

AVI BIOPHARMA INC
Form 424B5
August 21, 2009

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Filed pursuant to Rule 424(b)(5)
SEC File No. 333-160922

**Prospectus Supplement
(to Prospectus dated August 13, 2009)**

21,126,761 Units

Common Stock

Warrants

We are offering 21,126,761 units, consisting of an aggregate of 21,126,761 shares of our common stock and warrants to purchase an additional 8,450,704 shares of common stock. Each unit consists of one share of common stock and a warrant to purchase 0.40 of a share of common stock at an exercise price of \$1.78 per share of common stock. The common stock and warrants are immediately separable and will be issued separately.

Our common stock is quoted on the Nasdaq Global Market under the symbol "AVII." The last reported sale price of our common stock on August 19, 2009 was \$1.78 per share. There is no established public trading market for the offered warrants and we do not expect a market to develop. In addition, we do not intend to apply for listing of the warrants on any national securities exchange.

Investing in our common stock and warrants involve a high degree of risk. Please read "Risk Factors" beginning on page S-4 of this prospectus supplement and on page 2 of the accompanying prospectus.

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

	PER	
	UNIT	TOTAL
Public Offering Price	\$ 1.420	\$30,000,000
Underwriting Discounts and Commissions	\$ 0.078	\$ 1,650,000
Proceeds to AVI BioPharma (Before Expenses)	\$ 1.342	\$28,350,000

Delivery of the shares of common stock and warrants to purchase common stock is expected to be made on or about August 25, 2009. The Company has granted the underwriters an option for a period of 30 days to purchase, on the same terms and conditions set forth above, up to an additional 3,169,014 units, consisting of an aggregate of 3,169,014 shares of our common stock and warrants to purchase 1,267,606 shares of common stock, to cover overallocments. If the underwriters exercise the option in full, the total underwriting discounts and commissions payable by us will be \$1,897,500 and the total proceeds to us, before expenses, will be \$32,602,500.

Sole Book-Running Manager

Jefferies & Company

JMP Securities

Prospectus Supplement

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About This Prospectus Supplement

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus supplement and the accompanying prospectus to "AVI BioPharma," "AVI," "we," "us," "our," or similar references mean AVI BioPharma, Inc.

This prospectus supplement is part of a registration statement that we have filed with the U.S. Securities and Exchange Commission, or SEC, using a "shelf" registration process. Under this process, we are offering to sell our common stock and warrants using this prospectus supplement and the accompanying prospectus. The prospectus supplement describes the specific terms of this offering of common stock and warrants. The accompanying prospectus gives more general information, some of which may not apply to this offering. This prospectus incorporates by reference important information. You should read both this prospectus supplement and the accompanying prospectus in addition to the information contained in the documents we refer to under the heading "Where You Can Find More Information" before deciding to invest in our common stock or warrants. If the description of this offering varies between this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement.

You should rely only on the information contained or incorporated by reference into this prospectus supplement, the accompanying prospectus and any free-writing prospectus. We have not authorized any person, including any salesman or broker, to provide information other than that provided in this prospectus supplement, the accompanying prospectus or any free writing prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information in this prospectus supplement, the accompanying prospectus and any pricing supplement is accurate only as of the date of such document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference.

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Prospectus Supplement Summary

This summary contains basic information about us and this offering. Because it is a summary, it may not contain all of the information that you should consider before investing in our common stock and warrants. You should read the entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference carefully, including the risk factors, the financial statements and the notes to those financial statements contained in those documents.

AVI BioPharma is a biopharmaceutical company specializing in the discovery and development of novel, RNA-based drugs targeting a range of diseases. References in this prospectus to "AVI," the "Company," we," "us" and "our" are to AVI BioPharma, Inc., an Oregon corporation.

As one of the emerging leaders in the fast growing field of RNA therapeutics, AVI has developed and optimized derivatives of its proprietary antisense chemistry (phosphorodiamidate morpholino oligomers or PMOs) that can be designed to target disease mechanisms through distinct mechanisms of action. Unlike other RNA therapeutic approaches, AVI's antisense technology has been used to directly target both messenger RNA (mRNA) and precursor messenger RNA (pre-mRNA) allowing for both down- and up-regulation of targeted genes or proteins. We believe that these broad capabilities give the Company a unique RNA-based technology platform and strong intellectual property position, both of which are the result of advances across several areas of science, including over 20 years of research and development work in chemistry and the Human Genome Project. Our patent estate includes 213 patents (foreign and domestic) issued to or licensed by us and 185 pending patent applications (domestic and foreign).

AVI is leveraging its discovery and development capabilities to build a pipeline of RNA-based therapeutic candidates to develop in collaboration with larger pharmaceutical and biotechnology partners. Current applications of AVI's RNA technology platform include genetic diseases (Duchenne muscular dystrophy), infectious diseases (Ebola and Marburg viruses), cardiovascular disease (restenosis) and other early discovery targets. Several of our antiviral programs, including H1N1 influenza, Ebola, Marburg, Junín and Dengue, have been or are currently funded by the U.S. government, and other governmental and non-governmental funding has supported our other programs.

We are an Oregon corporation headquartered at 3450 Monte Villa Parkway, Suite 101, Bothell, WA 98021. Our telephone number is (425) 354-5038. Our website address is www.avibio.com. Information contained on our website is not a part of, and is not incorporated into, this prospectus.

This prospectus includes our trademarks and registered trademarks, including NeuGene®, Avicine®, Resten-NG®, Resten-CP , and Oncomyc-NG . Each other trademark, trade name or service mark appearing in this prospectus belongs to its holder

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Securities offered by us	21,126,761 units, each unit consisting of one share of common stock and a warrant to purchase 0.40 of a share of common stock.
Public offering price per unit	\$1.42 per unit
Market for the warrants	There is no established public trading market for the offered Warrants and we do not expect a market to develop. In addition, we do not intend to apply for listing of the Warrants on any national securities exchange.
Warrant agent	The Company will administer the warrants initially. Although it is not required to do so, it may subsequently elect to engage a warrant agent in the future.
Common stock to be outstanding immediately after this offering	106,861,754 shares, excluding 8,450,704 shares of common stock issuable upon exercise of the warrants and excluding all other outstanding options or warrants to acquire shares of common stock of the Company.
Over-allotment option	We have granted the underwriters an option for a period of 30 days to purchase, on the same terms and conditions set forth above, up to an additional 3,169,014 units, consisting of 3,169,014 shares of common stock and warrants to purchase 1,267,606 shares of our common stock, to cover over-allotments.
Use of proceeds	We expect the net proceeds to us from this offering will be approximately \$27.8 million, after deducting the underwriting discount and estimated offering expenses. We intend to use those net proceeds to fund our research and development efforts, including clinical trials for our proprietary product candidates, and for general corporate purposes, including working capital needs.
Description of the warrants	Each purchaser will receive a warrant to purchase 0.40 of a share of common stock for each share of common stock it purchases in the offering. The warrants are exercisable at an exercise price of \$1.78 per share of common stock. The warrants are exercisable starting on February 25, 2010, and expire on August 25, 2014. For additional information regarding the warrants, see "Description of the Warrants" below.
Risk factors	See the "Risk factors" on page S-4 of this prospectus supplement, on page 2 of the accompanying prospectus and in the documents incorporated by reference in this prospectus supplement (including Item 1A contained in Part I of our most recent Annual Report on Form 10-K and Item 1A contained in Part II of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2009) for a discussion of factors to consider before deciding to purchase shares of our common stock.
Trading symbol	Our common stock is listed on the Nasdaq Global Market under the symbol "AVII"

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The number of shares of common stock to be outstanding after this offering as reflected in the table above is based on the actual number of shares outstanding as of June 30, 2009, which was 85,725,709, and does not include, as of that date:

9,064,310 shares of common stock issuable upon the exercise of outstanding stock options with a weighted average exercise price of \$4.01 per share;

24,774,687 shares of common stock reserved for issuance upon the exercise of outstanding warrants with a weighted average exercise price of \$4.18 per share; and

771,606 shares of common stock available for future grant under our 2002 Equity Incentive Plan, and 43,202 shares available for purchase under the 2000 Employee Stock Purchase Plan.

Except as otherwise indicated, all information in the prospectus supplement assumes no exercise by the underwriters of their over-allotment option.

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Risk Factors

An investment in our common stock and warrants involves a high degree of risk. You should carefully consider the risks described below as well as under "Risk Factors" in Part I, Item 1A of our most recent Annual Report on Form 10-K and Part II, Item 1A of our most recent Quarterly Report on Form 10-Q as well as other information contained in this prospectus supplement and the accompanying prospectus, and incorporated by reference into this prospectus supplement and the accompanying prospectus, including our financial statements and related notes, before investing in our common stock and warrants. If any of the possible events described in those sections actually occur, our business, business prospects, cash flow, results of operations or financial condition could be harmed. In this case, the trading price of our common stock could decline, and you might lose all or part of your investment in our common stock. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our operations.

Management will have broad discretion as to the use of the proceeds from this offering, and we may not use the proceeds effectively.

We intend to use the net proceeds from this offering for general corporate purposes, including clinical trial expenses, research and development expenses, general and administrative expenses, manufacturing expenses, and potential acquisitions of companies and technologies that complement our business. Accordingly, our management will have broad discretion as to the application of the net proceeds from this offering, and could spend the proceeds in ways that do not necessarily improve our operating results or enhance the value of our common stock.

There is no public market for the warrants being offered in this offering.

There is no established public trading market for the warrants being offered in this offering, and we do not expect a market to develop. In addition, we do not intend to apply for listing of the warrants on any securities exchange. Without an active market, the liquidity of the warrants will be limited.

Holders of our warrants will have no rights as a common shareholder until they acquire our common stock.

Until you acquire shares of our common stock upon exercise of the warrants, you will have no rights with respect to shares of our common stock issuable upon exercise of warrants, including rights to vote or respond to tender offers. Upon exercise of your warrants, you will be entitled to exercise the rights of a common shareholder only as to matters for which the record date occurs after the exercise date.

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Description of the Warrants

Each unit will include a warrant to purchase 0.40 of a share of our common stock. The warrants will be issued in the form of warrant certificates, which will govern the rights of a holder of the warrants. The warrants are transferable separately from the common stock that is part of the unit. The warrant certificate has been filed as an exhibit to a Current Report on Form 8-K and is incorporated by reference into the Registration Statement. Capitalized terms not otherwise defined in this section have the meaning set forth in the warrant certificate. A copy of the warrant certificate may be obtained free of charge from us as described in the Prospectus under the heading "Incorporation by Reference."

The exercise price per share of common stock purchasable upon exercise of the warrant is \$1.78 per share. The warrants will be exercisable by the holders at any time on or after February 25, 2010, and through and including August 25, 2014.

The warrants will, among other things, include provisions for the appropriate adjustment in exercise price of the warrants and the class and number of the common shares to be issued upon exercise of the warrants upon the occurrence of certain events, including any subdivision, consolidation or reclassification of our common shares, the payment of stock dividends, our amalgamation, and certain rights offerings and other distributions to all holders of our common stock.

If, at any time while any of the warrants are outstanding:

we, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another person or entity,

we, directly or indirectly, effect any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of our assets in one or a series of related transactions,

any direct or indirect purchase offer, tender offer or exchange offer (whether by us or another person or entity) is completed pursuant to which holders of our common stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of our outstanding common stock,

we, directly or indirectly, in one or more related transactions effect any reclassification, reorganization or recapitalization of our common stock or any compulsory share exchange pursuant to which our common stock is effectively converted into or exchanged for other securities, cash or property, (each a "*Fundamental Transaction*"),

then upon any subsequent exercise of a warrant, the holder will be entitled to receive for each share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, the number of shares of common stock of the successor or acquiring corporation or of our shares, if we are the surviving corporation, and any additional consideration receivable as a result of such Fundamental Transaction by a holder of our common stock.

In the event of a Fundamental Transaction that is (1) an all cash transaction, (2) a "Rule 13e-3 transaction" as defined in Rule 13e-3 under the Exchange Act, or (3) a Fundamental Transaction involving a person or entity not traded on a national securities exchange, including, but not limited to, the Nasdaq Global Select Market, the Nasdaq Global Market, or the Nasdaq Capital Market, the Company or any successor entity shall, at the warrant holder's option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Fundamental Transaction, purchase the warrant from such holder by paying to such holder an amount of cash equal to the Black Scholes Value of the remaining unexercised portion of such holder's warrant on the date of the consummation of such Fundamental Transaction. "*Black Scholes Value*" means the value of such holder's warrant based on the Black and Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time

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between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100-day volatility obtained from the HVT function on Bloomberg L.P. ("*Bloomberg*") as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date.

Absent a waiver by the Company, no holder will be permitted to exercise a warrant to the extent that, after giving effect to such exercise, such holder and its affiliates would beneficially own, in the aggregate, more than 4.99% of the total number of issued and outstanding shares of our common stock. However, upon a 61-day notice from the holder, such holder may increase this ownership limit to 9.99% of the total number of issued and outstanding shares of our common stock.

The common shares underlying the warrants, when issued upon exercise of a warrant, will be fully paid and non-assessable, and we will pay any transfer tax, transfer agent fee, or other incidental tax or expense incurred as a result of the issuance of common shares to the holder upon its exercise.

We are not required to issue fractional shares upon the exercise of a warrant. In lieu of any fractional share that would otherwise be issuable, we will pay the warrant holder cash equal to the product of such fraction multiplied by the closing price of one common share as reported on the applicable trading market. The holder of a warrant will not possess any rights as our shareholder until such holder exercises the warrant.

At any time in which the registration statement of which this prospectus is a part is effective after February 25, 2010, a warrant may be exercised upon delivery to us, prior to the expiry date of the warrant, of the exercise form found on the back of the warrant certificate completed and executed as indicated, accompanied by payment of the exercise price in immediately available funds for the number of common shares with respect to which the warrant is being exercised. At any time in which the registration statement of which this prospectus is a part is not effective after February 25, 2010 and prior to the warrant expiry date, by proper election on the exercise form a warrant may be exercised through a cashless exercise, in which event we will issue to the holder of the warrant a number of shares equal to the quotient obtained by dividing ((A-B) (X)) by (A), where:

- (A) = the VWAP on the Trading Day immediately preceding the date on which a holder elects to exercise a warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;
- (B) = the Exercise Price of the warrant, as adjusted; and
- (X) = the number of shares of common stock that would be issuable upon exercise of the warrant in accordance with its terms if such exercise were by means of a cash exercise rather than a cashless exercise.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the common stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the common stock for such date (or the nearest preceding date) on the Trading Market on which the common stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the common stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the common stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the common stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the common stock so reported, or (d) in all other cases, the fair market value of a share of common stock as determined by an independent appraiser selected in good faith by our board of directors.

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Cautionary Statement Regarding Forward-Looking Statements

This prospectus supplement and the accompanying prospectus and the information incorporated by reference herein and therein contain forward-looking statements regarding our plans, expectations, estimates and beliefs. Such statements are "forward-looking statements" for purposes of Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. Our actual results could differ materially from those discussed in, or implied by, these forward-looking statements. Forward-looking statements are identified by words such as "believe," "anticipate," "expect," "intend," "plan," "will," "may," and other similar expressions. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. These forward-looking statements are based on current expectations and are not guarantees of future performance. We caution you not to place undue reliance on these statements, which speak only as of the date on which the statement was made. Forward-looking statements in this prospectus supplement and the accompanying prospectus include, but are not necessarily limited to, those relating to:

our intention to introduce new products,

receipt of any required FDA or other regulatory approval for our products,

our expectations about the markets for our products,

acceptance of our products, when introduced, in the marketplace,

our expectations about availability of government funding for certain projects,

our future capital needs,

results of our research and development efforts, and

success of our patent applications.

Forward-looking statements are subject to risks and uncertainties, certain of which are beyond our control. Actual results could differ materially from those anticipated as a result of the factors described in "Risk Factors" in the accompanying prospectus and detailed in our other SEC filings, including among others:

the effect of regulation by the FDA and other governmental agencies,

delays in obtaining, or our inability to obtain, approval by the FDA or other regulatory authorities for our products,

research and development efforts, including delays in developing, or the failure to develop, our products,

uncertainty of government funding for certain projects,

the development of competing or more effective products by other parties,

the results of pre-clinical and clinical testing and our ability to conduct these tests,

uncertainty of market acceptance of our products,

problems that we may face in manufacturing, marketing, and distributing our products,

our inability to raise additional capital when needed,

delays in the issuance of, or the failure to obtain, patents for certain of our products and technologies, and

problems with important suppliers and business partners.

Because of these risks and uncertainties, the forward-looking events and circumstances discussed in this prospectus and any subsequent prospectus supplement or incorporated by reference might not transpire. Except for our ongoing obligations to disclose material information as required by the federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. All of the above factors are difficult to predict, contain uncertainties that may materially affect our actual results and may be beyond our control. New factors emerge from time to time, and it is not possible for our management to predict all of such factors or to assess the effect of each factor on our business.

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Use of Proceeds

We estimate that the net proceeds we will receive from this offering will be approximately \$27.8 million, based on a public offering price of \$1.42 per unit, after deducting the underwriting discounts and commissions and our estimated offering expenses. If the underwriters exercise the over-allotment option in full, the net proceeds of the units we sell will be approximately \$32.1 million.

We intend to use the net proceeds from this offering to fund our research and development efforts, including clinical trials for our proprietary product candidates, and for general corporate purposes, including working capital needs.

As of the date of this prospectus supplement, we cannot specify with certainty all of the particular uses of the proceeds from this offering. Accordingly, we will retain broad discretion over the use of such proceeds. Pending the use of the net proceeds from this offering as described above, we intend to invest the net proceeds in investment-grade, interest-bearing instruments.

Table of Contents**Dilution**

If you purchase units of our common stock and warrants in this offering, your interest will be diluted to the extent of the difference between the offering price per share and the net tangible book value per share of our common stock after this offering. We calculate net tangible book value per share by subtracting our total liabilities from our total tangible assets, which is total assets less intangible assets, and dividing this amount by the number of outstanding shares of our common stock on that date. Investors participating in this offering will incur immediate, substantial dilution.

Our net tangible book value (unaudited) at June 30, 2009, was approximately \$0.3 million, or \$0.0039 per share, based on 85,725,709 shares of our common stock outstanding as of June 30, 2009. After giving effect to the sale of 21,126,761 units, which include 21,126,761 shares of common stock, by us at a public offering price of \$1.42 per unit, less the estimated underwriting discount and estimated offering expenses we expect to pay, our net tangible book value (unaudited) at June 30, 2009, would have been approximately \$17.7 million, or approximately \$0.17 per share. This represents an immediate increase in the net tangible book value of \$0.162 per share to existing stockholders and an immediate dilution of approximately \$1.25 per share to investors in this offering. The following table illustrates this per share dilution (all amounts in the table below except for the public offering price have been rounded to the number of decimal places shown):

Public offering price per share	\$ 1.42
Net tangible book value per share as of June 30, 2009	\$0.0039
Increase in net tangible book value per share attributable to new investors	\$0.162
As adjusted net tangible book value per share after this offering	\$0.17
Dilution per share to new investors	\$1.25

If the underwriters exercise in full their option to purchase 3,169,014 additional units, which include 3,169,014 shares of common stock, from us at a public offering price of \$1.42 per unit, less the estimated underwriting discount and commissions and estimated offering expenses we expect to pay, our net tangible book value (unaudited) at June 30, 2009, would have been approximately \$20.4 million, or \$0.19 per share. This represents an immediate increase in the net tangible book value of \$0.182 per share to existing stockholders and an immediate dilution of \$1.23 per share to investors in this offering.

The information above is based on 85,725,709 shares of our common stock outstanding as of June 30, 2009 and does not include:

8,450,704 shares of common stock issuable upon the exercise of warrants being sold in this offering with a weighted average exercise price of \$1.78 per share;

1,267,606 shares of common stock issuable upon the exercise of warrants with a weighted average exercise price of \$1.78 per share that would be sold in this offering if the underwriters exercise in full their over-allotment option;

9,064,310 shares of common stock issuable upon the exercise of outstanding stock options with a weighted average exercise price of \$4.01 per share;

24,774,687 shares of common stock reserved for issuance upon the exercise of outstanding warrants with a weighted average exercise price of \$4.18 per share; and

771,606 shares of common stock available for future grant under our 2002 Equity Incentive Plan, and 43,202 shares available for purchase under the 2000 Employee Stock Purchase Plan.

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To the extent that any of these warrants or options are exercised, new options or other rights to acquire shares of our common stock are issued under our benefit plans or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering.

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Material United States Federal Income Tax Considerations

The following is a summary of certain United States federal income tax considerations of the acquisition, ownership and disposition of our common stock and warrants issued pursuant to this offering. This discussion is not a complete analysis of all of the potential United States federal income tax consequences relating thereto, nor does it address any estate and gift tax consequences or any tax consequences arising under any state, local or foreign tax laws, or any other United States federal tax laws. This discussion is based on the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the Internal Revenue Service, or IRS, all as in effect as of the date of this offering. These authorities may change, possibly retroactively, resulting in United States federal income tax consequences different from those discussed below. No ruling has been or will be sought from the IRS with respect to the matters discussed below, and there can be no assurance that the IRS will not take a contrary position regarding the tax consequences of the acquisition, ownership or disposition of our common stock, or that any such contrary position would not be sustained by a court.

This discussion is limited to holders who purchase our common stock and warrants issued pursuant to this offering and who hold our common stock and warrants as a "capital asset" within the meaning of Section 1221 of the Internal Revenue Code (generally, property held for investment). This discussion does not address all of the United States federal income tax consequences that may be relevant to a particular holder in light of such holder's particular circumstances. This discussion also does not consider any specific facts or circumstances that may be relevant to holders subject to special rules under the United States federal income tax laws, including, without limitation:

financial institutions, banks and thrifts;

insurance companies;

tax-exempt organizations;

"S" corporations, partnerships or other pass-through entities;

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

taxpayers subject to the alternative minimum tax;

regulated investment companies and real estate investment trusts;

broker-dealers or dealers in securities or currencies;

United States expatriates and certain former citizens or long-term residents of the United States;

corporations that accumulate earnings to avoid United States federal income tax;

persons that own, or have owned, actually or constructively, more than 5% of our common stock;

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persons that hold our stock as a position in a "straddle," or as part of a synthetic security or "hedge," "conversion transaction," "constructive sale" or other integrated investment; or

or U.S. holders (as defined below) that have a "functional currency" other than the United States dollar.

PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK AND WARRANTS, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS AND ANY OTHER UNITED STATES FEDERAL TAX LAWS.

For purposes of this discussion, a "U.S. holder" is a beneficial owner of common stock or warrants that is, for United States federal income tax purposes:

an individual citizen or resident of the United States;

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a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is subject to United States federal income taxation regardless of its source; or

a trust (1) whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust, or (2) that has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person.

The term "non-U.S. holder" means a beneficial owner of common stock or warrants (other than a partnership) that is not a U.S. holder.

If an entity that is classified as a partnership for United States federal income tax purposes is a beneficial owner of common stock or warrants, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. Partnerships and other entities that are classified as partnerships for United States federal income tax purposes and persons holding common stock or warrants through a partnership or other entity classified as a partnership for United States federal income tax purposes are urged to consult their own tax advisors.

Allocation of Purchase Price Between Common Stock and Warrants

Each holder that purchases an investment unit will receive both common stock and a warrant for a certain amount of our common stock. The purchase price for the investment unit will be allocated between the common stock and the warrant in proportion to their relative fair market values on the date that the investment unit is purchased by such holder. This allocation of the purchase price will establish a holder's initial tax basis for United States federal income tax purposes in its common stock and warrant.

Each holder should consult its own tax advisor regarding the allocation of the purchase price between the common stock and the warrant.

Summary of Tax Consequences with Respect to our Common Stock

U.S. Holders

Distributions on Our Common Stock. If we make cash or other property distributions on our common stock, such distributions will constitute dividends for United States federal income tax purposes to the extent paid from our current earnings and profits for that taxable year or accumulated earnings and profits, as determined under United States federal income tax principles. Any such dividends will be eligible for the dividends-received deduction if received by an otherwise qualifying corporate U.S. holder that meets certain holding period and other requirements for the dividends-received deduction. For tax years beginning before 2011, non-corporate U.S. holders that received dividends on our common stock are eligible for a reduced rate of taxation if certain requirements are satisfied. Any distributions on our common stock in excess of our current and accumulated earnings and profits will first be applied to reduce the U.S. holder's tax basis in the common stock, and any amount in excess of the U.S. holder's tax basis will be treated as gain from the sale or exchange of the U.S. holder's common stock as described below.

Adjustments to the Number of Shares Underlying the Warrants and/or Exercise Price of the Warrants. Certain adjustments to, or failure to adjust, the number of shares underlying the warrants and/or exercise price of the warrants may cause holders of common stock to be treated as having received a distribution on the common stock, to the extent any such adjustment or failure to adjust results in an increase in the proportionate interest of such holders in our company. Such a distribution would be taxable to holders as a dividend, return of capital or capital gain generally in accordance with rules discussed above under the heading "Distributions on Our Common Stock."

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Sale, Exchange or Other Disposition of Our Common Stock. Upon a sale, exchange or other taxable disposition of our common stock, a U.S. holder generally will recognize capital gain or loss in an amount equal to the difference, if any, between (i) the amount of cash and the fair market value of other property received, and (ii) the U.S. holder's adjusted tax basis in the shares. Such gain or loss generally will be long-term capital gain or loss if the U.S. holder's holding period with respect to such shares is more than one year at the time of the sale or other taxable disposition. Non-corporate U.S. holders may be eligible for reduced rates of taxation on long-term capital gains. The deductibility of capital losses is subject to certain limitations.

Backup Withholding and Information Reporting. Information returns may be filed with the IRS in connection with payments or deemed payments of dividends on the common stock and the proceeds from a sale or other disposition of the common stock. A U.S. holder will not be subject to backup withholding tax on these payments if the holder provides its taxpayer identification number to the paying agent and complies with certain certification procedures or otherwise establishes an exemption from backup withholding. The amount of any backup withholding from a payment to a U.S. holder generally will be allowed as a credit against the U.S. holder's United States federal income tax liability and may entitle the U.S. holder to a refund, provided that the required information is furnished to the IRS.

Non-U.S. Holders

Dividends and Adjustments to the Number of Shares Underlying the Warrants and/or Exercise Price of the Warrants. Dividends paid to a non-U.S. holder of our common stock generally will be subject to United States federal withholding tax at a rate of 30% of the gross amount of the dividends, or such lower rate specified by an applicable income tax treaty. Certain adjustments to, or failure to adjust, the number of shares underlying the warrants and/or exercise price of the warrants may cause holders of common stock to be treated as having received a distribution on the common stock, to the extent any such adjustment or failure to adjust results in an increase in the proportionate interest of such holders in our company. Any such deemed distribution would be subject to withholding tax to the same extent as an actual distribution.

To receive the benefit of a reduced treaty rate, a non-U.S. holder must furnish to us or our paying agent a validly completed IRS Form W-8BEN (or applicable successor form) certifying, under penalty of perjury, such holder's qualification for the reduced rate. This certification must be provided to us or our paying agent prior to the payment of the dividend and must be updated periodically. Non-U.S. holders that do not timely provide us or our paying agent with the required certification, but that qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

If a non-U.S. holder holds our common stock in connection with the conduct of a trade or business in the United States and dividends paid on the common stock are effectively connected with such non-U.S. holder's United States trade or business (and, if required by an applicable income tax treaty, are attributable to a permanent establishment maintained by the non-U.S. holder in the United States), the non-U.S. holder will be exempt from United States federal withholding tax. To claim the exemption, the non-U.S. holder must furnish to us or our paying agent a validly completed IRS Form W-8ECI (or applicable successor form).

Any dividends paid on our common stock that are effectively connected with a non-U.S. holder's United States trade or business (and, if required by an applicable income tax treaty, that are attributable to a permanent establishment maintained by the non-U.S. holder in the United States) generally will be subject to U.S. federal income tax on a net income basis at the regular graduated United States federal income tax rates in the same manner as if such non-U.S. holder were a resident of the United States. A non-U.S. holder that is a foreign corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders should consult their own tax advisors regarding any applicable income tax treaties that may provide for different rules.

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Sale, Exchange or Other Disposition of Our Common Stock. Subject to the discussion below regarding backup withholding, a non-U.S. holder generally will not be subject to United States federal income tax on any gain realized upon the sale or other disposition of our common stock, unless:

the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States and, if required by an applicable income tax treaty, is attributable to a permanent establishment maintained by the non-U.S. holder in the United States;

the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or

our common stock constitutes a "United States real property interest" by reason of our status as a United States real property holding corporation, or USRPHC, for United States federal income tax purposes at any time within the shorter of the five-year period preceding the disposition or the non-U.S. holder's holding period for our common stock. The determination of whether we are a USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our other trade or business assets and our foreign real property interests.

Gain described in the first bullet point above will be subject to United States federal income tax on a net income basis at regular graduated United States federal income tax rates in the same manner as if the non-U.S. holder were a resident of the United States. A non-U.S. holder that is a foreign corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders should consult their own tax advisors regarding any applicable income tax treaties that may provide for different rules.

Gain described in the second bullet point above will be subject to United States federal income tax at a flat 30% rate (or such lower rate specified by an applicable income tax treaty), but may be offset by United States source capital losses (even though the individual is not considered a resident of the United States) provided that the non-U.S. holder has timely filed United States federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we are not currently and do not anticipate becoming a USRPHC for United States federal income tax purposes. However, because the determination of whether we are a USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our other trade or business assets and our non-U.S. real property interests, there can be no assurance that we are not a USRPHC or will not become one in the future. Even if we are or become a USRPHC, gain arising from the sale or other taxable disposition by a non-U.S. holder of our common stock will not be subject to tax as a sale of a USRPI if such class of stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such non-U.S. holder owned, actually or constructively, 5% or less of such class of our stock throughout the shorter of the five-year period ending on the date of the sale or exchange or the non-U.S. holder's holding period for such stock. Our common stock currently is "regularly traded" on an established securities market, although we cannot guarantee that it will be so traded in the future. If gain on the sale or other taxable disposition of our stock were subject to taxation under the exception described in the third bullet point above, the non-U.S. holder would be subject to regular United States federal income tax with respect to such gain in the same manner as a U.S. person (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals).

Backup Withholding and Information Reporting. Information returns may be filed with the IRS in connection with the payment or deemed payment of dividends on our common stock and the proceeds from a sale or other disposition of our common stock. A non-U.S. holder may be subject to U.S. backup withholding on these payments unless the holder complies with certification procedures to establish an exemption from backup withholding. The amount of any backup withholding from a payment to a non-U.S. holder generally will be allowed as a credit against the holder's United States federal income tax liability and may entitle the holder to a refund, provided that the required information is furnished to the IRS.

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Summary of Tax Consequences with Respect to the Warrants

U.S. Holders

Exercise of Warrants. If a U.S. holder exercises a warrant with cash (the "Cash Exercise Option"), a U.S. holder should not be required to recognize income, gain or loss and the U.S. holder's tax basis in common stock received upon the exercise will equal the sum of (i) the U.S. holder's adjusted tax basis in the warrant at the time of exercise and (ii) the exercise price of the warrant (reduced by any tax basis allocable to a fractional share). The U.S. holder's holding period in the shares received under the Cash Exercise Option will commence on the day that the U.S. holder exercises the warrant and will not include the period during which the U.S. holder held the warrant. If a U.S. holder receives any cash in lieu of a fractional share of common stock, the rules described below under "Sale or Other Disposition of Warrants" will apply with respect to portion of the warrants that correspond to the fractional share.

Under certain circumstances, a U.S. holder may exercise its warrants through the cashless exercise option (the "Cashless Exercise Option"). In such a case, the tax consequences are not entirely clear under current tax law. The Cashless Exercise Option may be tax-free, either because the exercise is not a taxable exchange or because the exercise is treated as a recapitalization for U.S. federal income tax purposes. In either tax-free situation, a U.S. holder's tax basis in the common stock received would equal the U.S. holder's tax basis in the warrant. If the Cashless Exercise Option were treated as other than a taxable exchange, a U.S. holder's holding period in the common stock would commence on the date of exercise of the warrant. If the Cashless Exercise Option were treated as a recapitalization, the holding period of the common stock would include the holding period of the warrant.

It is also possible that the Cashless Exercise Option could be treated as a taxable exchange in which gain or loss would be recognized. In such event, a U.S. holder could be deemed to have surrendered a number warrants having a fair market value equal to the exercise price for the number of warrants deemed exercised (i.e., the number of warrants equal to the number of common shares issued pursuant to the Cashless Exercise Option). The U.S. holder would recognize capital gain or loss in an amount equal to the difference between such fair market value and the U.S. holder's tax basis in such warrants deemed surrendered. In this case, a U.S. holder's tax basis in the common stock received would equal the sum of such fair market value and the U.S. holder's tax basis in the remaining warrants exercised. A U.S. holder's holding period for the common stock would commence on the date of exercise of the warrant.

The tax consequences of holding and disposing of common shares acquired on exercise of a warrant are described under "Summary of Tax Consequences with Respect to Our Common Stock" above.

Holders of warrants should consult their own tax advisors as to the proper treatment of the exercise of such warrants.

Lapse of Warrants. If a warrant expires without being exercised, a U.S. holder generally will recognize a capital loss in an amount equal to its tax basis in the warrant, subject to possible loss disallowance rules that may be applicable to U.S. holders that are treated as related to us. Such loss will be long-term capital loss if, at the time of the expiration, the Warrant has been held by the U.S. holder for more than one year. In addition, the deductibility of capital losses is subject to various limitations.

Sale or Other Taxable Disposition of Warrants. Upon a sale or other taxable disposition of a warrant other than by exercise as described above, a U.S. holder generally will recognize capital gain or loss in an amount equal to the difference, if any, between (i) the amount of cash and the fair market value of other property received and (ii) the holder's adjusted tax basis in the warrant. Any capital gain or loss recognized will be long-term capital gain or loss if the holder's holding period for the warrant is more than one year at the time of such disposition. For tax years beginning before 2011, non-corporate U.S. holders may be eligible for reduced rates of taxation on long-term capital gains. The deductibility of capital losses is subject to certain limitations.

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Adjustments to the Number of Shares Underlying the Warrants and/or Exercise Price of the Warrants. Certain adjustments to, or failure to adjust, the number of shares underlying the warrants and/or exercise price of the warrants may cause holders of warrants to be treated as having received a distribution on the warrants, to the extent any such adjustment or failure to adjust results in an increase in the proportionate interest of such holders in our company. Such a distribution would be taxable as a dividend, return of capital or capital gain in accordance with rules discussed above under "Summary of Tax Consequences with Respect to Our Common Stock U.S. Holders Distributions".

Backup Withholding and Information Reporting. Information returns may be filed with the IRS in connection with deemed payments of dividends on our warrants and the proceeds from a sale or other disposition of the warrants. A U.S. holder will not be subject to backup withholding tax on these payments if the holder provides its taxpayer identification number to the paying agent and complies with certain certification procedures or otherwise establishes an exemption from backup withholding. The amount of any backup withholding from a payment to a U.S. holder generally will be allowed as a credit against the U.S. holder's United States federal income tax liability and may entitle the U.S. holder to a refund, provided that the required information is furnished to the IRS.

Non-U.S. Holders

Adjustments to the Number of Shares Underlying the Warrants and/or Exercise Price of the Warrants. Certain adjustments to, or failure to adjust, the number of shares underlying the warrants and/or exercise price of the warrants may cause holders of warrants to be treated as having received a distribution on the warrants, to the extent any such adjustment or failure to adjust results in an increase in the proportionate interest of such holders in our company. Any such deemed distribution would be subject to withholding tax to the same extent as an actual distribution.

Exercise or Sale of Warrants. A non-U.S. holder should not recognize gain or loss on exercise of a warrant. Subject to the discussion below regarding backup withholding, a non-U.S. holder generally will not be subject to United States federal income tax on any gain recognized on the sale, exchange, redemption or other taxable disposition of a warrant unless:

such gain is effectively connected with the conduct by the non-U.S. holder of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment);

the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of the disposition, and certain other conditions are met; or

we are or have been a "United States real property holding corporation," or a USRPHC, for United States federal income tax purposes.

Gain described in the first bullet point above will be subject to United States federal income tax on a net income basis at regular graduated United States federal income tax rates in the same manner as if such holder were a resident of the United States. A non-U.S. holder that is a foreign corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders should consult their own tax advisors regarding any applicable income tax treaties that may provide for different rules.

Gain described in the second bullet point above will be subject to United States federal income tax at a flat 30% rate (or such lower rate specified by an applicable income tax treaty), but may be offset by United States source capital losses (even though the individual is not considered a resident of the United States) provided that the non-U.S. holder has timely filed United States federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we are not currently and do not anticipate becoming a USRPHC for United States federal income tax purposes. However, because the determination of whether we are a

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USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our other trade or business assets and our non-U.S. real property interests, there can be no assurance that we are not a USRPHC or will not become one in the future. If, however, we are or were to become a USRPHC, the United States federal income and withholding taxes relating to interests in USRPHCs nevertheless will not apply to gains derived from the sale or other disposition of warrants by a non-U.S. holder if the aggregate fair market value of the interests in us, including the warrants, treated as held by such non-U.S. holder is less than or equal to the fair market value of 5% of the shares of the regularly-traded class of our stock with the lowest fair market value, determined as of the date that such non-U.S. holder acquires our warrants. If the warrants were to be treated as regularly traded on an established securities market, such 5% test would be applied with respect to such warrants. No assurance can be given that we will not become a USRPHC, or that the warrants will be considered regularly traded, when a non-U.S. holder sells its warrants.

Information Reporting. Information returns may be filed with the IRS in connection with deemed payments of dividends on our warrants and the proceeds from a sale or other disposition of the warrants. A non-U.S. holder may be subject to U.S. backup withholding on these payments unless the holder complies with certification procedures to establish an exemption from backup withholding. The amount of any backup withholding from a payment to a non-U.S. holder will be allowed as a credit against the holder's United States federal income tax liability and may entitle the holder to a refund, provided that the required information is furnished to the IRS.

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Under the terms and subject to the conditions contained in an underwriting agreement dated August 20, 2009, the underwriters have agreed to purchase, and we have agreed to sell to them the number of units of common stock and warrants indicated in the table below:

Name	Number of Units
Jefferies & Company, Inc.	14,788,733
JMP Securities LLC	6,338,028
Total	21,126,761

The underwriters are offering the units of common stock and warrants subject to their acceptance of the units from us and subject to prior sale. The underwriting agreement provides that the obligations of the underwriters to pay for and accept delivery of the units offered by this prospectus supplement are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the units if any such units are taken.

Commissions and Expenses

The underwriters have advised us that they propose to offer the units to the public at the public offering price set forth on the cover page of this prospectus supplement and to certain dealers at that price less a concession not in excess of \$0.047 per unit. After the offering, the public offering price and concession to dealers may be reduced by the underwriters. No such reduction shall change the amount of proceeds to be received by us as set forth on the cover page of this prospectus supplement. The units are offered by the underwriters as stated herein, subject to receipt and acceptance by them and subject to their right to reject any order in whole or in part.

The following table shows the public offering price, the underwriting discounts and commissions payable to the underwriters by us and the proceeds, before expenses, to us.

	Per Unit	Total
Public offering price	\$ 1.420	\$ 30,000,000
Underwriting discounts and commissions paid by us	\$ 0.078	\$ 1,650,000
Proceeds to us, before expenses	\$ 1.342	\$ 28,350,000

We estimate expenses payable by us in connection with the offering of units, other than the underwriting discounts and commissions referred to above, will be approximately \$550,000, which includes \$75,000 that we have agreed to reimburse the underwriters for the fees incurred by them in connection with this offer.