

Guardian II Acquisition CORP
Form S-4/A
November 07, 2008
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As filed with the Securities and Exchange Commission on November 7, 2008

Registration No. 333-153394

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

AMENDMENT NO. 3 TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

(with respect to the 12.50% Convertible Guaranteed Senior Notes due 2011 and common stock being offered in the exchange offer)

Oscient Pharmaceuticals Corporation

(Exact name of registrant as specified in its charter)

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Massachusetts (State or other jurisdiction of incorporation or organization)	2834 (Primary Industrial Classification Code Number)	04-2297484 (I.R.S. Employer Identification No.)
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Guardian II Acquisition Corporation

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	2834 (Primary Industrial Classification Code Number) 1000 Winter Street, Suite 2200 Waltham, Massachusetts 02451 (781) 398-2300	20-5239620 (I.R.S. Employer Identification No.)
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(Address, including ZIP code, and telephone number, including area code, of the registrants principal executive office)

Philippe Maitre

Oscient Pharmaceuticals Corporation

1000 Winter Street, Suite 2200

Waltham, Massachusetts 02451

(781) 398-2300

(Name, address, including ZIP code, and telephone number, including area code, of agent for service for the registrants)

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Washington, D.C. 20004
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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, 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 of 1933, as amended (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(d) 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 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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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(c) 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 definition of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer
Non-accelerated filer (do not check if smaller reporting company)

Accelerated filer
Smaller Reporting Company

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Calculation of Registration Fee

Title of Each Class of Securities to be Registered	Amount to be Registered(1)(2)(3)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
12.50% Convertible Guaranteed Senior Notes due 2011 ⁽⁴⁾	\$ 5,735,887	\$ 5,735,887	\$ 226.00 ⁽⁵⁾
Total Registration Fee			\$ 226.00

- (1) The \$2,704 filing fee in connection with the 58,316,012 shares of common stock being registered was previously paid with Registration Statement (333-153394) on Form S-4 filed on September 10, 2008.
- (2) The \$2,174 filing fee in connection with the \$225,700,000 principal amount of 12.50% Convertible Guaranteed Senior Notes due 2011 that may be received by the registrant from tendering holders in the exchange offer was previously paid with Registration Statement (333-153394) on Form S-4 filed on September 10, 2008.
- (3) The \$836 filing fee in connection with \$21,277,468 principal amount of 12.50% Convertible Guaranteed Senior Notes due 2011 issuable if the registrant elects for each interest period to make payments of additional interest in kind by increasing the principal amount of the new notes or issuing additional new notes was previously paid with Registration Statement (333-153394) on Form S-4 filed on September 10, 2008.
- (4) We are registering an additional amount of 12.50% Convertible Guaranteed Senior Notes due 2011 issuable if the registrant elects for each interest period to make payments of additional interest in kind by increasing the principal amount of the new notes or issuing additional new notes.
- (5) The registration fee has been calculated pursuant to Rule 457(f) under the Securities Act.

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 SEC acting pursuant to Section 8(a) may determine.

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The information in this prospectus may change. We may not complete the exchange offer and issue 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 it is not soliciting an offer to buy these securities, in any state where the offer or sale is not permitted.

Subject to Completion, dated November 7, 2008

Oscient Pharmaceuticals

Exchange Offer

12.50% Convertible Guaranteed Senior Notes due 2011 and Common Stock for its 3.50% Convertible Senior Notes due 2011

If you elect to participate in the exchange offer, for each \$1,000 principal amount of our 3.50% Convertible Senior Notes due 2011, or existing 2011 notes, you tender, you will receive from us:

\$400 principal amount of our 12.50% Convertible Guaranteed Senior Notes due 2011, or new notes ; and

shares of our Common Stock, par value \$0.10 or common stock having a value equal to \$100 based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each \$1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of \$1.00 per share.

The new notes will be guaranteed by our subsidiary Guardian II Acquisition Corporation, or Guardian II, and Guardian II's guarantee will be secured on a second priority lien basis by substantially all of its assets. The security granted in favor of the guarantee will be subject to standstill and turnover provisions. The security may be released in certain circumstances. The security will also be subject to contractual and legal limitations under applicable law.

The new notes will be issued in denominations of \$1,000 and any integral multiples of \$1,000.

The new notes will accrue interest at a rate of 12.50% per annum. We may elect to pay interest on the new notes in cash or in kind by increasing the principal amount of the new notes or issuing additional new notes (PIK interest). If we elect to pay PIK interest, we will increase the principal amount of the new notes or issue additional new notes in an amount equal to the amount of PIK interest for the applicable interest payment period to the holders of the new notes on the relevant record date (in integral multiples of \$1,000).

The exchange offer is open to all holders of our 3.50% Convertible Senior Notes due 2011. The exchange offer expires at 11:59 p.m., New York City time, on November 21, 2008.

Our common shares are traded on the NASDAQ Global Market under the symbol OSCI. On November 3, 2008, the last reported sale price of our common shares on the NASDAQ Global Market was \$0.67 per share. The new notes will not be listed on the NASDAQ Global Market or

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any national securities exchange. We mailed a preliminary prospectus and letters of transmittal on October 21, 2008.

See **Risk Factors** beginning on page 21 for a discussion of factors you should consider before deciding to participate in the exchange offer.

We have retained The Altman Group, Inc. as our information agent to assist you in connection with the exchange offer. You may call The Altman Group, Inc. at (866) 751-6316, to receive additional documents and to ask questions relating to the process of tendering your existing 2011 notes in the exchange offer.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The dealer managers for the exchange offer:

Lazard Capital Markets

MTS Securities, LLC

The date of this Prospectus is _____, 2008

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You should rely only on the information contained in this prospectus. We have not, and the dealer managers have not, authorized any other person to provide you with different information. This prospectus is not an offer to sell, nor is it seeking an offer to buy, these securities in any state where the offer or sale is not permitted. The information in this prospectus is complete and accurate as of the date on the front cover, but the information may have changed since that date.

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WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-4 with the Securities and Exchange Commission, or SEC, for the exchange offer. This prospectus does not include all of the information contained in the registration statement. You should refer to the registration statement and its exhibits for additional information. Although we have disclosed the material terms of any contracts, agreements, or other documents that are referenced in this prospectus, you should refer to the exhibits attached to the registration statement for copies of the actual contracts, agreements, or other documents.

We are a public company and file annual, quarterly and current 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. You can request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our SEC filings are also available to the public at the SEC's website at <http://www.sec.gov>. In addition, our common stock is listed for trading on the NASDAQ Global Market. You can read and copy reports and other information concerning us at the offices of the Financial Industry Regulation Authority located at 1735 K Street, Washington, D.C. 20006. You may also access our filings with the SEC and obtain other information about us through the website maintained by Oscient, which is located at <http://www.oscient.com>, as soon as reasonably practicable after these materials have been electronically filed with, or furnished to, the SEC. Please note that all references to www.oscient.com in this registration statement and prospectus are inactive textual references only and that the information contained on Oscient's website is neither incorporated by reference into this registration statement or prospectus nor intended to be used in connection with either the exchange.

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PROSPECTUS SUMMARY

This summary does not contain all of the information you should consider before exchanging your existing 2011 notes for the new notes in connection with the exchange offer. For a more complete understanding of Oscient and the exchange offer, we encourage you to read carefully this entire prospectus. Unless otherwise stated, all references to us, our, Oscient, we, the Company and similar designations refer to Oscient Pharmaceuticals Corporation and its consolidated subsidiaries unless the context otherwise requires.

Our Company

Overview

We are a commercial-stage pharmaceutical company marketing two FDA-approved products to community-based primary care physicians through our national primary care sales force, ANTARA® (fenofibrate) capsules, a cardiovascular product, approved by the FDA for the adjunct treatment of hypercholesterolemia (high blood cholesterol) and hypertriglyceridemia (high triglycerides) in combination with a healthy diet and FACTIVE® (gemifloxacin mesylate) tablets, an antibiotic approved by the FDA for the five-day treatment of acute bacterial exacerbations of chronic bronchitis (AECB) and the five-day treatment of community-acquired pneumonia of mild to moderate severity (CAP).

We market ANTARA and FACTIVE in the U.S. through our 250-person national sales force, which focuses on primary care physicians who predominantly treat older patients and those with co-morbid conditions that may benefit from our products. With FACTIVE, our strategy outside of the U.S. has been to grant commercialization rights to third parties in order to leverage the additional resources that a pharmaceutical marketing partner with expertise in such countries can provide. Pfizer, S.A. de C.V. (Pfizer Mexico) is currently commercializing FACTIVE in Mexico, Abbott Laboratories, Ltd. (Abbott Canada) has launched FACTIVE in Canada, and Menarini International Operation Luxembourg SA (the Menarini Group) has licensed the drug for sale in Europe.

We are currently exploring partnering and other strategic opportunities for the continued development of our late-stage antibiotic candidate, Ramoplanin, for the treatment of *Clostridium difficile*-associated disease.

Our business growth strategy is to increase the sales of our existing products and to gain access to new products via transactions, including acquisition, in-licensing and co-promotion for the U.S. marketplace in order to leverage our existing commercial infrastructure. Our review of potential additions to our portfolio of marketed products is focused on those products which are commonly prescribed by those primary care physicians that we currently visit during the marketing of ANTARA and FACTIVE. As we currently direct our sales effort largely at those primary care physicians that treat older patients with co-morbidities, a range of therapeutic categories can be considered for our portfolio, including cardiovascular, diabetes, metabolic, anti-infectives among others.

ANTARA

ANTARA is approved by the FDA to treat hypercholesterolemia and hypertriglyceridemia in combination with a healthy diet. On August 18, 2006, we acquired rights to ANTARA in the U.S. from Reliant Pharmaceuticals Inc. for \$78.0 million plus a \$4.3 million payment for ANTARA inventory. In connection with this acquisition, we were assigned rights to and assumed obligations under an exclusive license to the U.S. rights to ANTARA from Ethypharm S.A.

In 2007, total U.S. sales of fenofibrate products were approximately \$1.7 billion, a 12% increase over 2006 sales. The fenofibrate market has experienced a 25% average annual growth in sales since 2003. Prior to our

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acquisition, in the 12 months ended June 30, 2006, ANTARA generated approximately \$35 million in sales. Comparatively, in the 12 months ended June 30, 2008, ANTARA generated \$63 million in net sales.

Since we began marketing ANTARA on August 18, 2006, net revenues from the drug totaled \$106 million through June 30, 2008.

It is estimated that nearly 37 million Americans have total cholesterol values above recommended levels and heart disease remains the number one cause of death in the U.S. Abnormal cholesterol and lipid levels, known as dyslipidemia, can lead to the development of atherosclerosis, a dangerous hardening of blood vessels and a major risk factor for the development of coronary heart disease.

ANTARA is a once-daily formulation of fenofibrate approved for use in combination with a diet restricted in saturated fat and cholesterol to reduce elevated low-density lipoprotein cholesterol (LDL or bad cholesterol), triglyceride and apolipoprotein B (free floating fats in the blood) levels and to increase high-density lipoprotein cholesterol (HDL or good cholesterol) in adult patients with high cholesterol or an abnormal concentration of lipids in the blood. ANTARA received FDA approval in November 2004 and is approved and marketed in 43 mg and 130 mg doses.

In a clinical trial conducted in 2004, ANTARA was studied in the Triglyceride Reduction in Metabolic Syndrome study, known as TRIMS, to measure the impact of ANTARA on cholesterol levels in patients with multiple cardiovascular risk factors and to assess the use of ANTARA without regard to meals. Of the 146 patients studied, 70% had hypertension and 32% had diabetes. The double-blind, placebo-controlled trial measured levels of total cholesterol, triglycerides, HDLs and LDLs, as well as other types of cholesterol, during eight weeks of therapy. In the study, ANTARA demonstrated the ability to reduce triglyceride and increase HDL cholesterol levels after two weeks of therapy. At the end of therapy, patients treated with ANTARA had a statistically significant 37% reduction in their triglyceride levels and a statistically significant 14% increase in their HDL levels.

FACTIVE

In April 2003, FACTIVE, a fluoroquinolone antibiotic, was approved by the FDA for the five-day treatment of AECB (acute bacterial exacerbations of chronic bronchitis) and seven-day treatment of CAP (community acquired pneumonia) of mild to moderate severity. On May 1, 2007, the FDA approved FACTIVE for the five-day treatment of CAP. We license the rights to gemifloxacin, the active ingredient in FACTIVE tablets, from LG Life Sciences. We launched FACTIVE in the U.S. in September 2004. In fiscal year 2007, FACTIVE generated \$21.4 million in net revenues. For the twelve months ended December 31, 2005, 2006 and 2007, FACTIVE generated \$20.5 million, \$22.1 million and \$21.4 million in net revenues, respectively. For the six months ended June 30, 2008, FACTIVE generated \$7.7 million in net revenues.

Chronic bronchitis is a health problem associated with significant morbidity and mortality. It is estimated that chronic bronchitis affects more than 9 million adults in the U.S. Patients with chronic bronchitis are prone to frequent exacerbations, characterized by increased cough and other symptoms of respiratory distress. Studies have estimated that 1 to 4 exacerbations occur each year in patients with chronic bronchitis; studies estimate that two-thirds are caused by bacteria. These exacerbations are estimated to account for approximately 12 million physician visits per year in the U.S.

CAP (community-acquired pneumonia) is a common and serious illness in the U.S. Of the 4 to 5 million reported cases per year, nearly 1 million cases occur in patients over the age of 65. CAP cases result in approximately

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10 million physician visits and as many as 1 million hospitalizations annually. Antibiotics are the mainstay of treatment for most patients with pneumonia, and where possible, antibiotic treatment should be specific to the pathogen responsible for the infection and individualized.

Over the last decade, resistance to penicillins and macrolides has increased significantly, and in many cases, fluoroquinolones are now recommended as first-line therapy due to their efficacy against a wide range of respiratory pathogens, including many antibiotic resistant strains. The most recent treatment guidelines from the Infectious Diseases Society of America and the American Thoracic Society recommend fluoroquinolones as a first-line treatment for certain higher-risk patients with CAP and as therapy for treating patients with pneumonia in geographic regions of the U.S. with high levels of macrolide-resistant *Streptococcus pneumoniae*.

Clinical Candidate

Given our strategic decision to concentrate our financial resources on building our commercial business, we have been seeking to out-license, co-develop or sell our rights to our late-stage antibiotic candidate Ramoplanin to a partner.

In October 2001, we in-licensed U.S. and Canadian rights to Ramoplanin from Vicuron Pharmaceuticals Inc., or Vicuron, now a wholly-owned subsidiary of Pfizer Inc., and on February 3, 2006, acquired worldwide rights from Vicuron. Ramoplanin is a novel glycolipodepsipeptide antibiotic. In July 2004, we completed a Phase II trial to assess the safety and efficacy of two doses of Ramoplanin versus vancomycin in the treatment of *Clostridium difficile*-associated disease (CDAD) the most commonly recognized microbial cause of diarrhea, resulting from high rates of colonization in hospitalized patients and the frequent use of antimicrobials. While the study did not meet its primary endpoint, non-inferiority at the test-of-cure visit, the response rates for all three arms were comparable.

Based on the results we observed in our Phase II trial, we had discussions with the FDA on the design of a Phase III program. In December 2005, we agreed with the FDA to a Special Protocol Assessment regarding the specific components of a Phase III program that, if completed successfully, would support regulatory approval of Ramoplanin for the indication. Oscient has not initiated the Phase III program and expects that clinical development for Ramoplanin will advance only under the direction of a development partner. Because the Special Protocol Assessment was agreed to by the FDA in 2005, we cannot guarantee that the FDA will continue to regard it as binding on the agency if and when a prospective partner re-initiates the Ramoplanin clinical development process.

Financial

In fiscal 2007, our revenues increased to approximately \$80.0 million from approximately \$46.2 million in fiscal 2006. On August 1, 2008, we announced financial results for the second quarter of 2008. We recorded total revenues of approximately \$20.3 million for the three-months ended June 30, 2008, compared to approximately \$15.9 million in total revenues for the three-months ended June 30, 2007 and recorded total revenues of approximately \$38.7 million for the six months ended June 30, 2008 compared to approximately \$39.1 million for the six months ended June 30, 2007.

As of June 30, 2008, we had approximately \$31.8 million in total cash, cash equivalents and restricted cash. Of that total, approximately \$4.2 million consists of restricted cash related to letters of credit on our facilities. We believe our existing funds, anticipated cash generated from operations and our ability to manage expenses will be sufficient to support our current plans to February 2009.

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In financial guidance provided to investors in August 2008, we have stated that we expect total revenue for fiscal 2008 to increase by approximately 15% from fiscal 2007 revenue levels, to approximately \$92 million in ANTARA and FACTIVE revenues, with approximately 80% of those revenues from ANTARA. We anticipate net cash utilization of approximately \$30 to \$33 million in fiscal 2008. This guidance does not include any cash impact of the acquisition and marketing of a third product, which remains one of our top business development goals for fiscal 2008.

We are currently pursuing privately raising additional capital from investors through equity financing, the incurrence of indebtedness, or a combination of equity and debt. We plan to use the additional capital to repay approximately \$17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy.

The statements of financial guidance set forth above are forward-looking statements and are based on management's assumptions of our future financial performance. Some of the important risk factors that could cause our actual results to differ materially from those expressed in our forward-looking statements are included under the heading "Risk Factors" in this prospectus. We encourage you to read these risks carefully. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus.

Recent Developments

On November 4, 2008, we reported financial results for the third quarter ended September 30, 2008. Total revenues for the third quarter of 2008 were \$21.8 million, compared to \$15.6 million in the third quarter of 2007. Revenue from ANTARA increased 41% to \$18.1 million in the third quarter of 2008, from \$12.8 million in the third quarter of 2007. Revenues from FACTIVE totaled \$3.7 million in the third quarter of 2008, compared to \$2.8 million in the third quarter of 2007.

For the third quarter ended September 30, 2008, we reported a net loss of \$15.0 million, or \$1.09 per basic and diluted share. For the third quarter ended September 30, 2007, we reported a net loss of \$19.5 million, or \$1.43 per basic and diluted share. During the quarter ended September 30, 2008, our cash position decreased by approximately \$2.8 million to approximately \$29.0 million in total cash, cash equivalents and restricted cash.

Selling and marketing expenses were \$18.3 million in the third quarter of 2008, compared to \$17.6 million in the third quarter of 2007. General and administrative expenses for the third quarter of 2008 totaled \$2.9 million, compared to \$3.4 million in the third quarter of 2007. Third quarter 2008 results included \$6.2 million in non-cash charges, compared to \$6.6 million in the third quarter of 2007. Non-cash charges in the third quarter of 2008 included \$3.6 million recorded as interest expense, \$2.3 million related to the amortization of intangible assets and \$0.3 million of stock-based compensation. Non-cash charges in the third quarter of 2007 included \$3.6 million recorded as interest expense, \$2.3 million related to the amortization of intangible assets and \$0.7 million of stock-based compensation.

For the nine months ended September 30, 2008, we reported total revenues of \$60.4 million, reflecting ANTARA revenues of \$49.1 million and FACTIVE revenues of \$11.3 million. This compares to total revenues of \$54.7 million in the first nine months of 2007, including ANTARA revenues of \$39.2 million and FACTIVE revenues of \$15.5 million. The Company reported a net loss of \$53.2 million, or \$3.86 per basic and diluted share, for the first nine months of 2008. We reported a net loss of \$15.2 million, or \$1.12 per basic and diluted share, for the first nine months of 2007. Exclusive of the one-time, non-cash gain related to the convertible debt exchange completed during the first half of 2007, our pro forma net loss for the first nine months of 2007 was \$46.0 million, or \$3.38 per basic and diluted share.

In financial guidance provided to investors in our earnings release, we stated that we expect 2008 revenue from ANTARA and FACTIVE to be approximately \$92 million, with approximately 80 percent of those revenues

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derived from sales of ANTARA. The Company also expects a net decrease in cash in 2008 of approximately \$33 million. This guidance does not include any cash impact of steps taken to recalibrate the Company's capital structure or the acquisition and marketing of a third product, which remains one of our top business development goals. Our guidance and projections are based on results to date, as well as historical wholesaler buying patterns. However, in this economic climate, wholesalers may not follow historical year-end buying patterns, which could impact our results.

The statements of financial guidance set forth above are forward-looking statements and are based on management's assumptions of our future financial performance. Some of the important risk factors that could cause our actual results to differ materially from those expressed in our forward-looking statements are included under the heading "Risk Factors" in this prospectus. We encourage you to read these risks carefully. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus.

Guarantor

Our wholly-owned subsidiary Guardian II Acquisition Corporation, or Guardian II, is incorporated in Delaware. Guardian II's assets include certain license rights to sell ANTARA capsules in the U.S. and the associated intellectual property rights, ANTARA inventory and the accounts receivable from sales of ANTARA.

Corporate Information

Oscient is incorporated in The Commonwealth of Massachusetts. Our principal executive offices are located at 1000 Winter Street, Suite 2200, Waltham, MA 02451. Our telephone number at this location is (781) 398-2300. Our sales and marketing functions are located in Skillman, NJ. Our website is located at <http://www.oscient.com>. The content on our website and on websites linked from it are for informational purposes and not incorporated into or a part of this prospectus nor intended to be used in connection with the exchange offer.

Our logo, trademarks and service marks are the property of Oscient. FACTIVE is a trademark of LG Life Sciences, Ltd. ANTARA is a trademark of Oscient. Other trademarks or service marks appearing in this prospectus are the property of their respective holders.

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The Exchange Offer

We have summarized the terms of the exchange offer in this section. Before you decide whether to tender your existing 2011 notes in the exchange offer, you should read the detailed description of the offer under **The Exchange Offer** and of the new notes under **Description of New Notes** and of our common stock under **Description of Capital Stock** for further information.

Terms of the exchange offer

We are offering to exchange for each \$1,000 principal amount of existing 2011 notes \$400 principal amount of new notes and shares of our common stock having a value equal to \$100, based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each \$1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of \$1.00 per share. New notes will be issued in denominations of \$1,000 and any integral multiples of \$1,000. You may tender all, some or none of your existing 2011 notes. We will settle any fractional new notes in shares of the Company's common stock based on the daily volume-weighted average price described above and any fractional shares of common stock will be rounded up to the next full share.

Conversion Price

The new notes will be convertible into our common stock at any time on or prior to maturity at a conversion price equal to a 10% premium over the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event will the conversion price be less than \$1.10 per share.

Deciding whether to participate in the exchange offer

Neither we nor our officers or directors make any recommendation as to whether you should tender or refrain from tendering all or any portion of your existing 2011 notes in the exchange offer. Further, we have not authorized anyone to make any such recommendation. You must make your own decision whether to tender your existing 2011 notes in the exchange offer and, if so, the aggregate amount of existing 2011 notes to tender. You should read this prospectus and the letter of transmittal and consult with your advisors, if any, to make that decision based on your own financial position and requirements. In particular, you should know that there are certain significant adverse tax consequences that could result from the exchange of existing 2011 notes or the holding, conversion or other disposition of the new notes. Investors considering the exchange of existing 2011 notes for new notes should discuss the tax consequences with their own tax advisors. See **Material U.S. Federal Income Tax Consequences**.

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Expiration date; extension; termination	<p>The exchange offer and withdrawal rights will expire at 11:59 p.m., New York City time, on November 21, 2008, or any subsequent time or date to which the exchange offer is extended. We may extend the expiration date or amend any of the terms or conditions of the exchange offer for any reason. In the case of an extension, we will issue a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date. If we extend the expiration date, you must tender your existing 2011 notes prior to the date identified in the press release or public announcement if you wish to participate in the exchange offer. In the case of an amendment, we will issue a press release or other public announcement. We have the right to:</p> <p style="padding-left: 40px;">extend the expiration date of the exchange offer and retain all tendered existing 2011 notes, subject to your right to withdraw your tendered existing 2011 notes; and</p> <p style="padding-left: 40px;">waive any condition or otherwise amend any of the terms or conditions of the exchange offer in any respect, other than the condition that the registration statement relating to the exchange offer be declared effective.</p>
Conditions to the exchange offer	<p>The exchange offer is subject to the registration statement, and any post-effective amendment to the registration statement covering the new notes and the common stock, being effective under the Securities Act of 1933, as amended, or the Securities Act. The exchange offer is also subject to customary conditions, which we may waive. The satisfaction or waiver of the conditions, other than those that relate to governmental or regulatory conditions necessary to the consummation of the exchange offer, will be determined as of the expiration date of the exchange offer currently scheduled for November 21, 2008.</p>
Withdrawal rights	<p>You may withdraw a tender of your existing 2011 notes at any time before the exchange offer expires by delivering a written notice of withdrawal to U.S. Bank National Association, the exchange agent, before the expiration date. If you change your mind, you may re-tender your existing 2011 notes by again following the exchange offer procedures before the exchange offer expires. In addition, if we have not accepted your tendered existing 2011 notes for exchange, you may withdraw your existing 2011 notes at any time after 30 days after expiration of the exchange offer.</p>
Procedures for tendering existing 2011 notes	<p>If you hold existing 2011 notes through a broker, dealer, commercial bank, trust company or other nominee, you should contact that person promptly if you wish to tender your existing 2011 notes. Tenders of your existing 2011 notes will be effected by book-entry transfers through The Depository Trust Company.</p> <p>If you hold existing 2011 notes through a broker, dealer, commercial bank, trust company or other nominee, you may also comply with the procedures for guaranteed delivery.</p>

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If you wish to contact the dealer managers, please contact Lazard Capital Markets LLC at (415) 281-3420, attention Simon Manning.

Risk factors	You should carefully consider the matters described under Risk Factors, as well as other information, set forth in this prospectus and in the letter of transmittal.
Consequences of not exchanging existing 2011 notes	The liquidity and trading market for existing 2011 notes not tendered in the exchange offer could be adversely affected to the extent a significant amount of the existing 2011 notes are tendered and accepted in the exchange offer.
Tax consequences	<p>Subject to the limitations set forth in Material United States Federal Income Tax Consequences (below), it is more likely than not that the exchange of existing 2011 notes for shares of common stock should qualify as a tax-free recapitalization for U.S. federal income tax purposes with the result that U.S. holders of existing 2011 notes should not recognize any gain or loss on the exchange with respect thereto. However, based on all the relevant facts and circumstances of the new notes, including the guarantee by Guardian II secured by a second lien on its property, the convertibility of the new notes, the term being less than three years and their other terms, it is not clear whether the new notes received in exchange for the existing 2011 notes would be considered securities eligible for tax-free receipt as part of a recapitalization. If the exchange qualifies as a recapitalization and the new notes are treated as securities for this purpose, a U.S. Holder should not recognize any gain or loss on the exchange. Alternatively, the exchange could be treated as a recapitalization with respect to the exchange of existing 2011 notes for shares of common stock, but with the receipt of the new notes being treated as other property, with the result that U.S. Holders of the existing 2011 notes would not recognize any loss, but would recognize gain (if any), on the entire exchange of existing 2011 notes for new notes and shares of common stock to the extent of the fair market value of the new notes received. It is also possible that the exchange of the existing 2011 notes for new notes and shares of common stock could be treated as a taxable exchange with the result that U.S. Holders of existing 2011 notes could recognize gain or loss on such exchange. You should read Material United States Federal Income Tax Consequences for a more complete description of the U.S. federal income tax consequences of the exchange.</p> <p>Tax matters are very complicated, and the tax consequences of the exchange to you will depend on your own situation. You should consult your own tax advisor to determine the effect of the exchange on you under U.S. Federal, State, local and foreign tax laws.</p>
Ratio of earnings to fixed charges	Earnings were insufficient to cover fixed charges by \$38.0 million, \$29.5 million, \$78.3 million, \$88.6 million, \$93.5 million and \$29.4 million for the six month period ended June 30, 2008 and the years ended December 31, 2007, 2006, 2005, 2004 and 2003, respectively. For the six month period ended June 30, 2007, the Company had a ratio of earnings to fixed charges of 1.4x.

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Comparison of New Notes and Existing 2011 Notes

The following is a brief summary of the terms of the new notes and the existing 2011 notes. For a more detailed description of the new notes and existing 2011 notes, see Description of New Notes and Description of Existing 2011 Notes.

	New Notes	Existing 2011 Notes
Securities	Up to \$90,280,000 in principal amount of our 12.50% Convertible Guaranteed Senior Notes due 2011.	As of the date of this prospectus, there is \$225,700,000 in principal amount of our existing 3.50% Convertible Senior Notes due 2011 outstanding.
Issuer	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.
Maturity	January 15, 2011.	April 15, 2011.
Interest	<p>Interest on the new notes will be payable at a rate of 12.50% per year, payable semiannually on April 15 and October 15 of each year, commencing April 15, 2009, except that the final interest payment date will be January 15, 2011.</p> <p>We may elect to pay interest on the new notes in cash or by increasing the principal amount of the new notes or by issuing additional new notes (PIK interest) in an amount equal to the amount of interest for the applicable interest payment period. PIK interest will be paid in \$1,000 minimum denominations and in integral multiples thereof (with fractional interest paid in cash).</p>	<p>Interest on the existing 2011 notes is payable at a rate of 3.50% per year, payable semiannually on April 15 and October 15 of each year.</p> <p>Interest on the existing 2011 notes is payable only in cash.</p>
Conversion rights	The new notes will be convertible, at the option of the holder, at any time on or prior to maturity, into shares of our common stock at a conversion price equal to a 10% premium over the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange	The existing 2011 notes are convertible, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at a conversion rate of 74.0741 shares per \$1,000 principal amount of existing 2011 notes (equal to a conversion price of approximately \$13.50 per share). The conversion rate is subject to adjustment.

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	New Notes	Existing 2011 Notes
	offer; provided, that in no event will the conversion price be less than \$1.10 per share. The conversion rate is subject to adjustment. There will be no limitation as to the principal amount of the new notes you can convert at any time.	There is no limitation as to the principal amount of existing 2011 notes you can convert at any time.
Auto-conversion	We will have the right to automatically convert some or all of the new notes (an automatic conversion) on or prior to January 15, 2011 if the closing price of our common shares has exceeded 130% of the conversion price then in effect for at least 20 trading days during any consecutive 30 trading day period ending within five trading days prior to the notice of automatic conversion (an automatic conversion price).	We have the right to automatically convert some or all of the existing 2011 notes (an automatic conversion) on or prior to the maturity date if the closing price of our common shares has exceeded 130% of the conversion price then in effect for at least 20 trading days during any consecutive 30 trading day period ending within five trading days prior to the notice of automatic conversion (an automatic conversion price).
Additional interest upon automatic conversion	If we elect to automatically convert some or all of your new notes on or prior to the date that is one year from the original issue date of the new notes issued in the exchange offer, we will pay additional interest to holders of new notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including the date which is one year from the original issue date of the new notes issued in the exchange offer. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon an automatic conversion with our common shares, such shares will be valued at 90% of the automatic conversion price that is in effect at that time.	If we elect to automatically convert some or all of your existing 2011 notes on or prior to May 10, 2010, we will pay additional interest to holders of existing 2011 notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the existing 2011 notes from the last day interest was paid on the existing 2011 notes, through and including May 10, 2010. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon an automatic conversion with our common shares, such shares will be valued at 90% of the automatic conversion price that is in effect at that time.

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	New Notes	Existing 2011 Notes
Additional interest upon voluntary conversion	If you elect to voluntarily convert some or all of your new notes on or prior to the date that is two years from the original issue date of the new notes issued in the exchange offer, we will pay additional interest to holders of new notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including the date which is two years from the original issue date of the new notes issued in the exchange offer. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon a voluntary conversion with our common shares, such shares will be valued at the conversion price that is in effect at that time.	If you elect to voluntarily convert some or all of your existing 2011 notes on or prior to May 10, 2010, we will pay additional interest to holders of existing 2011 notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the existing 2011 notes from the last day interest was paid on the existing 2011 notes, through and including May 10, 2010. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon a voluntary conversion with our common shares, such shares will be valued at the conversion price then in effect.
Repurchase or redemption at holder's option upon a fundamental change	You may require us to repurchase your new notes upon a fundamental change, as described in Description of New Notes, in cash at 100% of the principal amount, plus accrued and unpaid interest, to but excluding the fundamental change repurchase date.	You may require us to repurchase your existing 2011 notes upon a fundamental change, as described in Description of Existing 2011 Notes, in cash at 100% of the principal amount, plus accrued and unpaid interest, to but excluding the fundamental change repurchase date.
Conversion rate adjustment upon a fundamental change	In the event of a fundamental change, we may be required to increase the conversion rate for the new notes surrendered for conversion in connection with the fundamental change. See Description of New Notes Conversion rate adjustment on a fundamental change. In no event will the conversion rate exceed shares per \$1,000 principal amount of new notes (subject to adjustment).	In the event of a fundamental change, we may be required to increase the conversion rate for the existing 2011 notes surrendered for conversion in connection with the fundamental change. See Description of Existing 2011 Notes Conversion rate adjustment on a fundamental change. In no event will the conversion rate exceed 113.0741 shares per \$1,000 principal amount of the existing 2011 notes (subject to adjustment).

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	New Notes	Existing 2011 Notes
Optional redemption	<p>Prior to October 15, 2010, the new notes are not redeemable.</p> <p>On or after October 15, 2010, we may redeem some or all of the new notes for cash at 100% of the principal amount of the new notes to be redeemed, plus accrued and unpaid interest, to but excluding the redemption date.</p>	<p>Prior to May 10, 2010, the existing 2011 notes are not redeemable.</p> <p>On or after May 10, 2010, we may redeem some or all of the existing 2011 notes for cash at 100% of the principal amount of the existing 2011 notes to be redeemed, plus accrued and unpaid interest, to but excluding the redemption date.</p>
Secured Guarantee	<p>The new notes will be guaranteed by our subsidiary Guardian II and this guarantee will be secured by a second priority lien on substantially all of the assets of Guardian II. The second priority lien is subject to the first priority lien on substantially all of the assets of Guardian II which is held by Paul Royalty Fund Holdings II, LP (PRF), an affiliate of Paul Capital Partners, or Paul Capital, and secures our and Guardian II s payment obligations to Paul Capital. Guardian II s assets include certain license rights to sell ANTARA capsules in the U.S. and the associated intellectual property rights, ANTARA inventory and the accounts receivable from sales of ANTARA.</p>	<p>None</p>
Ranking	<p>The new notes will be Oscient s unsecured obligations guaranteed by our subsidiary Guardian II and this guarantee will be secured by a second priority lien on substantially all of the assets of Guardian II.</p> <p>The new notes will:</p> <p style="padding-left: 40px;">rank senior in right of payment to any of our future indebtedness that by its terms is junior or subordinated in right of payment to the new notes;</p> <p style="padding-left: 40px;">rank equally in right of payment with all of our existing and future senior unsecured indebtedness but, to the extent of the value of the</p>	<p>The existing 2011 notes are unsecured and unsubordinated obligations and rank equal in priority with all of our existing and future unsecured and unsubordinated indebtedness, and senior in right of payment to all of our future subordinated indebtedness. The existing 2011 notes effectively rank junior to any of our secured indebtedness and any of our indebtedness that is guaranteed by our subsidiaries. The existing 2011 notes are structurally subordinated to all liabilities of our subsidiaries.</p>

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	New Notes	Existing 2011 Notes
	<p>second priority lien on substantially all of the assets of our subsidiary Guardian II, effectively senior to all of Oscient's existing and future unsecured senior indebtedness (including existing 2011 notes not tendered in the exchange offer and our 5% Convertible Promissory Notes due 2009). See Description of New Notes Ranking ;</p> <p>be effectively subordinated in right of payment to Guardian II's indebtedness to Paul Capital under the \$20.0 million aggregate principal amount 12% senior secured note due August 2010 and the interest accrued to date thereon (the Paul Capital Note) and our and Guardian II's payment obligations to Paul Capital under the amended revenue interests assignment agreement as described herein. See Description of New Notes Ranking.</p>	
Intercreditor Agreement	<p>The trustee under the indenture governing the new notes and Paul Capital will enter into an intercreditor agreement as to the relative priorities of their relative security interests in Guardian II's assets securing the guarantee of the new notes and Guardian II's indebtedness to Paul Capital under the Paul Capital Note and our and Guardian II's payment obligations to Paul Capital under the revenue interests assignment agreement. See Description of New Notes Intercreditor Agreement.</p>	
Limitations on indebtedness and liens	None.	None.

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New Notes

Existing 2011 Notes

Extension of cure period for event of default
for late SEC reports