harm our business.

In order to further advance the development of, and ultimately receive marketing approval to sell our product candidates, we must conduct extensive preclinical studies and clinical trials to demonstrate their safety and efficacy to the satisfaction of the FDA or similar regulatory authorities in other countries, as the case may be. Preclinical studies and clinical trials are expensive, complex, can take many years to complete, and have highly uncertain outcomes. Delays, setbacks, or failures can occur at any time, or in any phase of preclinical or clinical testing, and can result from concerns about safety or toxicity, a lack of demonstrated efficacy or superior efficacy over other similar products that have been approved for sale or are in more advanced stages of development, poor study or trial design, and issues related to the formulation or manufacturing process of the materials used to conduct the trials. The results of prior preclinical studies or early-stage clinical trials are not necessarily predictive of the results we may observe in later-stage clinical trials. In many cases, product candidates in clinical development may fail to show desired safety and efficacy characteristics despite having favorably demonstrated such characteristics in preclinical studies or early-stage clinical trials.

In addition, we may experience numerous unforeseen events during, or as a result of, preclinical studies and the clinical trial process, which could delay or impede our ability to advance the development of, receive marketing approval for, or commercialize our product candidates, including, but not limited to:

- communications with the FDA, or similar regulatory authorities in different countries, regarding the scope or design of a trial or trials, or placing the development of a product candidate on hold until questions or issues are satisfactorily resolved;

- regulatory authorities or institutional review boards ("IRBs") not authorizing us to commence or conduct a clinical trial at a prospective trial site;

- enrolment in our clinical trials being delayed, or proceeding at a slower pace than we expected, because we have difficulty recruiting patients or because participants drop out of our clinical trials at a higher rate than we anticipated;

- our third-party contractors, upon whom we rely for conducting preclinical studies, clinical trials and manufacturing of our trial materials, may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner;

- having to suspend or ultimately terminate a clinical trial if participants are being exposed to unacceptable health or safety risks;

- regulatory authorities or IRBs requiring that we hold, suspend or terminate our preclinical studies and clinical trials for various reasons, including non-compliance with regulatory requirements; and

- the supply or quality of drug material necessary to conduct our preclinical studies or clinical trials being insufficient, inadequate or unavailable.

Even if the data collected from preclinical studies or clinical trials involving our product candidates demonstrate a satisfactory safety and efficacy profile, such results may not be sufficient to support the submission of a New Drug Application (NDA) to obtain regulatory approval from the FDA in the U.S., or other similar foreign regulatory authorities in foreign jurisdictions, which is required for us to market and sell the product.

Several of our product candidates are being developed to treat seasonal respiratory infections, which could cause their clinical development to be more complex and take longer and cost more to complete than product candidates intended for non-seasonal infections.

Influenza, HRV and RSV are respiratory infections that generally occur much more frequently in the fall and winter months, as opposed to spring and summer months. Accordingly, clinical trials being conducted in patients with these infections need to be conducted during the season in which the infections occur, and generally cannot be conducted year-round in any one region of the world. This seasonality of these respiratory infections requires us to plan to conduct larger clinical trials in the both northern and southern hemisphere in order to enroll these trials on a timely basis. In the event we cannot enroll a sufficient number of patients during a season in any one region of the world, such as the northern hemisphere, we may need to also conduct the trial in countries in the southern hemisphere in order to meet enrollment targets, which increases the complexity of these trial designs, exposes us to additional regulatory oversight in more countries and generally increases the cost to conduct these trials.

In the event that the severity, nature and extent of influenza in any given year or season is mild, we may not be able to clearly demonstrate the efficacy oflaninamivir octanoate in a placebo-controlled clinical trial, which would could materially harm our business prospects and financial condition.

For studies supporting a NDA filing to the FDA, we anticipate conducting placebo-controlled clinical trials of laninamivir octanoate under the BARDA contract, with the primary efficacy endpoints designed to show in a statistically significant manner that laninamivir octanoate has superior efficacy as compared to a placebo. In the event the severity, nature and extent of influenza and its correlate symptoms are mild, we may not be able to enroll a sufficient number of patients in the trial and/or demonstrate a statistical difference between laninamivir octanoate and the placebo control. This could result in the clinical trial failing, which may cause us to have to repeat the trial or BARDA to terminate our contract, either of which could materially harm our business prospects and financial condition.

If third-party contract manufacturers, upon whom we rely to formulate and manufacture our product candidates, do not perform, fail to manufacture according to our specifications or fail to comply with strict government regulations, our preclinical studies or clinical trials could be adversely affected and the development of our product candidates could be delayed or terminated, or we could incur significant additional expenses.

We do not currently own any manufacturing facilities. We have historically contracted with third-party contract manufacturers and we intend to continue to rely on third-party contractors, at least for the foreseeable future, to manufacture our products. Our reliance on third-party contract manufacturers exposes us to a number of risks, any of which could delay or prevent the completion of our clinical trials, or the regulatory approval or commercialization of our product candidates, result in higher costs, or deprive us of potential product revenues.

Some of these risks include, but are not limited to:

- our third-party contractors failing to develop an acceptable formulation to support later-stage clinical trials for, or the commercialization of, our product candidates;

- our contract manufacturers failing to manufacture our product candidates according to their own standards, our specifications, current good manufacturing practices ("cGMPs") or otherwise manufacturing material that we or regulatory authorities may deem to be unsuitable in our clinical trials;

- our contract manufacturers being unable to increase the scale of, increase the capacity for, or reformulate the form of our product candidates. We may experience a shortage in supply, or the cost to manufacture our products may increase to the point where it adversely affects the cost of our product candidates. We cannot be assured that our contract manufacturers will be able to manufacture our products at a suitable scale, or we will be able to find alternative manufacturers acceptable to us that can do so; our contract manufacturers placing a priority on the manufacture of their own products, or other customers' products, rather than ours;

- our contract manufacturers failing to perform as agreed or exiting from the contract manufacturing business; and

- our contract manufacturers' plants being closed as a result of regulatory sanctions or a natural disaster.

Manufacturers of pharmaceutical products are subject to ongoing periodic inspections by the FDA, the U.S. Drug Enforcement Administration ("DEA") and corresponding state and foreign agencies to ensure strict compliance with FDA-mandated cGMPs, other government regulations and corresponding foreign standards. We do not have control over our third-party contract manufacturers' compliance with these regulations and standards and accordingly failure by our third party manufacturers, or us, to comply with applicable regulations could result in sanctions being imposed on us or the drug manufacturer from the production of other third-party products, which could significantly and adversely affect our business.

In the event that we need to change our third-party contract manufacturers, our preclinical studies, clinical trials or the commercialization of our product candidates could be delayed, adversely affected or terminated, or such a change may result in significantly higher costs.

Due to regulatory restrictions inherent in many countries as well as potential capacity constraints that occur from time-to-time in our industry, various steps in the manufacture of our product candidates may be sole-sourced to various contract manufacturers. In accordance with cGMPs, changing manufacturers may require the re-validation of manufacturing processes and procedures, and may require further preclinical studies or clinical trials to show comparability between the materials produced by different manufacturers. Changing our current or future contract manufacturers may be difficult for us and could be costly, which could result in our inability to manufacture our product candidates for an extended period of time and therefore a delay in the development of our product candidates. Further, in order to maintain our development time lines in the event of a change in our third-party contract manufacturer, we may incur significantly higher costs to manufacture our product candidates.

If third-party vendors, upon whom we rely to conduct our preclinical studies or clinical trials, do not perform or fail to comply with strict regulations, these studies or trials of our product candidates may be delayed, terminated, or fail, or we could incur significant additional expenses, which could materially harm our business.

We have limited resources dedicated to designing, conducting and managing preclinical studies and clinical trials. We have historically relied, and intend to continue to rely, on third parties, including clinical research organizations, consultants and principal investigators, to assist us in designing, managing, monitoring and conducting our preclinical studies and clinical trials. We rely on these vendors and individuals to perform many facets of the drug development process on our behalf, including certain preclinical studies, the recruitment of sites and patients for participation in our clinical trials, maintenance of good relations with the clinical sites, and ensuring that these sites are conducting our trials in compliance with the trial protocol and applicable regulations. If these third parties fail to perform satisfactorily, or do not adequately fulfill their obligations under the terms of our agreements with them, we may not be able to enter into alternative arrangements without undue delay or additional expenditures, and therefore the preclinical studies and clinical trials of our product candidates may be delayed or prove unsuccessful.

Further, the FDA, or similar regulatory bodies in other countries, may inspect some of the clinical sites participating in our clinical trials or our third-party vendors' sites to determine if our clinical trials are being conducted according to Good Laboratory Practice and Good Clinical Practice ("GCP") or similar regulations. If we or a regulatory authority determine that our third-party vendors are not in compliance with, or have not conducted our clinical trials according to, applicable regulations we may be forced to delay, repeat or terminate such clinical trials.

We have limited capacity for recruiting and managing clinical trials, which could impair our timing to initiate or complete clinical trials of our product candidates and materially harm our business.

We have limited capacity to recruit and manage the clinical trials necessary to obtain approval by the FDA or similar regulatory authorities in other countries. By contrast, larger pharmaceutical and biopharmaceutical companies often have substantial staff with extensive experience in conducting clinical trials with multiple product candidates across multiple indications. In addition, they may have greater financial resources to compete for the same clinical investigators, sites and patients that we are attempting to recruit for our clinical trials. As a result, we may be at a competitive disadvantage that could delay the initiation, recruitment, timing and completion of our clinical trials and obtaining marketing approvals, if at all, for our product candidates.

If we are unable to retain or attract key employees, advisors or consultants, we may be unable to successfully develop our product candidates in a timely manner, if at all, or otherwise manage our business effectively.

We have adopted an operating model that relies on the outsourcing of a number of responsibilities and key activities to third-party consultants and contract research and manufacturing organizations in order to advance the development of our product candidates. Therefore, our success depends in part on our ability to retain highly qualified key management, personnel and directors to develop, implement and execute our business strategy, our operations and oversee the activities of our consultants and vendors, as well as academic and corporate advisors or consultants that assist us in this regard. We are currently highly dependent upon the efforts of our management team to accomplish this. In order to advance the development of our product candidates, we need to attract or retain certain key personnel, consultants or advisors with experience in a number of disciplines, including research and development, product development, clinical trials, medical affairs, government regulation of pharmaceuticals, manufacturing, business development, accounting, finance, human resources and information systems. Although we have not experienced material difficulties in retaining key personnel in the past, we may not be able to continue to do so in the future on acceptable terms, if at all. If we lose any key managers or employees, or are unable to attract and retain qualified key personnel, directors, advisors or consultants, the development of our product candidates could be delayed or terminated and our business may be harmed.

Our industry is highly competitive and subject to rapid technological changes. As a result, we may be unable to compete successfully or develop innovative products, which could harm our business.

Our industry is highly competitive and characterized by rapid technological change. Key competitive factors in our industry include, among others, the ability to successfully advance the development of a product candidate through preclinical and clinical trials; the efficacy, toxicology, safety, resistance or cross-resistance, and dosing profile of a product or product candidate; the timing and scope of marketing approvals, if ever achieved; reimbursement rates for and the average selling price of competing products and pharmaceutical products in general; the availability of raw materials and qualified contract manufacturing and manufacturing capacity; manufacturing costs; establishing and maintaining intellectual property and patent rights and their protection; and sales and marketing capabilities.

We face significant competition from large pharmaceutical and biotechnology companies, many of whom have substantially greater resources. In Japan, zanamivir and laninamivir octanoate compete with oseltamivir (Tamiflu®), an anti-influenza drug that is sold by F. Hoffmann-La Roche Ltd and associated companies. A similar situation would likely exist if and when laninamivir octanoate is marketed in territories outside Japan. In addition, a number of companies are pursuing the development of technologies which will compete with our existing products and research programs. These companies include specialized pharmaceutical firms and large pharmaceutical companies acting either independently or together with other pharmaceutical companies.

Developing pharmaceutical product candidates is a highly competitive, expensive and risky activity with a long business cycle. Many organizations, including the large pharmaceutical and biopharmaceutical companies that have existing products on the market or in clinical development that could compete with our product candidates, have substantially more resources than we have, and much greater capabilities and experience than we have in research and discovery, designing and conducting preclinical studies and clinical trials, operating in a highly regulated environment, manufacturing drug substances, products and devices, and marketing and sales. Our competitors may be more successful than we are in obtaining regulatory approvals for their product candidates and achieving broad market acceptance once they are approved. Our competitors' drugs or product candidates may be more effective, have fewer adverse effects, be more convenient to administer, have a more favorable resistance profile, or be more effectively marketed and sold than any drug we, or our potential collaborators, may develop or commercialize. New drugs or classes of drugs from competitors may render our product candidates obsolete or non-competitive before we are able to successfully develop them or, if approved, before we can recover the expenses of developing and commercializing them. We anticipate that we or our collaborators will face intense and increasing competition as new drugs and drug classes enter the market and advanced technologies or new drug targets become available. If our product candidates do not demonstrate any competitive advantages over existing drugs, new drugs or product candidates, we or our future collaborators may terminate the development or commercialization of our product candidates at any time.

We also face, and expect we will continue to face, intense competition from other companies for collaborative arrangements with pharmaceutical and biopharmaceutical companies, and for attracting investigators and clinical sites capable of conducting our preclinical studies and clinical trials, and for patients to participate in our clinical trials. These competitors, either alone or with their collaborators, may succeed in developing technologies or products that are more effective, safer, less expensive or easier to administer than ours. Accordingly, our competitors may succeed in obtaining regulatory approvals for their product candidates more rapidly than we can. Companies that can complete clinical trials, obtain required marketing approvals and commercialize their products before their competitors may achieve a significant competitive advantage, including certain patent and marketing exclusivity rights that could delay the ability of competitors to market certain products. We cannot be assured that product candidates resulting from our research and development efforts, or from joint efforts with our collaborators, will be able to compete successfully with our competitors' existing products or products under development.

We may be unable to successfully develop a product candidate that is the subject of collaboration if our collaborator does not perform, delays the development of our product candidate or terminates our agreement.

We expect to continue to enter into and rely on license and collaboration agreements or other similar business arrangements with third parties to further develop and/or commercialize some or all of our existing and future product candidates. Such collaborators or partners may not perform as agreed upon or anticipated, may fail to comply with strict regulations, or may elect to delay or terminate their efforts in developing or commercializing our product candidates even though we have met our obligations under the arrangement.

A majority of the potential revenue from future collaborations will likely consist of contingent payments, such as payments for achieving development or regulatory milestones and royalties payable on the sales of approved products. Milestone and royalty revenues that we may receive under these collaborations will depend primarily upon our collaborator's ability to successfully develop and commercialize our product candidates. In addition, our collaborators may decide to enter into arrangements with third parties to commercialize products developed under our existing or future collaborations using our technologies, which could reduce the milestone and royalty revenue that we may receive, if any. In many cases, we will not be directly involved in the development or commercialization of our product candidates and, accordingly, will depend entirely on our collaborators. Our collaboration partners may fail to develop or effectively commercialize our product candidates because they:

- do not allocate the necessary resources due to internal constraints, such as limited personnel with the requisite scientific expertise, limited capital resources, or the belief that other product candidates or other internal programs may have a higher likelihood of obtaining regulatory approval or may potentially generate a greater return on investment;

- do not have sufficient resources necessary to fully support the product candidate through clinical development, regulatory approval and commercialization;

- are unable to obtain the necessary regulatory approvals; or

- de-prioritize the importance of or otherwise diminish their support for developing and/or marketing our product candidate or product due to a change in management, business operations or financial strategy.

Should any of these events occur, we may not realize the full potential benefits of our collaboration arrangements, and our results of operations may be adversely affected.

In addition, a collaborator may decide to pursue the development of a competitive product candidate developed outside of our collaboration with them. Conflicts may also arise if there is a dispute about the progress of, or other activities related to, the clinical development or commercialization of a product candidate, the achievement and payment of a milestone amount, the ownership of intellectual property that is developed during the course of the collaborative arrangement, or other licensing agreement terms. If a collaboration partner fails to develop or effectively commercialize our product candidates for any of these reasons, we may not be able to replace them with another partner willing to develop and commercialize our product candidates under similar terms, if at all. Similarly, we may disagree with a collaborator as to which party owns newly or jointly-developed intellectual property. Should an agreement be revised or terminated as a result of a dispute and before we have realized the anticipated benefits of the collaboration, we may not be able to obtain certain development support or revenues that we anticipated receiving. We may also be unable to obtain, on terms acceptable to us, a license from such collaboration partner to any of its intellectual property that may be necessary or useful for us to continue to develop and commercialize the product candidate. We cannot be assured that any product candidates will emerge from any future collaboration agreements we may enter into for any of our product candidates.

Our early-stage research and development efforts may not result in additional product candidates being discovered, which could limit our ability to generate revenues in the future.

Our early-stage research and discovery efforts may not lead to the development of any additional product candidates that may be suitable for further preclinical or clinical development to treat viral or bacterial infections. The discovery of additional product candidates requires significant research and preclinical studies, as well as a substantial commitment of internal and/or external resources. Many candidate or lead compounds, which appear to be promising in early stages of research, fail to progress to become product candidates in clinical trials. There is a great deal of uncertainty inherent in the research and development process and, as a consequence, in our ability to advance the development of lead compounds to potentially promising product candidates. We cannot assure you that our early research activities and efforts will yield any additional preclinical or clinical product candidates.

RISKS RELATED TO COMMERCIAL MATTERS

We have a history of significant net losses and we may never achieve or maintain profitability.

We have a history of significant net losses. We expect to incur additional losses in the near-term, and our losses could increase as our research and development efforts progress. To become consistently profitable, we, or our collaborative partners, must successfully manufacture and develop drug product candidates, receive regulatory approval, successfully commercialize and/or enter into profitable agreements with other parties and maintain existing and/or obtain additional intellectual property rights. It could be several years, if ever, before we receive significant royalties from any future license agreements or revenues directly from product sales.

Royalty revenues from our marketed products are unpredictable and subject to seasonal incidence of influenza, which could harm our results of operations and financial condition.

We currently earn royalty revenue from Relenza™ and Inavir®, which are marketed by licensees. Although the royalty rates paid to us by our licensees are fixed at a proportion of our licensees' net sales of these products, our annual revenue from these royalties has historically been variable and subject to fluctuation based on the seasonal influence of influenza. We cannot predict with any certainty what our royalty revenues are likely to be in any given year.

The BARDA contract can be revised or terminated by the U.S. Government at any time , which could result in significant revenue shortfalls, and materially harm our financial condition and business.

Our contract with BARDA is with a U.S. Government agency and contains provisions permitting BARDA to vary the contract or terminate it on short notice, with or without cause. Changes to, or an unexpected termination of this contract could result in significant revenue shortfalls. If revenue shortfalls occur and are not offset by corresponding reductions in expenses, our business could be adversely affected. We cannot anticipate if, when or to what extent BARDA might revise, alter or terminate its contract with us in the future.

If significant safety, resistance or drug interaction issues should arise with Relenza™ and Inavir®, our future royalty revenue may be reduced, which would adversely affect our financial condition and business.

We currently earn royalty revenue from Relenza™ and Inavir®, which are marketed by our licensees. The data supporting the marketing approvals and forming the basis for the safety warnings in the product labels for these products were obtained in controlled clinical trials of limited duration in limited patient populations and, in some cases, from post-approval use. As these marketed products are used over longer periods of time and by more patients, some with underlying health problems or taking other medicines, new issues such as safety, resistance or drug interaction issues may arise, which may require our licensees to provide additional warnings or contraindications on their product labels, or otherwise narrow the approved indications. If serious safety, resistance or drug interaction issues arise with respect to these marketed products, sales of these products could be limited or abandoned by our licensees or by regulatory authorities.

If government and third-party payers fail to provide adequate reimbursement or coverage for our products or those we develop through collaborations, our revenues and potential for profitability will be harmed.

In the U.S. and most foreign markets, our product revenues, and therefore the inherent value of our products, will depend largely upon the reimbursement rates established by third-party payers for such products. Such third-party payers include government health administration authorities, managed-care organizations, private health insurers and other similar organizations. These third-party payers are increasingly examining the cost effectiveness of medical products, services and pharmaceuticals and challenging the price of these products and services. In addition, significant uncertainty exists as to the reimbursement status, if any, of newly approved drugs or pharmaceutical products. Further, the comparative effectiveness of new products over existing therapies and the assessment of other non-clinical outcomes are increasingly being considered in the decision by these payers to establish reimbursement rates. We may also need to conduct post-marketing clinical trials in order to demonstrate the cost-effectiveness of our products. Such studies may require us to commit a significant amount of management time and financial resources. We cannot be assured that any products we successfully develop will be reimbursed in part, or at all, by any third-party payers in any countries.

Many governments continue to propose legislation designed to expand the coverage, yet reduce the cost, of healthcare, including pharmaceutical drugs. In some foreign markets, governmental agencies control the pricing and profitability of prescription drugs. In the U.S., significant changes in federal health care policy were recently approved and will mostly likely result in reduced reimbursement rates in the future. We expect that there will continue to be federal and state proposals to implement increased government control over reimbursement rates of pharmaceutical products. In addition, we expect that increasing emphasis on managed care and government intervention in the U.S. healthcare system will continue to put downward pressure on the pricing of pharmaceutical products domestically. Government cost control initiatives could decrease the price that we receive for any of our products that may be approved for sale in the future, which would limit our revenues and profitability. Accordingly, legislation and regulations affecting the pricing of pharmaceutical products may change before our product candidates are approved for sale, which could further limit or eliminate reimbursement rates for our product candidates. Further, social activist groups, whose goal it is to reduce the cost of healthcare, and in particular the price of pharmaceutical products, may also place downward pressure on the price of drugs, which could result in decreased prices of our products.

If any product candidates that we develop independently or through collaborations are approved but do not gain meaningful acceptance in their intended markets, we are not likely to generate significant revenues.

Even if our product candidates are successfully developed and we or a collaborator obtain the requisite regulatory approvals to commercialize them in the future, they may not gain market acceptance or utilization among physicians, patients or third party payers. The degree of market acceptance that any of our product candidates may achieve will depend on a number of factors, including:

- the therapeutic efficacy or perceived benefit of the product relative to existing therapies, if any;
- the timing of market approval and the existing market for competitive drugs, including the presence of generic drugs;
- the level of reimbursement provided by payers to cover the cost of the product to patients;
- the net cost of the product to the user or payer;
- the convenience and ease of administration of our product;
- the product's potential advantages over existing or alternative therapies;
- the actual or perceived safety of similar classes of products;
- the actual or perceived existence, incidence and severity of adverse effects;
- the effectiveness of sales, marketing and distribution capabilities; and
- the scope of the product label approved by the FDA or similar regulatory agencies in other jurisdictions.

There can be no assurance that physicians will choose to prescribe or administer our products, if approved, to the intended patient population. If our products do not achieve meaningful market acceptance, or if the market for our products proves to be smaller than anticipated, we may never generate significant revenues.

If we fail to enter into or maintain collaborations or other sales, marketing and distribution arrangements with third parties to commercialize our product candidates, or otherwise fail to establish marketing and sales capabilities in the future, we may not be able to successfully commercialize our products.

We currently have no infrastructure to support the commercialization of any of our product candidates, and have little, if any, experience in the commercialization of pharmaceutical products. Therefore, if we successfully develop any of our product candidates, and it is ultimately approved for sale, our future profitability will depend largely on our ability to access or develop suitable marketing and sales capabilities. Other than potentially the sale of laninamivir octanoate, if approved, to the U.S. or other governments for stock-piling measures, we anticipate that we will need to establish relationships with other companies, through license and collaborations agreements, to commercialize our product candidates in the U.S. and in other countries around the world. To the extent that we enter into these license and collaboration agreements, or marketing and sales arrangements with other companies to sell, promote or market our products in the U.S. or abroad, our product revenues, which may be in the form of indirect revenue, a royalty, or a split of profits, will depend largely on their efforts, which may not be successful. In the event we develop a sales force and marketing capabilities, this may result in us incurring significant costs before the time that we may generate any significant product revenues. We may not be able to attract and retain qualified third parties or marketing or sales personnel, or be able to establish marketing capabilities or an effective sales force.

C*urrency fluctuations and changes in exchange rates could increase our costs and may cause our profitability to decline.*

We collect and pay a portion of our revenue and expenses in currencies other than the U.S. dollar. Therefore, fluctuations in foreign currency exchange rates affect our operating results. We retain substantial cash balances in U.S. dollars and from time-to-time utilize foreign currency forward contracts, which are derivative instruments, to manage foreign currency risk, but not to engage in currency speculation. We use these forward contracts to hedge certain forecast transactions and balance sheet exposures denominated in foreign currencies. The use of these derivative instruments is intended to mitigate the exposure of these risks with the intent to reduce our risk or cost, but may not fully offset any change in operating results as a consequence of fluctuations in foreign currencies. Any significant foreign exchange rate fluctuations could adversely affect our financial position and results of operations.

Unless we reach an agreement with Daiichi Sankyo and Hovione with respect to our commercial rights for laninamivir octanoate outside of Japan, disputes between us and these parties may occur and could adversely affect our financial condition and business prospects.

Pursuant to our collaboration and license agreement with Daiichi Sankyo, if a third-party licensee other than we or Daiichi Sankyo develops and commercializes laninamivir octanoate in territories outside Japan, we and Daiichi Sankyo will share all licensing revenue equally. The agreement does not, however, specifically address the respective rights or obligations of, or any consideration between, the parties in the event that either we or Daiichi Sankyo directly market laninamivir octanoate in territories outside Japan.

The license agreement that we and Daiichi Sankyo entered into with Hovione for use of the TwinCaps® dry powder inhaler provide we and Daiichi Sankyo each with the right to import, export, make, have made, used, distribute the sale, sale and have sold drug product comprised of laninamivir octanoate and the TwinCaps® dry powder inhaler ("Drug Product") worldwide in the field of preventing and/or treating influenza infections and specifies what consideration is payable to Hovione where Drug Product is marketed by a third-party other than we or Daiichi Sankyo outside of Japan. The agreement does not, however, specifically address the respective rights or obligations of, or any consideration between, the parties in the event that either we or Daiichi Sankyo directly market the Drug Product in territories outside Japan.

If we fail to reach a mutually acceptable commercial agreement in the future with either Daiichi Sankyo, Hovione, or both with respect to the development and marketing of laninamivir octanoate or Drug Product outside of Japan, disputes could result, which could further result in arbitration, litigation or other legal proceedings, or delay our ability to generate significant revenue from the sale of such products outside Japan. Such proceedings can be expensive and consume a significant amount of managements' time. We cannot assure you we will reach a satisfactory commercial agreement with Daiichi Sankyo or Hovione in the future.

RISKS RELATED TO OUR CONTRACTS WITH THE U.S. GOVERNMENT

If BARDA, which has certain contracting requirements that allow it to unilaterally control its contracts, suspends, cancels, or otherwise terminates our contract with them, our financial condition and business could be materially harmed.

Contracts with U.S. government agencies typically contain termination provisions unfavorable to the other party, and are subject to audit and modification by the U.S. government at its sole discretion, which will subject us to additional risks. These risks include the ability of the U.S. government to unilaterally:

- audit or object to our contract-related costs and fees, and require us to reimburse all such costs and fees;
- suspend or prevent us for a set period of time from receiving new contracts or extending our existing contracts based on violations or suspected violations of laws or regulations;
- cancel, terminate or suspend our contracts based on violations or suspected violations of laws or regulations;
- terminate our contracts if in the government's best interest, including if funds become unavailable to the applicable governmental agency;
- reduce the scope and value of our contracts; and
- change certain terms and conditions in our contracts.

BARDA is able to terminate its contracts with us, either for its best interests or if we default by failing to perform in accordance with or to achieve the milestones set forth in the contract schedules and terms. Termination-for-convenience provisions generally enable us to recover only our costs incurred or committed and settlement expenses on the work completed prior to termination.

The U.S. government's determination to award any contracts may be challenged by an interested party, such as another competitor or bidder. If such a challenge is successful, our contract or any future contract we may be awarded may be terminated, which would harm our financial condition and prospects

The laws and regulations governing the procurement of goods and services by the U.S. government provide procedures by which other bidders and interested parties may challenge the award of a government contract. If we are awarded a government contract, such challenges or protests could be filed even if there are not any valid legal grounds on which to base the protest. If any such protests are filed, the government agency may decide to suspend our performance under the contract while such protests are being considered by the GAO or the applicable federal court, thus potentially delaying delivery of payment. In addition, we could be forced to expend considerable funds to defend any potential award. If a protest is successful, the government may be ordered to terminate any one or more of our contracts and reselect bids. The government agencies with which we have contracts could even be directed to award a potential contract to one of the other bidders.

Under our contract with BARDA, our operations, and those of our contractors, are subject to audit by the U.S. government, a negative outcome to which could adversely affect financial condition and business.

U.S. government agencies, such as the Department of Health and Human Services, or DHHS, and the Defense Contract Audit Agency, or the DCAA, routinely audit and investigate government contractors and recipients of federal grants. These agencies evaluate a contractor's performance under its contracts, cost structure and compliance with applicable laws, regulations and standards.

The DHHS and the DCAA also review the adequacy of, and a contractor's compliance with, its internal control systems and policies, including the contractor's purchasing, property, estimating, compensation and management information systems. Any costs found to be improperly allocated to a contract will not be reimbursed, while such costs already reimbursed must generally be repaid. If an audit identifies improper or illegal activities, we may be subject to civil and criminal penalties and administrative sanctions, including, but not limited to:

- termination of contracts;
- forfeiture of profits;
- suspension of payments;
- fines; and
- suspension or prohibition from conducting business with the United States government.

Any contracts we have with U.S. government agencies may lead to claims against us under the Federal False Claims Act, and these claims could result in substantial fines and other penalties, which could harm our financial condition, reputation and prospects.

The biopharmaceutical industry is, and in recent years has been, under heightened scrutiny as the subject of government investigations and enforcement actions. Our U.S. government contracts are subject to substantial financial penalties under the Federal Civil Monetary Penalties Act and the Federal Civil False Claims Act. Under the False Claims Act's "whistle blower" provisions, private enforcement of fraud claims against businesses on behalf of the U.S. government has increased due in part to amendments to the False Claims Act that encourage private individuals to sue on behalf of the government. These whistle blower suits, may be filed by individuals, including present and former employees. The False Claims Act statute provides for treble damages and up to $11,000 per false claim. If our operations are found to be in violation of any of these laws, or any other U.S. governmental regulation that applies to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from the Medicare and Medicaid programs, and the curtailment or restructuring of our operations.

RISKS RELATED TO OUR INTELLECTUAL PROPERTY

If we are unable to adequately protect or expand our intellectual property related to our products or current or future product candidates, our business prospects could be harmed.

Our business success depends in part on our ability to:

- obtain and maintain intellectual property rights;
- protect our trade secrets; and
- prevent others from infringing on our proprietary rights or patents.

We will be able to protect our proprietary intellectual property rights from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. The patent position of pharmaceutical and biopharmaceutical companies involves complex legal and factual questions, and, therefore, we cannot predict with certainty whether we will be able to ultimately enforce our patents or proprietary rights. Therefore, any issued patents that we own or otherwise have rights to may be challenged, invalidated or circumvented, and may not provide us with the protection against competitors that we anticipate.

The degree of future protection for our proprietary intellectual property rights is uncertain because issued patents and other legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. Our future patent position will be influenced by the following factors:

- we, or our licensors, may not have been the first to discover the inventions covered by each of our or our licensors' pending patent applications and issued patents, and we may have to engage in expensive and protracted interference proceedings to determine priority of invention;
- our, or our licensors', pending patent applications may not result in issued patents;
- our, or our licensors', issued patents may not provide a basis for commercially viable products, may not provide us with any competitive advantages, or may be challenged by third parties; and
- third parties may develop intellectual property around our or our licensors' patent claims to design competitive intellectual property and ultimately product candidates that fall outside the scope of our or our licensors' patents.

Because of the extensive time required for the development, testing and regulatory review and approval of a product candidate, it is possible that before a product candidate can be approved for sale and commercialized, our relevant patent rights may expire, or such patent rights may remain in force for only a short period following marketing approval and commercialization. We currently rely on certain patents to provide us and our licensees with exclusive rights for certain of our products. When all patents underlying a license expire, our revenue from that license may cease, and there can be no assurance that we will be able to replace it with revenue from new or existing licenses. The granted patents relating to Relenza™ will expire in December 2014 in the U.S., May 2015 in Australia and major countries of the European Union, and July 2019 in Japan. The patent relating to laninamivir octanoate expires in 2017 in Japan ; however, the patent relating to the dry powder inhaler used for Inavir®, known as TwinCaps® expires in 2027. Patent expiration will likely adversely affect our ability to protect future product development and, consequently, our royalty revenue and financial condition.

Also, patent rights may not provide us with adequate proprietary protection or competitive advantages against competitors with similar technologies. The laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the U.S. and those countries may lack adequate rules and procedures for defending our intellectual property rights. For example, we may not be able to prevent a third party from infringing our patents in a country that does not recognize or enforce patent rights, or that imposes compulsory licenses on or restricts the prices of life-saving drugs. Changes in either patent laws or in interpretations of patent laws in the U.S. and other countries may diminish the value of our intellectual property.

We may need to in-license certain technologies to successfully develop and commercialize our product candidates. We may not develop or obtain rights to products or processes that are patentable. Even if we or our licensors do obtain patents, such patents may not adequately protect the products or technologies licensed, or may otherwise be limited in scope. In addition, we may not have total control over the patent prosecution of subject matter that we license from others. Accordingly, we may be unable to exercise the same degree of control over this intellectual property as we would over our own. Others may challenge, seek to invalidate, infringe or circumvent any pending or issued patents we own or license, and rights we receive under those issued patents may not provide competitive advantages to us.

We cannot be assured of the degree of protection that will be afforded by any of our issued or pending patents, or those licensed by us.

If a third-party claims we are infringing on its intellectual property rights, we could incur significant expenses, or be prevented from further developing or commercializing our product candidates.

Our success will also depend on our ability to operate without infringing the patents and other proprietary intellectual property rights of third parties. This is generally referred to as having the "freedom to operate." The biotechnology and pharmaceutical industries are characterized by extensive litigation regarding patents and other intellectual property rights. The defense and prosecution of intellectual property claims, interference proceedings and related legal and administrative proceedings, both in the U.S. and internationally, involve complex legal and factual questions. As a result, such proceedings are lengthy, costly and time-consuming and their outcome is highly uncertain. We may become involved in protracted and expensive litigation in order to determine the enforceability, scope and validity of the proprietary rights of others, or to determine whether we have the freedom to operate with respect to the intellectual property rights of others.

Patent applications in the U.S. are, in most cases, maintained in secrecy until approximately 18 months after the patent application is filed. The publication of discoveries in the scientific or patent literature frequently occurs substantially later than the date on which the underlying discoveries were made. Therefore, patent applications relating to products similar to our product candidates may have already been filed by others without our knowledge. In the event that a third party has also filed a patent application covering our product candidate or other claims, we may have to participate in an adversarial proceeding, known as an interference proceeding, in the U.S. Patent and Trademark Office ("USPTO"), or similar proceedings in other countries, to determine the priority of invention. In the event an infringement claim is brought against us, we may be required to pay substantial legal fees and other expenses to defend such a claim and, if we are unsuccessful in defending the claim, we may be prevented from pursuing the development and commercialization of a product candidate and may be subject to injunctions and/or damage awards.

In the future, the USPTO or a foreign patent office may grant patent rights to our product candidates or other claims to third parties. Subject to the issuance of these future patents, the claims of which will be unknown until issued, we may need to obtain a license or sublicense to these rights in order to have the appropriate freedom to further develop or commercialize them. Any required licenses may not be available to us on acceptable terms, if at all. If we need to obtain such licenses or sublicenses, but are unable to do so, we could encounter delays in the development of our product candidates, or be prevented from developing, manufacturing and commercializing our product candidates at all. If it is determined that we have infringed an issued patent and do not have the freedom to operate, we could be subject to injunctions, and/or compelled to pay significant damages, including punitive damages. In cases where we have in-licensed intellectual property, our failure to comply with the terms and conditions of such agreements could harm our business.

It is becoming common for third parties to challenge patent claims on any successfully developed product candidate or approved drug. If we or our collaborators become involved in any patent litigation, interference or other legal proceedings, we could incur substantial expense, and the efforts of our technical and management personnel could be significantly diverted. A negative outcome of such litigation or proceedings may expose us to the loss of our proprietary position or to significant liabilities, or require us to seek licenses that may not be available from third parties on commercially acceptable terms, if at all. We may be restricted or prevented from developing, manufacturing and selling our product candidates in the event of an adverse determination in a judicial or administrative proceeding, or if we fail to obtain necessary licenses.

We cannot be sure that any patents will be issued from the patent applications we own or have licensed or, should any patents issue, that we will be provided with adequate protection against potentially competitive products. Furthermore, we cannot be sure that patents issued or licensed to us will be of any commercial value, or that private parties or competitors will not successfully challenge these patents or circumvent our patent position in the U.S. or abroad. In the absence of adequate patent protection, our business may be adversely affected by competitors who develop comparable technology or products.

Confidentiality agreements with employees and others may not adequately prevent disclosure of trade secrets and other proprietary information and may not adequately protect our intellectual property.

We rely on trade secrets to protect our technology, especially where we do not believe patent protection is obtainable, or prior to us filing patent applications on inventions we may make from time to time. However, trade secrets are difficult to protect. In order to protect our proprietary technology and processes, we also rely in part on confidentiality and intellectual property assignment agreements with our corporate and academic partners, employees, consultants, outside scientific collaborators and sponsored researchers and other advisors. These agreements may not effectively prevent disclosure of confidential information nor result in the effective assignment to us of intellectual property, and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information or other breaches of the agreements. In addition, others may independently discover our trade secrets and proprietary information, and in such case we could not assert any trade secret rights against such party. Enforcing a claim that a third-party illegally obtained and is using our trade secrets is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. may be less willing to protect trade secrets. Costly and time-consuming litigation could be necessary to seek to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

RISKS RELATED TO OWNING OUR COMMON STOCK

Our revenue, expenses and results of operations may be subject to significant fluctuations, which will make it difficult to compare our operating results from period to period.

Our revenues are highly variable. Royalties earned are derived from sales of products for the treatment and/or prevention of influenza. Influenza as a disease is highly volatile and unpredictable and sales of our products fluctuate in line with the nature and extent of influenza each season. Furthermore, payments potentially due to us under our existing or any future collaborative arrangements, including any milestone and royalty payments, are generally intermittent in nature and are subject to significant fluctuation in both timing and amount, or may never be earned or paid. Accordingly, our quarterly and annual revenues may be highly volatile, and comparisons to previous periods may be difficult to make. Our historical and current revenues may not be indicative of our ability to achieve additional payment-generating milestones or events in the future. We expect that our operating results will also vary significantly from quarter to quarter and year to year as a result of the initiation, success or failure of preclinical studies or clinical trials, the timing of the formulation and manufacture of our product candidates, or other development related factors. Accordingly, our revenues, expenses and results of operations for any period may not be comparable to the revenues, expenses or results of operations for any other period.

The reporting requirements of being a company publicly-traded on the NASDAQ Global Select Market (NASDAQ) increase our overall operating costs and subject us to increased costs and regulatory risk and may negatively impact our business or our ability to raise capital in the future.

As a company publicly-traded on NASDAQ, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), and the listing requirements of NASDAQ. Further, Section 404 of the Sarbanes-Oxley Act requires that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, management must perform system and process evaluation and testing of our internal control over financial reporting to assess the effectiveness of our internal control over financial reporting and our independent auditor must perform their own assessment on our internal control over financial reporting. This testing is expensive and requires the attention of our limited management resources. The various financial reporting, legal, corporate governance and other obligations associated with being a publicly-traded company in the U.S. require us to incur significant expenditures and place additional demands on our board of directors and executive officers, as well as other administrative, operational and financial personnel and resources. If we are unable to comply with these requirements in a timely and effective manner, we and/or our executive officers may be subject to sanctions by the SEC, which could harm our business or impair our ability to raise additional funds in the future. We will continue to incur additional expenses as a result of being a company that is publicly-traded on NASDAQ.

The price of our common stock price has been highly volatile, and your investment in us could suffer a decline in value.

The market price of our common stock has been and is likely to continue to be highly volatile and could be subject to wide fluctuations in response to various factors and events, including but not limited to:

- our ability to successfully advance our product candidates through preclinical and clinical development;
- disclosure of any favorable or unfavorable data from our preclinical studies or clinical trials, or other regulatory developments concerning our clinical trials, the formulation and manufacturing of our product candidates, or those of our competitors;
- the approval or commercialization of new products by us or our competitors, and the disclosure thereof;
- variation or termination of the BARDA contract or funding ability of BARDA;
- scientific innovations by us or our competitors;
- rumors relating to us or our competitors;
- public concern about the safety of our products, product candidates, or similar classes of compounds;
- litigation to which we may become subject;
- actual or anticipated variations in our quarterly or annual revenue or operating results;
- changes in general conditions or trends in the biotechnology and pharmaceutical industries;
- changes in drug reimbursement rates or government policies related to such reimbursement;
- significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
- new regulatory legislation adopted in the U.S. or abroad;
- changes in patent legislation in the U.S. or abroad;
- our failure to achieve or meet equity research analysts' expectations or their estimates of our business or prospects, or a change in their recommendations concerning us, the value of our common stock or our industry in general;
- termination or delay in any of our existing or future collaborative arrangements;
- future sales of equity or debt securities, or the perception that such future sales may occur;
- the loss of our eligibility to have shares of our common stock traded on the NASDAQ Global Select Market due to our failure to maintain minimum listing standards or other listed markets;
- changes in accounting principles;
- failure to comply with the periodic reporting requirements of publicly-owned companies under the Exchange Act and the Sarbanes-Oxley Act; and
- general economic conditions and capital markets.

In addition, the stock market in general, and more specifically the NASDAQ Global Select Market, upon which our common stock trades, and the market for smaller biotechnology stocks in particular have historically experienced significant price and volume fluctuations. Volatility in the market price for a particular biotechnology company's stock has often been unrelated or disproportionate to the operating performance of that company. Market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. Due to this volatility, investors may be unable to sell their shares of our common stock at or above the price they paid, which could generate losses.

In order to develop our product candidates and support our operations beyond 12 months from December 31, 2012 and continue as a going concern, we may need to raise additional capital. Such capital may not be available to us on acceptable terms, if at all, which could materially harm our financial condition, business and business prospects.

We believe that our existing cash and cash equivalents of $74.1 million as of December 31, 2012, along with the anticipated proceeds from existing royalty-bearing licenses, our contract with BARDA, and other existing license and collaboration agreements will enable us to operate for a period of at least 12 months from December 31, 2012. We have no other committed sources of additional capital at this time. This estimate assumes that we continue current operations and development plans with our existing product candidates, but does not include the impact of any other significant transaction or change in strategy or development plans in the future. We currently do not have any commitments for additional future funding, nor do we anticipate that we will generate any significant incremental revenue from the sale of any of our product candidates in the foreseeable future. Therefore, in order to meet our anticipated liquidity needs beyond 12 months to continue the development of our product candidates, or possibly sooner in the event we enter into other transactions or change our strategy or accelerate our development plans, we may need to secure additional capital. In the event we need to raise additional capital, we expect to raise it primarily through the sale of additional common stock or other equity securities, as well as potentially through forms of debt financing, or any other financing vehicles we may enter into in the future. Funds from these sources may not be available to us on acceptable terms, if at all, and our failure to raise such funds could have a material adverse impact on our future business strategy, plans, financial condition and results of operations. If adequate capital is not available to us on acceptable terms in the future, we may be required to delay, reduce the scope of, or eliminate one or more of our research and development programs, or delay or curtail our preclinical studies and clinical trials. If additional capital is not available to us on acceptable terms, we may also need to obtain funds through license agreements, or collaborative or partner arrangements, pursuant to which we will likely relinquish rights potentially valuable rights to certain of our product candidates that we might otherwise choose to develop or commercialize independently, or be forced to enter into such arrangements earlier than we would prefer, which would likely result in less favorable transaction terms. Additional equity financings may be dilutive to holders of our common stock, and debt financing, if available, may involve significant payment obligations and restrictive covenants that restrict how we operate our business.

The timing and extent of our future financing needs will depend on many factors, some of which are very difficult to predict and others that may be beyond our control, including:

- the variability of future royalty revenue we may receive from existing royalty-bearing license agreements;
- continuing to receive sufficient revenue under our contract with BARDA to advance the development of laninamivir octanoate in the U.S.;
- the development timelines and plans for our product candidates, including any changes to those timelines, plans or our strategy;
- the variability, timing and costs associated with conducting clinical trials for our product candidates, the rate of enrolment in such clinical trials, and the results of these clinical trials:
- the variability, timing and costs associated with conducting preclinical studies, and the results of these studies;
- the cost of scaling up, formulating and manufacturing preclinical and clinical trial materials to evaluate our product candidates;
- whether we receive regulatory approval to advance the clinical development of our product candidates in a timely manner, if at all;
- the cost and time to obtain regulatory approvals required to advance the development of our product candidates;
- the scope and size of our research and development efforts;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish in the future;
- the cost to maintain a corporate infrastructure to support being a publicly-traded company; and
- the cost of filing, prosecuting, and enforcing patent and other intellectual property claims.

Future issuances of shares of our common stock may cause our stock price to decline, even if our business is doing well.

The sale and issuance of additional shares of our common stock, or the perception that such future sales could occur, including sales by our directors, executive officers, and other insiders or their affiliates, could materially and adversely affect the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities at a price we deem appropriate.

If we raise additional capital in the future, your level of ownership in us could be diluted or require us to relinquish rights.

Any issuance of securities we may undertake in the future to raise additional capital could cause the price of our common stock to decline, or require us to issue shares at a price that is lower than that paid by holders of our common stock in the past, which would result in those newly issued shares being dilutive. Further, if we obtain funds through a debt financing or through the issuance of debt or preferred securities, these securities would likely have rights senior to your rights as a common stockholder, which could impair the value of our common stock. Any debt financing we enter into may include covenants that limit our flexibility in conducting our business. We also could be required to seek funds through arrangements with collaborators or others, which might require us to relinquish valuable rights to our intellectual property or product candidates that we would have otherwise retained.

We do not anticipate paying cash dividends in the foreseeable future, and accordingly, you must rely on appreciation in the price of our common stock for any return on your investment in us.

We anticipate that we will retain our earnings, if any, for future growth and therefore do not anticipate paying cash dividends in the future. As a result, only appreciation in the price of our common stock will provide a return to stockholders.

Our certificate of incorporation, our bylaws, and the laws of Delaware contain provisions that could discourage, delay or prevent a change in our control or our management.

Certain provisions of our restated certificate of incorporation, bylaws and the laws of Delaware, the state in which we are incorporated, may discourage, delay or prevent a change in control of us or a change in management that stockholders may consider favorable. These certain provisions:

- allow the authorized number of directors to be changed only by resolution of our Board of Directors;
- provide that our stockholders may remove our directors only for cause;
- authorize our Board of Directors to issue without stockholder approval, up to 5,000,000 shares of preferred stock, the rights of which will be determined at the discretion of the Board of Directors that, if issued, could operate as a “poison pill” to dilute the stock ownership of a potential hostile acquirer to prevent an acquisition that is not approved by our Board of Directors;
- establish advance notice requirements for stockholder nominations to our Board of Directors or for stockholder proposals that can be acted on at stockholder meetings;
- limit who may call stockholder meetings; and
- contain a fair price provision.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may, unless certain criteria are met, prohibit large stockholders, in particular those owning 15% or more of the voting rights on our common stock, from merging or combining with us for a prescribed period of time.

These provisions could discourage proxy contests and make it more difficult for you and other stockholders to remove and elect directors and take other corporate actions. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock.

RISKS RELATED TO OTHER ASPECTS OF OUR BUSINESS

We may be unable to successfully integrate the operations of Nabi Biopharmaceuticals and Biota Holdings in a timely manner, if at all, which could increase our cost of doing business or harm our operations and business prospects.

On November 8, 2012 Nabi and Biota Holdings Limited merged, with the resulting organization being called Biota Pharmaceuticals. The relocation of the corporate headquarters to the U.S. and integrating the operations and financial records is still ongoing. We may incur additional costs and consume a significant amount of management's time to integrate our U.S. operations, including information systems, financial records and reporting systems and legal contracts, in a timely manner, if at all, which could result in us incurring additional general and administrative costs.

If a product liability claim is successfully brought against us for uninsured liabilities, or such claim exceeds our insurance coverage, we could be forced to pay substantial damage awards that could materially harm our business.

The use of any of our existing or future product candidates in clinical trials and the sale of any approved pharmaceutical products may expose us to significant product liability claims. We currently have product liability insurance coverage for our clinical trials in the amount of $15 million. Such insurance coverage may not protect us against any or all of the product liability claims that may be brought against us in the future. We may not be able to acquire or maintain adequate product liability insurance coverage at a commercially reasonable cost or in sufficient amounts or scope to protect us against potential losses. In the event a product liability claim is brought against us, we may be required to pay legal and other expenses to defend the claim, as well as uncovered damage awards resulting from a claim brought successfully against us. In the event any of our product candidates are approved for sale by the FDA or similar regulatory authorities in other countries and commercialized, we may need to substantially increase the amount of our product liability coverage. Defending any product liability claim or claims could require us to expend significant financial and managerial resources, which could have an adverse effect on our business.

If our use of hazardous materials results in contamination or injury, we could suffer significant reputational or financial loss.

Our research activities may involve the controlled use of certain hazardous chemical and biological materials from time-to-time. Notwithstanding the various regulations controlling the use and disposal of these materials, as well as the safety procedures we undertake, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident or environmental discharge or exposure, we may be held liable for any resulting damages, which may negatively impact our financial resources, our ability to recruit new staff, which could have an adverse effect on our business.

Our ability to use our net operating loss carry forwards to reduce taxable income generated in the future could be substantially limited or eliminated.

Our ability to use our net operating losses is subject to limitations and re-assessment due to ownership changes that have occurred or that could occur in the future, in the U.S., Australia and the U.K. Depending on the actual amount of any limitation on our ability to use our net operating loss carry forwards, a significant portion of our future taxable income could be taxable. Additionally, tax law limitations may result in our net operating losses expiring before we have the ability to use them. In addition, any transaction that we may enter into as a result of our strategic alternatives process may significantly limit or eliminate our ability to realize any value from our net operating losses.

If a product liability claim is successfully brought against us for uninsured liabilities, or such claim exceeds our insurance coverage, we could be forced to pay substantial damage awards that could materially harm our business.

The use of any of our existing or future product candidates in clinical trials and the sale of any approved pharmaceutical products may expose us to significant product liability claims. We currently have product liability insurance coverage for our clinical trials in the amount of $15 million. Such insurance coverage may not protect us against any or all of the product liability claims that may be brought against us in the future. We may not be able to acquire or maintain adequate product liability insurance coverage at a commercially reasonable cost or in sufficient amounts or scope to protect us against potential losses. In the event a product liability claim is brought against us, we may be required to pay legal and other expenses to defend the claim, as well as uncovered damage awards resulting from a claim brought successfully against us. In the event any of our product candidates are approved for sale by the FDA or similar regulatory authorities in other countries and commercialized, we may need to substantially increase the amount of our product liability coverage. Defending any product liability claim or claims could require us to expend significant financial and managerial resources, which could have an adverse effect on our business.

ITEM 2: UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Effective November 12, 2012, the Company entered into Executive Employment Agreements with each of Russell H. Plumb and Joseph M. Patti in conjunction with their respective appointments as executive officers of the Company. In connection therewith, the Company granted to Messrs. Plumb and Patti as inducement grants (i) a restricted stock unit equal to 143,322 and 71,661 shares of the Company's common stock, respectively, one-third of which will be fully vested ninety (90) days after November 12, 2012, and the other two-thirds of which will vest in two equal installments on the first and second anniversary thereof, and (ii) 573,286 and 358,304 options to purchase shares of the Company's common stock, respectively, at an exercise price of $4.07 with a 10 year term, which will vest in three equal installments on the first, second and third anniversary of November 12, 2012. These securities were granted outside the Company's 2007 Omnibus Equity and Incentive Plan in a transaction exempt from the registration requirements of the Securities Act in reliance on Section 4(2) of the Securities Act of 1933, as amended**.**

ITEM 6. EXHIBITS

The exhibits to this report are listed in the Exhibit Index beginning on Page 55 hereof.

SIGNATURES

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

Biota Pharmaceuticals, Inc.

Date: February 11, 2013

By: /s/ Russell H Plumb
Russell H Plumb
Chief Executive Officer and President

By: /s/ Ronald B. Kocak
Ronald B. Kocak
Corporate Controller and Chief Accounting Officer

EXHIBIT INDEX

Exhibit Number	Exhibit Title	Filed with this Form 10-Q	Incorporation by Reference		
			Form	File No.	Date Filed
3.1	Composite Certificate of Incorporation of Biota Pharmaceuticals, Inc.	X			
3.2	By-Laws of Biota Pharmaceuticals, Inc.	X			
4.1	Form of Common Stock Certificate		10-K	000-04829-08651814	03/15/07
10.1+	Executive Employment Agreement, dated as of November 12, 2012, between Biota Pharmaceuticals, Inc., and Russell H. Plumb		8-K	001-35285-121206005	11/14/12
10.2+	Executive Employment Agreement, dated as of November 12, 2012, between Biota Pharmaceuticals, Inc., and Joseph M. Patti		8-K	001-35285-121206005	11/14/12
10.3+	Form Non-Plan Stock Units Agreement		8-K	001-35285-121206005	11/14/12
10.4+	Form of Letter Agreement for Stock Option Grant		8-K	001-35285-121206005	11/14/12
31.1*	Certification of Principal Executive Officer and Principal Financial Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended	X			
32.1*	Certification of Principal Executive Officer and Principal Financial Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. §1350	X			
101**	The following materials from the Biota Pharmaceuticals, Inc. Quarterly Report on Form 10-Q for the period ended December31, 2012 formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets as of December 31, 2012 and June 30, 2012, (ii) the Condensed Consolidated Statements of Operations for the Three and Six Months Ended December 31, 2012, and December 31, 2011, (iii) the Condensed Statements of Stockholders' Equity for the Six Months Ended December 31, 2012, and December 31, 2011, (iv) Condensed Consolidated Statements of Cash Flows for the Six Months Ended December 31, 2012, and December 31, 2011, and (v) Notes to Condensed Consolidated Financial Statements	X			

+ Indicates management or compensatory plan or arrangement.

* This certification is being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and is not to be incorporated by reference into any filing of Biota Pharmaceuticals, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

** Furnished, not filed.

Exhibit 3.1

COMPOSITE CERTIFICATE OF INCORPORATION

OF

BIOTA PHARMACEUTICALS, INC.

FIRST: The name of the Corporation is Biota Pharmaceuticals, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is United States Corporation Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 205,000,000 shares consisting of

a) 5,000,000 shares of Preferred Stock, par value $0.10 per share, and

b) 200,000,000 shares of Common Stock, par value $0.10 per share.

Except as otherwise provided by law, the shares of stock of the Corporation, regardless of class, may be issued by the Corporation from time to time in such amounts, for such consideration and for such corporate purposes as the Board of Directors may from time to time determine.

Effective at 4:59 p.m., Eastern Standard Time, on Thursday, November 8, 2012, each six shares of the Corporation's Common Stock issued and outstanding immediately prior to the Effective Time (the "Old Common Stock") shall be reclassified and combined into one (1) validly issued, fully paid and non-assessable share of Common Stock, par value $0.10 per share (the "New Common Stock"), without any further action by the Corporation or the holder thereof. The Corporation shall not issue fractions of shares of New Common Stock in connection with such reclassification and combination. Stockholders who otherwise would be entitled to receive fractional shares of New Common Stock shall be entitled to receive, in lieu of such fractional shares, cash from the Corporation from the disposition of such fractional interests as provided below. The Corporation shall arrange for the disposition of fractional interests by those otherwise entitled thereto by the mechanism of having (a) the Transfer Agent of the Corporation aggregate such fractional interests and (b) the shares resulting from the aggregation sold and (c) the net proceeds received from the sale be allocated and distributed among the holders of the fractional interests as their respective interests appear. Each certificate that, immediately prior to the Effective Time, represented shares of Old Common Stock shall thereafter represent that number of shares of New Common Stock into which such shares of Old Common Stock shall have been reclassified and combined, subject to the disposition of fractional interests described above; provided, that each person holding of record a stock certificate or certificates that represented shares of Old Common Stock shall receive, upon surrender of such certificate or certificates, a new certificate or certificates evidencing and representing the number of shares of New Common Stock to which such person is entitled under the foregoing reclassification and combination.

Shares of Preferred Stock may be issued from time to time in one or more series of any number of shares as may be determined from time to time by the Board of Directors, provided that the aggregate number of shares issued and not cancelled of any and all such series shall not exceed the total number of shares of Preferred Stock authorized by this Certificate of Incorporation. Each series of Preferred Stock shall be distinctly designated. Except in respect of the particulars fixed for series by the Board of Directors as permitted hereby, all shares of Preferred Stock shall be of equal rank and shall be identical. All shares of any one series of Preferred Stock shall be alike in every particular, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon shall be cumulative. The voting powers, if any, of each such series and the preferences and relative, participating, optional and other special rights of each such series and the qualifications, limitations and restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and the Board of Directors is hereby expressly granted authority to fix, in the resolution or resolutions providing for the issue of stock of a particular series of Preferred Stock, the voting powers, if any, of each such series and the designations, preferences and relative, participating, optional and other special rights of each such series and the qualifications, limitations and restrictions thereof to the full extent now or hereafter permitted by this Certificate of Incorporation and the laws of the State of Delaware.

Subject to the provisions of any applicable law, this Restated Certificate of Incorporation or of the By-Laws with respect to the closing of the transfer books or the fixing of a record date for the determination of stockholders entitled to vote, and except as otherwise provided by law or herein or by the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of outstanding shares of Common Stock shall exclusively possess the voting power for the election of directors and for all other purposes, each holder of record of shares of Common Stock being entitled to one vote for each share of Common Stock standing in his name on the books of the Corporation.

There is hereby established a series of the authorized preferred shares of this corporation having a par value of $0.10 per share and a stated value of $0.65 per share, which series shall be designated as "Series A Convertible Preferred Stock," shall consist of 1,538,462 shares, which number of shares may not be increased, and shall have the following rights, preferences and limitations:

a) Conversion Rights. At any time subsequent to the Issue Date, the holders of any one or more shares of the Series A Convertible Preferred Stock may, at their option, convert such share or shares, on the terms and conditions set forth in this Paragraph a), into fully paid and non-assessable common shares of this Corporation as such common shares shall be constituted at the Issue Date. Each share of Series A Convertible Preferred Stock shall be convertible into one common share, $0.10 par value per share; provided, however, that the number of common shares issuable on conversion of each share of Series A Convertible Preferred Stock (the "Conversion Amount") shall be subject to adjustment as follows:

(1) In case this Corporation shall at any time (i) subdivide its outstanding common shares of the class issuable upon conversion of the Series A Convertible Preferred Stock into a greater number of shares, or (ii) pay a dividend to holders of its securities in common shares of the class issuable upon the conversion of the Series A Convertible Preferred Stock, the Conversion Amount shall be proportionately increased. In case this Corporation shall at any time combine its outstanding common shares of the Class issuable upon conversion of the Series A Convertible Preferred Stock, the Conversion Amount shall be proportionately decreased. Any such adjustment shall become effective retroactively immediately after the record date in the case of a dividend and shall become effective immediately after the effective date in the case of a subdivision or combination.

(2) In case of any reclassification or change of the common shares of the class issuable upon conversion of the Series A Convertible Preferred Stock (other than a change from no par value to par value, or from par value to no par value, or a change in par value, or as a result of a subdivision or combination of shares) into a lesser number of shares, or in case of any consolidation or merger of this Corporation with or into another corporation (other than a merger with a subsidiary in which merger this Corporation is the continuing corporation and which does not result in any reclassification or change of outstanding common shares of the class issuable upon conversion of the Series A Convertible Preferred Stock), or in case of any sale or substantially all of the property of this Corporation, the holder of each share of the Series A Convertible Preferred Stock then outstanding shall have the right thereafter, subject to the terms and conditions of this Paragraph a), to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reclassification, change, consolidation, merger, or sale by a holder of the number of common shares of this Corporation into which such share of Series A Convertible Preferred Stock might have been converted immediately prior to such reclassification, change, consolidation, merger, or sale, and shall have no other conversion rights under these provisions; and effective provision shall be made in the Articles of Incorporation of the resulting or surviving corporation or otherwise, so that the provisions set forth herein for the protection of the conversion rights of the Series A Convertible Preferred Stock shall thereafter be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of the Series A Convertible Preferred Stock remaining outstanding or other convertible preferred stock received by the holders in place thereof; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon the exercise of the conversion privilege, such shares, securities or property as the holders of the Series A Convertible Preferred Stock remaining outstanding, or other convertible preferred stock received by the holders in place thereof, and to make provisions for the protection of the conversion right as above provided. In case securities or property other than common shares shall be issuable or deliverable upon conversion as aforesaid, then all reference in this Subparagraph (2) shall be deemed to apply so far as appropriate and as nearly as may be, to such other securities or property.

(3) No fractional common shares shall be issued on any conversion, but in lieu thereof, this Corporation shall, at its option, either (a) pay therefor in cash in an amount equal to the current market value of such fractional interest computed on the basis of the last reported sale of common shares on any national securities exchange on which the common shares may then be listed prior to the date upon which conversion is deemed to have been effected, or, if such shares are not then so listed, at the average of the bid and asked prices of such common shares in the over-the-counter market on the three (3) business days prior to the date upon which conversion is deemed to have been effected, as shown by the National Association of Securities Dealers, Inc., Automated Quotation System Level I, or the nearest comparable system, or in the absence of either, the fair market value as determined by the Board of Directors (whose determination shall be conclusive), or (b) make such arrangements as the Board of Directors shall approve to enable the holder of a fractional interest to sell such interest or buy an additional fractional interest sufficient to make one whole share of common stock.

Whenever there is a subdivision or combination of, or a dividend payable in, common shares requiring a change in the Conversion Amount, this Corporation shall file with the Transfer Agent for its common shares in the City of New York, New York, and at its principal office in the City of Miami, Florida, a statement signed by the President or a Vice President and by the Treasurer or the Secretary of this Corporation, describing specifically such subdivision or combination of or dividend payable in common shares and stating the adjustments which shall be made to the Conversion Amount and the Conversion Amount as so adjusted. The statement so filed shall be open to inspection by any holder of record of shares of Series A Convertible Preferred Stock. This Corporation shall at the time of filing any such statement mail notice to the same effect to the holders of shares of Series A Convertible Preferred Stock at their addresses appearing on the books of this Corporation or supplied by them to this Corporation for the purpose of notice.

Upon surrender to this Corporation at the office of the Corporation in Miami, Florida, or at such other place or places, if any, as the Board of Directors of this Corporation may determine, of certificates, duly endorsed to this Corporation or in blank, for shares of Series A Convertible Preferred Stock to be converted, together with directions in writing to this Corporation to convert such shares specifying the name and address of the person, corporation, firm or other entity to whom such shares are to be issued, this Corporation will issue as of the time of such surrender the number of full common shares issuable on conversion thereof and as promptly as practicable thereafter will deliver certificates for such common shares and either cash for any remaining fraction of a share or order forms entitling holders to sell fractional interests or purchase additional fractional interests necessary to make a full share, as provided in Subparagraph (2) above.

Shares of Series A Convertible Preferred Stock converted into common shares as hereinbefore provided shall be retired and restored to the status of authorized and unissued preferred shares. Shares so converted shall not be reissued as Series A Convertible Preferred Stock.

This Corporation shall at all times after the Issue Date reserve for issuance upon conversion of Series A Convertible Preferred Stock a sufficient number of full common shares for the conversion of each outstanding share of Series A Convertible Preferred Stock at the current Conversion Amount.

b) Rights Upon Liquidation or Dissolution. The amounts payable to holders of Series A Convertible Preferred Stock in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, shall be equal to the amounts set apart or payable on account of the shares of common stock in the same amount, as if such Series A Convertible Preferred Stock had been fully converted into Common Stock. The holders of Series A Convertible Preferred Stock shall be entitled to no further participation in any remaining assets of this Corporation after payment of the foregoing amounts. Neither the consolidation or merger of this Corporation with or into any other corporation or corporations, nor the sale or lease of all or substantially all the assets of this Corporation shall be deemed to be a liquidation, dissolution or winding up of this Corporation within the meaning of any of the provisions of this Paragraph b).

c) Voting Rights.

(1) The holders of Series A Convertible Preferred Stock shall have one vote per share on all matters to come before the shareholders of this Corporation and shall vote together with the Common Stock and not as a separate class except as otherwise herein specifically provided and except that the holders of the Series A Convertible Preferred Stock shall be entitled to vote as a class for the approval or rejection of those matters which under the provisions of the laws of the State of Delaware require approval of a designated portion of the shares of such class or series.

So long as 769,231 or more of the shares of Series A Convertible Preferred Stock shall be outstanding, or, if there have been share adjustments as described in Section a) above, so long as there are outstanding the number of shares which equals fifty percent or more of the shares outstanding from time to time after giving effect to said share adjustments, if any, the holders thereof, voting as a separate class, shall be entitled to elect a majority of the whole Board of Directors of the Corporation. The holders of the Common Stock shall be entitled to elect a minority of the Board of Directors of the Corporation voting as a separate class.

No director elected by the holders of the Series A Convertible Preferred Stock, voting as a class, shall during his or her term of office be removed from office except upon the vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the number of shares of Series A Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by vote at a meeting called for that purpose, and any vacancy caused by the death, resignation, inability to serve, or removal of any director elected by the holders of the Series A Convertible Preferred Stock, voting as a separate class, shall be filled only by a vote of the remaining directors elected by the Series A Convertible Preferred Stock voting as a separate class.

In case the special voting rights of the holders of the Series A Convertible Preferred Stock for the election of a majority of the Corporation's Board of Directors shall cease in accordance with the provisions of the Section, the terms of office of the directors so elected shall cease at the next annual meeting of stockholders.

(2) Unless the vote or consent of the holders of a greater number of shares of Series A Convertible Preferred Stock shall at the time be required by law the consent of the holders of at least a majority of the number of shares of Series A Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by vote at a meeting called for the purpose at which the holders of Series A Convertible Preferred Stock shall vote separately as a class, shall be necessary for authorizing, effecting or validating the sale, lease, exchange, transfer or conveyance of all or substantially all of the property or business of the Corporation, or the parting with control thereof, or the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation; provided, however, that the provisions of this Subsection (2) shall not apply to, nor shall any consent of the holders of the Series A Convertible Preferred Stock be required for, the merger or consolidation of the Corporation, into or with another corporation, or the merger or consolidation of another corporation into or with the Corporation, if none of the preferences, rights, powers or privileges of the Series A Convertible Stock or the holders thereof will be adversely affected thereby, and if the Corporation resulting from such merger or consolidation shall be bound by the provisions hereof as fully and to the same extent as if it were the Corporation.

(3) The consent of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the number of shares of Series A Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of Series A Convertible Preferred Stock shall vote separately as a class, shall be necessary for authorizing, effecting or validating any amendment, alteration, or repeal of any of the provisions of the Restated Certificate of Incorporation of the Corporation, or any certificate amendatory thereof or supplemental thereto, so as to affect adversely any of the rights, powers, preferences or privileges of the Series A Convertible Preferred Stock or the holders thereof.

(4) If at any time dividends are declared on the Corporation's common shares, the Series A Convertible Preferred Stock shall have a right pari passu with the common shares as to the distribution of dividends.

FIFTH: The Board of Directors of the Corporation shall consist of seven members or such other number as shall be designated by the Board of Directors. The Board of Directors is expressly authorized and empowered to adopt, amend and repeal By-Laws, subject to the power of the stockholders to amend or repeal any By-Law made by the Board of Directors.

SIXTH: Unless and except to the extent that the By-Laws shall so require, the election of the directors need not be by written ballot.

SEVENTH: (a) Except as set forth in Part (b) of this Article Seventh the affirmative vote or consent of the holders of (x) 75% of the shares of Common Stock of the Corporation entitled to vote for the election of directors and (y) 50% of the Series A Convertible Preferred Stock (so long as they have right to elect a majority of the Corporation's directors as provided for herein), voting as a separate class, shall be required (i) for the adoption of any agreement for the merger or consolidation of the Corporation with or into any Other Corporation (as hereinafter defined), or (ii) to authorize any sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the assets of the Corporation or any Subsidiary (as hereinafter defined) having a then net worth in excess of $250,000 (as hereinafter defined) to any Other Corporation, or (iii) to authorize the issuance or transfer by the Corporation of any Substantial Amount (as hereinafter defined) of securities of the Corporation in exchange for the securities or assets of any Other Corporation. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the stock of the Corporation otherwise required by law, the Certificate of Incorporation of the corporation or any agreement or contract to which the Corporation is a party.

(b) The provisions of Part (a) of this Article Seventh shall not be applicable to any transaction described therein if such transaction is approved by resolution of the Board of Directors of the Corporation, provided that a majority of the members of the Board of Directors voting for the approval of such transaction were duly elected and acting members of the Board of Directors prior to the time any such Other Corporation may have become a Beneficial Owner (as hereinafter defined) of 5% or more of the shares of the stock of the Corporation entitled to vote for the election of directors.

(c) For the purposes of Part (b) of this Article Seventh, the Board of Directors shall have the power and duty to determine for the purposes of this Article Seventh, on the basis of information known to such Board, if and when any Other Corporation is the Beneficial Owner of 5% or more of the outstanding shares of stock of the Corporation entitled to vote for the election of directors. Any such determination shall be conclusive and binding for all purposes of this Article Seventh.

(d) As used in this Article Seventh the following terms shall have the meanings indicated:

"Other Corporation" means any person, firm, corporation, or other entity, other than a Subsidiary of the Corporation.

"Subsidiary" means any corporation in which the Corporation owns, directly or indirectly, more than 50% of the voting securities.

"Substantial Amount" means any securities of the Corporation having a then fair market value of more than $250,000.

An Other Corporation (as defined above) shall be deemed to be the "Beneficial Owner" of stock if such Other Corporation or "affiliate" or "associate" of such Other Corporation (as those terms are defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 aaa et seq.)), as amended from time to time, directly or indirectly, controls the voting of conversion or other rights to acquire such stock.

(e) This Article Seventh may not be amended, revised or revoked, in whole or in part, except by the affirmative vote or consent of the holders of (x) 75% of the shares of Common Stock of the Corporation entitled to vote for the election of directors and (y) 50% of the shares of the Series A Convertible Preferred Stock (so long as they have right to elect a majority of the Corporation's directors as provided herein), voting as a separate class, each series of which shall be considered for the purposes of this Article Seventh as one class of stock.

EIGHTH: a) The Corporation shall indemnify its officers, directors, employees and agents against liabilities, damages, settlements and expenses (including attorneys' fees) incurred in connection with the Corporation's affairs to the full extent permitted by law, and as more particularly set forth in the Corporation's By-laws. Such indemnification provisions of the Corporation's By-laws may be enacted and modified from time to time by resolution of the Corporation's Board of Directors.

b) Notwithstanding any other provision of this Article Eighth, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this provision to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

c) Any repeal or modification of any provision of this Article Eighth by the stockholders of the Corporation shall not adversely affect any right to protection of a director of the Corporation existing at the time of such repeal or modification.

NINTH: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed or permitted by said laws and by this Certificate of Incorporation; and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article Ninth.

Exhibit 3.2

BY-LAWS

OF

BIOTA PHARMACEUTICALS, INC.

ARTICLE I

Offices

The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware, and the name of the resident agent in charge thereof is The Corporation Trust Company.

The corporation may also have offices at such other places within or without the State of Delaware as the Board of Directors may from time to time appoint or the business of the corporation may require.

ARTICLE II

Meetings of Stockholders

Section l. Place of Meetings. All meetings of stockholders for any purpose shall be held at such place, within or without the State of Delaware, as shall be designated by the Board of Directors or the Chairman of the Board or the President and stated in the notice of the meeting. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held in any place but shall instead be held solely by means of remote communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders and be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (a) the Board of Directors shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder, (b) the Board of Directors shall implement reasonable measures to provide such stockholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (c) if any stockholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 2. Annual Meeting. An annual meeting of the stockholders of the corporation, for the election of Directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held on such date and at such time as shall be fixed from time to time by the Board of Directors and stated in the notice of the meeting.

Section 3. Special Meetings. Special meetings of the stockholders may be called by the Chairman of the Board, the President or by order of the Board of Directors. Business transacted at any special meeting shall be confined to the purpose or purposes stated in the notice of such meeting.

Section 4. Notice of Meeting. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, the certificate of incorporation or these by-laws, notice of the time and place of holding each annual meeting and each special meeting of stockholders shall be given by the Secretary, not less than ten nor more than sixty days before the meeting, to each stockholder of record entitled to vote at such meeting.

When a meeting is adjourned to another place, date or time, unless the adjournment is for more than thirty days or a new record date is fixed for the adjourned meeting, notice of the adjourned meeting need not be given if the time, place, if any, thereof, and the means of remote communication, if any, by which stockholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally called.

Section 5. List of Stockholders. At least ten days before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be prepared by the Secretary, who shall have charge of the stock ledger. Nothing contained in this Section 5 shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 6. Quorum. At any meeting of stockholders, the holders of issued and outstanding shares of capital stock which represent a majority of the votes entitled to be cast thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, then either the person presiding over the meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time until a quorum shall be present or represented.

Section 7. Voting. At any meeting of the stockholders, every stockholder having the right to vote shall be entitled to vote in person or may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 11 months from its date. When a quorum is present at any meeting, a plurality of the votes properly cast for election to the Board of Directors and a majority of the votes properly cast on any question other than election to the Board of Directors shall decide the question unless the question is one upon which by express provision of law or of the certificate of incorporation or of these by-laws a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 8. Fixing of Record Date.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action other than stockholder action by written consent, the Board of Directors may fix a record date, which shall not precede the date such record date is fixed and shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any such other action. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given. The record date for any other purpose other than stockholder action by written consent shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or any officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

Section 9. Nomination of Directors. Only persons who are nominated in accordance with the procedures set forth in the By-laws shall be eligible to serve as Directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of notice provided for in this Section 9, who shall be entitled to vote for the election of Directors at the meeting and who complies with the notice procedures set forth in this Section 9. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the corporation not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected); and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the corporation's books, of such stockholder and (ii) the class and number of shares of the corporation which are beneficially owned by such stockholder. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a Director shall furnish to the Secretary of the corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible to serve as a Director of the corporation unless nominated in accordance with the procedures set forth in this By-law. The person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the By-laws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section.

Section 10. Notice of Business. At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 10, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 10. For business to be properly brought before a stockholder meeting by a stockholder, the business must relate to a proper subject matter for stockholder action and the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder, to be timely must be received no later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (a) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation which are beneficially owned by the stockholder and (d) any material interest in the stockholder in such business. Notwithstanding anything in the By-laws to the contrary, no business shall be conducted at a stockholder meeting except in accordance with the procedures set forth in this Section 10. The person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of the By-laws, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 10, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section.

Section 11. Conduct of Meeting. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Subject to such rules and regulations of the Board of Directors, if any, the person presiding over the meeting shall have the right and authority to convene and adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the person presiding over the meeting, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the person presiding over the meeting shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulations of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. The person presiding over the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the person presiding over the meeting should so determine and declare, any such matter or business shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE III

Directors

Section 1. Directors and Their Terms of Office. The corporation shall have one or more Directors, the number of Directors to be determined from time to time by vote of a majority of Directors then in office. Each Director shall hold office until his or her successor is elected and qualified. A Director need not be a stockholder. No decrease in the number of Directors shall affect the term of any Director in office.

Section 2. Powers of Directors. The affairs, property and business of the corporation shall be managed by the Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the certificate of incorporation or these by-laws directed or required to be exercised or done by the stockholders.

Section 3. Vacancies. If any vacancies occur in the Board of Directors caused by death, resignation, retirement, disqualification or removal from office of any Directors or otherwise, or any new Directorship is created by any increase in the authorized number of Directors, Directors to fill the vacancy or vacancies or to fill the newly created Directorship shall be filled solely by a majority vote of the Directors then in office, whether or not a quorum, at any meeting of the Board and the Directors so chosen shall hold office until their successors are duly elected and qualified.

Section 4. Annual Meeting of Directors. The first meeting of each newly elected Board of Directors may be held without notice immediately after an annual meeting of stockholders (or a special meeting of stockholders held in lieu of an annual meeting) at the same place as that at which such meeting of stockholders was held, or such first meeting may be held at such place (within or without the State of Delaware) and time as shall be fixed by the consent in writing of all the Directors or as may be called in the manner hereinafter provided with respect to the call of special meetings.

Section 5. Regular Meetings of Directors. Regular meetings of the Board of Directors may be held at such times and at such place or places (within or without the State of Delaware) as the Board of Directors may from time to time prescribe. No notice need be given of any regular meeting and a notice, if given, need not specify the purposes thereof.

Section 6. Special Meetings of Directors. Special meetings of the Board of Directors may be called at any time by or under the authority of the Chairman of the Board or the President and shall be called by him or her or by the Secretary on written request of any two Directors or, if they fail to do so, by two Directors in the name of the Secretary, to be held in each instance at such place (within or without the State of Delaware) as the person calling the meeting may designate in the call thereof. Notice of each special meeting of the Board of Directors, stating the time and place thereof, shall be given to each Director by the Secretary, not less than twenty-four hours before the meeting. Such notice need not specify the purposes of the meeting.

Section 7. Quorum; Voting. At any meeting of the Board of Directors a majority of the Directors then in office shall constitute a quorum for the transaction of business, but if a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise provided by law or by the certificate of incorporation or by these by-laws, the affirmative vote of a majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board of Directors.

Section 8. Meetings by Telephone. Members of the Board of Directors or of any committee thereof may participate in meetings of the Board of Directors or of such committee by means of conference telephone or other communications equipment by means of which all person participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 9. Action Without Meeting. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or of such committee. Such filings shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 10. Compensation. By resolution of the Board of Directors, the Directors, as such, may receive stated salaries for their services, and may be allowed a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board. Members of committees may also be allowed a fixed sum and expenses of attendance, if any, for attending committee meetings. Nothing herein contained shall preclude any Director from serving the corporation in any other capacity and receiving compensation for such services.

Section 11. Chairman of the Board. The Board of Directors shall select from its members a Chairman of the Board who shall preside at all meetings of the Board of Directors.

ARTICLE IV

Committees

The Board of Directors may: (a) designate, change the membership of or terminate the existence of any committee or committees, each committee to consist of one or more Directors; (b) designate one or more Directors as alternate members of any such committee who may replace any absent or disqualified member at any meeting of the committee; and (c) determine the extent to which each such committee shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, including the power to authorize the seal of the corporation to be affixed to all papers which require it and the power and authority to declare dividends or to authorize the issuance of stock, excepting, however, such powers which by law, by the certificate or incorporation or by these by-laws the Board of Directors is prohibited from so delegating. In the absence or disqualification of any member of such committee and his or her alternative, if any, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Board or such rules, its business shall be conducted as nearly as may be in the same manner as is provided by these by-laws for the conduct of business by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

ARTICLE V

Officers

Section 1. Officers and Their Election, Term of Office and Vacancies. The officers of the corporation shall be a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time determine and elect or appoint. All officers shall be elected annually by the Board of Directors at their first meeting following the annual meeting of stockholders or any special meeting held in lieu thereof and shall hold office until their successors are duly elected and qualified. All officers may, but need not be, members of the Board of Directors. Two or more offices may be held by the same person. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. If any vacancy shall occur among the officers, it shall be filled by the Board of Directors.

Section 2. President. The President shall be the chief executive officer of the corporation with full control and responsibility for management decisions, subject to the supervision and control of the Board of Directors and such limitations as the Board of Directors may from time to time impose. The President when present shall preside at all meetings of the stockholders. It shall be his duty and he shall have the power to see that all orders and resolutions of the Board are carried into effect. Subject to the direction of the Board of Directors, the President shall have power to sign all stock certificates, contracts and other instruments of the corporation which are authorized and shall have general supervision of all of the other officers.

Section 3. Vice Presidents. In the absence or disability of the President, his or her powers and duties shall be performed by the Vice President, if only one, or, if more than one, by the one designated for the purpose by the Board. Each Vice President shall have such other powers and perform such other duties as the Board shall from time to time designate.

Section 4. Treasurer. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositaries as shall be designated by the Board or in the absence of such designation in such depositaries as he or she shall from time to time deem proper. He or she shall disburse the funds of the corporation as shall be ordered by the Board, taking proper vouchers for such disbursements. He or she shall promptly render to the President and to the Board such statements of his or her transactions and accounts as the President and Board respectively may from time to time require. The Treasurer shall perform such duties and have such powers additional to the foregoing as the Board may designate.

Section 5. Assistant Treasurers. In the absence or disability of the Treasurer, his or her powers and duties shall be performed by the Assistant Treasurer, if only one, or if more than one, by the one designated for the purpose by the Board. Each Assistant Treasurer shall have such other powers and perform such other duties as the Board shall from time to time designate.

Section 6. The Secretary. The Secretary shall issue notices of all meetings of stockholders and Directors and of the executive and other committees where notices of such meetings are required by law or these by-laws. He or she shall keep the minutes of meetings of stockholders and of the Board of Directors and of the executive and other committees, respectively, unless such committees appoint their own respective secretaries and be responsible for the custody thereof. Unless the Board shall appoint a transfer agent and/or registrar, the Secretary shall be charged with the duty of keeping, or causing to be kept, accurate records of all stock outstanding, stock certificates issued and stock transfers. He or she shall sign such instruments as require his or her signature and shall perform such other duties and shall have such powers as the Board of Directors shall designate from time to time, in all cases subject to the control of the Board of Directors. The Secretary shall have custody of the corporate seal, shall affix and attest such seal on all documents whose execution under seal is duly authorized. In his or her absence at any meeting, an Assistant Secretary or the Secretary pro tempore shall perform his or her duties thereat.

Section 7. Assistant Secretaries. In the absence or disability of the Secretary, his or her powers and duties shall be performed by the Assistant Secretary, if only one, or, if more than one, by the one designated for the purpose by the Board. Each Assistant Secretary shall have such powers and perform such other duties as the Board shall from time to time designate.

Section 8. Salaries. The salaries of officers, agents and employees shall be fixed from time to time by or under authority from the Board of Directors.

ARTICLE VI

Resignations and Removals

Section 1. Officers, Agents, Employees and Members of Committees. Any officer of the corporation may resign at any time upon notice given in writing or by electronic transmission given to the Board of Directors or to the Chairman of the Board or to the President or to the Secretary of the corporation; and any member of any committee may resign upon notice given in writing or by electronic transmission given either as aforesaid or to the committee of which he or she is a member or to the chairman thereof. Any such resignation shall take effect at the time specified therein, or if the time be not specified, upon receipt thereof, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The Board of Directors may at any time, with or without cause, remove from office or discharge or terminate the employment of any officer, agent, employee or member of any committee.

Section 2. Directors. Any Director of the corporation may resign at any time upon notice given in writing or by electronic transmission given to the Board of Directors or to the Chairman of the Board or to the President or the Secretary of the corporation. Any such resignation shall take effect at the time specified therein, or if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least seventy-five (75%) of the voting power of all of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of Directors, and his or her successor or their successors shall be elected by the remaining Directors as provided in these By-laws in the filling of other vacancies. A Director may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him or her.

ARTICLE VII

Indemnification of Directors, Officers and Others

Section 1. Directors and Officers. Subject to the provisions of Section 5, the corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware as presently in effect or as hereafter amended:

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether external or internal to the corporation (other than by action by or in the right of the corporation) by reason of the fact that he or she is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such suit, action or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was lawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(c) In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, any person seeking indemnification under or pursuant to this Section 1 shall be deemed and presumed to have met the applicable standard of conduct set forth in this Section l unless the contrary shall be established, and the corporation shall have the burden of proof to overcome such prescription in connection with the making by any person or entity of any determination contrary to that presumption.

Section 2. Employees and Agents. Subject to the provisions of Section 5, the Board of Directors, in its discretion, may authorize the corporation to indemnify to the fullest extent permitted by the General Corporation Law of the State of Delaware (as presently in effect or as hereafter amended):

(a) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was an employee or agent of the corporation, or is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was an employee or agent of the corporation, or is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and amounts, to the extent permitted by law, paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. Indemnification for Expenses of Successful Party. Notwithstanding the other provisions of this Article, to the extent that a present or former Director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or in Section 2 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to such person, (ii) an adjudication that such person was liable to the corporation, (iii) a plea of guilty or nolo contendere by such person, (iv) an adjudication that such person did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and (v) with respect to any criminal proceeding, an adjudication that such person had reasonable cause to believe his or her conduct was unlawful, such person shall be considered for the purposes hereof to have been wholly successful with respect thereto.

Section 4. Procedure. Any indemnification under this Article VII (unless required by law or ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections l and 2 of this Article VII. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum or (ii) by a committee of such Directors designated by majority vote of such Directors, even though less than a quorum or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders of the corporation.

Section 5. Notification and Defense of Claim; Right to Institute Suit.

(a) In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, it shall be a condition of the corporation's obligation to indemnify under Sections l and 2 of this Article VII (in addition to any other condition in these by-laws or by law provided or imposed) that the person asserting, or proposing to assert, the right to be indemnified, must notify the corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such person for which indemnity will or could be sought, but the failure to so notify shall not affect the corporation's objection to indemnify except to the extent the corporation is adversely affected thereby. With respect to any action, suit, proceeding or investigation of which the corporation is so notified, the corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to such person. After notice from the corporation to such person of its election so to assume such defense, the corporation shall not be liable to such person for any legal or other expenses subsequently incurred by such person in connection with such action, suit, proceeding or investigation other than as provided below in this subsection (a). Such person shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the corporation of its assumption of the defense thereof shall be at the expense of such person unless (i) the employment of counsel by such person has been authorized by the corporation, (ii) counsel to such person shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the corporation and such person in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for such person shall be at the expenses of the corporation, except as otherwise expressly provided by this Article VII. The corporation shall not be entitled, without the consent of such person, to assume the defense of any claim brought by or in the right of the corporation or as to which counsel for such person shall have reasonably made the conclusion provided for in clause (ii) above. The corporation shall not be required to indemnify such person under this Article VII for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on such person without such person's written consent. Neither the corporation nor such person will unreasonably withhold their consent to any proposed settlement.

(b) If a claim for indemnification or advancement of expenses under this Article VII is not paid in full by the corporation within 90 days after a written claim therefor has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim.

Section 6. Reduction and Reimbursement. The corporation's indemnification under Sections 1 and 2 of this Article VII of any person who is or was a Director, officer, employee or agent of the corporation, or is or was serving, at the request of the corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person receives as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the corporation, (ii) from such other corporation, partnership, joint venture, trust or other enterprise, or (iii) under any other applicable indemnification provision. In the event the corporation makes an indemnification payment under this Article VII and the person receiving such payment is subsequently reimbursed from the proceeds of insurance or by such other corporation, partnership, joint venture, trust or other enterprise, such person shall promptly refund such indemnification payments to the corporation to the extent of such reimbursement.

Section 7. Advance of Expenses. In the event that the corporation does not assume the defense pursuant to Section 5, any expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this Article VII. Any advance under this Section 4 shall be made promptly, and in any event within ninety days, upon the written request of the person seeking the advance.

Section 8. Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the General Corporation Law of the State of Delaware (as presently in effect or hereafter amended), the certificate of incorporation of the corporation or these by-laws.

Section 9. Consolidation or Merger. In the discretion of the Board of Directors of the corporation, for the purposes of this Article VII, references to "the corporation" may also include any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors or officers, so that any person who is or was a Director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, would stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he or she would have with respect to such other constituent corporation if its separate existence had continued.

Section 10. Non-Exclusive; Savings Clause. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified under this Article VII, may be entitled under any statute, by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. Each person who is or becomes a Director or officer as described in Section 1 shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article VII. All rights to indemnification under this Article VII shall be deemed to be provided by a contract between the corporation and the person who serves as a Director or officer of the corporation at any time while these by-laws and other relevant provisions of the General Corporation Law of the State of Delaware and other applicable law, if any, are in effect. Any repeal or modification thereof shall not affect any rights or obligations then existing.

Section 11. Inurement. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 12. Definitional Matters. For purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service by a Director or officer of the corporation which imposes duties on, or involves services by, such person with respect to any employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article VII.

ARTICLE VIII

Capital Stock

Section 1. Stock Certificates. Each stockholder shall be entitled to a certificate or certificates representing in the aggregate the share owned by him or her and certifying the number and class thereof, which shall be in such form as this Board shall adopt. Each certificate of stock shall be signed by the Chairman of the Board or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before the certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Transfer of Stock. Shares of stock shall be transferable on the books of the corporation pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe.

Section 3. Holders of Record. Prior to due presentment for registration of transfer the corporation may treat the holder of record of a share of its stock as the complete owner thereof exclusively entitled to vote, to receive notifications and otherwise entitled to all the rights and powers of a complete owner thereof, notwithstanding notice to the contrary.

Section 4. Transfer Agent and Registrar. The Board of Directors may at any time appoint a transfer agent or agents and/or registrar or registrars for the transfer and/or registration of shares of stock.

Section 5. Lost, Stolen, Destroyed or Mutilated Stock Certificates. The Board of Directors may direct a new stock certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, destroyed or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, destroyed or mutilated. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, destroyed or mutilated certificate or certificates, or his or her legal representative, to (a) advertise the same in such manner as it shall require and/or (b) give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, destroyed or mutilated and/or (c) comply with any other reasonable requirements prescribed by the Board.

ARTICLE IX

Securities of Other Corporations

Subject to any limitations that may be imposed by the Board of Directors, the Chairman of the Board, the President or any person or persons authorized by the Board may in the name and on behalf of the corporation (i) act, or appoint any other person or persons (with or without powers of substitution) to act in the name and on behalf of the corporation (as proxy or otherwise), at any meeting of the holders of stock or other securities of any corporation or other organization, securities of which shall be held by this corporation, or (ii) express consent or dissent, as a holder of such securities, to corporate or other action by such other corporation or organization.

ARTICLE X

Checks, Notes, Drafts and Other Instruments

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the name of the corporation may be signed by any officer or officers or person or persons authorized by the Board of Directors to sign the same. No officer or person shall sign any such instrument as aforesaid unless authorized by the Board to do so.

ARTICLE XI

Dividends and Reserves

Section 1. Dividends. Dividends upon the capital stock of the corporation may, subject to any provisions of the certificate of incorporation, be declared pursuant to law by the Board of Directors. Dividends may be paid in cash, in property or in shares of the capital stock.

Section 2. Reserves. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Directors shall think conducive to the interest of the corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE XII

Corporate Seal

The corporate seal shall be in such form as the Board of Directors may from time to time prescribe and the same may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE XIII

Fiscal Year

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE XIV

Books and Records

The books, accounts and records of the corporation, except as may be otherwise required by the laws of the State of Delaware, may be kept outside of the State of Delaware, at such place or places as the Board of Directors may from time to time appoint. Except as may otherwise be provided by law, the Board of Directors shall determine whether and to what extent the books, accounts, records and documents of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any book, account, record or document of the corporation, except as conferred by law or by resolution of the stockholders or Board of Directors.

ARTICLE XV

Notices

Section 1. Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of law, the certificate of incorporation, or these by-laws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (a) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (b) such inability becomes known to the Secretary or an Assistant Secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Notice given pursuant to the immediately preceding paragraph shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (ii) such posting and (ii) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or any Assistant Secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

For purposes of these by-laws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2. Waiver of Notice. Whenever notice is required, the certificate of incorporation, these by-laws or as otherwise provided by law, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission.

ARTICLE XVI

Severability

If any term or provision of the by-laws, or the application thereof to any person or circumstance or period of time, shall to any extent be invalid or unenforceable, the remainder of the by-laws, or the application of such term or provision to persons or circumstances or periods of time other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of the by-laws shall be valid and enforced to the fullest extent permitted by law. All restrictions, limitations, requirements and other provisions of these by-laws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be contrary to law.

ARTICLE XVII

Amendments

The Board of Directors and the stockholders shall each have the power to adopt, alter, amend and repeal these by-laws, and any by-laws adopted by the Directors or the stockholders under the powers conferred hereby may be altered, amended or repealed by the Directors or by the stockholders; provided, however, that these by-laws shall not be altered, amended or repealed by action of the stockholders, and no by-law shall be adopted by action of the stockholders, without the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all the shares of the corporation entitled to vote generally in the election of Directors, voting together as a single class.

Exhibit 31.1

ITEM 5: CERTIFICATIONS
Rule 13a-14(a)/15d-14(a) Certification

I, Russell H Plumb, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Biota Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

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

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report my conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 11, 2013

By: /s/ Russell H Plumb
Russell H Plumb
Chief Executive Officer and President
(Principal Executive Officer and Principal Financial Officer)

Exhibit 32.1

SECTION 1350 CERTIFICATION

The undersigned officer of Biota Pharmaceuticals, Inc., or the Company, hereby certifies that, as of the date of this statement, the Company's report on Form 10-Q for the quarter ended December 31, 2012, or the Report, fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that, to the best of his knowledge, the information contained in the Report fairly presents, in all material respects, the financial condition of the Company as of December 31, 2012 and the results of operations of the Company for the six months ended December 31, 2012.

The purpose of this certification is solely to comply with Title 18, Chapter 63, Section 1350 of the United States Code, as amended by Section 906 of the Sarbanes-Oxley Act of 2002. This statement is not "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that Act or any other federal or state law or regulation.

In connection with the Quarterly Report on Form 10-Q of Biota Pharmaceuticals, Inc. (the "Company") for the quarter ending December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Russell H. Plumb, as Chief Executive Officer and President of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 11, 2013

By: /s/ Russell H Plumb

Russell H Plumb
Chief Executive Officer and President
(Principal Executive Officer and Principal Financial Officer)