Verastem, Inc.
Form 424B5
May 15, 2018
Table of Contents

Filed Pursuant to Rule 424(b)(5)
Registration No. 333-217048

The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. A registration statement relating to the securities has become effective under the Securities Act of 1933, as amended. This preliminary prospectus supplement together with the accompanying prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, Dated May 15, 2018

Preliminary Prospectus Supplement

(To Prospectus dated April 24, 2017)

$35,000,000

Common Stock

We are offering shares of our common stock. Our common stock is listed on The Nasdaq Global Market under the symbol VSTM. On May 14, 2018 the last reported sale price of our common stock on The Nasdaq Global Market was $5.15 per share.

Investing in our common stock involves a high degree of risk. Before making an investment decision, you should carefully consider the information under the heading Risk Factors beginning on page S-5 of this prospectus supplement and in the documents incorporated by reference into this prospectus supplement.

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

The underwriter has agreed to purchase shares of common stock from us at a price of $ per share, which will result in approximately $ of proceeds to us before expenses. We have granted the underwriter an option for a period of 30 days to purchase up to an additional $5,250,000 of shares of our common stock. If the underwriter exercises the option in full, the total proceeds to us, before expenses, will be $. The underwriter proposes to offer the shares of common stock from time to time for sale in one or more transactions on Nasdaq, in the over-the-counter market, through negotiated transactions or otherwise, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, subject to receipt and acceptance by it and subject to its right to reject any order in whole or in part. We have agreed to reimburse the underwriter for certain expenses in connection with this offering. See Underwriting.

Delivery of the shares of common stock is expected to be made on or about May , 2018.

Cantor

Prospectus Supplement dated , 2018

Table of Contents

TABLE OF CONTENTS

PROSPECTUS SUPPLEMENT

	Page
About This Prospectus Supplement	S-1
Prospectus Supplement Summary	S-2
The Offering	S-4
Risk Factors	S-5
Forward-Looking Statements	S-6
Use of Proceeds	S-7
Underwriting	S-8
Material United States Federal Income and Estate Tax Considerations for Non-U.S. Holders of Shares of our Common Stock	S-12
Incorporation of Certain Documents by Reference	S-16
Legal Matters	S-16
Experts	S-16

PROSPECTUS

	Page
About this Prospectus	3
Our Company	4
Risk Factors	5
Forward-Looking Statements	6
Use of Proceeds	7
Ratio of Earnings to Fixed Charges	8
Plan of Distribution	9
Description of Common Stock	11

Description of Preferred Stock 13

Description of Warrants 14

Description of Debt Securities 15

Where You Can Find More Information 21

Incorporation of Certain Documents by Reference 22

Legal Matters 23

Experts 23

Table of Contents

ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement and the accompanying prospectus relate to part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Both this prospectus supplement and the accompanying prospectus include or incorporate by reference important information about us, our common stock and other information you should know before investing. You should read both this prospectus supplement and the accompanying prospectus as well as additional information described under Where You Can Find More Information in the accompanying prospectus before making an investment decision.

We have not authorized any dealer, agent or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus supplement and the accompanying prospectus or in any related free writing prospectus filed by us with the SEC. Neither we nor the underwriter has authorized anyone to provide you with information that is different from or in addition to such information. This prospectus supplement and the accompanying prospectus do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus supplement and the accompanying prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus supplement and the accompanying prospectus is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus supplement and any accompanying prospectus is delivered or securities are sold on a later date.

This prospectus supplement may add to, update or change the information in the accompanying prospectus or the documents incorporated by reference herein. If information in this prospectus supplement is inconsistent with information in the accompanying prospectus or the documents incorporated by reference herein, this prospectus supplement will apply and will supersede that information in the accompanying prospectus or the documents incorporated by reference herein.

References in this prospectus to Verastem, the Company, we, us, our and similar terms refer to Verastem, Inc. and our subsidiary on a consolidated basis, as appropriate, unless we state otherwise or the context otherwise requires.

Table of Contents

PROSPECTUS SUPPLEMENT SUMMARY

This summary highlights selected information included or incorporated by reference in this prospectus supplement and the accompanying prospectus and does not contain all of the information that may be important to you. You should carefully review this entire prospectus supplement and the accompanying prospectus, including the risk factors and financial statements included and incorporated by reference in this prospectus supplement and the accompanying prospectus.

Company Overview

We are a biopharmaceutical company focused on developing and commercializing drugs to improve the survival and quality of life of cancer patients. Our most advanced product candidates, duvelisib and defactinib, utilize a multi-faceted approach designed to treat cancers originating either in the blood or major organ systems. We are currently evaluating these compounds in both preclinical and clinical studies as potential therapies for certain cancers, including leukemia, lymphoma, lung cancer, ovarian cancer, mesothelioma, and pancreatic cancer. We believe that these compounds may be beneficial as therapeutics either as single agents or when used in combination with immuno-oncology agents or other current and emerging standard of care treatments in aggressive cancers that are poorly served by currently available therapies.

Duvelisib targets the Phosphoinositide 3-kinase, or PI3K signaling pathway. The PI3K signaling pathway plays a central role in cancer proliferation and survival. Duvelisib is an investigational oral therapy designed to attack both malignant B-cells and T-cells and disrupt the tumor microenvironment to help thwart their growth and proliferation through the dual inhibition of PI3K delta and gamma. Duvelisib is being developed for the treatment of patients with hematologic cancers including chronic lymphocytic leukemia and small lymphocytic lymphoma, or CLL/SLL, and indolent non-Hodgkin lymphoma, or iNHL, which includes follicular lymphoma, or FL, and other subtypes of lymphoma, including peripheral T-cell lymphoma, or PTCL. Duvelisib has U.S. Food and Drug Administration, or FDA, Fast Track Designation for patients with CLL or PTCL who have received at least one prior therapy and for patients with FL who have received at least two prior therapies. In addition, duvelisib has orphan drug designation for patients with CLL/SLL and FL in the United States and European Union. Our New Drug Application, or NDA, requesting the full approval of duvelisib for the treatment of patients with relapsed or refractory CLL/SLL and accelerated approval for the treatment of patients with relapsed or refractory FL was accepted for filing by the FDA with Priority Review and a target action date of October 5, 2018. Additionally, we plan to submit a marketing authorization application to the European Medicines Agency in 2019. We are currently building our U.S. commercial capabilities for our potential product launch in 2018, and we intend to enter into one or more partnerships or collaborations for the potential commercialization of duvelisib outside of the United States.

Defactinib is a targeted inhibitor of the Focal Adhesion Kinase, or FAK, signaling pathway. FAK is a non-receptor tyrosine kinase encoded by the PTK-2 gene that is involved in cellular adhesion and, in cancer, metastatic capability. Similar to duvelisib, defactinib is also orally available and designed to be a potential therapy for patients to take at home under the advice of their physician. Defactinib has orphan drug designation in ovarian cancer in the United States and the European Union, and in mesothelioma in the United States, the European Union, and Australia.

Cancer is a group of diseases characterized by uncontrolled growth and spread of abnormal cells. The American Cancer Society estimated that in the United States in 2018, approximately 1.7 million new cases of cancer will be diagnosed and approximately 610,000 people will die from the disease. Current treatments for cancer include surgery, radiation therapy, chemotherapy, hormonal therapy, immunotherapy, and targeted therapy. Despite years of intensive research and clinical use, current treatments often fail to cure cancer. Cancer remains one of the world s most serious health problems and is the second most common cause of death in the United States after heart disease.

According to Decision Resources, the prevalence of CLL/SLL in the United States is approximately 197,000, and the prevalence of FL is approximately 141,000. The CLL/SLL and FL markets are projected to expand in the coming years, driven by the growing elderly population and the availability of new treatments. According to Decision Resources, the total value in global major markets is expected to grow at a compounded annual rate of over 14%, from $6 billion in 2016 to $24 billion in 2026. The use of targeted therapies for patients with CLL/SLL has recently increased due to the approval of novel agents and now encompasses approximately one third of first line treatment with an increasing share of use across lines of therapy. In contrast, targeted therapies are currently less utilized for treatment of patients with FL as fewer agents have demonstrated efficacy in the patient population, and chemotherapy still accounts for the majority of treatments administered. However, as new targeted therapies emerge for these diseases, it is expected that the share of chemotherapy use will decrease.

There are numerous factors to consider when determining the best course of treatment for any patient. For instance, approximately 20% of FL patients are relatively insensitive to first line chemotherapy, have a poor ongoing prognosis or no longer respond to treatment. While ibrutinib use in first line treatment for patients with CLL/SLL continues to increase, nearly a quarter of CLL/SLL patients discontinue ibrutinib after a median of seven months and ibrutinib has not been shown to be efficacious in FL. It is also important to note that 70% of the CLL/SLL and FL patient population are treated in community settings, away from major academic centers, and as many as 55% of oncology patients give equal importance to quality of life and survival.

Community oncologists treat a wide variety of lymphomas, including CLL/SLL and FL. When treating elderly patients, factors such as comorbidities, rate of progression, genetic risks as well as the patient s overall quality of life are some of the considerations. It is important to note that over 70% of elderly iNHL patients experience at least one major comorbidity that may limit existing treatment options. Additionally, approximately 20% of FL patients are fast progressors on chemotherapy, while approximately two-thirds of CLL/SLL patients have medium to high tumor burden, and greater than 30% have high risk genetic alterations, limiting their treatment options. Almost 60% of patients feel burdened by hospital visits, so a treatment that can be administered without infusions and at home may be of further benefit to patients.

With the application of new technologies and key discoveries, we believe that we are now entering an era of cancer research characterized by a more sophisticated understanding of the biology of cancer. We believe that the potential of oral, targeted therapies, along with the rapidly advancing field of immunotherapy, or using the body s immune system to fight cancer, are important new insights that present the opportunity to develop more effective cancer treatments. Our goal is to develop targeted agents that both specifically kill cancer cells and disrupt the tumor microenvironment to enhance the efficacy of cancer treatment.

Table of Contents

Recent Developments

The following is a summary of selected key developments affecting our business that have occurred since March 31, 2018.

Duvelisib NDA Accepted by FDA with Priority Review

In April 2018, we announced that the FDA accepted the duvelisib NDA for filing with Priority Review, and with a target action date of October 5, 2018. In the accepted NDA, we are seeking full approval for duvelisib, our investigational oral dual inhibitor of PI3K-delta and PI3K-gamma, for the treatment of relapsed or refractory CLL/SLL and accelerated approval for the treatment of relapsed or refractory FL. The duvelisib NDA is supported by clinical data from the randomized Phase 3 DUO study evaluating duvelisib as a monotherapy in patients with relapsed or refractory CLL/SLL, as well as the Phase 2 DYNAMO study evaluating patients with indolent non-Hodgkin lymphoma that are double-refractory to both rituximab and chemotherapy or radioimmunotherapy. Both DUO and DYNAMO achieved their primary endpoints.

At-the-Market Offering Program

On March 30, 2017, we entered into a Controlled Equity Offering℠ Sales Agreement with Cantor Fitzgerald & Co., as sales agent, which we amended on August 28, 2017. Under the sales agreement, as amended, we are permitted, from time to time, to issue and sell shares of our common stock, $0.0001 par value per share, having up to an aggregate offering price of $75.0 million through an at-the-market offering program. From April 1, 2018 to May 11, 2018, we have sold 6,314,410 shares of our common stock pursuant to this program and have received proceeds of approximately $23.7 million, net of commissions paid. As of May 11, 2018 we had 57,307,383 shares of common stock outstanding.

Corporate Information

We were incorporated under the laws of the State of Delaware in August 2010. We are headquartered in Needham, Massachusetts, and our principal offices are located at 117 Kendrick Street, Suite 500, Needham, Massachusetts and our telephone number is (781) 292-4200.

Table of Contents

THE OFFERING

Common stock offered by us	shares
Common stock to be outstanding after this offering	shares
Use of proceeds	We intend to use the net proceeds from this offering for commercial preparation and launch costs, pending successful development and a favorable regulatory outcome for our lead product candidate duvelisib, for the continued clinical development of our lead product candidates and to fund working capital, capital expenditures and other general corporate purposes, which may include the acquisition or in-license of additional compounds, product candidates or technology. See Use of Proceeds on page S-7.
Risk factors	You should read the Risk Factors section of this prospectus supplement and in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.
Underwriter s option	The underwriter has an option for a period of 30 days to purchase additional shares of our common stock.
The Nasdaq Global Market symbol	VSTM

The number of shares of our common stock to be outstanding after this offering as reflected above is based on 50,967,973 shares of our common stock outstanding as of March 31, 2018, and excludes:

- 10,818,454 shares of our common stock issuable upon the exercise of stock options outstanding under our equity incentive plans, as of March 31, 2018, at a weighted average price of $4.79 per share;

- 166,250 shares of our common stock issuable pursuant to unvested restricted stock units outstanding as of March 31, 2018;

- 702,118 shares of our common stock available for future issuance as of March 31, 2018 under our 2012 equity incentive plan, plus up to a maximum of 68,591 shares of our common stock subject to outstanding awards under our 2010 equity incentive plan that could expire, be terminated or otherwise be surrendered, cancelled, forfeited or repurchased; and

- 6,314,410 shares of our common stock issued pursuant to our at-the-market equity offering program since March 31, 2018.

Unless otherwise stated, all information in this prospectus supplement excludes the shares referenced in the bullets immediately above.

Table of Contents

RISK FACTORS

An investment in our common stock involves significant risks. Before making an investment in our common stock, you should carefully read all of the information contained in this prospectus supplement, the accompanying prospectus and in the documents incorporated by reference herein. For a discussion of risks that you should carefully consider before deciding to purchase any of our common stock, please review the risk factors disclosed below, together with the other information in this prospectus supplement, the accompanying prospectus, and the information and documents incorporated by reference herein and therein, including Item 1A. Risk Factors included in our Annual Report on Form 10-K for the year ended December 31, 2017. Any of these risks, as well as additional risks not currently known to us or that we currently deem immaterial, may adversely affect our business, financial condition, results of operations, and prospects, resulting in a decline in the trading price of our common stock and loss of all or part of your investment.

Additional Risks Related to This Offering and Our Common Stock

We may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.

We currently intend to use the net proceeds of this offering for commercial preparation and launch costs, pending successful development and a favorable regulatory outcome for our lead product candidate duvelisib, for the continued clinical development of our lead product candidates and to fund working capital, capital expenditures and other general corporate purposes, which may include the acquisition or in-license of additional compounds, product candidates or technology. This expected use of the net proceeds from this offering represents our intentions based upon our current plans and business conditions. The amounts and timing of our actual expenditures may vary significantly depending on numerous factors, including the progress of our development efforts, the status of and results from clinical trials, as well as any collaborations that we may enter into with third parties for our product candidates, and any unforeseen cash needs. Because of the number and variability of factors that will determine our use of the proceeds from this offering, their ultimate use may vary substantially from their currently intended use. As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering and could spend the proceeds in ways that do not necessarily improve our operating results or enhance the value of our common stock. See Use of Proceeds.

Investors in this offering may experience future dilution.

In order to raise additional capital, we may in the future offer additional shares of our common stock or other securities convertible into, or exchangeable for, our common stock at prices that may not be the same as the price per share in this offering. We cannot assure you that we will be able to sell shares of our common stock or other related securities in any other offering at a price per share that is equal to or greater than the price per share paid by investors in this offering. If the price per share at which we sell additional shares of our common stock or related securities in future transactions is less than the price per share in this offering, investors who purchase our common stock in this offering will suffer a dilution in their investment.

A significant portion of our total outstanding shares may be sold into the market at any time, which could cause the market price of our common stock to drop significantly, even if our business is doing well.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

Upon the completion of this offering, approximately 4,094,638 shares of our common stock beneficially owned by our officers and directors will be subject to lock-up agreements with the underwriter that prohibit, subject to certain exceptions, the disposal or pledge of, or the hedging against, any of their common stock or securities convertible into or exchangeable for shares of common stock for a period of 60 days after the date of this prospectus supplement. However, all of the shares sold in this offering and the remaining shares of our common stock outstanding prior to this offering will not be subject to lock-up agreements with the underwriter and, except to the extent such shares are held by our affiliates, will be freely tradable. The market price of our common stock could decline as a result of sales by our stockholders in the market following completion of this offering or the perception that these sales could occur. These factors could also make it difficult for us to raise additional capital by selling stock.

Table of Contents

FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the other documents we have filed with the SEC that are incorporated by reference herein contain forward-looking statements about our strategy, future operations, future financial position, future plans and prospects, including statements regarding the development and activity of our investigational product candidates, including duvelisib and defactinib, and our PI3K and FAK programs generally, the structure of our planned or pending clinical trials, the timeline and indications for clinical development and regulatory approval of our product candidates, the expected timing for the reporting of data from ongoing trials, additional planned studies, our rights to develop or commercialize our product candidates and our ability to finance contemplated development and commercialization activities and fund operations for a specified period. The words anticipate, believe, estimate, expect, intend, may, pla predict, project, target, potential, will, would, could, should, continue, and similar expressions are intended to identify forward-l statements, although not all forward-looking statements contain these identifying words. Each forward-looking statement is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such statement. Applicable risks and uncertainties include the risks that approval of our New Drug Application for duvelisib will not occur on the expected timeframe or at all, including by the U.S. Food and Drug Administration s target action date; that a filing of a European Marketing Application may not be achieved in fiscal year 2018 or at all; that we may not enter into any partnerships or collaborations for the potential commercialization of duvelisib outside of the United States; that the full data from the Phase 3 DUO study will not be consistent with the previously presented results of the study; that the preclinical testing of our product candidates and preliminary or interim data from clinical trials may not be predictive of the results or success of ongoing or later clinical trials; that data may not be available when expected, including for the Phase 3 DUO study; that even if data from clinical trials is positive, regulatory authorities may require additional studies for approval or may approve for indications or patient populations that are not as broad as intended and the product may not prove to be safe and effective or may require labeling with use or distribution restrictions; that the degree of market acceptance of product candidates, if approved, may be lower than expected; that the timing, scope and rate of reimbursement for our product candidates is uncertain; that there may be competitive developments affecting our product candidates; that data may not be available when expected; that enrollment of clinical trials may take longer than expected; that our product candidates will cause unexpected safety events or result in an unmanageable safety profile as compared to their level of efficacy; that duvelisib will be ineffective at treating patients with lymphoid malignancies; that we will be unable to successfully initiate or complete the clinical development and eventual commercialization of our product candidates; that the development and commercialization of our product candidates will take longer or cost more than planned; that we may not have sufficient cash to fund our contemplated operations; that we or Infinity Pharmaceuticals, Inc. will fail to fully perform under the duvelisib license agreement; that we may be unable to make additional draws under our debt facility or obtain adequate financing in the future through product licensing, co-promotional arrangements, public or private equity, debt financing or otherwise; that we will not pursue or submit regulatory filings for our product candidates, including for duvelisib in patients with CLL/SLL or iNHL; and that our product candidates will not receive regulatory approval, become commercially successful products, or result in new treatment options being offered to patients.

Forward-looking statements are not guarantees of future performance and our actual results could differ materially from the results discussed in the forward-looking statements we make. In particular, you should consider the numerous risks described in the Risk Factors section of this prospectus supplement and the accompanying prospectus.

As a result of these and other factors, we may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make. The forward-looking statements contained in this prospectus supplement reflect our views as of the date hereof. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Table of Contents

USE OF PROCEEDS

We estimate that the net proceeds we will receive from this offering will be approximately $ million, after deducting the estimated offering expenses payable by us. If the underwriter exercises its option to purchase additional shares in full, we estimate that the net proceeds from this offering will be approximately $ million.

We intend to use the net proceeds from this offering for:

- commercial preparation and launch costs, pending successful development and a favorable regulatory outcome for our lead product candidate duvelisib;

- the continued clinical development of our lead product candidates; and

- the balance to fund working capital, capital expenditures and other general corporate purposes, which may include the acquisition or in-license of additional compounds, product candidates or technology.

We believe that the net proceeds from this offering, together with our existing cash and cash equivalents and investments, will be sufficient to fund our projected operating expenses and capital expenditures into 2019. Our expected use of the net proceeds from this offering represents our intentions based upon our current plans and business conditions. The amounts and timing of our actual expenditures may vary significantly depending on numerous factors, including the progress of our development efforts, the status of and results from clinical trials, as well as any collaborations that we may enter into with third parties for our product candidates, and any unforeseen cash needs. As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering.

Pending our use of the net proceeds from this offering, we intend to invest the net proceeds in a variety of capital preservation investments, including short-term, investment-grade, interest-bearing instruments and U.S. government securities.

Table of Contents

UNDERWRITING

Subject to the terms and conditions set forth in the underwriting agreement between us and the underwriter named below, we have agreed to sell to the underwriter, and the underwriter has agreed to purchase from us, the shares of common stock shown opposite its name below:

Underwriter	Number of Shares
Cantor Fitzgerald & Co.	

Commission and Expenses

The underwriter has agreed to purchase shares of common stock from us at a price of $ per share, which will result in approximately $ of proceeds to us before expenses or $ if the underwriter exercises its option to purchase additional shares in full. The underwriter proposes to offer the shares of common stock from time to time for sale in one or more transactions on Nasdaq, in the over-the-counter market, through negotiated transactions or otherwise, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, subject to receipt and acceptance by it and subject to its right to reject any order in whole or in part. The difference between the price at which the underwriter purchases shares and the price at which the underwriter resells such shares may be deemed underwriting compensation. The underwriter may effect such transactions by selling shares of common stock to or through dealers, and as such dealers may receive compensation in the form of discounts, concessions or commission from the underwriter and/or purchases of shares of common stock for whom they may act as agents or to who they may sell as principal.

We estimate expenses payable by us in connection with this offering will be approximately $0.2 million. We have agreed to reimburse the underwriter for certain expenses in an amount not to exceed $15,000.

Listing

Our common stock is listed on The Nasdaq Global Market under the trading symbol VSTM .

Option to Purchase Additional Securities

We have granted to the underwriter an option, exercisable for 30 days from the date of this prospectus supplement, to purchase, from time to time, in whole or in part, up to an aggregate of additional shares of common stock from us.

No Sales of Similar Securities

We, our officers and our directors have agreed, subject to certain specified exceptions, not to directly or indirectly, for a period of 60 days after the date of the underwriting agreement:

- sell, offer, contract or grant any option to sell (including any short sale), pledge, transfer, establish an open put equivalent position within the meaning of Rule 16a-l(h) under the Securities Exchange Act of 1934, as amended, or

- otherwise dispose of any shares of common stock, options or warrants to acquire shares of common stock, or securities exchangeable or exercisable for or convertible into shares of common stock currently or hereafter owned either of record or beneficially, or

Table of Contents

- publicly announce an intention to do any of the foregoing for a period of 60 days after the date of this prospectus supplement without the prior written consent of Cantor Fitzgerald & Co.

In addition, we and each such person agrees that, without the prior written consent of Cantor Fitzgerald & Co., we or such other person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

The restrictions in the immediately preceding paragraph do not apply in certain circumstances, including:

- the registration of the offer and sale of common stock in this offering,

- issuances of common stock upon the exercise of options or warrants granted under existing equity plans described in the prospectus,

- issuances of common stock pursuant to restricted stock units granted under existing equity plans described in the prospectus,

- the grant of awards under equity incentive plans described in the prospectus and the grant of stock options pursuant to our inducement award programs, as described in our registration statements on Form S-8 filed with the SEC, subject to certain conditions,

- the filing by us of any registration statement on Form S-8 or a successor form thereto, and

- issuances of common stock or other securities in connection with a transaction that includes a commercial relationship or any acquisition of assets or at least a controlling portion of the equity of another entity, subject to certain conditions.

Cantor Fitzgerald & Co. may, in its sole discretion and at any time or from time to time before the termination of the 60-day period, release all or any portion of the securities subject to lock-up agreements. There are no existing agreements between the

underwriter and any of our shareholders who will execute a lock-up agreement, providing consent to the sale of shares prior to the expiration of the lock-up period.

Market Making, Stabilization and Other Transactions

The underwriter may make a market in the common stock as permitted by applicable laws and regulations. However, the underwriter is not obligated to do so, and the underwriter may discontinue any market-making activities at any time without notice in its sole discretion. Accordingly, no assurance can be given as to the liquidity of the trading market for the common stock, that you will be able to sell any of the common stock held by you at a particular time or that the prices that you receive when you sell will be favorable.

The underwriter has advised us that it, pursuant to Regulation M under the Securities Exchange Act of 1934, as amended, and certain persons participating in the offering, may engage in short sale transactions, stabilizing transactions, syndicate covering transactions or the imposition of penalty bids in connection with this offering. These activities may have the effect of stabilizing or maintaining the market price of the common stock at a level above that which might otherwise prevail in the open market. Establishing short sales positions may involve either covered short sales or naked short sales.

Covered short sales are sales made in an amount not greater than the underwriter s