HUDSON TECHNOLOGIES INC /NY
Form S-3/A
July 30, 2008

As filed with the Securities and Exchange Commission on July 30, 2008
Registration No. 333-151973

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

Amendment No. 1 to
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

HUDSON TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

New York	**13-3641539**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. employer identification no.)**

P.O. Box 1541
One Blue Hill Plaza
Pearl River, NY 10965
Telephone: (845) 735-6000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kevin J. Zugibe, Chairman and Chief Executive Officer
Hudson Technologies, Inc.
P.O. Box 1541
One Blue Hill Plaza
Pearl River, NY 10965
Telephone: (845) 735-6000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Robert J. Mittman, Esq.
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Blank Rome LLP

405 Lexington Avenue
New York, NY 10174
Telephone: (212) 885-5000
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APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: ¨

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ¨

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ¨

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

Large accelerated filer ¨		Accelerated filer ¨
Non-accelerated filer ¨	(Do not check if a smaller reporting company)	Smaller reporting company x

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine

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The information in this preliminary prospectus is not complete and may be changed. The securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, dated July 30, 2008

PROSPECTUS

$30,000,000

HUDSON TECHNOLOGIES, INC.

Common Stock
Preferred Stock
Warrants
Debt Securities

From time to time, we may offer and sell common stock, preferred stock, warrants or debt securities or any combination of securities described in this prospectus, either individually, or in units, at prices and on terms described in one or more supplements to this prospectus. The aggregate public offering price of the securities offered by this prospectus will not exceed $30 million.

This prospectus provides you with a general description of the securities that we may offer in one or more offerings. Each time we offer securities, we will provide a supplement to this prospectus that will contain more specific information about the terms of that offering. We may also add, update or change in the prospectus supplement any of the information contained in this prospectus.

You should read both this prospectus and the applicable prospectus supplement, as well as any documents incorporated by reference in this prospectus and/or the applicable prospectus supplement, before you make your investment decision.

Our common stock is traded on the Nasdaq Capital Market under the trading symbol “HDSN.” On July 29, 2008, the last reported sale price of our common stock on the Nasdaq Capital Market was $2.96 per share.

Investing in our securities involves risks. See the risks and uncertainties described under the heading “Risk Factors” contained in any applicable prospectus supplement and under similar headings in the other documents that are incorporated by reference into this prospectus.

This prospectus may not be used to sell any of our securities unless accompanied by a prospectus supplement.

The securities offered by this prospectus may be sold directly by us to investors, through agents designated from time to time or to or through one or more underwriters or dealers or in other manners as set forth under the heading “Plan of Distribution.” In addition, each time we offer securities, the supplement to this prospectus applicable to such offering will provide the specific terms of the plan of distribution for such offering and the net proceeds that we expect to receive from such offering.

The aggregate market value of our outstanding common stock held by non-affiliates is $31,096,025 based on 19,406,548 shares of outstanding common stock, of which 10,505,414 are held by non-affiliates, and a per share price

of $2.96 based on the closing sale price of our common stock on July 29, 2008. We have not offered any securities during the past twelve months pursuant to General Instruction I.B.6. of Form S-3.

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

The date of this prospectus is , 2008.

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SUMMARY

About Hudson Technologies, Inc.

We are a refrigerant services company providing innovative solutions to recurring problems within the refrigeration industry. Our products and services are primarily used in commercial air conditioning, industrial processing and refrigeration systems, including (i) refrigerant sales, (ii) refrigerant management services consisting primarily of reclamation of refrigerants and (iii) RefrigerantSide® Services performed at a customer's site, consisting of system decontamination to remove moisture, oils and other contaminants. In addition, RefrigerantSide® Services include predictive and diagnostic services for industrial and commercial refrigeration applications designed to predict potential catastrophic problems and identify inefficiencies in an operating system. Our Chiller Chemistry®, Chill Smart®, Fluid Chemistry, and Performance Optimization are predictive and diagnostic service offerings. We operate through our wholly-owned subsidiary, Hudson Technologies Company. Unless the context requires otherwise, references to the "Company", "Hudson", "we", "us", "our", or similar pronouns refer to Hudson Technologies, Inc. and its subsidiaries.

We are incorporated under the laws of the State of New York. Our executive offices are located at One Blue Hill Plaza, Pearl River, New York and our telephone number is (845) 735-6000.

Our web site address is www.hudsontech.com. We have included our web site address in this document as an inactive textual reference only, and the information contained in, or that can be accessed through, our web site does not constitute part of this prospectus.

RISK FACTORS

Any investment in our securities involves a high degree of risk. You should consider carefully the risk factors described in our periodic reports filed with the SEC (including the risks, uncertainties and assumptions discussed under the heading "Risk Factors" included in our most recent annual report on Form 10-KSB or 10-K, as the case may be, as such may be revised or supplemented prior to the completion of this offering by more recently filed quarterly reports on Form 10-Q, each of which is or upon filing will be incorporated herein by reference), which may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future, and those identified in any applicable prospectus supplement, as well as other information in this prospectus and any applicable prospectus supplement and the documents incorporated by reference herein before purchasing any of our securities. Each of these risk factors could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our securities.

ABOUT THIS PROSPECTUS

You should rely only on the information provided in or incorporated by reference in this prospectus, any prospectus supplement or documents to which we otherwise refer you. We have not authorized anyone else to provide you with different information. We are not making an offer of any securities in any jurisdiction where the offer is not permitted, and this document may only be used where it is legal to sell the securities described herein. You should not assume that the information in this prospectus, any prospectus supplement or any document incorporated by reference is accurate as of any date other than the date of the document in which such information is contained or such other date referred to in such document, regardless of the time of any sale or issuance of the securities.

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, to register an indeterminable number of shares of common stock, preferred stock, warrants and debt securities as may from time to time be offered for sale, either individually or in units, at indeterminate prices (up to an aggregate maximum offering price for all such securities of $30 million), using a "shelf" registration process. By using a shelf registration statement, we may offer and sell from time to time in one or more offerings the securities described in this prospectus.

This prospectus provides you with some of the general terms that may apply to an offering of our securities. Each time we sell securities under this shelf registration we will provide a prospectus supplement that will contain specific information about the terms of that specific offering, including the number and price per security (or exercise price) of the securities to be offered and sold in that offering and the specific manner in which such securities may be offered. The prospectus supplement may also add to, update or change any of the information contained in this prospectus. If there is an inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information in the prospectus supplement.

You should read carefully both this prospectus and the applicable prospectus supplement, together with the additional information incorporated by reference herein as described under the heading "Information Incorporated by Reference," before making an investment decision.

The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about us and the securities offered under this prospectus. That registration statement can be read at the SEC web site (www.sec.gov) or at the SEC offices mentioned under the heading "Where You Can Find More Information."

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference herein contain statements that we believe are "forward-looking statements" as that term is used in the Private Securities Litigation Reform Act of 1995 and are intended to enjoy protection of the safe harbor for forward-looking statements provided by that Act. These forward-looking statements are based on our current expectations, assumptions, estimates and projections about our business and our industry. Forward-looking statements include statements regarding our future financial position, performance and achievements, business strategy, and plans and objectives of management for future operations.

In some cases, you can identify forward-looking statements by terms such as "may," "should," "will," "could," "estimat "project," "predict," "potential," "continue," "anticipate," "believe," "plan," "seek," "expect," "future" and "intend" or the n terms or other comparable expressions which are intended to identify forward-looking statements. These statements are only predictions and are not guarantees of future performance. They are subject to known and unknown risks, uncertainties and other factors, some of which are beyond our control and difficult to predict and could cause our actual results to differ materially from those expressed or forecasted in, or implied by, the forward-looking statements. In evaluating these forward-looking statements, you should carefully consider the risks and uncertainties referred to under the caption "Risk Factors" above and elsewhere in this prospectus, including those described in documents incorporated by reference herein, and those described in any applicable prospectus supplement. Given these uncertainties, you should not place undue reliance on these forward-looking statements. In addition, these forward-looking statements reflect our view only as of the date they are made.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these cautionary statements.

USE OF PROCEEDS

Except as may be described otherwise in a prospectus supplement, we will add the net proceeds from the sale of securities under this prospectus to our general funds and will use them for working capital and/or general corporate purposes and/or acquisitions.

Pending the application of such proceeds, we expect to invest the proceeds in short-term, interest bearing, investment-grade marketable securities or money market obligations.

DESCRIPTION OF COMMON STOCK

Hudson is authorized to issue 50,000,000 shares of common stock. As of July 29, 2008, there were 19,406,548 shares of common stock outstanding.

The holders of common stock are entitled to one vote for each share held of record on all matters to be voted on by stockholders. There is no cumulative voting with respect to the election of directors, with the result that the holders of more than 50% of the shares voting for the election of directors can elect all of the directors then up for election. The holders of common stock are entitled to receive dividends when, as and if declared by our Board of Directors out of funds legally available therefor. In the event of liquidation, dissolution or winding up of Hudson, the holders of common stock are entitled to share in all assets remaining which are available for distribution to them after payment of liabilities and after provision has been made for each class of stock, if any, having preference over the common stock. Holders of shares of common stock have no conversion, preemptive or other subscription rights, and there are no redemption provisions applicable to the common stock. All of the outstanding shares of common stock are fully paid and nonassessable.

Transfer Agent

The transfer agent and registrar for the common stock is Continental Stock Transfer & Trust Company, New York, New York.

Anti-Takeover Effects of Provisions of Our Bylaws

Our By-laws provide that our Board of Directors is divided into two classes. Each class is to have a term of two years, with the term of each class expiring in successive years, and is to consist, as nearly as possible, of one-half of the number of directors constituting the entire Board. Under certain circumstances, at least two annual meetings of stockholders, instead of one, may be required to effect a change in a majority of our board of directors. The classification of our board into two separate classes, could discourage, delay, or prevent a takeover of us thereby preserving control by the current stockholders.

DESCRIPTION OF PREFERRED STOCK

Hudson is authorized to issue 5,000,000 shares of preferred stock. As of July 29, 2008, there were 150,000 shares of preferred stock designated as Series A Convertible Preferred Stock and no shares of preferred stock outstanding. Hudson has no intent to issue any shares of its Series A Convertible Preferred Stock.

This section describes the general terms of our preferred stock to which any prospectus supplement may relate. A prospectus supplement will describe the terms relating to any preferred stock to be offered by us in greater detail, and may provide information that is different from this prospectus. If the information in the prospectus supplement with respect to the particular preferred stock being offered differs from this prospectus, you should rely on the information in the prospectus supplement. A copy of our certificate of incorporation, as amended, has been incorporated by reference from our filings with the SEC as an exhibit to the registration statement. A certificate of amendment to our certificate of incorporation will specify the terms of the preferred stock being offered, and will be filed or incorporated by reference from a report that we file with the SEC as an exhibit to the registration statement before the preferred stock is issued.

Under our certificate of incorporation, as amended, we have the authority to issue 5,000,000 shares of preferred stock. The authorized preferred stock can be issued from time to time in one or more series. Our Board of Directors has the power, without stockholder approval, to issue shares of one or more series of preferred stock, at any time, for such consideration and with such relative rights, privileges, preferences and other terms as the Board may determine, including terms relating to dividend rates, redemption rates, liquidation preferences and voting, sinking fund and conversion or other rights. The rights and terms relating to any new series of preferred stock could adversely affect the voting power or other rights of the holders of the common stock or could be utilized, under certain circumstances, as a

method of discouraging, delaying or preventing a change in control of Hudson.

The following description of our preferred stock, and any description of our preferred stock in a prospectus supplement may not be complete. We urge you to read the applicable prospectus supplement(s) related to the particular series of preferred stock that we sell under this prospectus and to the actual terms and provisions contained in our certificate of incorporation and bylaws, each as amended from time to time.

Terms

Our board of directors will fix the rights, preferences, privileges, qualifications and restrictions of the preferred stock of each series that we sell under this prospectus and applicable prospectus supplements in the amendment to our certificate of incorporation relating to that series. We will incorporate by reference into the registration statement of which this prospectus is a part the form of any amendment to our certificate of incorporation that describes the terms of the series of preferred stock we are offering before the issuance of the related series of preferred stock. This description of the preferred stock in the amendment to our certificate of incorporation and any applicable prospectus supplement may include:

- the number of shares of preferred stock to be issued and the offering price of the preferred stock;
- the title and stated value of the preferred stock;
- dividend rights, including dividend rates, periods, or payment dates, or methods of calculation of dividends applicable to the preferred stock;
- whether dividends will be cumulative or non-cumulative, and if cumulative the date from which distributions on the preferred stock shall accumulate;
- right to convert the preferred stock into a different type of security;
- voting rights, if any, attributable to the preferred stock;
- rights and preferences upon our liquidation or winding up of our affairs;
- terms of redemption;
- preemption rights, if any;
- the procedures for any auction and remarketing, if any, for the preferred stock;
- the provisions for a sinking fund, if any, for the preferred stock;
- any listing of the preferred stock on any securities exchange;
- the terms and conditions, if applicable, upon which the preferred stock will be convertible into our common stock, including the conversion price (or manner of calculation thereof);
- a discussion of federal income tax considerations applicable to the preferred stock, if material;
- the relative ranking and preferences of the preferred stock as to dividend or other distribution rights and rights if we liquidate, dissolve or wind up our affairs;
- any limitations on issuance of any series of preferred stock ranking senior to or on a parity with the series of preferred stock being offered as to distribution rights and rights upon the liquidation, dissolution or winding up or our affairs; and

- any other specific terms, preferences, rights, limitations or restrictions of the preferred stock.

Rank

Unless otherwise indicated in the applicable supplement to this prospectus, shares of our preferred stock will rank, with respect to payment of distributions and rights upon our liquidation, dissolution or winding up, and allocation of our earnings and losses:

- senior to all classes or series of our common stock, and to all of our equity securities ranking junior to the preferred stock;
- on a parity with all equity securities issued by us, the terms of which specifically provide that these equity securities rank on a parity with the preferred stock; and
- junior to all equity securities issued by us, the terms of which specifically provide that these equity securities rank senior to the preferred stock.

Distributions

Subject to any preferential rights of any outstanding stock or series of stock, our preferred shareholders are entitled to receive distributions, when and as authorized by our board of directors, out of legally available funds, and share pro rata based on the number of shares of preferred stock, common stock and other equity securities outstanding.

Voting Rights

Unless otherwise indicated in the applicable supplement to this prospectus, or otherwise required under New York law, holders of our preferred stock will not have any voting rights.

Liquidation Preference

Upon the voluntary or involuntary liquidation, dissolution or winding up of our affairs, then, before any distribution or payment shall be made to the holders of any common stock or any other class or series of stock ranking junior to the preferred stock in our distribution of assets upon any liquidation, dissolution or winding up, the holders of each series of our preferred stock are entitled to receive, after payment or provision for payment of our debts and other liabilities, out of our assets legally available for distribution to shareholders, liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable supplement to this prospectus), plus an amount, if applicable, equal to all distributions accrued and unpaid thereon (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if the preferred stock does not have a cumulative distribution). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets. In the event that, upon our voluntary or involuntary liquidation, dissolution or winding up, the legally available assets are insufficient to pay the amount of the liquidating distributions on all of our outstanding preferred stock and the corresponding amounts payable on all of our stock of other classes or series of equity security ranking on a parity with the preferred stock in the distk outstanding with a weighted average exercise price of $0.13 and a weighted average remaining contractual term of 5.8 years; including options as to 36,274,425 shares currently exercisable, with a weighted average exercise price of $0.10 and a weighted average remaining contractual term of 5.0 years.

Stock-based compensation expense related to the 2006 Plan was $381,009 and $769,829 for the three month and six month periods ended June 30, 2009, as compared to $752,366 and $1,098,692 for the three month and six month periods ended June 30, 2008, respectively. The table below shows the allocation of stock-based compensation expense related to our stock option plan between general and administrative expense and research and development expense. As of June 30, 2009, there was $1,080,494 of unrecognized compensation expense related to stock-based compensation arrangements subject to the 2006 Plan, which is expected to be recognized over a weighted average period of 1.5 years.

	Three Months Ended June 30,		Six Months Ended June 30,	
Expense Allocated to:	2009	2008	2009	2008

General and Administrative Expense	$ 295,570	$ 405,058	$ 598,952	$ 715,867
Research and Development Expense	85,439	347,308	170,878	382,825
Total Stock-Based Compensation Expense	$ 381,009	$ 752,366	$ 769,830	$ 1,098,692

Compensatory Warrants

We may, from time to time, issue stock purchase warrants to consultants or others in exchange for services. As of June 30, 2009, there were a total of 2,700,000 shares of our common stock covered by outstanding stock warrants all of which are currently exercisable at a weighted average exercise price of $0.33 per share and a weighted-average remaining contractual life of 2.5 years. There was no expense associated with compensatory warrants during the three month or six month periods ended June 30, 2009; for the three month and six month periods ended June 30, 2008, we recorded $43,920 and $77,940 of expense, respectively, all of which was allocated to general and administrative expense. As of June 30, 2009, there was no unrecognized compensation expense related to compensatory warrant arrangements.

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Investment Warrants

In addition to outstanding stock options and compensatory warrants, as of June 30, 2009 we had stock purchase warrants covering a total of 66,322,634 shares of our common stock which were issued to investors in previous transactions. Such warrants have a weighted-average exercise price of $0.24 per share and a weighted-average remaining contractual life of 2.1 years.

5. Income Taxes

Because of our historically significant net operating losses, we have not paid income taxes since inception. We maintain deferred tax assets that reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. These deferred tax assets are comprised primarily of net operating loss carryforwards and also include amounts relating to nonqualified stock options and research and development credits. The net deferred tax asset has been fully offset by a valuation allowance because of the uncertainty of our future profitability and our ability to utilize the deferred tax assets. Utilization of operating losses and credits may be subject to substantial annual limitations due to ownership change provisions of Section 382 of the Internal Revenue Code. The annual limitation may result in the expiration of net operating losses and credits before utilization.

6. NIH Grant Funding

In September 2007, the National Institutes of Health (NIH) awarded us an Integrated Preclinical/Clinical AIDS Vaccine Development (IPCAVD) grant to support our HIV/AIDS vaccine program. The project period for the grant, which is renewable annually, covers a five year period which commenced October 2007, with an expected annual award of between $3 and $4 million per year (approximately $17 million in the aggregate). We are utilizing this funding to further our HIV/AIDS vaccine development, optimization and production. We record revenue associated with the grant as the related costs and expenses are incurred and such revenue is reported as a separate line item in our statements of operations.

7. Related Party Transactions

In June 2008, we entered into two subcontracts with Emory for the purpose of conducting research and development activities associated with our IPCAVD grant from the NIH (see Note 6). During the three and six month periods ended June 30, 2009, we recorded $245,819 and $464,451 of expense associated with these subcontracts as compared to $179,002 for both of the comparable periods of 2008. All amounts paid to Emory under these subcontracts are reimbursable to us pursuant to the NIH grant.

In March 2008, we entered into a consulting agreement with Donald Hildebrand, the Chairman of our Board of Directors and our former President and Chief Executive Officer, pursuant to which Mr. Hildebrand provides business and technical advisory services to the Company. The term of the consulting agreement began on April 1, 2008 and will end on December 31, 2009. During the three month and six month periods ended June 30, 2009, we recorded $14,400 and $28,800, respectively, of expense associated with the consulting agreement as compared to $16,000 for both of the comparable periods of 2008.

Item 2 Management s Discussion and Analysis of Financial Condition And Results of Operations

FORWARD LOOKING STATEMENTS

In addition to historical information, the information included in this Form 10-Q contains forward-looking statements. Forward-looking statements involve numerous risks and uncertainties and should not be relied upon as predictions of future events. Certain such forward-looking statements can be identified by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, approximately, intends, plans, pro anticipates or other variations thereof or comparable terminology, or by discussions of strategy, plans or intentions. Such forward-looking statements are necessarily dependent on assumptions, data or methods that may be incorrect or imprecise and may be incapable of being realized. The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

whether we can raise additional capital as and when we need it;

whether we are successful in developing our products;

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whether we are able to obtain regulatory approvals in the United States and other countries for sale of our products;

whether we can compete successfully with others in our market; and

whether we are adversely affected in our efforts to raise cash by the volatility and disruption of local and national economic, credit and capital markets and the economy in general.

Readers are cautioned not to place undue reliance on forward-looking statements, which reflect our management s analysis only. We assume no obligation to update forward-looking statements.

Management s discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, management evaluates its estimates and adjusts the estimates as necessary. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

Overview

GeoVax is a clinical-stage biotechnology company focused on developing human vaccines for diseases caused by Human Immunodeficiency Virus and other infectious agents. We have exclusively licensed from Emory University certain HIV vaccine technology which was developed in collaboration with the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention.

Our HIV vaccine candidates have successfully completed preclinical efficacy testing in non-human primates and Phase 1 clinical testing trials in humans. A Phase 2a human clinical trial for our preventative HIV vaccine candidate was initiated during the fourth quarter of 2008, and patient enrollment commenced in February 2009. The costs of conducting all of our human clinical trials to date have been borne by the HIV Vaccine Trials Network (HVTN), funded by the NIH, with GeoVax incurring costs associated with manufacturing the clinical vaccine supplies and other study support. HVTN is bearing the cost of conducting our ongoing Phase 2a human clinical study, but we cannot predict the level of support we will receive from HVTN for any additional clinical studies. Our operations are also partially supported by an Integrated Preclinical/Clinical AIDS Vaccine Development (IPCAVD) Grant from the NIH. The project period for the grant covers a five year period which commenced October 2007, with an expected annual award of between $3-4 million per year (approximately $17 million in the aggregate). The grant is subject to annual renewal, with the latest grant award covering the period from September 2008 through August 2009, and we expect the grant to be renewed for the next annual period of September 2009 through August 2010. We intend to pursue additional grants from the federal government, however, as we progress to the later stages of our vaccine development activities, government financial support may be more difficult to obtain, or may not be available at all. It will, therefore, be necessary for us to look to other sources of funding in order to finance our development activities.

We anticipate incurring additional losses for several years as we expand our drug development and clinical programs and proceed into higher cost human clinical trials. Conducting clinical trials for our vaccine candidates in development is a lengthy, time-consuming and expensive process. We do not expect to generate product sales from our development efforts for several years. If we are unable to successfully develop and market pharmaceutical products over the next several years, our business, financial condition and results of operations will be adversely impacted.

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Critical Accounting Policies and Estimates

Our significant accounting policies are summarized in Note 2 to our consolidated financial statements included in our Form 10-K for the year ended December 31, 2008. We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements:

Impairment of Long-Lived Assets. Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to the future net cash flows expected to be generated by such assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the discounted expected future net cash flows from the assets.

Revenue Recognition. We recognize revenue in accordance with the SEC s Staff Accounting Bulletin No. 101, Revenue Recognition in Financial Statements, as amended by Staff Accounting Bulletin No. 104, Revenue Recognition, (SAB 104). SAB 104 provides guidance in applying U.S. generally accepted accounting principles to revenue recognition issues, and specifically addresses revenue recognition for upfront, nonrefundable fees received in connection with research collaboration agreements. Our revenue consists primarily of government grant revenue, which is recorded as income as the related costs are incurred.

Stock-Based Compensation. Effective January 1, 2006, we adopted Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No.123 (revised 2004), *Share-Based Payments* (SFAS 123R), which requires the measurement and recognition of compensation expense for all share-based payments made to employees and directors based on estimated fair values on the grant date. SFAS 123R replaces SFAS 123, *Accounting for Stock-Based Compensation* , and supersedes Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees* . We adopted SFAS 123R using the prospective application method which requires us to apply the provisions of SFAS 123R prospectively to new awards and to awards modified, repurchased or cancelled after December 31, 2005. Awards granted after December 31, 2005 are valued at fair value in accordance with the provisions of SFAS 123R and recognized on a straight line basis over the service periods of each award.

Liquidity and Capital Resources

At June 30, 2009, we had cash and cash equivalents of $1,823,245 and total assets of $2,432,108, as compared to $2,191,180 and $3,056,241, respectively, at December 31, 2008. Working capital totaled $1,877,079 at June 30, 2009, compared to $2,455,412 at December 31, 2008.

Sources and Uses of Cash. We are a development-stage company (as defined by SFAS No. 7, *Accounting and Reporting by Development Stage Enterprises*) and do not have any products approved for sale. Due to our significant research and development expenditures, we have not been profitable and have generated operating losses since our inception in 2001. Our primary sources of cash are from sales of our equity securities and from government grant funding.

Cash Flows from Operating Activities. Net cash used in operating activities was $1,197,935 for the six month period ended June 30, 2009 as compared to $959,412 for the comparable period in 2008. Generally, the differences between years are due to fluctuations in our net losses which, in turn, result primarily from fluctuations in expenditures from our research activities, offset by net changes in our assets and liabilities.

In September 2007, the NIH awarded us an Integrated Preclinical/Clinical AIDS Vaccine Development (IPCAVD) grant to support our HIV/AIDS vaccine program. The project period for the grant, which is renewable annually, covers a five year period which commenced October 2007, with an expected annual award of between $3 and $4 million per year (approximately $17 million in the aggregate). We are utilizing this funding to further our HIV/AIDS vaccine development, optimization, and production for human clinical trial testing. The funding we receive pursuant to this grant is recorded as revenue at the time the related expenditures are incurred, and thus partially offsets our net losses.

Cash Flows from Investing Activities. Our investing activities have consisted predominantly of capital expenditures. Capital expenditures for the six months ended June 30, 2009 and 2008 were $-0- and $65,646, respectively.

Cash Flows from Financing Activities. Net cash provided by financing activities was $830,000 and $2,168,541 for the six month periods ended June 30, 2009 and 2008, respectively. The cash generated by our financing activities relates

to Fusion Capital during the 2009 period (see discussion below) and to the sale of our common stock to individual accredited investors during the 2008 period.

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In May 2008, we signed a Purchase Agreement with Fusion Capital Fund II, LLC, an Illinois limited liability company (Fusion Capital) which provides for the sale of up to $10 million of shares of our common stock. In connection with this agreement, we filed a registration statement related to the transaction with the SEC covering the shares that have been issued or may be issued to Fusion Capital under the Purchase Agreement. The SEC declared effective the registration statement on July 1, 2008, and we now have the right until July 31, 2010 to sell our shares of common stock to Fusion Capital from time to time in amounts ranging from $80,000 to $1 million per purchase transaction, depending on certain conditions as set forth in the Purchase Agreement. During the six months ended June 30, 2009, we received $830,000 from the sale of our common stock to Fusion Capital pursuant to this arrangement. Through June 30, 2009, we have received a cumulative total of $1,330,000 from Fusion Capital, leaving $8,670,000 available pursuant to the Purchase Agreement. Depending on general stock market conditions, and the prevailing price of our common stock leading up to the date upon which the Purchase Agreement ends (July 31, 2010), we may not be able to access the full amount remaining pursuant to the Purchase Agreement. The extent to which we rely on the Purchase Agreement as a source of funding will depend on a number of factors including the prevailing market price of our common stock and the extent to which we can secure working capital from other sources if we choose to seek such other sources.

In June 2009, we signed a proposal to discuss a cooperative arrangement with Cook County, Illinois (metro Chicago area), the Cook County Health and Hospital Systems Board, and the Ruth M. Rothstein s CORE Foundation (the Cook County Proposal). Our proposal contained provisions for seeking funds from private non-profit or government sources to pay for our overall clinical trial program. While it now appears that our proposal will not move forward, we intend to pursue other related opportunities to accelerate our therapeutic vaccine program.

We may receive up to $1.5 million through the exercise of an outstanding stock purchase warrant due to expire in September 2009, which has an exercise price below the current market price of our common stock; but there is no assurance that the holder of the warrant will choose to exercise it. We believe that our current working capital, combined with the proceeds from the IPCAVD grant awarded annually from the NIH and our minimum anticipated use of the Purchase Agreement with Fusion Capital, will be sufficient to support our planned level of operations at least through June 30, 2010. Even if we are able to access the remainder of the full $10 million under the Purchase Agreement with Fusion Capital, we may still need additional capital in the future to fully implement our business, operating and development plans. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, the consequences could be a material adverse effect on our business, operating results, financial condition and prospects. While we believe that we will be successful in obtaining the necessary financing to fund our operations through grants, the Purchase Agreement and/or other sources, there can be no assurances that such additional funding will be available to us on reasonable terms or at all.

Our capital requirements, particularly as they relate to product research and development, have been and will continue to be significant. We intend to seek FDA approval of our products, which may take several years. We will not generate revenues from the sale of our products for at least several years, if at all. We will be dependent on obtaining financing from third parties in order to maintain our operations, including our clinical program. Due to the existing uncertainty in the capital and credit markets, and adverse regional and national economic conditions which may persist or worsen, capital may not be available on terms acceptable to the Company or at all. If we fail to obtain additional funding when needed, we would be forced to scale back or terminate our operations, or to seek to merge with or to be acquired by another company.

We have no off-balance sheet arrangements that are likely or reasonably likely to have a material effect on our financial condition or results of operations.

Contractual Obligations

In July 2008, we signed a non-binding letter of intent for a joint collaboration and commercial license for the use of vaccine manufacturing technology owned by Vivalis S.A., a French biopharmaceutical company. Subsequent to the signing of the letter of intent, we paid a signing fee of $241,440 to Vivalis which was recorded as a prepaid expense, pending the outcome of our license agreement negotiations. During the period of time subsequent to the signing of the term sheet with Vivalis, in addition to negotiating the specific terms of the final license agreement, our respective scientific staffs have been working through a number of technical issues regarding the incorporation of Vivalis

manufacturing technology as it applies to production of the MVA component of our vaccine. During July 2009, we determined that it was in the best interests of the Company to suspend negotiation and implementation of the license agreement (together with the related financial obligations) until such time as the remaining technical issues are resolved. In conjunction with the determination to defer the license, we expect to incur additional costs of approximately $250,000 for payments to Vivalis in support of the continued and past scientific effort. Also, due to the uncertainty regarding the ultimate outcome of the license, as of June 30, 2009, we also reclassified to research and development expense the

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$241,440 upfront payment made to Vivalis which was previously recorded as a prepaid expense. We have made alternative arrangements for the production of the MVA component of our vaccine to be used in our planned clinical trials and there is no impact on the timetable for our ongoing Phase 2a (preventative) clinical trial or the initiation of our Phase 1 (therapeutic) clinical trial as a result of the deferral of the potential license of Vivalis technology.

As of June 30, 2009, we had no other material firm purchase obligations or commitments for capital expenditures, no committed lines of credit or other committed funding or long-term debt, and no lease obligations (operating or capital). We have employment agreements with our senior management team, each of which may be terminated with 30 days advance notice. We have no other contractual obligations, with the exception of commitments which are contingent upon the occurrence of future events.

Results of Operations

Net Loss

We recorded a net loss of $1,348,654 for the three months ended June 30, 2009 as compared to $1,284,352 for the three months ended June 30, 2008. For the six months ended June 30, 2009, we recorded a net loss of $2,210,163, as compared to a net loss of $1,966,862 for the six months ended June 30, 2008. Our net losses typically fluctuate due to the timing of activities and related costs associated with our vaccine research and development activities and our general and administrative costs, as described in more detail below.

Grant Revenue

During the three and six month periods ended June 30, 2009 we recorded grant revenue of $752,800 and $1,462,955, respectively, as compared to $376,078 and $976,069, respectively, during the comparable periods of 2008. During 2007, we were awarded an Integrated Preclinical/Clinical AIDS Vaccine Development (IPCAVD) grant by the NIH to support our HIV/AIDS vaccine program. The project period for the grant, which is renewable annually, covers a five year period which commenced October 2007, with an expected annual award of between $3 to $4 million per year (approximately $17 million in the aggregate). We are utilizing this funding to further our HIV/AIDS vaccine development, optimization and production. The grant is subject to annual renewal, with the latest grant award covering the period from September 2008 through August 2009. As of June 30, 2009, there is approximately $1.7 million remaining from the current grant year s award. Assuming that the remaining budgeted amounts under the grant are awarded annually to the Company, there is an additional $11.1 million available through the grant for the remainder of the original five year project period (ending August 31, 2012).

Research and Development

During the three month and six month periods ended June 30, 2009, we incurred $1,202,894 and $2,060,130, respectively, of research and development expense as compared to $759,208 and $1,362,686, respectively, during the three month and six month periods ended June 30, 2008. Research and development expense for the three month and six month periods of 2009 includes stock-based compensation expense of $85,439 and $170,878, respectively, while the comparable periods of 2008 include stock-based compensation expense of $347,308 and $382,825, respectively (see discussion under *Stock-Based Compensation Expense* below).

Research and development expenses can vary considerably on a period-to-period basis, depending on our need for vaccine manufacturing and testing of manufactured vaccine by third parties, and due to fluctuations in the timing of other external expenditures related to our IPCAVD grant from the NIH. The increase in research and development expense from the 2008 periods to the 2009 periods is due primarily to costs associated with our vaccine manufacturing activities in preparation for the commencement of Phase 2 clinical testing, costs associated with our activities funded by our NIH grant including costs related to our collaborative effort with Vivalis (see discussion above under *Contractual Obligations*), and also due to higher personnel costs associated with the addition of new scientific personnel. Our recently initiated Phase 2a clinical trial is being conducted and funded by the HVTN, but we are responsible for the manufacture of vaccine product to be used in the trial. We cannot predict the level of support we may receive from HVTN or other federal agencies (or divisions thereof) for our future clinical trials. We expect that our research and development costs will continue to increase in 2009 and beyond as we progress through the human clinical trial process leading up to possible product approval by the FDA.

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General and Administrative Expense

During the three month and six month periods ended June 30, 2009, we incurred general and administrative costs of $906,055 and $1,629,870, respectively, as compared to $917,702 and $1,623,344, respectively, during the three month and six month periods ended June 30, 2008. General and administrative costs include officers salaries, legal and accounting costs, patent costs, amortization expense associated with intangible assets, and other general corporate expenses. General and administrative expense for the three month and six month periods of 2009 include stock-based compensation expense of $295,570 and $598,952, respectively; while the comparable periods of 2008 include stock-based compensation expense of $468,561 and $831,640, respectively (see discussion under *Stock-Based Compensation Expense* below). We expect that our general and administrative costs will increase in the future in support of expanded research and development activities and other general corporate activities.

Stock-Based Compensation Expense

During the three month and six month periods ended June 30, 2009, we recorded total stock-based compensation expense of $381,009 and $769,829, respectively, which is included in research and development expense, or general and administrative expense according to the classification of cash compensation paid to the employee, consultant or director to which the stock compensation was granted. Stock-based compensation expense for the three month and six month periods ended June 30, 2008 was $815,869 and $1,214,465, respectively. In addition to amounts related to the issuance of stock options to employees, the figures for 2008 include amounts related to common stock and stock purchase warrants issued to consultants, and extension of existing stock option contracts. Stock-based compensation expense is calculated and recorded in accordance with the provisions of SFAS 123R. We adopted SFAS 123R using the prospective application method which requires us to apply its provisions prospectively to new awards and to awards modified, repurchased or cancelled after December 31, 2005. Awards granted after December 31, 2005 are valued at fair value in accordance with the provisions of SFAS 123R and recognized on a straight line basis over the service periods of each award. As of June 30, 2009, there was $1,080,494 of unrecognized compensation expense related to stock-based compensation arrangements.

Other Income

Interest income for the three month and six month periods ended June 30, 2009 was $7,495 and $16,882, respectively, as compared to $16,480 and $43,099, respectively, for the three months and six months ended June 30, 2008. The variances between periods are attributable to generally lower interest rates, and lower incremental cash balances available for investment during each respective period.

Item 3 Quantitative and Qualitative Disclosures About Market Risk

We do not currently have any market risk sensitive instruments held for trading purposes or otherwise, therefore, we do not have exposure to interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks.

Item 4 Controls and Procedures

Evaluation of disclosure controls and procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that the information required to be disclosed in reports filed or submitted under the Securities Exchange Act of 1934, as amended (Exchange Act), is (1) recorded, processed, summarized and reported within the time periods specified in the SEC s rules and forms and (2) accumulated and communicated to management, including the chief executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Our management has carried out an evaluation, under the supervision and with the participation of our President and our Principal Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, our President and Chief Financial Officer have concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission s rules and forms.

Changes in internal control over financial reporting

There was no change in our internal control over financial reporting that occurred during the three months ended June 30, 2009 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.