

MANNKIND CORP
Form 10-Q
May 10, 2012
[Table of Contents](#)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

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

For the quarterly period ended March 31, 2012

Or

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

For the transition period from to .

Commission file number: 000-50865

MannKind Corporation

(Exact name of registrant as specified in its charter)

Edgar Filing: MANNKIND CORP - Form 10-Q

Delaware (State or other jurisdiction of incorporation or organization)	13-3607736 (I.R.S. Employer Identification No.)
28903 North Avenue Paine Valencia, California (Address of principal executive offices)	91355 (Zip Code)
(661) 775-5300 (Registrant's telephone number, including area code)	

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

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

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

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

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

As of April 27, 2012, there were 167,821,957 shares of the registrant's common stock, \$.01 par value per share, outstanding.

Table of Contents

MANNKIND CORPORATION

Form 10-Q

For the Quarterly Period Ended March 31, 2012

TABLE OF CONTENTS

	Page
PART I: FINANCIAL INFORMATION	
Item 1. Financial Statements	
<u>Condensed Consolidated Balance Sheets: March 31, 2012 and December 31, 2011</u>	2
<u>Condensed Consolidated Statements of Operations: Three months ended March 31, 2012 and 2011 and the period from February 14, 1991 (date of inception) to March 31, 2012</u>	3
<u>Condensed Consolidated Statements of Comprehensive Loss for the three months ended March 31, 2012 and 2011 and the period from February 14, 1991 (date of inception) to March 31, 2012</u>	4
<u>Condensed Consolidated Statements of Cash Flows: Three months ended March 31, 2012 and 2011 and the period from February 14, 1991 (date of inception) to March 31, 2012</u>	5
<u>Notes to Condensed Consolidated Financial Statements</u>	6
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	15
<u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u>	19
<u>Item 4. Controls and Procedures</u>	20
PART II: OTHER INFORMATION	
<u>Item 1. Legal Proceedings</u>	20
<u>Item 1A. Risk Factors</u>	20
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	35
<u>Item 3. Defaults Upon Senior Securities</u>	35
<u>Item 4. Mine Safety Disclosures</u>	36
<u>Item 5. Other Information</u>	36
<u>Item 6. Exhibits</u>	37
<u>SIGNATURES</u>	39
AFREZZA®, MedTone® and Technosphere® are our registered trademarks in the United States. We have also applied for and have registered company trademarks in other jurisdictions, including Europe and Japan.	

Table of Contents**PART 1: FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****MANNKIND CORPORATION AND SUBSIDIARIES****(A Development Stage Company)****CONDENSED CONSOLIDATED BALANCE SHEETS****(Unaudited)****(In thousands except share data)**

	March 31, 2012	December 31, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 56,355	\$ 2,681
Available for sale securities	350	515
Prepaid expenses and other current assets	3,004	2,625
Total current assets	59,709	5,821
Property and equipment net	190,916	193,029
State research and development credit exchange receivable	565	473
Other assets	230	230
Total	\$ 251,420	\$ 199,553
LIABILITIES AND STOCKHOLDERS DEFICIT		
Current liabilities:		
Accounts payable	\$ 2,661	\$ 4,624
Accrued expenses and other current liabilities	31,746	20,736
Total current liabilities	34,407	25,360
Senior convertible notes	210,946	210,642
Note payable to related party	283,453	277,203
Total liabilities	528,806	513,205
Commitments and contingencies		
Stockholders' deficit:		
Undesignated preferred stock, \$0.01 par value 10,000,000 shares authorized; no shares issued or outstanding at March 31, 2012 and December 31, 2011		
Common stock, \$0.01 par value 250,000,000 shares authorized at March 31, 2012 and December 31, 2011, respectively; 167,815,783 and 131,522,945 shares issued and outstanding at March 31, 2012 and December 31, 2011, respectively	1,678	1,315
Additional paid-in capital	1,694,658	1,620,535
Accumulated other comprehensive income	(3)	44
Deficit accumulated during the development stage	(1,973,719)	(1,935,546)
Total stockholders' deficit	(277,386)	(313,652)
Total	\$ 251,420	\$ 199,553

See notes to condensed consolidated financial statements.

Table of Contents**MANNKIND CORPORATION AND SUBSIDIARIES****(A Development Stage Company)****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS****(Unaudited)****(In thousands, except per share data)**

	Three months ended March 31,		Cumulative period from February 14, 1991 (date of inception) to March 31, 2012
	2012	2011	
Revenue	\$	\$ 50	\$ 3,131
Operating expenses:			
Research and development	24,156	26,289	1,390,207
General and administrative	9,777	11,762	390,008
In-process research and development costs			19,726
Goodwill impairment			151,428
Total operating expenses	33,933	38,051	1,951,369
Loss from operations	(33,933)	(38,001)	(1,948,238)
Other income (expense)	1,382	1,350	306
Interest expense on note payable to related party	(3,048)	(2,476)	(31,382)
Interest expense on senior convertible notes	(2,575)	(2,413)	(31,369)
Interest income	1	15	36,990
Loss before provision for income taxes	(38,173)	(41,525)	(1,973,693)
Income taxes			(26)
Net loss	(38,173)	(41,525)	(1,973,719)
Deemed dividend related to beneficial conversion feature of convertible preferred stock			(22,260)
Accretion on redeemable preferred stock			(952)
Net loss applicable to common stockholders	\$ (38,173)	\$ (41,525)	\$ (1,996,931)
Net loss per share applicable to common stockholders basic and diluted	\$ (0.27)	\$ (0.34)	
Shares used to compute basic and diluted net loss per share applicable to common stockholders	143,154	121,057	

See notes to condensed consolidated financial statements.

Table of Contents

MANNKIND CORPORATION AND SUBSIDIARIES

(A Development Stage Company)

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(Unaudited)

(In thousands, except per share data)

	Three months ended March 31,		Cumulative period from February 14, 1991 (date of inception) to March 31, 2012
	2012	2011	
Net Loss	\$ (38,173)	\$ (41,525)	\$ (1,973,719)
Other comprehensive loss:			
Cumulative translation (loss) gain	(1)	(5)	(5)
Unrealized gain (loss) on investments:			
Unrealized holding gain (loss) during the period		(7)	48
Less: reclassification adjustment for gains (losses) included in net loss	48		48
Net unrealized (loss) gain on investments	48	(7)	0
Comprehensive loss	\$ (38,126)	\$ (41,537)	\$ (1,973,724)

See notes to condensed consolidated financial statements.

Table of Contents**MANNKIND CORPORATION AND SUBSIDIARIES****(A Development Stage Company)****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(Unaudited)****(In thousands)**

	Three months ended March 31,		Cumulative Period from February 14, 1991 (Date of Inception) to March 31, 2012
	2012	2011	
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	\$ (38,173)	\$ (41,525)	\$ (1,973,719)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	3,696	4,119	116,071
Stock-based compensation expense	2,878	2,708	127,504
Stock expense for shares issued pursuant to research agreement			3,018
(Gain) loss on sale, abandonment/disposal or impairment of property and equipment	(32)		23,539
Accrued interest on investments, net of amortization of discounts			(191)
In-process research and development			19,726
Goodwill impairment			151,428
Loss on available-for-sale securities	117		990
Fair value adjustment of warrant liability	284		284
Fair value of forward purchase contract	(1,705)		(1,705)
Other, net	1	5	1,102
Changes in assets and liabilities:			
State research and development credit exchange receivable	(92)	(100)	(565)
Prepaid expenses and other current assets	365	370	(660)
Other assets		87	(230)
Accounts payable	(1,713)	(218)	2,661
Accrued expenses and other current liabilities	1,888	3,850	21,862
Other liabilities			(2)
Net cash used in operating activities	(32,486)	(30,704)	(1,508,887)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchase of marketable securities			(796,779)
Sales and maturities of marketable securities		3,828	796,393
Purchase of property and equipment	(323)	(1,993)	(327,432)
Proceeds from sale of property and equipment	32		409
Net cash (used in) provided by investing activities	(291)	1,835	(327,409)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Issuance of common stock and warrants, net of issuance costs	80,598	9,746	1,310,619
Collection of Series C convertible preferred stock subscriptions receivable			50,000
Issuance of Series B convertible preferred stock for cash			15,000
Cash received for common stock to be issued			3,900
Repurchase of common stock			(1,028)

Edgar Filing: MANNKIND CORP - Form 10-Q

Put shares sold to majority stockholder			623
Borrowings under lines of credit			4,220
Proceeds from notes receivables			1,742
Borrowings on notes payable to related party	6,250		381,250
Principal payments on notes payable to principal stockholder			(70,000)
Borrowings on notes payable			3,460
Principal payments on notes payable			(1,667)
Proceeds from senior convertible notes			207,050
Payment of employment taxes related to vested restricted stock units	(397)	(26)	(12,518)
Net cash provided by financing activities	86,451	9,720	1,892,651
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	\$ 53,674	\$ (19,149)	\$ 56,355
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	2,681	66,061	
CASH AND CASH EQUIVALENTS, END OF PERIOD	\$ 56,355	\$ 46,912	\$ 56,355
SUPPLEMENTAL CASH FLOWS DISCLOSURES:			
Cash paid for income taxes	\$	\$	\$ 26
Interest paid in cash, net of amounts capitalized	2,595	5,504	51,992
Accretion on redeemable convertible preferred stock			(952)
Issuance of common stock upon conversion of notes payable			3,331
Increase in additional paid-in capital resulting from merger			171,154
Issuance of common stock for notes receivable			2,758
Issuance of put option by stockholder			(2,949)
Put option redemption by stockholder			1,921
Issuance of Series C convertible preferred stock subscriptions			50,000
Issuance of Series A redeemable convertible preferred stock			4,296
Conversion of Series A redeemable convertible preferred stock			(5,248)
Non-cash construction in progress and property and equipment	921	4,321	921
Cancellation of principal on note payable to related party		1,116	27,797
Warrant liability	7,631		7,631
In connection with the Company's initial public offering, all shares of Series B and Series C convertible preferred stock, in the amount of \$15.0 million and \$50.0 million, respectively, automatically converted into common stock in August 2004.			

See notes to condensed consolidated financial statements.

Table of Contents

MANNKIND CORPORATION AND SUBSIDIARIES

(A Development Stage Company)

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

1. Description of business and basis of presentation

The accompanying unaudited condensed consolidated financial statements of MannKind Corporation and its subsidiaries (the "Company"), have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (the "SEC"). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. These statements should be read in conjunction with the financial statements and notes thereto included in the Company's latest audited annual financial statements. The audited statements for the year ended December 31, 2011 (which includes disclosures regarding the Company's ability to continue as a going concern) are included in the Company's annual report on Form 10-K for the fiscal year ended December 31, 2011 filed with the SEC on March 15, 2012 (the "Annual Report").

In the opinion of management, all adjustments, consisting only of normal, recurring adjustments, considered necessary for a fair presentation of the results of these interim periods have been included. The results of operations for the three months ended March 31, 2012 may not be indicative of the results that may be expected for the full year.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates or assumptions. The more significant estimates reflected in these accompanying financial statements involve assessing long-lived assets for impairment, accrued expenses including the valuation of warrant liabilities, the valuation of stock-based compensation and the determination of the provision for income taxes and corresponding deferred tax assets and liabilities and any valuation allowance recorded against net deferred tax assets.

Business The Company is a biopharmaceutical company focused on the discovery and development of therapeutic products for diseases such as diabetes and cancer. The Company's lead product candidate, AFREZZA (insulin human [rDNA origin]) inhalation powder, is an ultra rapid-acting insulin therapy in late-stage clinical investigation for the treatment of adults with type 1 or type 2 diabetes for the control of hyperglycemia.

AFREZZA consists of the Company's proprietary Technosphere particles onto which insulin molecules are loaded. These loaded particles are then aerosolized and inhaled deep into the lung using the Company's AFREZZA inhaler.

Basis of Presentation The Company is considered to be in the development stage as its primary activities since incorporation have been establishing its facilities, recruiting personnel, conducting research and development, business development, business and financial planning, and raising capital. It is costly to develop therapeutic products and conduct clinical trials for these products. Since its inception through March 31, 2012 the Company has reported accumulated net losses of \$2.0 billion, which include a goodwill impairment charge of \$151.4 million, and cumulative negative cash flow from operations of \$1.5 billion. At March 31, 2012, the Company's capital resources consisted of cash, cash equivalents, and marketable securities of \$56.7 million and \$38.8 million of available borrowings under the loan agreement with an entity controlled by the Company's principal stockholder (see Note 11 - Related-party arrangements). Based upon the Company's current expectations, management believes the Company's existing capital resources will enable it to continue planned operations into the fourth quarter of 2012. However, the Company cannot provide assurances that its plans will not change or that changed circumstances will not result in the depletion of its capital resources more rapidly than it currently anticipates. The Company will need to raise additional capital, whether through the sale of equity or debt securities, a strategic business collaboration with a pharmaceutical company, the establishment of other funding facilities, licensing arrangements, assets sales or other means, or an increase in the borrowings available under the loan arrangement with its related party, in order to continue the development and commercialization of AFREZZA and other product candidates and to support its other ongoing activities. This raises substantial doubt about the Company's ability to continue as a going concern.

Fair Value of Financial Instruments The carrying amounts of financial instruments, which include cash equivalents, marketable securities and accounts payable, approximate their fair values due to their relatively short maturities. The fair value of the note payable to related party cannot be reasonably estimated as the Company would not be able to obtain a similar credit arrangement in the current economic environment.

Edgar Filing: MANNKIND CORP - Form 10-Q

Cash equivalents consist of highly liquid investments, with original or remaining maturities of 90 days or less at the time of purchase, that are readily convertible into cash. As of March 31, 2012 and December 31, 2011, the Company held \$50.6 million and \$55,000, respectively of cash equivalents, consisting entirely of money market funds. The fair value of these investments was determined by using quoted prices for identical investments in an active market (Level 1 in the fair value hierarchy).

Table of Contents

The Company's marketable securities consist principally of a certificate of deposit with a maturity greater than 90 days, held as collateral for the Company's commercial credit card programs and a common stock investment that are classified as available-for-sale securities. The certificate of deposit is stated at fair value based on quoted prices for similar instruments in an active market (Level 2 in the fair value hierarchy) and the common stock investment is stated at fair value based on quoted prices in an active market (Level 1 in the fair value hierarchy). As of March 31, 2012 and December 31, 2011, there were marketable securities of \$350,000 and \$515,000, respectively.

The following is a summary of the carrying values and estimated fair values of the Company's senior convertible notes due in 2013 and 2015 (in millions).

	March 31, 2012		December 31, 2011	
	Carrying value	Estimated fair value	Carrying value	Estimated fair value
Notes due 2013	\$ 114.0	\$ 64.0	\$ 113.9	\$ 61.0
Notes due 2015	\$ 97.0	\$ 58.6	\$ 96.8	\$ 60.8

The estimated fair value of the senior convertible notes due 2013 was calculated based on quoted prices in an active market. The estimated fair value of the senior convertible notes due 2015 was calculated based on model-derived valuations whose inputs are observable. As there is no current observable market for the senior convertible notes due 2015, the Company determined the estimated fair value using a convertible bond valuation model within a lattice framework. The convertible bond valuation model combined expected cash outflows with market-based assumptions regarding risk-adjusted yields, stock price volatility and recent price quotes and trading information regarding Company issued debt instruments and shares of common stock into which the notes are convertible.

The estimated fair value of the warrant liability was calculated based on the Black-Scholes option pricing model (Level 3 in the fair value hierarchy). See Note 9 – Warrant Liability for further discussion.

The estimated fair value of Mann Purchase Agreement was based on a forward purchase contract valuation (Level 3 in the fair value hierarchy). See Note 8- Common and Preferred Stock for further discussion.

The following roll-forward provides a summary of changes in fair value of the Company's Level 3 financial assets and liabilities (in thousands):

	Three months ended March 31, 2012	
	Forward Purchase Contract	Warrant Liability
Beginning Balance	\$ -	\$ -
Transfers to Level 3	1,080	(7,631)
Realized gain/(loss) included in expense	-	-
Unrealized gain/(loss) included in other income (expense)	(336)	(284)
Settlements	-	-
Ending Balance	\$ 744	\$ (7,915)

Recently Issued Accounting Standards In June 2011, the FASB issued Accounting Standards Update No. 2011-05 (ASU 2011-05) for Comprehensive Income (Topic 220): Presentation of Comprehensive Income. This update improves the comparability, consistency and transparency of financial reporting and increases the prominence of items reported in other comprehensive income. This update is effective for interim and annual periods beginning after December 15, 2011. The Company has adopted all current required provisions of ASU 2011-05 on a retrospective basis.

In May 2011, the FASB issued Accounting Standards Update No. 2011-04 (ASU 2011-04) for Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. This update addresses how to measure fair value and requires new disclosures about fair value measurements. The amendments in this update are effective for interim and annual periods beginning after December 15, 2011. The Company has adopted all current required provisions of ASU 2011-04.

Table of Contents**2. Investment in securities**

The following is a summary of the available-for-sale securities classified as current assets (in thousands).

	March 31, 2012			December 31, 2011		
	Cost Basis	Gross Unrealized Gain	Fair Value	Cost Basis	Gross Unrealized Gain	Fair Value
Available-for-sale securities	\$ 350	\$	\$ 350	\$ 467	\$ 48	\$ 515

The Company's available-for-sale securities at March 31, 2012 consist of a \$350,000 certificate of deposit with a maturity greater than 90 days, held as collateral for the Company's commercial credit card programs. The Company's available-for-sale securities at December 31, 2011 consist principally of a \$350,000 certificate of deposit with a maturity greater than 90 days, held as collateral primarily for the Company's commercial credit card programs, and a common stock investment. During the quarter ended March 31, 2012, the Company evaluated its common stock investment to be other than temporarily impaired and recorded the \$117,000 realized loss for available-for-sale securities as Other income (expense) in the condensed consolidated statements of operations. Gross unrealized gains and losses are included in Other comprehensive gain (loss).

3. Accrued expenses and other current liabilities

Accrued expenses and other current liabilities are comprised of the following (in thousands):

	March 31, 2012	December 31, 2011
Salary and related expenses	\$ 5,289	\$ 8,997
Research and clinical trial costs	5,449	2,383
Accrued interest	10,950	8,262
Construction in progress	891	
Warrant liability	7,933	
Other	1,234	1,094
Accrued expenses and other current liabilities	\$ 31,746	\$ 20,736

4. Accounting for stock-based compensation

Total stock-based compensation expense recognized in the accompanying condensed consolidated statements of operations for the three months ended March 31, 2012 and 2011 was as follows (in thousands):

	Three months ended March 31,	
	2012	2011
Stock-based compensation	\$ 2,878	\$ 2,708

The Company issued stock awards to employees during the three months ended March 31, 2012 primarily with a four-year vesting schedule. The grant date fair value of the 10,100 restricted stock units issued during the three months ended March 31, 2012 was \$24,000 with a grant date fair value per share of \$2.41.

As of March 31, 2012, there was \$9.7 million and \$13.2 million of unrecognized compensation cost related to options and restricted stock units, respectively, which are expected to be recognized over the remaining weighted average vesting period of 2.1 years. As of March 31, 2012, there was \$128,000 and \$3.7 million of unrecognized expenses related to performance options and restricted stock units, respectively, for milestones not considered probable of achievement.

5. Net loss per common share

Basic net loss per share excludes dilution for potentially dilutive securities and is computed by dividing net loss applicable to common stockholders by the weighted average number of common shares outstanding during the period excluding the shares loaned under the share lending arrangement (see Note 8 – Common and preferred stock). As of March 31, 2012, 9,000,000 shares of the Company's common stock, which were loaned to a share borrower pursuant to the terms of a share lending agreement as described in Note 12, were issued and are outstanding, and holders of the borrowed shares have all the rights of a holder of the Company's common stock. However, because the share borrower must return all borrowed shares to the Company (or, in certain circumstances, the cash value thereof), the borrowed shares are not considered outstanding for the purpose of computing and reporting basic or diluted earnings (loss) per share. Diluted net loss per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. Potentially dilutive securities are excluded from the computation of diluted net loss per share for all of the periods presented in the accompanying condensed consolidated statements of operations

Table of Contents

because the reported net loss in each of these periods results in their inclusion being antidilutive. Antidilutive securities, which consist of stock options, restricted stock units, warrants, and shares that could be issued upon conversion of the senior convertible notes, that are not included in the diluted net loss per share calculation consisted of an aggregate of 54,310,177 shares and 33,334,623 shares as of March 31, 2012 and 2011, respectively, and exclude the 9,000,000 shares loaned under the share lending arrangement.

6. State research and development credit exchange receivable

The State of Connecticut provides certain companies with the opportunity to exchange certain research and development income tax credit carryforwards for cash in exchange for forgoing the carryforward of the research and development income tax credits. The program provides for an exchange of research and development income tax credits for cash equal to 65% of the value of corporation tax credit available for exchange. Estimated amounts receivable under the program are recorded as a reduction of research and development expenses. At March 31, 2012 and December 31, 2011, the estimated amounts receivable under the program were \$565,000 and \$473,000, respectively.

7. Property and equipment net

Property and equipment net consist of the following (dollar amounts in thousands):

	Estimated Useful Life (Years)	March 31, 2012	December 31, 2011
Land		\$ 5,273	\$ 5,273
Buildings	39-40	54,948	54,948
Building improvements	5-40	114,225	114,247
Machinery and equipment	3-15	82,190	83,476
Furniture, fixtures and office equipment	5-10	5,244	5,249
Computer equipment and software	3	12,177	13,049
Leasehold improvements		48	53
Construction in progress		9,743	8,498
		283,848	284,793
Less accumulated depreciation and amortization		(92,932)	(91,764)
Property and equipment net		\$ 190,916	\$ 193,029

Leasehold improvements are amortized over four years which is the shorter of the term of the lease or the service lives of the improvements.

Depreciation and amortization expense related to property and equipment for the three months ended March 31, 2012 and 2011 was as follows (in thousands):

	Three months ended March 31,	
	2012	2011
Depreciation and amortization expense	\$ 3,357	\$ 3,799

8. Common and preferred stock

On February 8, 2012, the Company sold 35,937,500 units in an underwritten public offering, including 4,687,500 units, sold pursuant to the full exercise of an over-allotment option granted to the underwriters, with each unit consisting of one share of common stock and a warrant to purchase 0.6 of a share of common stock. All of the securities were offered by the Company at a combined price to the public of \$2.40 per unit and the underwriters purchased the units at a price of \$2.256 per unit. Net proceeds from this offering were approximately \$80.6 million, excluding any warrant exercises. The 21,562,500 warrants are exercisable at \$2.40 per share and expire four years from the date of the issuance.

Edgar Filing: MANNKIND CORP - Form 10-Q

(See Note 9 – Warrant liability). The shares of common stock and warrants are immediately separable and were issued separately. Concurrent with the underwritten public offering, The Mann Group LLC (“The Mann Group”) agreed to purchase \$77.2 million worth of restricted shares of common stock which will be paid, at the discretion of the Company, by cash or by cancellation of principal indebtedness under the amended loan arrangement, subject to stockholder approval to increase the number of our authorized shares (see Note 11 – Related-party arrangements). As indicated in the Company’s Proxy Statement first distributed to the stockholders of the Company on April 6, 2012 in connection with the 2012 Annual Meeting of Stockholders, the Company has included a proposal to approve an amendment to the Company’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 250,000,000 shares to 350,000,000 shares.

The Company concluded that the Mann Group common stock purchase agreement represented a contingent forward purchase contract that met the definition of a derivative instrument in accordance with ASC 815 *Derivatives and Hedging*. Of the 31,250,000 shares pursuant to the common stock purchase agreement, the portion of the derivative instrument representing 14.7 million shares were recorded as equity as they met the criteria for equity classification under ASC 815-40 *Derivatives and Hedging, Contracts in an Entity’s Own Stock*. The remaining portion of the derivative instrument required classification outside of equity as the Company does not have sufficient available shares at the time of issuance and at March 31, 2012. The fair value of the forward purchase contract was \$2.0 million at the time of issuance and was recorded in other income. The fair value of the portion classified as equity was \$0.9 million and the remaining portion was recorded as \$1.1 million in prepaid and other current assets. The portion of the contract recorded as an asset within prepaid expenses and other current assets has been adjusted to fair value as of March 31, 2012 and the Company recorded an expense of \$0.3 million to other expense during the three months ended March 31, 2012. The value of the derivative instrument was calculated using a forward contract valuation formula in which the forward contract is estimated to be equal to the valuation date stock price minus the strike price discounted to the valuation date using a risk-free rate of 0.08% at issuance and 0.06% at March 31, 2012. As the shares which would be received upon settlement are currently unregistered, the Company applied a discount for lack of marketability of 10.27% at issuance and 6.57% at March 31, 2012 to reflect this lack of marketability based on quantitative put models, adjusted to take into account qualitative factors, including the fact that the Company’s stock is publicly traded and the fact that there is no contractual restriction on the unregistered shares being registered. The fair value of the forward purchase contract is highly sensitive to the discount applied for lack of marketability and an increase in this discount would cause the value of the forward purchase contract to increase the asset position of the Company.

Table of Contents

In June 2011, the Company's stockholders approved an increase in its authorized shares of common stock from 200,000,000 to 250,000,000. As such, the Company is authorized to issue 250,000,000 shares of common stock, par value \$0.01 per share, and 10,000,000 shares of undesignated preferred stock, par value \$0.01 per share, issuable in one or more series designated by the Company's board of directors. No other class of capital stock is authorized. As of March 31, 2012 and December 31, 2011, 167,815,783 and 131,522,945 shares of common stock, respectively, were issued and outstanding. Included in the common stock outstanding as of March 31, 2012 are 9,000,000 shares of common stock loaned to Bank of America under a share lending agreement in connection with the offering of the \$100.0 million aggregate principal amount of 5.75% Senior Convertible Notes due 2015 (see Note 12 – Senior convertible notes). Bank of America is obligated to return the borrowed shares (or, in certain circumstances, the cash value thereof) to the Company on or about the 45th business day following the date as of which the entire principal amount of the notes ceases to be outstanding, subject to extension or acceleration in certain circumstances or early termination at Bank of America's option. The Company did not receive any proceeds from the sale of the borrowed shares by Bank of America, but the Company did receive a nominal lending fee of \$0.01 per share from Bank of America for the use of borrowed shares. As of March 31, 2012 the Company had not issued any shares of undesignated preferred stock.

In August 2010, the Company entered into an agreement with Seaside 88, LP (Seaside) for the sale of up to 18,200,000 shares of common stock in increments of 700,000 shares on a bi-weekly basis with the first closing date scheduled for September 22, 2010 provided that certain conditions are met, including for a particular closing to take place, the ten-day volume weighted average trading price for the Company's common stock immediately prior to such closing must meet or exceed a minimum price set by the Company at \$6.50 per share. If the 10-day volume weighted average trading price for a particular closing was below \$6.50 per share, then that closing would not occur and the aggregate number of shares to be purchased would be reduced by 700,000 shares. The purchase price per share at each closing was equal to 92% of that 10-day volume weighted average price. The agreement with Seaside terminated during the quarter ended September 30, 2011. During the agreement, the Company issued and sold a total of 3,500,000 shares of common stock to Seaside for net proceeds of \$23.8 million.

In conjunction with the Seaside agreement, in August 2010, the Company entered into a common stock purchase agreement with The Mann Group, an entity controlled by the Company's principal stockholder. Under this common stock purchase agreement, the Company was required to issue and sell, and The Mann Group was obligated to purchase at a price equal to the greater of \$7.15 per share (the closing bid price of the Company's common stock on August 10, 2010) and the closing bid price of common stock on the trading day immediately preceding the applicable closing date, the same number of shares of the Company's common stock that Seaside purchased on each closing date under its agreement with the Company (see Note 11 – Related-party arrangements). The agreement with The Mann Group terminated during the quarter ended September 30, 2011. During the agreement, the Company issued and sold a total of 3,500,000 shares of common stock to The Mann Group that had resulted in total reduction in the note payable to related party of \$27.8 million.

9. Warrant liability

In connection with the sale of units in February 2012, the Company issued separable warrants representing 21,562,500 shares of common stock which are exercisable at \$2.40 per share and are exercisable any time prior to February 8, 2016. No warrants have been exercised as of March 31, 2012.

Of the 21,562,500 shares represented by warrants, 16,145,833 shares were recorded as equity as they met the criteria for equity classification under ASC 815-40 *Derivatives and Hedging, Contracts in an Entity's Own Stock*. The remaining warrants representing 5,416,667 shares require liability classification in accordance with ASC 480, *Distinguishing Liabilities from Equity*, as the Company did not have sufficient registered shares available at the time of issuance. The fair value of these shares was recorded in accrued expenses and other current liabilities in the condensed consolidated balance sheet. The warrants will be reported as a liability until they are exercised, or at the time that the Company has sufficient registered shares available, at which time the warrants will be adjusted to fair value and reclassified from liabilities to stockholders equity.

The warrants requiring liability classification were recorded at fair value at issuance and will be adjusted to fair value at each reporting period until exercised or expiration. The fair value of the warrant liability at th