

ILLUMINA INC  
Form SC14D9C  
January 25, 2012

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

## SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION STATEMENT

UNDER SECTION 14(d)(4) OF THE  
SECURITIES EXCHANGE ACT OF 1934

(Amendment No.    )

**Illumina, Inc.**

(Name of Subject Company)

**Illumina, Inc.**

(Names of Persons Filing Statement)

Common stock, \$0.01 par value

(Title of Class of Securities)

452327109

(CUSIP Number of Class of Securities)

Edgar Filing: ILLUMINA INC - Form SC14D9C

**Christian G. Cabou**

**Senior Vice President & General Counsel**

**Illumina, Inc.**

**5200 Illumina Way, San Diego, California**

**(858) 202-4500**

(Name, address and telephone number of person authorized to receive  
notices and communications on behalf of the persons filing statement)

*With copies to:*

**Frederick Kanner**

**Dewey & LeBoeuf LLP**

**1301 Avenue of the Americas**

**New York, NY 10019**

**(212) 259-7300**

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

January 24, 2012

Dear Colleagues:

A few moments ago, we issued a press release acknowledging that Roche has said publicly it intends to commence an unsolicited tender offer to acquire us. Our press release is attached.

We did not solicit this offer, but our Board of Directors has a responsibility to our stockholders to evaluate it and make a formal recommendation that the Board believes is in the best interests of Illumina stockholders. Our Board has engaged Goldman, Sachs & Co. and Bank of America Merrill Lynch as financial advisors and Dewey & LeBoeuf LLP as legal advisor to assist in the review, and will make a recommendation to stockholders in due course. A tender offer is a public offer to the stockholders of a company asking those stockholders to sell their stock to the party making the offer. A tender offer must comply with the rules and regulations of the SEC, which are quite technical. It is important to note that Roche will not be able to actually purchase any shares tendered until numerous conditions are satisfied. As you will see from our press release, we have advised our stockholders not to take any action pending the Board's recommendation.

We realize that this news has the potential to be distracting. Until the Board makes its recommendation, however, we will be constrained in what we can say and simply cannot speculate on the outcome.

You should be proud that Illumina has firmly established itself as the innovation and market leader in tools for genetic analysis, with a proven track record of profitability and outperformance. We are singularly positioned in a nascent industry which promises to grow exponentially in the years ahead as the needs and applications for genetic information broaden in line with changing paradigms of biological research, medical diagnostics and healthcare.

You have all done a wonderful job helping to build this great Company and you are a vital part of its future. I encourage you to remain focused on our business and our customers.

If you receive any media or other outside inquiries regarding this situation, please direct them to the contacts listed on the press release. If you have specific questions, please feel free to contact me, Christian or Mark Stapley.

Thank you for your continued dedication and hard work.

Best regards,

Jay Flatley

Chief Executive Officer

**FORWARD-LOOKING STATEMENTS**

This communication may contain statements that are forward looking, as that term is defined by the Private Securities Litigation Reform Act of 1995, as amended, or by the SEC in its rules, regulations and releases. Forward-looking statements are subject to known and unknown risks and uncertainties and are based on potentially inaccurate assumptions that could cause actual results to differ materially from those expected or implied by the forward-looking statements. Among the important factors that could cause actual results to differ materially from those in any forward-looking statements are (i) our ability to

develop and commercialize further our sequencing, BeadArray , VeraCod<sup>®</sup>, Eco , and consumables technologies and to deploy new sequencing, genotyping, gene expression, and diagnostics products and applications for our technology platforms, (ii) our ability to manufacture robust instrumentation and consumables, and (iii) significant uncertainty concerning government and academic research funding worldwide as governments in the United States and Europe, in particular, focus on reducing fiscal deficits while at the same time confronting slowing economic growth; (iv) risks and uncertainties relating to the possible transaction; and (v) other factors detailed in our filings with the Securities and Exchange Commission, including our most recent filings on Forms 10-K and 10-Q, or in information disclosed in public conference calls, the date and time of which are released beforehand. We undertake no obligation, and do not intend, to update these forward-looking statements.

#### **ADDITIONAL INFORMATION**

This communication does not constitute an offer to buy or solicitation of an offer to sell any securities. No tender offer for the shares of Illumina, Inc. ( Illumina ) has commenced at this time. If a tender offer is commenced, Illumina may file a solicitation/recommendation statement on Schedule 14D-9 with the U.S. Securities and Exchange Commission ( SEC ). Any solicitation/recommendation statement filed by Illumina that is required to be mailed to stockholders will be mailed to stockholders of Illumina. INVESTORS AND STOCKHOLDERS OF ILLUMINA ARE URGED TO READ THESE AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors and stockholders will be able to obtain free copies of these documents (if and when available) and other documents filed with the SEC by Illumina through the web site maintained by the SEC at <http://www.sec.gov>. In addition, Illumina may file a proxy statement with the SEC. Any definitive proxy statement will be mailed to stockholders of Illumina. INVESTORS AND SECURITY HOLDERS OF ILLUMINA ARE URGED TO READ THESE AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders will be able to obtain free copies of these documents (if and when available) and other documents filed with the SEC by Illumina through the web site maintained by the SEC at <http://www.sec.gov>.

In addition, this document and other materials related to Roche 's unsolicited proposal may be obtained from Illumina free of charge by directing a request to Illumina, Inc., Attn: Investor Relations, Kevin Williams, MD, [kwilliams@illumina.com](mailto:kwilliams@illumina.com).

#### **CERTAIN INFORMATION REGARDING PARTICIPANTS**

Illumina and certain of its respective directors and executive officers may be deemed to be participants under the rules of the SEC. Security holders may obtain information regarding the names, affiliations and interests of Illumina 's directors and executive officers in Illumina 's Annual Report on Form 10-K for the year ended January 2, 2011, which was filed with the SEC on February 28, 2011, and its proxy statement for the 2011 Annual Meeting, which was filed with the SEC on March 24, 2011. These documents can be obtained free of charge from the sources indicated above. Additional information regarding the interests of these participants in any proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will also be included in any proxy statement and other relevant materials to be filed with the SEC if and when they become available.

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- (1) Assumes that all 8,145,446 Warrant Shares issuable upon exercise of the Warrants offered by this prospectus supplement are issued and sold in this offering. There is no requirement that any minimum number of Warrant Shares or dollar amount of Warrant Shares be issued and sold in this offering and there can be no assurance that we will issue and sell all or any of the Warrant Shares being offered.
- (2) Reflects placement agent fees and finder's fees totaling \$196,300 and transfer agent fees, legal fees, accounting fees and other expenses totaling \$339,285. We have agreed to pay placement agent fees and finder's fees as follows: Rodman & Renshaw, LLC, the exclusive placement agent in connection with this offering, will receive a fee of 5% for sales to Unit Investors not previously identified by us to them and a fee of 2.5% for sales to Unit Investors previously identified by us to them; J & E Davy will receive a finder's fee of 5% for sales to Unit Investors identified by them to us; and ProSeed Capital Holdings CVA will receive a finder's fee of 5% for sales to Unit Investors identified by them to us. No other discounts, commissions, concessions or other compensation has been paid or will be paid to any underwriter, broker, dealer or agent in connection with the offering.

**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 CORE PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

The Units offered hereby are being issued directly to the Unit Investors on or about December 6, 2007. The Warrant Shares offered hereby will be issued directly to the Unit Investors or their assigns on their date of issuance.

The date of this prospectus supplement is December 5, 2007.

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## ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus is in two parts. The first part is this prospectus supplement, which describes the material terms of this offering, the Units and the Warrant Shares and adds to and updates information contained in or incorporated by reference into the accompanying core prospectus. The second part is the accompanying core prospectus, which gives more information about us and the securities we may offer from time to time under the registration statement of which this prospectus supplement and accompanying core prospectus are a part. To the extent there is a conflict between the information contained, or referred to, in this prospectus supplement, on the one hand, and the information contained, or referred to, in the accompanying core prospectus or any document incorporated by reference herein or therein, on the other hand, the information in this prospectus supplement shall control.

We have not authorized any broker, dealer, salesperson or other person to give any information or to make any representation. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus supplement or the accompanying core prospectus.

**This prospectus supplement and the accompanying core prospectus do not constitute an offer to sell or the solicitation of an offer to buy the securities in any jurisdiction nor do this prospectus supplement and the accompanying core prospectus constitute an offer to sell or the solicitation of an offer to buy the 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 core 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 core prospectus are delivered securities are sold on a later date.

It is important for you to read and consider all information contained in this prospectus supplement and the accompanying core prospectus, including the documents we have referenced in the section entitled “Incorporation of Certain Information by Reference” in this prospectus supplement.

In this prospectus supplement and the accompanying core prospectus, “Amarin,” “Company,” “we,” “us” and “our” refer to Amarin Corporation plc and its consolidated subsidiaries. References to “U.S. dollars,” “USD” or “\$” are to the lawful currency of the United States and references to “pounds sterling,” “GBP£” or “£” are to the lawful currency of the United Kingdom.



## **NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus supplement and the accompanying core prospectus include forward-looking statements. These forward-looking statements relate, among other things, to our future capital needs, our ability to acquire or develop additional marketable products, acceptance of our products by prescribers and end-users, competitive factors, and our marketing and sales plans. In addition, we may make forward-looking statements in future filings with the Securities and Exchange Commission (the “SEC”) and in written material, press releases and oral statements issued by or on behalf of us. Forward-looking statements include statements regarding our intent, belief or current expectations or those of our management regarding various matters, including statements that include forward-looking terminology such as “may,” “will,” “should,” “believes,” “expects,” “anticipates,” “estimates,” “continues,” or similar expressions.

Forward-looking statements are subject to risks and uncertainties, certain of which are beyond our control. Actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including the factors described in the “Risk Factors” section of this prospectus supplement. Some, but not all, of these factors are the timing of our future capital needs and our ability to raise additional capital when needed, our ability to obtain regulatory approval for our products, uncertainty of market acceptance of our products, our ability to compete with other pharmaceutical companies, our ability to develop or acquire new products, problems with important third-party manufacturers on whom we rely, our ability to attract and retain key personnel, and implementation and enforcement of government regulations. This list of factors is not exclusive and other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements.

All forward-looking statements in this prospectus supplement and core prospectus are based on information available to us on the date hereof. We may not be required to publicly update or revise any forward-looking statements that may be made by us or on our behalf, in this prospectus supplement and core prospectus or otherwise, whether as a result of new information, future events or other reasons. Because of these risks and uncertainties, the forward-looking events and circumstances discussed in this prospectus supplement and core prospectus might not transpire.

## RECENT DEVELOPMENTS

### Acquisition of Ester

On December 5, 2007, we entered into a Stock Purchase Agreement (the “Acquisition Agreement”) with the selling shareholders named therein and the other parties thereto pursuant to which we will purchase all of the outstanding ordinary shares of Ester Neurosciences Ltd. (“Ester”), a private pharmaceutical development company based in Israel (the “Ester Acquisition”). The acquisition is expected to close on December 6, 2007. Ester’s core assets include (i) a platform messenger RNA (mRNA) silencing technology which targets the cholinergic pathway; (ii) EN101, a Phase II compound with promising efficacy data for the treatment of myasthenia gravis (“MG”) utilising this technology; and (iii) a preclinical program in neurodegenerative and inflammatory diseases. Pursuant to the Acquisition Agreement, we will acquire 100% of the issued share capital of Ester for initial consideration of \$15 million, of which \$5 million is payable in cash and \$10 million in Ordinary Shares, i.e., approximately 25 million Ordinary Shares. Following the acquisition but before giving effect to this offering or the Concurrent Offering (as defined under “— Concurrent Offering” below), former Ester shareholders will own approximately 20% of our outstanding Ordinary Shares. Additional contingent payments, valued at \$17 million, are payable to former Ester shareholders on the successful completion of certain development-based milestones. This additional contingent consideration represents:

- two milestone payments totalling \$11 million, are payable, at our option, in cash or in Ordinary Shares valued at \$0.38 per share, the 10-day volume weighted average closing price of our ADSs on the Nasdaq Capital Market on December 4, 2007 (subject to an adjustment reducing the number of shares payable to former Ester shareholders if our ADS closing price on such milestone date is higher than \$0.76 per share):
  - o \$5 million is payable no earlier than April 5, 2008 on the achievement of certain efficacy data on completion of the ongoing Phase IIa study; and
  - o \$6 million is due on successful completion of the Phase II program supporting progression to Phase III in the United States; and
- one cash milestone payment of \$6 million is payable on successful completion of the Phase III program in the United States.

In addition, pursuant to the Acquisition Agreement we have assumed a single digit royalty obligation on net product sales of EN101.

### Reverse Stock Split

As described in our Report of Foreign Private Issuer on Form 6-K furnished to the SEC on December 5, 2007, we announced on December 5, 2007 that we intend to send notice of an extraordinary general meeting (“EGM”) to our shareholders at which we will seek approval for a 1 for 10 reverse stock split of our Ordinary Shares; if approval of the Ordinary Share stock split is received, our ADSs will also be reverse split on a 1 for 10 basis. It is estimated that the EGM will take place in January 2008. To maintain the listing of our ADSs on the Nasdaq Capital Market, we must maintain a minimum bid share price of the ADSs of \$1.00 per share. In effecting the 1 for 10 reverse stock split, we expect the bid price of our ADSs to greatly exceed the minimum bid price requirement of \$1 and thus regain and sustain compliance with the Nasdaq Capital Market’s listing requirements. We have received a delisting notice from Nasdaq (see “Risk Factors — We have received a notice from Nasdaq that our ADSs will be delisted from the Nasdaq Capital Market”) and will make an appeal to a hearing panel on the basis of the our definitive plan to regain and sustain compliance, including the planned reverse stock split.

### Concurrent Offering

Concurrently with this offering, we are offering, by means of a separate prospectus supplement and accompanying core prospectus, (i) \$2,750,000 aggregate principal amount of our 8% Convertible Debentures due 2010,

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convertible into 5,729,166 Ordinary Shares, and (ii) warrants to purchase 2,291,666 Ordinary Shares, in each case to selected investors pursuant to a separate prospectus supplement and an accompanying core prospectus (the "Concurrent Offering"). Each unit, composed of \$1,000 principal amount of debentures and warrants to purchase 833.33 Ordinary Shares, will be sold at the negotiated price of \$1,000 per unit.

The debentures will be convertible into our ADSs on or after April 6, 2008 at a conversion price of \$0.48 per Ordinary Share, which represents a 30% premium to the five-day volume weighted average price of our ADSs on December 3, 2007 of \$0.366 per ADS. The debentures bear an annual interest rate of 8%, payable quarterly in arrears. The purchasers of the debentures will also receive five-year warrants to purchase that number of ADSs equal to 40% of the ADSs into which the debentures are initially convertible, with an exercise price of \$0.48 per Ordinary Share.

The debentures will be required to be repaid from the proceeds of, and the initial holders of the convertible notes will have the right to participate in, future financings of the Company, with certain exceptions.

The proceeds from the Concurrent Offering will be to replenish cash on hand used for the Ester acquisition and for general corporate purposes, which may include making of milestone payments pursuant to the Acquisition Agreement, research and development costs and funding future acquisitions. This prospectus supplement and the accompanying core prospectus do not constitute an offer to sell or the solicitation of an offer to buy such units, which offer and solicitation shall occur only pursuant to such separate prospectus supplement and accompanying core prospectus.

**THE OFFERING**

Shares Offered	16,290,900 Ordinary Shares, each Ordinary Share represented by one ADS.
Warrants Offered	Warrants to purchase 8,145,446 Ordinary Shares, each Ordinary Share represented by one ADS.
Warrant Shares	8,145,446 Ordinary Shares, each Ordinary Share represented by one ADS.
Ordinary Shares to be outstanding after issuance of the Shares and the Warrant Shares issuable upon exercise of the Warrants offered in this offering and Ordinary Shares issuable upon exercise of the warrants offered in the Concurrent Offering (excludes Ordinary Shares issuable upon conversion of debentures offered in the Concurrent Offering)	124,494,482 Ordinary Shares.
Warrant Exercise Price	\$0.48 per Ordinary Share, subject to adjustment pursuant to the terms of the Warrants.
Expiration	December 5, 2012.
Mandatory Exercise	If, at any time after December 5, 2009, the volume weighted average price of the ADSs for any 20 consecutive trading day period is equal to or greater than \$0.915, and through and including the date the Warrants are cancelled pursuant to this right the ADSs do not trade below the Exercise Price of the Warrants, then we at any time thereafter shall have the right, but not the obligation, within 10 trading days of the end of such 20-day period, to cancel all, but not less than all, of the unexercised Warrants.
Trading	The Units will be new securities for which no active trading market currently exists. The Units will not be listed on any securities exchange or included in any automated quotation system. See “Risk Factors — The Units are each a new issue of securities, and there is no existing market for the Units.”
Trading Symbol for Our ADSs	Our ADSs are traded on the Nasdaq Capital Market, the principal trading market for our securities, under the symbol “AMRN”.
Governing Law	The Units and the Warrant Shares will be governed by the laws of England and Wales.

Use of  
Proceeds

This offering is being made in connection with our acquisition of Ester. See “Recent Developments — Acquisition of Ester” and “Use of Proceeds.” We expect that the net proceeds from the sale of the Units and all Warrant Shares that may be offered hereby will be approximately \$8.75 million, after fees, commissions and expenses; such amount represents approximately \$4.9 million in net proceeds that we expect to receive from sale of the Units and approximately \$3.8 million in net proceeds that we would receive from the sale of the Warrant Shares assuming that all Warrant Shares issuable upon exercise of the Warrants are issued and sold.

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Risk  
Factors

You should carefully consider the information set forth under the heading “Risk Factors” in this prospectus supplement, as well as the other information contained or incorporated by reference in this prospectus supplement and the accompanying core prospectus, before making a decision to invest in the Units or the Warrant Shares.

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## RISK FACTORS

*Investing in the Units and the Warrant Shares involves risks, including risks relating to our ADSs and Ordinary Shares. You should carefully consider the risks described below as well as those set forth in our Report of Foreign Issuer on Form 6-K furnished to the SEC on May 9, 2007, which is incorporated herein by reference. The risks and uncertainties described in this section are not the only ones that we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. If any of the risks and uncertainties develop into actual events, our business, financial condition and results of operations could be materially and adversely affected. In such an instance, the trading price of the Units or the Warrant Shares could decline, and you might lose all or part of your investment.*

### **Risks Related to the Company**

*In addition to those risks set forth in our Report of Foreign Issuer on Form 6-K furnished to the SEC on May 9, 2007, which is incorporated herein by reference, our company is subject to the risks set forth below.*

***We have received a notice from Nasdaq that our ADSs will be delisted from the Nasdaq Capital Market.***

On June 6, 2007, we received a notice from Nasdaq that we had failed to meet the \$1 minimum bid price requirement for a period of 30 consecutive business days required by Nasdaq Rule 4320. The notice stated that if we did not regain compliance by December 3, 2007, then the staff of Nasdaq would determine whether we meet the Nasdaq Capital Market initial listing criteria in Marketplace Rule 4320(e), except for the minimum bid price requirement. We received a notice on December 4, 2007 from the Nasdaq Stock Market indicating that we are not in compliance with the \$1.00 minimum bid requirement for continued listing and, as a result, our ADSs are subject to delisting, unless we request a hearing by December 11, 2007 in accordance with the Nasdaq Marketplace Rules. We intend to request an appeal hearing prior to December 11, 2007 with the Nasdaq Listing Qualification Panel to review the delisting determination. There can be no assurance that the Panel will grant our request for continued listing. If the Panel denies the request, our ADSs will be delisted. The hearing date will be determined by Nasdaq and should occur within 45 calendar days from the request for hearing. Our hearing request will 'stay' the delisting of our ADSs pending the Panel's decision. At the hearing, we will be required to provide a plan to regain compliance with the minimum bid price requirement, which will include our plan to seek shareholder approval for the reverse stock split in order to exceed the minimum bid price requirement.

***Our indebtedness after the completion of the offering could adversely affect our financial condition and our ability to respond to changes in our business.***

We will have debt service obligations following the completion of this offering. These debt obligations could have significant negative consequences, including, but not limited to:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions or other business purposes;
- limiting our flexibility to plan for, or react to, changes in our business and the industry in which we compete;
- placing us at a possible disadvantage to competitors with fewer debt obligations and competitors that have better access to capital resources; and

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requiring us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital expenditures, research and development efforts and other general corporate purposes.

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***We may incur additional indebtedness.***

The indenture governing the Debentures will not prohibit us from incurring substantial additional indebtedness in the future. Any such additional indebtedness that is permitted to be secured would be effectively senior to the Debentures to the extent of the assets securing such indebtedness. The Debentures will limit the ability of our subsidiaries to incur indebtedness. See “Description of Debentures — Additional Covenant — Limitation on Incurrence of Subsidiary Indebtedness.” However, because they will not be guaranteed by our subsidiaries (or any other third party), the Debentures will be structurally subordinated to the indebtedness and other liabilities that our subsidiaries are permitted to incur. In addition, the indenture will not contain any restrictive covenants limiting our ability to pay dividends, make any payments on junior or other indebtedness or otherwise limit our financial condition.

***We may have to issue additional equity, leading to shareholder dilution.***

We are committed to issue equity to the former shareholders of Amarin Neuroscience upon the successful achievement of specified milestones for the Miraxion development program (subject to such shareholders’ right to choose cash payment in lieu of equity). Pursuant to the Amarin Neuroscience share purchase agreement, further success-related milestones will be payable as follows:

Upon receipt of marketing approval in the United States and Europe for the first indication of any product containing Amarin Neuroscience intellectual property, we must make an aggregate stock or cash payment (at the sole option of each of the sellers) of GBP£7.5 million for each of the two potential market approvals (i.e., GBP£15.0 million maximum). In addition, upon receipt of a marketing approval in the United States and Europe for any other product using Amarin Neuroscience intellectual property or for a different indication of a previously approved product, we must make an aggregate stock or cash payment (at the sole option of each of the sellers) of GBP£5.0 million for each of the two potential market approvals (i.e., GBP£10.0 million maximum). The exchange rate as of December 4, 2007 was approximately \$2.06 per GBP£.

We are also committed to issue equity to the former shareholders of Ester Neuroscience Limited upon the successful achievement of specified milestones for the myasthenia gravis development program (subject to our right to choose cash payment in lieu of equity). See “Unaudited Pro Forma Financial Information.”

At November 30, 2007, before giving effect to the offering or the Concurrent Offering, we had 10,391,123 warrants outstanding with a weighted average exercise price of \$1.52 per share. As at November 30, 2007, we also had outstanding employee options to purchase 11,638,184 Ordinary Shares at an average price of \$1.64 per share.

Additionally, in pursuing our growth strategy we will either need to issue new equity as consideration for the acquisition of products, or to otherwise raise additional capital, in which case equity, convertible equity or debt instruments may be issued. The creation of new shares may lead to dilution of the value of the shares held by our current shareholder base.

***We have granted the initial purchasers of the debentures in the Concurrent Offering the right to participate in certain of our future financings, which may restrict our ability to raise capital.***

So long as the initial purchaser of a debenture in the Concurrent Offering is the registered holder of the debenture, such initial purchaser shall have a right, subject to certain exceptions, to participate in future equity or debt financings by us for cash on terms equal to those of other investors in such future financings. This right is not transferable upon the sale of the debentures by the initial purchasers thereof. This financing participation right may restrict our ability to raise capital through equity financing in the future as it may, among other things, make potential investors less likely to enter into negotiations with us.

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***If we cannot find additional capital resources, we will have difficulty in operating as a going concern and growing our business.***

At September 30, 2007, we had a cash balance of \$20.7 million and based upon current business activities, we forecast having sufficient cash to fund the group's operating activities into September 2008. We intend to arrange to obtain additional funding through earning license fees from our partnering activities and/or completing further financings. There can be no assurance, however, that our efforts to obtain additional funding will be successful. If these efforts are unsuccessful, there is substantial uncertainty as to whether we will be able to fund our operations on an ongoing basis. We may also require further funds in the future to implement our long-term growth strategy of acquiring additional development stage and/or marketable products, recruiting clinical, regulatory and sales and marketing personnel, and growing our business. Our ability to execute our business strategy and sustain our infrastructure at our current level will be impacted by whether or not we have sufficient funds. Depending on market conditions and our ability to maintain financial stability, we may not have access to additional funds on reasonable terms or at all. Any inability to obtain additional funds when needed would have a material adverse effect on our business and on our ability to operate on an ongoing basis.

### **Risks Related to this Offering**

***The price of our ADSs and Ordinary Shares may be volatile.***

The stock market has from time to time experienced significant price and volume fluctuations that may be unrelated to the operating performance of particular companies. In addition, the market prices of the securities of many pharmaceutical and medical technology companies have been especially volatile in the past, and this trend is expected to continue in the future. Our ADSs may also be subject to volatility as a result of their limited trading market. We currently have 91,701,869 ADSs representing Ordinary Shares outstanding and 6,064,601 Ordinary Shares outstanding (which are not held in the form of ADSs). There is a risk that there may not be sufficient liquidity in the market to accommodate significant increases in selling activity or the sale of a large block of our securities. Our ADSs have historically had limited trading volume, which may also result in volatility. During the twelve-month period ending November 30, 2007, the average daily trading volume for our ADSs was 1,123,489 ADSs.

If our public float and the level of trading remain at limited levels over the long term, this could result in volatility and increase the risk that the market price of our ADSs and Ordinary Shares may be affected by factors such as:

- the announcement of new products or technologies;
- innovation by us or our future competitors;
- developments or disputes concerning any future patent or proprietary rights;
- actual or potential medical results relating to our products or our competitors' products;

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