

JAZZ PHARMACEUTICALS INC

Form POS AM

March 19, 2010

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As filed with the Securities and Exchange Commission on March 19, 2010

Registration No. 333 -163999

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**POST-EFFECTIVE AMENDMENT NO. 1 TO**  
**FORM S-1**  
**ON**  
**FORM S-3**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**JAZZ PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction of Incorporation or Organization)

**05-0563787**  
(I.R.S. Employer Identification No.)

**3180 Porter Drive**

**Palo Alto, CA 94304**

**(650) 496-3777**

(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

**Bruce C. Cozadd**

**Chairman and Chief Executive Officer**

**3180 Porter Drive**

**Palo Alto, CA 94304**

**(650) 496-3777**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

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**Palo Alto, CA 94304**

**3000 El Camino Real**

**(650) 496-3777**

**Palo Alto, CA 94306-2155**

**(650) 843-5000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

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: ☒

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 ☒

**This filing constitutes a Post-Effective Amendment to the Registration Statement on Form S-1 (File No. 333-163999), which was declared effective on December 31, 2009. This Post-Effective Amendment shall hereafter become effective in accordance with Section 8(c) of the Securities Act of 1933, as amended, on such date as the Securities and Exchange Commission, acting pursuant to Section 8(c), may determine.**

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**EXPLANATORY NOTE**

On December 23, 2009, the registrant filed a registration statement with the Securities and Exchange Commission (the Commission ) on Form S-1 (Registration No. 333-163999), which was declared effective by the Commission on December 31, 2009 (the Form S-1 ), to register for resale by the selling stockholders named in the prospectus up to 562,192 shares of the registrant's common stock, \$0.0001 par value, issuable upon the exercise of warrants.

This Post-Effective Amendment No. 1 to Form S-1 on Form S-3 is being filed by the registrant to convert the Form S-1 into a registration statement on Form S-3, and contains an updated prospectus relating to the offering and sale of the shares that were registered for resale on the Form S-1.

All filing fees payable in connection with the registration of the shares of the common stock covered by the Form S-1 were paid by the registrant at the time of the initial filing of the Form S-1.

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**The information in this prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, Dated March 19, 2010**

**PROSPECTUS**

**562,192 Shares**

**Common Stock**

This prospectus relates to the disposition from time to time of up to 562,192 shares of our common stock issuable upon the exercise of outstanding warrants that are held by the selling stockholders named in this prospectus. We are not selling any common stock under this prospectus and will not receive any of the proceeds from the sale of shares by the selling stockholders.

The selling stockholders identified in this prospectus, or their permitted transferees or other successors-in-interest, may offer the shares from time to time through public or private transactions at prevailing market prices, at prices related to prevailing market prices, or at privately negotiated prices. We provide more information about how the selling stockholders may sell their shares of common stock in the section entitled **Plan of Distribution** beginning on page 10 of this prospectus. We will not be paying any underwriting discounts or commissions in connection with any offering of common stock under this prospectus.

Our common stock is listed on The NASDAQ Global Market under the symbol **JAZZ**. On March 12, 2010, the last reported sale price of our common stock on The NASDAQ Global Market was \$11.35.

***Investing in our common stock involves a high degree of risk. You should review carefully the risks and uncertainties incorporated by reference herein under the heading Risk Factors contained in this prospectus, and under similar headings in the other documents that are filed after the date hereof and incorporated by reference into this prospectus.***

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                      , 2010.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using the shelf registration process. Under this process, the selling stockholders may from time to time, in one or more offerings, sell the common stock described in this prospectus.

You should rely only on the information contained in or incorporated by reference into this prospectus (as supplemented and amended). We have not authorized anyone to provide you with different information. This document may only be used where it is legal to sell these securities. The information contained in this prospectus (and in any supplement or amendment to this prospectus) is accurate only as of the date on the front of the document, and any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any sale of our common stock.

We urge you to read carefully this prospectus (as supplemented and amended), together with the information incorporated herein by reference as described under the heading Where You Can Find More Information, before deciding whether to invest in any of the common stock being offered.

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### **PROSPECTUS SUMMARY**

*This summary may not contain all of the information that may be important to you. You should read the entire prospectus (as supplemented and amended), including the financial data and related notes, risk factors and other information incorporated by reference in this prospectus, before making an investment decision.*

#### **Jazz Pharmaceuticals, Inc.**

#### **Overview**

We are a specialty pharmaceutical company that, since our inception, has focused on the development and commercialization of pharmaceutical products to meet important unmet medical needs in neurology and psychiatry. With our JZP-6 product candidate for the treatment of fibromyalgia, for which a new drug application, or NDA, was accepted for filing by the U.S. Food and Drug Administration, or FDA, in February 2010, we expanded our development activities to include rheumatology and pain management. We currently market two products: Xyrem (sodium oxybate) for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy; and Luvox CR (fluvoxamine maleate) for the treatment of both obsessive compulsive disorder and social anxiety disorder. We are building a portfolio of products through a combination of internal development, acquisition and in-licensing activities, and we utilize our specialty sales force to promote our products in our target markets.

Our marketed products and late-stage product candidate are:

*Xyrem® (sodium oxybate) oral solution.* Xyrem is the only product approved by the FDA for the treatment of both excessive daytime sleepiness and cataplexy in patients with narcolepsy. Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles. We promote Xyrem in the United States for its FDA-approved indications to sleep specialists, neurologists, pulmonologists and psychiatrists through our specialty sales force. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB currently markets Xyrem in 14 countries in Europe.

*Luvox CR® (fluvoxamine maleate) Extended-Release Capsules.* Once-daily Luvox CR was approved by the FDA for the treatment of both obsessive compulsive disorder and social anxiety disorder in February 2008. We began promoting Luvox CR through our specialty sales force in April 2008. Luvox CR was developed by Solvay Pharmaceuticals, Inc., or Solvay, in collaboration with Elan Pharma International Limited, or Elan. We obtained the exclusive rights to market and distribute Luvox CR in the United States from Solvay in January 2007. Solvay retained the rights to market and distribute Luvox CR outside of the United States.

*JZP-6 (sodium oxybate).* We are developing sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia. Our NDA for JZP-6 was accepted for filing by the FDA in February 2010. If our NDA is approved by the FDA, we expect to market JZP-6 in the United States to physicians who treat fibromyalgia patients, through an expanded specialty sales force and/or in partnership with third parties. We have licensed to UCB the commercialization rights to JZP-6 in 54 countries outside of the United States in exchange for development funding, commercial milestones and royalties.

Our other product candidates in clinical development are oral tablet forms of sodium oxybate; JZP-8 (intranasal clonazepam), being developed for the treatment of recurrent acute repetitive seizures in epilepsy patients who continue to have seizures while on stable anti-epileptic regimens; JZP-4 (elpetrigine), being developed for the treatment of epilepsy and bipolar disorder; and JZP-7 (ropinirole gel), being developed for the treatment of restless legs syndrome. We are actively seeking development partners for JZP-4, JZP-7 and JZP-8, and we do not anticipate significant spending on these programs in the near term until we obtain a partner or otherwise obtain additional funding.

#### **Corporate Information**

We were incorporated in California in March 2003, and we reincorporated in Delaware in January 2004. Our principal executive office is located at 3180 Porter Drive, Palo Alto, California 94304. Our telephone number is (650) 496-3777. Our website address is [www.jazzpharmaceuticals.com](http://www.jazzpharmaceuticals.com). Information contained in, or accessible through, our website does not constitute a part of this prospectus.



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Unless the context indicates otherwise, as used in this prospectus, the terms Jazz Pharmaceuticals, we, us and our refer to Jazz Pharmaceuticals Inc., a Delaware corporation, and its subsidiaries. We own or have rights to various copyrights, trademarks, and trade names used in our business, including the following: Jazz Pharmaceuticals<sup>®</sup>; Xyrem<sup>®</sup> (sodium oxybate) oral solution; Luvox CR<sup>®</sup> (fluvoxamine maleate) Extended-Release Capsules; and Luvox<sup>®</sup> (fluvoxamine). All other trademarks or trade names referred to in this prospectus are the property of their respective owners.

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**The Offering**

The selling stockholders named in this prospectus may offer and sell up to 562,192 shares of our common stock, which shares of common stock are issuable upon the exercise of outstanding warrants. These shares will become eligible for sale by the selling stockholders under this prospectus only as the warrants are exercised. Our common stock is currently listed on The NASDAQ Global Market under the symbol JAZZ. Shares of common stock that may be offered in this offering, when issued and paid for upon exercise in accordance with the terms of the warrants, will be fully paid and non-assessable. We will not receive any of the proceeds of sales by the selling stockholders of any of the common stock covered by this prospectus. Throughout this prospectus, when we refer to the shares of our common stock being registered on behalf of the selling stockholders, we are referring to the shares underlying the warrants issued to the selling stockholders pursuant to a senior secured note and warrant purchase agreement that we and JPI Commercial, LLC, our wholly-owned subsidiary, entered into with the selling stockholders and certain other purchasers on March 14, 2008, as amended, or the Senior Note Agreement. In addition, when we refer to the selling stockholders throughout this prospectus, we are referring to the purchasers of \$40.0 million aggregate principal amount of senior secured notes due June 24, 2011, or the Senior Notes, and the related warrants to purchase 562,192 shares of our common stock under the Senior Note Agreement and, as applicable, any donees, pledgees, transferees or other successors-in-interest selling shares received after the date of this prospectus from a selling stockholder as a gift, pledge, or other non-sale related transfer.

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**RISK FACTORS**

Investing in our common stock involves a high degree of risk. You should carefully review the risks and uncertainties described under the heading "Risk Factors" contained in our Annual Report on Form 10-K for the year ended December 31, 2009, which has been filed with the Securities and Exchange Commission and is incorporated by reference in this prospectus, as updated or superseded by the risks and uncertainties described under similar headings in the other documents that are filed after the date hereof and incorporated by reference into this prospectus. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations.

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**DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the documents incorporated by reference into this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements are based on our current expectations, assumptions, estimates and projections about our business and our industry, and involve known and unknown risks, uncertainties and other factors that may cause our results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by the forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

future performance from Xyrem and Luvox CR sales efforts;

the potential approval by the FDA of our NDA for our JZP-6 product candidate, and the submission and timing of applications for regulatory approval of our JZP-6 product candidate in other countries;

our expectations with respect to the potential commercialization of any of our product candidates, including our JZP-6 product candidate;

our ability to comply with the Senior Note Agreement on an ongoing basis;

development progress and expectations with respect to our product candidates;

our expectations regarding our ability to obtain adequate clinical and commercial supplies of our product candidates and products from our single source suppliers and manufacturers; and

our estimates regarding our anticipated capital requirements and our need for additional funding.

In some cases, you can identify forward-looking statements by terms such as anticipate, believe, could, estimate, expect, intend, may, potential, predict, project, should, will, would and similar expressions intended to identify forward-looking statements. While we believe have a reasonable basis for each forward-looking statement, we caution you that these statements are based on a combination of facts and factors currently known by us and our projections of the future, about which we cannot be certain. We discuss many of these risks, uncertainties and other factors in greater detail under the heading Risk Factors contained in our Annual Report on Form 10-K for the year ended December 31, 2009, which has been filed with the Securities and Exchange Commission and is incorporated by reference in this prospectus, as updated or superseded by the risks and uncertainties described under similar headings in the other documents that are filed after the date hereof and incorporated by reference into this prospectus. Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date such forward-looking statements are made. You should read carefully this prospectus and the information incorporated herein by reference as described under the heading Where You Can Find More Information in this prospectus completely and with the understanding that our actual future results may be materially different from what we expect. We hereby qualify all of our forward-looking statements by these cautionary statements.

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

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**USE OF PROCEEDS**

The selling stockholders will receive all of the net proceeds from sales of the common stock sold pursuant to this prospectus. The shares covered by this prospectus are issuable upon exercise of warrants to purchase up to 562,192 shares of our common stock issued pursuant to a senior secured note and warrant purchase agreement described below under the heading **Selling Stockholders** . Upon exercise of the warrants for cash, the selling stockholders would pay us an exercise price of \$9.34 per share of common stock, subject to any adjustment pursuant to the terms of the warrants, or an aggregate of approximately \$5.25 million if the warrants are exercised in full for cash. The proceeds to us of such warrant exercises, if any, are expected to be used for working capital and general corporate purposes. The warrants are also exercisable on a cashless basis, and if the warrants are exercised on a cashless basis, we would not receive any cash payment from the selling stockholders upon any such exercise of the warrants.

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### **SELLING STOCKHOLDERS**

On March 14, 2008, we and JPI Commercial, LLC, or JPIC, our wholly-owned subsidiary, entered into the Senior Note Agreement among the purchasers named therein, us and JPIC, as well as certain related agreements. Under the terms of the Senior Note Agreement, JPIC issued and sold to the selling stockholders \$40.0 million in aggregate principal amount of Senior Notes and we issued warrants to the selling stockholders to purchase 562,192 shares of our common stock on March 17, 2008. In connection with the sale and issuance of Senior Notes and warrants pursuant to the Senior Note Agreement, a total of \$80.0 million in aggregate principal amount of outstanding senior secured notes of Orphan Medical, LLC, or Orphan Medical, our wholly-owned subsidiary, were exchanged by the holders of such senior secured notes for the same principal amount of new Senior Notes under the Senior Note Agreement. In connection with the transaction, we also entered into a registration rights agreement with the selling stockholders pursuant to which we agreed to file a registration statement to cover the resale of the shares underlying the warrants issued to the selling stockholders pursuant to the Senior Note Agreement.

Each warrant that was issued pursuant to the Senior Note Agreement is exercisable in whole or in part at any time until March 17, 2013 and carries an exercise price of \$9.34 per share. The exercise price and number of shares of common stock issuable upon exercise of the warrants may be adjusted in certain circumstances, including subdivisions and stock splits, stock dividends, reorganizations, reclassifications, consolidations, mergers or sales of assets and upon the issuance of certain assets or securities to holders of our common stock, as applicable. The warrants may be exercised for cash or on a cashless basis, in which case we will deliver, upon exercise, the number of shares with respect to which the warrant is being exercised reduced by a number of shares having a value (based on a five day average of the closing sales price of our common stock) equal to the aggregate exercise price of the shares with respect to which the warrant is being exercised.

In November 2009, we entered into an amendment and waiver agreement pursuant to which the holders of the Senior Notes issued pursuant to the Senior Note Agreement waived certain prior events of default under the Senior Note Agreement and the other agreements related thereto, and pursuant to which, among other things, the exercise price of the warrants that we issued to the selling stockholders pursuant to the Senior Note Agreement was reduced from \$14.23 to \$9.34 per share, and certain of our registration obligations with respect to these warrants were amended. Pursuant to the registration rights agreement, as amended, we agreed to file the registration statement, of which this prospectus is a part, to cover the resale of the shares underlying the warrants issued to the selling stockholders pursuant to the Senior Note Agreement and to keep such registration statement continuously effective until the earlier of (i) the date on which all of the shares covered by this prospectus have been sold pursuant to the registration statement of which this prospectus is a part or (ii) one year from the date the registration statement of which this prospectus is a part was declared effective by the SEC on December 31, 2009, provided that such one year period is subject to extension for the number of days that the effectiveness of the registration statement of which this prospectus is a part is suspended.

We are registering the above-referenced shares to permit each of the selling stockholders and their donees, pledgees, transferees or other successors-in-interest that receive their shares after the date of this prospectus to resell or otherwise dispose of the shares in the manner contemplated under Plan of Distribution in this prospectus (as supplemented and amended). This prospectus covers the sale or other disposition by the selling stockholders or their transferees of up to the total number of shares of common stock issuable upon exercise of the warrants issued to the selling stockholders pursuant to the Senior Note Agreement. Throughout this prospectus, when we refer to the shares of our common stock being registered on behalf of the selling stockholders, we are referring to the shares underlying the warrants issued to the selling stockholders pursuant to the Senior Note Agreement, and when we refer to the selling stockholders in this prospectus, we are referring to the purchasers of \$40.0 million aggregate principal amount of Senior Notes and the related warrants to purchase 562,192 shares of our common stock under the Senior Note Agreement and, as applicable, any donees, pledgees, transferees or other successors-in-interest selling shares received after the date of this prospectus from a selling stockholder as a gift, pledge, or other non-sale related transfer.

The following table sets forth the name of each selling stockholder, the number of shares beneficially owned by the selling stockholders and issuable to the selling stockholders upon a cash exercise of the warrants, the number of shares that may be offered under this prospectus and the number of shares of our common stock beneficially owned by the selling stockholders assuming all of the shares covered hereby are sold. The number of shares in the column Number of Shares of Common Stock Being Offered represents all of the shares that a selling stockholder may offer under this prospectus. The selling stockholders may sell some, all or none of their shares. We do not know how long the selling stockholders will hold the shares before selling them, and we currently have no agreements, arrangements or understandings with the selling stockholders regarding the sale or other disposition of any of the shares. The shares covered hereby may be offered from time to time by the selling stockholders.

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The information set forth below is based upon information obtained from the selling stockholders and upon information in our possession regarding the issuance of the warrants to the selling stockholders pursuant to the Senior Note Agreement. For purposes of the table below, we have assumed that the selling stockholders exercised the warrants in full pursuant to a cash exercise. The information regarding shares to be beneficially owned after the offering assumes the sale of all shares offered by the selling stockholders under this prospectus. The percentage of shares owned prior to and after the offering is based both on 31,535,888 shares of our common stock outstanding as of March 17, 2010, and on the assumption that all shares of common stock issuable upon exercise of the warrants held by a particular selling stockholder are outstanding as of that date. All share and per share amounts have been adjusted to give effect to the 1-for-11.06701 reverse stock split of our common stock and preferred stock effected on May 15, 2007.

Name of Selling Stockholder	Shares of Common Stock Beneficially Owned Prior to Offering(1)		Number of Shares of Common Stock Being Offered	Shares of Common Stock to be Beneficially Owned After Offering(1)	
	Number	Percent		Number	Percent
LB I Group Inc.(2)	1,020,846(3)(4)	3.14%	470,836	550,010(4)	1.71%
Deep Cove Mezzanine, LLC(5)	97,190(6)	0.31%	48,082	49,108	0.16%
General Electric Pension Trust(7)	121,847(8)	0.38%	43,274	78,573	0.25%

- (1) Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the shares indicated in the table.
- (2) The business address of LB I Group Inc. is 1271 Avenue of the Americas, New York, NY 10020. LB I Group was at one time a wholly-owned subsidiary of Lehman Brothers Inc., which is a registered broker-dealer, and is currently a wholly-owned subsidiary of Lehman ALI Inc., which in turn is a wholly-owned subsidiary of Lehman Brothers Holdings Inc. LB I Group Inc. has represented to us that it is not acting as an underwriter in this offering, it purchased the warrants in the ordinary course of business, and it has no agreements or understandings, and at the time of the purchase of the warrants it had no agreements or understandings, directly or indirectly, with any person to distribute the warrants or the shares of common stock issuable upon exercise of the warrants it is offering under this prospectus. Lehman Brothers Holdings Inc., a public reporting company, is the parent company of Lehman Brothers Inc. Commencing on September 15, 2008, Lehman Brothers Holdings Inc. and certain of its affiliates commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Lehman Brothers Holdings Inc. continues to operate its business as a debtor in possession. On September 19, 2008, a proceeding was commenced under the Securities Investor Protection Act of 1970 ("SIPA") with respect to Lehman Brothers Inc. A trustee appointed under SIPA is administering the estate of Lehman Brothers Inc.
- (3) Includes 470,836 shares of our common stock that the selling stockholder has the right to acquire through the exercise of a warrant issued pursuant to the Senior Note Agreement. Such shares are being offered for resale pursuant to this prospectus. Also includes an aggregate of 550,010 shares of our common stock that the selling stockholder has the right to acquire through the exercise of warrants (the "LB Prior Warrants"), a portion of which were issued by us in connection with the sale of senior secured notes by Orphan Medical in June 2005 and a portion of which were acquired by the selling stockholder from other purchasers of senior secured notes issued by Orphan Medical in June 2005, which notes were exchanged for Senior Notes pursuant to the Senior Note Agreement. The shares of our common stock underlying the LB Prior Warrants are not being offered for resale pursuant to this prospectus. LB I Group, Inc. has represented to us that the above-referenced shares and warrants are currently in the possession of Lehman Brothers Inc., which does not have voting or investment power with respect to such shares and warrants. LB I Group Inc. has filed a customer claim in Lehman Brothers Inc.'s SIPA proceeding with respect to such shares and warrants, but it remains unknown whether all or a portion of the shares or warrants will ultimately be distributed to LB I Group Inc. on account of such claim. It is possible that the shares or warrants will be sold or otherwise distributed to third parties by the SIPA trustee in accordance with SIPA and orders of the United States Bankruptcy Court for the Southern District of New York. It is also possible that any shares or warrants returned by Lehman Brothers Inc. to LB I Group Inc. could be transferred to claimants in connection with one or more plans of Lehman Brothers Holdings Inc. or its debtor affiliates pursuant to the Bankruptcy Code.

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- (4) Excludes 317,076 shares held by Lehman Brothers P.A., LLC, an affiliate of the selling stockholder. Such shares are currently in the possession of Lehman Brothers Inc., which does not have voting or investment power with respect to such shares. Lehman Brothers P.A., LLC has filed a customer claim in Lehman Brothers Inc.'s SIPA proceeding, but it remains unknown whether all or a portion of such shares will ultimately be distributed to Lehman Brothers P.A., LLC on account of such claim. It is possible that the shares will be sold or otherwise distributed to third parties by the SIPA trustee in accordance with SIPA and orders of the United States Bankruptcy Court for the Southern District of New York. It is also possible that any shares returned by Lehman Brothers Inc. to Lehman Brothers P.A., LLC could be transferred to claimants in connection with one or more plans of Lehman Brothers Holdings Inc. or its debtor affiliates pursuant to the Bankruptcy Code. Lehman Brothers P.A., LLC is wholly-owned by Property Asset Management Inc., which is wholly-owned by Lehman ALI Inc., which in turn is wholly-owned by Lehman Brothers Holdings Inc. Also excludes 19 shares held by Lehman Brothers OTC Derivatives Inc., an affiliate of the selling stockholder. Lehman Brothers OTC Derivatives Inc., an OTC derivatives dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended, is wholly-owned by Lehman Brothers Holdings Inc. The selling stockholder disclaims beneficial ownership of all shares held by Lehman Brothers P.A., LLC and Lehman Brothers OTC Derivatives Inc.
- (5) The business address of Deep Cove Mezzanine, LLC is 300 North LaSalle, Suite 4900, Chicago, IL 60654.
- (6) Includes 48,082 shares of our common stock that the selling stockholder has the right to acquire through the exercise of a warrant issued pursuant to the Senior Note Agreement. Such shares are being offered for resale pursuant to this prospectus. Also includes 49,108 shares of our common stock that the selling stockholder has the right to acquire through the exercise of a warrant (the "DC Prior Warrant") issued by us in connection with the sale of senior secured notes by Orphan Medical in June 2005, which notes were exchanged for Senior Notes pursuant to the Senior Note Agreement. The shares of our common stock underlying the DC Prior Warrant are not being offered for resale pursuant to this prospectus. Reeve B. Waud has sole voting and investment control over such securities.
- (7) The business address of General Electric Pension Trust is c/o GE Asset Management Incorporated, 3001 Summer Street, P. O. Box 7900, Stamford, CT 06904. GE Asset Management Incorporated, or GEAM, a wholly-owned subsidiary of General Electric Company, serves as investment manager to General Electric Pension Trust, or GEPT. In its capacity as investment manager to GEPT, GEAM has voting and investment control over the securities held by GEPT. The trustees of GEPT, who have ultimate voting and investment authority over the securities held by GEPT, are employees of GEAM. GEPT is affiliated with each of Banque Artesia Nederland N.V., Garanti Securities, GE Investment Distributors, GE Capital Markets, Inc., GE Capital Markets (Canada) Ltd., GE Capital Limited (UK) and GE Corporate Finance Bank SAS, each of which are registered broker-dealers. GEPT has represented to us that it is not acting as an underwriter in this offering, it purchased the warrants in the ordinary course of business, and it has no agreements or understandings, and at the time of the purchase of the warrants it had no agreements or understandings, directly or indirectly, with any person to distribute the warrants or the shares of common stock issuable upon exercise of the warrants it is offering under this prospectus.
- (8) Includes 43,274 shares of our common stock that the selling stockholder has the right to acquire through the exercise of a warrant issued pursuant to the Senior Note Agreement. Such shares are being offered for resale pursuant to this prospectus. Also includes 78,573 shares of our common stock that the selling stockholder has the right to acquire through the exercise of a warrant (the "GEPT Prior Warrant") issued by us in connection with the sale of senior secured notes by Orphan Medical in June 2005, which notes were exchanged for Senior Notes pursuant to the Senior Note Agreement. The shares of our common stock underlying the GEPT Prior Warrant are not being offered for resale pursuant to this prospectus.

### **Relationship with LB I Group Inc.**

LB I Group Inc., or LB I Group, which serves as the collateral agent under the Senior Note Agreement, is a wholly-owned subsidiary of Lehman ALI Inc., a wholly-owned subsidiary of Lehman Brothers Holdings Inc. and an entity which, along with Lehman Brothers Holdings Inc. is affiliated with certain of our stockholders. LB I Group received an arrangement fee of \$800,000 in connection with the transactions contemplated by the Senior Note Agreement. Immediately prior to the closing of the sale of Senior Notes and warrants pursuant to the Senior Note Agreement, LB I Group held a majority of the senior secured notes issued by Orphan Medical, and LB I Group currently holds a majority of the Senior Notes issued pursuant to the Senior Note Agreement (including Senior Notes issued in exchange for the senior secured notes of Orphan Medical).

Based on information supplied to us by LB I Group, the beneficial ownership of our common stock by LB I Group, Lehman Brothers Holdings Inc. and their affiliates as of March 17, 2010 is as follows: 1,020,846 shares that LB I Group has the right to acquire through the exercise of warrants; 19 shares held by Lehman Brothers OTC Derivatives Inc.; and 317,076 shares held by Lehman Brothers P.A., LLC. LB I Group provided us information only as of March 17, 2010. Information with respect to the beneficial ownership of such entities other than LB I Group may have changed since March 17, 2010.



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During the period from February 2004 to December 2006, we sold an aggregate of 662,645 shares of Series B Preferred Stock to entities affiliated with Lehman Brothers Holdings Inc., at a per share price of \$15.09, which were converted into an equal number of shares of our common stock in connection with the closing of our initial public offering in June 2007. In June 2005, in connection with the issuance of senior secured notes by Orphan Medical, including \$30.0 million in principal amount to LB I Group, we issued a warrant to purchase 294,648 shares of our Series BB Preferred Stock to LB I Group. In March 2006, LB I Group purchased an additional \$1.0 million of senior secured notes issued by Orphan Medical from a third party and received an additional warrant to purchase 9,822 shares of our Series BB Preferred Stock. The aggregate warrants to purchase 304,470 shares of Series BB Preferred Stock were converted into warrants to purchase an equal number of shares of our common stock in connection with the closing of our initial public offering in June 2007. In March 2008, LB I Group purchased an additional \$25.0 million of senior secured notes issued by Orphan Medical from third parties and received an additional warrant to purchase 245,540 shares of our common stock. The senior secured notes issued by Orphan Medical were exchanged for Senior Notes pursuant to the Senior Note Agreement.

On May 31, 2007, our Registration Statement on Form S-1/A was declared effective for our initial public offering, pursuant to which we sold 6,000,000 shares of our common stock at a public offering price of \$18.00 per share. Lehman Brothers Inc. acted as a representative of the underwriters in the initial public offering.

LB I Group was at one time a wholly-owned subsidiary of Lehman Brothers Inc., which is a registered broker-dealer, and is currently a wholly-owned subsidiary of Lehman ALI Inc., which in turn is a wholly-owned subsidiary of Lehman Brothers Holdings Inc. LB I Group has represented to us that it is not acting as an underwriter in this offering, it purchased the warrants in the ordinary course of business, and it has no agreements or understandings, and at the time of the purchase of the warrants it had no agreements or understandings, directly or indirectly, with any person to distribute the warrants or the shares of common stock issuable upon exercise of the warrants it is offering under this prospectus. Lehman Brothers Holdings Inc., a public reporting company, is the parent company of Lehman Brothers Inc. Commencing on September 15, 2008, Lehman Brothers Holdings Inc. and certain of its affiliates commenced cases under Bankruptcy Code. Lehman Brothers Holdings Inc. continues to operate its business as a debtor in possession. On September 19, 2008, a proceeding was commenced under the SIPA with respect to Lehman Brothers Inc. A trustee appointed under SIPA is administering the estate of Lehman Brothers Inc.

As noted in the footnotes to the table above, LB I Group has represented to us that the above-referenced shares and warrants are currently in the possession of Lehman Brothers Inc., which does not have voting or investment power with respect to such shares and warrants. A customer claim in Lehman Brothers Inc.'s SIPA proceeding with respect to such shares and warrants, but it remains unknown whether all or a portion of the shares or warrants will ultimately be distributed to LB I Group or its affiliates on account of such claim. It is possible that the shares or warrants will be sold or otherwise distributed to third parties by the SIPA trustee in accordance with SIPA and orders of the United States Bankruptcy Court for the Southern District of New York. It is also possible that any shares or warrants returned by Lehman Brothers Inc. to LB I Group or its affiliates could be transferred to claimants in connection with one or more plans of Lehman Brothers Holdings Inc. or its debtor affiliates pursuant to the Bankruptcy Code.

With the exception of the foregoing, LB I Group has not had any position, office or other material relationship with us or our affiliates in the past three years.

### **Relationship with Deep Cove Mezzanine, LLC**

During the period from February 2004 to December 2006, we sold an aggregate of 477,106 shares of Series B Preferred Stock to Waud Capital Partners, L.P. and 53,011 shares of Series B Preferred Stock to Waud Capital Affiliates, L.L.C., entities affiliated with Deep Cove Mezzanine, LLC, at a per share price of \$15.09, which were converted into an equal number of shares of our common stock, respectively, in connection with the closing of our initial public offering in June 2007. In June 2005, in connection with the issuance of senior secured notes by Orphan Medical, including \$5.0 million in principal amount to Deep Cove Mezzanine, LLC, we issued the DC Prior Warrant to Deep Cove Mezzanine, LLC. The senior secured notes issued by Orphan Medical were exchanged for Senior Notes pursuant to the Senior Note Agreement. With the exception of the foregoing, Deep Cove Mezzanine, LLC has not had any position, office or other material relationship with us or our affiliates in the past three years.

### **Relationship with General Electric Pension Trust**

In June 2005, in connection with the issuance of senior secured notes by Orphan Medical, including \$8.0 million in principal amount to General Electric Pension Trust, we issued the GEPT Prior Warrant to General Electric Pension Trust. The senior secured notes issued by Orphan Medical were exchanged for Senior Notes pursuant to the Senior Note Agreement. With the exception of the foregoing, General Electric Pension Trust has not had any position, office or other material relationship with us or our affiliates in the past three years.



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**PLAN OF DISTRIBUTION**

We are registering 562,192 shares of common stock under this prospectus issuable upon exercise of the warrants to permit the resale of these shares of common stock by the holders thereof from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholders may decide not to sell any shares. The shares may be sold by the selling stockholders and their donees, pledgees, transferees or other successors-in-interest directly or through broker-dealers acting as a principal or agent, or pursuant to a distribution by one or more underwriters on a firm commitment or best-efforts basis. The selling stockholders may from time to time offer some or all of the shares of common stock through brokers, dealers or agents who may receive compensation in the form of discounts, concessions or commissions from the selling stockholders and/or the purchasers of the shares of common stock for whom they may act as agent. In effecting sales, broker-dealers that are engaged by the selling stockholders may arrange for other broker-dealers to participate. The selling stockholders may be underwriters within the meaning of the Securities Act. Any brokers, dealers or agents who participate in the distribution of the shares of common stock may also be deemed to be underwriters, and any profits on the sale of the shares of common stock by them and any discounts, commissions or concessions received by any such brokers, dealers or agents may be deemed to be underwriting discounts or commissions under the Securities Act. A selling stockholder may effect resales of our common stock through any one or more registered broker-dealers.

The selling stockholders will act independently of us in making decisions with respect to the timing, manner and size of each sale. Such sales may be made over the NASDAQ Global Market, in the over-the-counter market, or on any other national securities exchange on which our shares are listed or traded or in transactions otherwise than on these exchanges or systems, or in a combination of such methods of sale, at then prevailing market prices, at prices related to prevailing market prices or at negotiated prices. The shares of common stock may be sold according to one or more of the following methods:

a block trade in which the broker or dealer so engaged will attempt to sell the shares of common stock as agent but may position and resell a portion of the block as principal to facilitate the transaction;

through purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this prospectus;

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

in an exchange distribution in accordance with the rules of the applicable exchange;

in privately negotiated transactions;

in underwritten transactions;

through the settlement of short sales;

through the writing or settlement of options or other hedging transactions, whether such options are listed on an options exchange or otherwise;

where broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

a combination of such methods of sale; and

any other method permitted pursuant to applicable law.

Any shares covered by this prospectus may be sold in reliance upon Rule 144 under the Securities Act, as permitted by that rule, or Section 4(1) under the Securities Act, if available, rather than pursuant to this prospectus, provided that the selling stockholders meet the criteria and conform to the requirements of those provisions. In addition, the selling stockholders may transfer the shares by other means not described in this prospectus.

In connection with distributions of the shares of common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions. In connection with such transactions, broker-dealers or other financial institutions may engage in short sales of our common stock in the course of hedging the positions they assume with the selling stockholders. The selling stockholders may also sell the common stock short and if such short sale shall take place after the date that the registration statement of which this prospectus is a part is declared effective by the SEC, the selling stockholders may deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also enter into options or other transactions with broker-dealers or other financial institutions which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). The selling stockholders may also pledge shares to a broker-dealer or other financial institution, and, upon a default, such broker-dealer or other financial institution may effect sales of the pledged shares pursuant to this prospectus (as supplemented or amended to reflect such transaction).

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Any broker-dealer participating in such transactions as underwriter or agent may receive commissions from a selling stockholder and may receive compensation in the form of discounts, concessions or commissions from the selling stockholders or from purchasers of the offered shares for whom they may act as agents. In addition, underwriters may sell the shares to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Broker-dealers may agree with a selling stockholder to sell a specified number of shares at a stipulated price per share, and, to the extent such a broker-dealer is unable to do so acting as agent for the selling stockholder, to purchase as principal any unsold shares at the price required to fulfill the broker-dealer commitment to the selling stockholder. Broker-dealers who acquire shares as principal may thereafter resell such shares from time to time in transactions (which may involve crosses and block transactions and which may involve sales to and through other broker-dealers, including transactions of the nature described above) on the NASDAQ Global Market, on the over-the-counter market, in privately-negotiated transactions or otherwise at market prices prevailing at the time of sale or at negotiated prices, and in connection with such resales may pay to or receive from the purchasers of such shares commissions computed as described above. To the extent required under the Securities Act, an amendment to this prospectus, or a supplemental prospectus will be filed, disclosing:

the name of any such broker-dealers;

the number of shares involved;

the price at which such shares are to be sold;

the commission paid or discounts or concessions allowed to such broker-dealers, where applicable;

that such broker-dealers did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus, as supplemented; and

other facts material to the transaction.

In order to comply with the securities laws of some states, if applicable, the shares must be sold in those states only through registered or licensed brokers or dealers. In addition, some states may restrict the selling stockholders from selling their shares unless the shares have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Underwriters and purchasers that are deemed underwriters under the Securities Act may engage in transactions that stabilize, maintain or otherwise affect the price of the securities, including the entry of stabilizing bids or syndicate covering transactions, short sales or the imposition of penalty bids. The selling stockholders and any other persons participating in the sale or distribution of the shares will be subject to the applicable provisions of the Exchange Act and the rules and regulations thereunder including, without limitation, Regulation M. These provisions may restrict certain activities of, and limit the timing of, purchases and sales of any of the shares of common stock set forth in this prospectus by the selling stockholders or other persons or entities. Regulation M may restrict the ability of any person engaged in the distribution of the securities to engage in market-making and certain other activities with respect to those securities. In addition, the anti-manipulation rules under the Exchange Act may apply to sales of the securities in the market. All of these limitations may affect the marketability of the shares and the ability of any person to engage in market-making activities with respect to the securities.

The selling stockholders may transfer the shares of common stock in certain circumstances, in which case the transferees or other successors in interest will be the selling stockholders for purposes of this prospectus. We will file a prospectus supplement naming the new selling stockholders if the shares are transferred.

We will make copies of this prospectus available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. We have agreed to pay the expenses of registering the shares of common stock under the Securities Act, including registration and filing fees, printing expenses, administrative expenses and certain legal and accounting fees, as well as certain fees of counsel for the selling stockholders incurred in the preparation of the registration statement, of which this prospectus is a part. The selling stockholders will bear all

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discounts, commissions or other amounts payable to underwriters, dealers or agents, if any.

Under the terms of the registration rights agreement, we have agreed to indemnify the selling stockholders and certain other persons against certain liabilities in connection with the offering of the shares of common stock offered hereby, including liabilities arising under the Securities Act or, if such indemnity is unavailable, to contribute toward amounts required to be paid in respect of such liabilities.

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At any time a particular offer of the shares of common stock is made, a revised prospectus or prospectus supplement, if required, will be distributed. Such prospectus supplement or post-effective amendment will be filed with the SEC, to reflect the disclosure of required additional information with respect to the distribution of the shares of common stock.

We have agreed with the selling stockholders to use our reasonable best efforts to cause the registration statement of which this prospectus is a part to remain continuously effective until the earlier of (i) the date on which all of the shares covered by this prospectus have been sold pursuant to the registration statement of which this prospectus is a part or (ii) one year from the date the registration statement of which this prospectus is a part was declared effective by the SEC on December 31, 2009, provided that such one year period is subject to extension for the number of days that the effectiveness of the registration statement of which this prospectus is a part is suspended.

Once sold under the registration statement, of which this prospectus is a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

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### **VALIDITY OF COMMON STOCK**

The validity of the common stock being offered hereby has been passed upon by Carol A. Gamble, our Senior Vice President, General Counsel and Corporate Secretary. As of March 11, 2010, Ms. Gamble beneficially owned 188,466 shares of our common stock, including 169,974 shares of common stock issuable upon the exercise of outstanding options that are exercisable within 60 days of March 11, 2010.

### **EXPERTS**

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements and schedule included in our Annual Report on Form 10-K for the year ended December 31, 2009, as set forth in their report, which is incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements and schedule are incorporated by reference in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including Jazz Pharmaceuticals. The SEC's Internet site can be found at [www.sec.gov](http://www.sec.gov).

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring you to another document that we have filed separately with the SEC. You should read the information incorporated by reference because it is an important part of this prospectus. We incorporate by reference the following information or documents that we have filed with the SEC (Commission File No. 0-50549):

our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed with the SEC on March 4, 2010;

our Current Report on Form 8-K filed with the SEC on March 10, 2010; and

the description of our common stock, which is registered under Section 12 of the Exchange Act, in our registration statement on Form 8-A, filed with the SEC on May 25, 2007, including any amendments or reports filed for the purpose of updating such description.

We also incorporate by reference into this prospectus all documents (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) that are filed by us with the Securities and Exchange Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (i) after the date of the filing of the registration statement of which this prospectus is a part and prior to effectiveness of such registration statement, or (ii) after the date of this prospectus and until we file a post-effective amendment that indicates the termination of the offering of the securities made by this prospectus. These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

We will provide to each person, including any beneficial owner, to whom a prospectus is delivered, without charge upon written or oral request, a copy of any or all of the documents that are incorporated by reference into this prospectus but not delivered with the prospectus, including exhibits which are specifically incorporated by reference into such documents. Requests should be directed to: Jazz Pharmaceuticals, Inc., Attn: Investor Relations, 3180 Porter Drive, Palo Alto, CA 94304, telephone: (650) 496-3777.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference into this document will be deemed to be modified or superseded for purposes of the document to the extent that a statement contained in this document or any other subsequently filed document that is deemed to be incorporated by reference into this document modifies or supersedes the statement.





**Table of Contents****PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the estimated costs and expenses, other than any underwriting discounts and commissions, payable by the registrant in connection with the offering of the common stock being registered. All the amounts shown are estimates, except for the SEC registration fee.

	<b>Amount</b>
SEC registration fee	\$ 328
Legal fees and expenses	35,000
Accounting fees and expenses	7,5000
Printing and miscellaneous expenses	10,000
<b>Total</b>	<b>\$ 52,828</b>

**Item 15. Indemnification of Directors and Officers.**

The registrant's amended and restated certificate of incorporation contains provisions permitted under Delaware law relating to the liability of directors. These provisions eliminate a director's personal liability for monetary damages resulting from a breach of fiduciary duty, except in circumstances involving wrongful acts, such as:

any breach of the director's duty of loyalty to the registrant or its stockholders;

any act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;

any act related to unlawful stock repurchases, redemptions or other distribution or payments of dividends; or

any transaction from which the director derived an improper personal benefit.

These provisions do not limit or eliminate the registrant's rights or any stockholder's rights to seek non-monetary relief, such as an injunction or rescission, in the event of a breach of a director's fiduciary duty. These provisions will not alter a director's liability under federal securities laws.

As permitted by Section 145 of the Delaware General Corporation Law, or DGCL, the registrant's amended and restated bylaws require the registrant to indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law. The registrant may modify the extent of such indemnification by individual contracts with the registrant's directors and officers. Further, the registrant may decline to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person, unless such indemnification is expressly required to be made by law, the proceeding was authorized by the registrant's Board of Directors, such indemnification is provided by the registrant, in its sole discretion, pursuant to the powers vested in the registrant under the DGCL or any other applicable law, or otherwise required under the registrant's amended and restated bylaws.

The registrant has entered into indemnity agreements with each of its directors, executive officers and vice presidents that require it to indemnify such persons against any and all expenses (including attorneys' fees), witness fees, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any action, suit or proceeding or alternative dispute resolution mechanism, inquiry

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hearing or investigation, whether threatened, pending or completed, to which any such person may be made a party by reason of the fact that such person is or was a director, an officer or an employee of the registrant or any of its affiliated enterprises, provided that such person's conduct did not constitute a breach of his or her duty of loyalty to the registrant or its stockholders, and was not an act or omission not in good faith or which involved intentional misconduct or a knowing violation of laws. The indemnity agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. The indemnity agreements with certain of the registrant's directors further provide that, with respect to a director that is serving on the registrant's Board of Directors at the direction of a venture or other investment fund or entity, with respect to such indemnitee's service as a director, officer, employee, agent and/or fiduciary of the registrant, the registrant's obligations under the indemnity agreement are the primary source of indemnification and advancement, the registrant is required to make all expense advances, and the registrant is liable for all of such indemnitee's expenses, to the extent required by the indemnity agreement, the registrant's amended and restated certificate of incorporation and amended and restated bylaws, without regard to any rights the indemnitee may have against the applicable venture or other investment fund or entity, and the registrant irrevocably waives, relinquishes and releases any and all claims against the applicable venture or other investment fund or entity for contribution, subrogation or any other recovery of any kind in connection with the registrant's obligations under the indemnity agreement. At present, there is no pending litigation or proceeding involving any of the registrant's directors, officers or employees for which indemnification is sought, nor is the registrant aware of any threatened litigation that may result in claims for indemnification by the registrant.

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The registrant has the power to indemnify its other employees and other agents, as permitted by the DGCL or any other applicable law, but the registrant is not required to do so.

The registrant maintains directors' and officers' liability insurance. The policy insures the registrant's directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses the registrant for those losses for which the registrant has lawfully indemnified the directors and officers. The policy contains various exclusions, none of which apply to any offerings pursuant to this registration statement.

The amended and restated investor rights agreement between the registrant and certain investors provides for cross-indemnification in connection with registration of the registrant's common stock on behalf of such investors. In March 2008, the registrant also entered into a registration rights agreement with the purchasers of \$40.0 million of senior secured notes that provides for cross-indemnification in connection with registration of the registrant's common stock underlying warrants on behalf of such purchasers. The common stock purchase agreement and the registration rights agreement the registrant entered into with Kingsbridge Capital Limited in May 2008 provides for cross-indemnification in connection with the registration of the registrant's common stock on behalf of Kingsbridge and the entering into of the transactions contemplated by the common stock purchase agreement and the registration rights agreement. In addition, the investor rights agreement the registrant entered into with certain investors affiliated with Longitude Capital Partners, LLC in July 2009 provides for cross-indemnification in connection with registration of the registrant's common stock on behalf of such investors.

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### **Item 16. Exhibits.**

#### **Exhibit**

#### **Number**

#### **Description of Document**

2.1	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.(6)
3.1	Fourth Amended and Restated Certificate of Incorporation of the Registrant.(1)
3.2	Amended and Restated Bylaws.(2)
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2	Specimen Common Stock Certificate.(3)
4.3A	Third Amended and Restated Investor Rights Agreement, made effective as of June 6, 2007, by and between the Registrant and the other parties named therein.(4)
4.3B	Waiver and Amendment Agreement, dated as of March 12, 2008, by and between the Registrant and the other parties named therein.(7)
4.3C	Waiver and Amendment Agreement, dated as of May 7, 2008, by and between the Registrant and the other parties named therein.(14)
4.3D	Waiver and Amendment Agreement, dated as of July 6, 2009 by and between the Registrant and the other parties named therein.(20)
4.4A	Form of Series BB Preferred Stock Warrant of the Registrant.(5)
4.4B	Form of Series BB Preferred Stock Warrant of the Registrant, as amended.(8)
4.5A	Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008, by and among the Registrant, JPI Commercial, LLC and the Purchasers named therein.(9)
4.5B	Form of Senior Secured Tranche A Note of JPI Commercial, LLC.(10)
4.5C	Form of Senior Secured Tranche B Note of JPI Commercial, LLC.(11)
4.5D	Form of Common Stock Warrant of the Registrant.(12)
4.5E	Registration Rights Agreement, dated as of March 17, 2008, by and between the Registrant and the other parties named therein.(13)
4.5F	Amendment and Waiver Agreement, dated as of November 10, 2009, by and among the Registrant, JPI Commercial, LLC and the other parties named therein.(22)
4.6A	Warrant issued to Kingsbridge Capital Limited, dated May 7, 2008.(15)
4.6B	Registration Rights Agreement, dated as of May 7, 2008, by and between the Registrant and Kingsbridge Capital Limited.(16)
4.6C	Amendment Agreement No. 1, dated as of November 20, 2009, by and between the Registrant and Kingsbridge Capital Limited.(23)
4.7	Form of Registered Direct Common Stock Warrant.(17)
4.8	NOL Preservation Lock-Up Agreement, effective as of July 7, 2009, by and between the Registrant and the other parties named therein.(18)
4.9A	Form of Common Stock Warrant of the Registrant issued on July 7, 2009.(19)
4.9B	Investor Rights Agreement, dated July 7, 2009 by and between the Registrant and the other parties named therein.(21)
5.1	Opinion of Registrant's General Counsel (previously filed with the Registrant's Form S-1 filed with the SEC on December 23, 2009).
23.1	Consent of Independent Registered Public Accounting Firm.

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- 23.2 Consent of Registrant's General Counsel.
- 24.1 Power of Attorney (included in the signature page of Registrant's Form S-1 filed with the SEC on December 23, 2009).

Confidential treatment has been granted for portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

- (1) Incorporated herein by reference to exhibit 3.1 in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.
- (2) Incorporated herein by reference to exhibit 3.4 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007.
- (3) Incorporated herein by reference to exhibit 4.2 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007.
- (4) Incorporated herein by reference to exhibit 4.3A in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.
- (5) Incorporated by reference to exhibit 4.6 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
- (6) Incorporated by reference to exhibit 2.1 in the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
- (7) Incorporated herein by reference to exhibit 4.3B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (8) Incorporated herein by reference to exhibit 4.4B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (9) Incorporated herein by reference to exhibit 4.5A in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (10) Incorporated herein by reference to exhibit 4.5B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (11) Incorporated herein by reference to exhibit 4.5C in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (12) Incorporated herein by reference to exhibit 4.5D in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (13) Incorporated herein by reference to exhibit 4.5E in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (14) Incorporated herein by reference to exhibit 4.3C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008.
- (15) Incorporated herein by reference to exhibit 4.6A in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008.
- (16) Incorporated herein by reference to exhibit 4.6B in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008.
- (17) Incorporated herein by reference to exhibit 4.7 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 16, 2008.
- (18) Incorporated herein by reference to exhibit 4.8 in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009.
- (19) Incorporated herein by reference to exhibit 4.9A in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009.
- (20) Incorporated herein by reference to exhibit 4.3D in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2009, as filed with the SEC on August 14, 2009.
- (21) Incorporated herein by reference to exhibit 4.9B in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009.

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- (22) Incorporated by reference to exhibit 4.5F in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on November 10, 2009.
- (23) Incorporated by reference to exhibit 4.6C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on November 23, 2009.

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### **Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.





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Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 1 on Form S-3 to the Registration Statement on Form S-1 has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* <b>Bruce C. Cozadd</b>	Chairman and Chief Executive Officer  <i>(Principal Executive Officer)</i>	March 19, 2010
/s/ <b>KATHRYN E. FALBERG</b> <b>Kathryn E. Falberg</b>	Senior Vice President and Chief Financial Officer  <i>(Principal Financial Officer)</i>	March 19, 2010
/s/ <b>JOAN E. COLLIGAN</b> <b>Joan E. Colligan</b>	Controller and Principal Accounting Officer  <i>(Principal Accounting Officer)</i>	March 19, 2010
* <b>Samuel D. Colella</b>	Director	March 19, 2010
* <b>Bryan C. Cressey</b>	Director	March 19, 2010
* <b>Patrick G. Enright</b>	Director	March 19, 2010
* <b>Michael W. Michelson</b>	Director	March 19, 2010
* <b>James C. Momtazee</b>	Director	March 19, 2010
* <b>Robert M. Myers</b>	Director	March 19, 2010
* <b>Kenneth W. O Keefe</b>	Director	March 19, 2010
* <b>Alan M. Sebulsky</b>	Director	March 19, 2010
* <b>James B. Tananbaum, M.D.</b>	Director	March 19, 2010
<b>Nathaniel M. Zilkha</b>	Director	
*By: /s/ <b>KATHRYN E. FALBERG</b> <b>Kathryn E. Falberg</b>		
<b>Attorney-in-Fact</b>		

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**EXHIBIT INDEX**

<b>Exhibit</b>	
<b>Number</b>	<b>Description of Document</b>
2.1	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.(6)
3.1	Fourth Amended and Restated Certificate of Incorporation of the Registrant.(1)
3.2	Amended and Restated Bylaws.(2)
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2	Specimen Common Stock Certificate.(3)
4.3A	Third Amended and Restated Investor Rights Agreement, made effective as of June 6, 2007, by and between the Registrant and the other parties named therein.(4)
4.3B	Waiver and Amendment Agreement, dated as of March 12, 2008, by and between the Registrant and the other parties named therein.(7)
4.3C	Waiver and Amendment Agreement, dated as of May 7, 2008, by and between the Registrant and the other parties named therein.(14)
4.3D	Waiver and Amendment Agreement, dated as of July 6, 2009 by and between the Registrant and the other parties named therein.(20)
4.4A	Form of Series BB Preferred Stock Warrant of the Registrant.(5)
4.4B	Form of Series BB Preferred Stock Warrant of the Registrant, as amended.(8)
4.5A	Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008, by and among the Registrant, JPI Commercial, LLC and the Purchasers named therein.(9)
4.5B	Form of Senior Secured Tranche A Note of JPI Commercial, LLC.(10)
4.5C	Form of Senior Secured Tranche B Note of JPI Commercial, LLC.(11)
4.5D	Form of Common Stock Warrant of the Registrant.(12)
4.5E	Registration Rights Agreement, dated as of March 17, 2008, by and between the Registrant and the other parties named therein.(13)
4.5F	Amendment and Waiver Agreement, dated as of November 10, 2009, by and among the Registrant, JPI Commercial, LLC and the other parties named therein.(22)
4.6A	Warrant issued to Kingsbridge Capital Limited, dated May 7, 2008.(15)
4.6B	Registration Rights Agreement, dated as of May 7, 2008, by and between the Registrant and Kingsbridge Capital Limited.(16)
4.6C	Amendment Agreement No. 1, dated as of November 20, 2009, by and between the Registrant and Kingsbridge Capital Limited.(23)
4.7	Form of Registered Direct Common Stock Warrant.(17)
4.8	NOL Preservation Lock-Up Agreement, effective as of July 7, 2009, by and between the Registrant and the other parties named therein.(18)
4.9A	Form of Common Stock Warrant of the Registrant issued on July 7, 2009.(19)
4.9B	Investor Rights Agreement, dated July 7, 2009 by and between the Registrant and the other parties named therein.(21)
5.1	Opinion of Registrant's General Counsel (previously filed with the Registrant's Form S-1 filed with the SEC on December 23, 2009).

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- 23.1 Consent of Independent Registered Public Accounting Firm.
- 23.2 Consent of Registrant's General Counsel.
- 24.1 Power of Attorney (included in the signature page of Registrant's Form S-1 filed with the SEC on December 23, 2009).

Confidential treatment has been granted for portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

- (1) Incorporated herein by reference to exhibit 3.1 in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.
- (2) Incorporated herein by reference to exhibit 3.4 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007.
- (3) Incorporated herein by reference to exhibit 4.2 in the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007.
- (4) Incorporated herein by reference to exhibit 4.3A in the Registrant's quarterly report on Form 10-Q (File No. 001-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.
- (5) Incorporated by reference to exhibit 4.6 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
- (6) Incorporated by reference to exhibit 2.1 in the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
- (7) Incorporated herein by reference to exhibit 4.3B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (8) Incorporated herein by reference to exhibit 4.4B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (9) Incorporated herein by reference to exhibit 4.5A in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (10) Incorporated herein by reference to exhibit 4.5B in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (11) Incorporated herein by reference to exhibit 4.5C in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (12) Incorporated herein by reference to exhibit 4.5D in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (13) Incorporated herein by reference to exhibit 4.5E in the Registrant's annual report on Form 10-K (File No. 001-33500) for the period ended December 31, 2007, as filed with the SEC on March 31, 2008.
- (14) Incorporated herein by reference to exhibit 4.3C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008.
- (15) Incorporated herein by reference to exhibit 4.6A in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008.
- (16) Incorporated herein by reference to exhibit 4.6B in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on May 9, 2008.
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- (21) Incorporated herein by reference to exhibit 4.9B in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on July 7, 2009.
- (22) Incorporated by reference to exhibit 4.5F in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on November 10, 2009.
- (23) Incorporated by reference to exhibit 4.6C in the Registrant's current report on Form 8-K (File No. 001-33500), as filed with the SEC on November 23, 2009.