

NUVASIVE INC
Form 10-Q
October 30, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2018

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: 000-50744

NUVASIVE, INC.

(Exact name of registrant as specified in its charter)

Delaware 33-0768598
(State or other jurisdiction of (I.R.S. Employer

incorporation or organization) Identification No.)

7475 Lusk Boulevard

San Diego, CA 92121

Edgar Filing: NUVASIVE INC - Form 10-Q

(Address of principal executive offices)

(858) 909-1800

(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 than 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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Small reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

As of October 26, 2018 there were 51,422,448 shares of the registrant's common stock (par value \$0.001 per share) outstanding.

NuVasive, Inc.

Quarterly Report on Form 10-Q

September 30, 2018

PART I. FINANCIAL INFORMATION

| | | |
|---------|--|----|
| Item 1. | <u>Financial Statements</u> | 3 |
| | <u>Consolidated Balance Sheets</u> | 3 |
| | <u>Consolidated Statements of Operations</u> | 4 |
| | <u>Consolidated Statements of Comprehensive Income (Loss)</u> | 5 |
| | <u>Consolidated Statements of Cash Flows</u> | 6 |
| | <u>Notes to Unaudited Consolidated Financial Statements</u> | 7 |
| Item 2. | <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u> | 31 |
| Item 3. | <u>Quantitative and Qualitative Disclosures About Market Risk</u> | 40 |
| Item 4. | <u>Controls and Procedures</u> | 41 |

PART II. OTHER INFORMATION

| | | |
|----------|--|----|
| Item 1. | <u>Legal Proceedings</u> | 41 |
| Item 1A. | <u>Risk Factors</u> | 41 |
| Item 2. | <u>Unregistered Sales of Equity Securities and Use of Proceeds</u> | 41 |
| Item 3. | <u>Defaults Upon Senior Securities</u> | 41 |
| Item 4. | <u>Mine Safety Disclosures</u> | 41 |
| Item 5. | <u>Other Information</u> | 41 |
| Item 6. | <u>Exhibits</u> | 42 |

| | | |
|--|-------------------|----|
| | <u>SIGNATURES</u> | 43 |
|--|-------------------|----|

Table of Contents

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NUVASIVE, INC.

CONSOLIDATED BALANCE SHEETS

(in thousands, except par values and share amounts)

| | September 30, 2018 | December 31, 2017 |
|--|-----------------------|----------------------|
| ASSETS | (Unaudited) | |
| Current assets: | | |
| Cash and cash equivalents | \$75,112 | \$72,803 |
| Restricted cash and investments | — | 3,901 |
| Accounts receivable, net of allowances of \$16,883 and \$13,026, respectively | 191,571 | 200,220 |
| Inventory, net | 271,347 | 247,138 |
| Prepaid income taxes | 18,215 | 17,209 |
| Prepaid expenses and other current assets | 23,408 | 18,792 |
| Total current assets | 579,653 | 560,063 |
| Property and equipment, net | 237,491 | 215,326 |
| Intangible assets, net | 262,945 | 280,774 |
| Goodwill | 560,401 | 536,926 |
| Deferred tax assets | 4,939 | 6,440 |
| Restricted cash and investments | 2,394 | 1,494 |
| Other assets | 27,577 | 39,117 |
| Total assets | \$1,675,400 | \$1,640,140 |
| LIABILITIES AND EQUITY | | |
| Current liabilities: | | |
| Accounts payable and accrued liabilities | \$100,912 | \$75,767 |
| Contingent consideration liabilities | 2,207 | 18,952 |
| Accrued payroll and related expenses | 47,798 | 55,618 |
| Litigation liabilities | 8,316 | 8,150 |
| Short-term borrowings | 5,000 | — |
| Income tax liabilities | 4,002 | 2,908 |
| Total current liabilities | 168,235 | 161,395 |
| Long-term senior convertible notes | 597,518 | 582,920 |
| Deferred and income tax liabilities, non-current | 6,200 | 18,870 |
| Other long-term liabilities | 99,826 | 77,539 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Preferred stock, \$0.001 par value; 5,000,000 shares authorized, none outstanding | — | — |
| Common stock, \$0.001 par value; 120,000,000 shares authorized at September 30, 2018 and December 31, 2017, 56,566,654 and 56,164,060 issued and outstanding at September 30, 2018 and December 31, 2017, respectively | 61 | 60 |
| Additional paid-in capital | 1,380,519 | 1,363,549 |

Edgar Filing: NUVASIVE INC - Form 10-Q

| | | |
|---|-------------|-------------|
| Accumulated other comprehensive loss | (10,194) | (6,933) |
| Retained earnings | 5,084 | 4,762 |
| Treasury stock at cost; 5,114,438 shares and 5,001,886 shares at September 30, 2018 and December 31, 2017, respectively | (571,849) | (565,867) |
| Total NuVasive, Inc. stockholders' equity | 803,621 | 795,571 |
| Non-controlling interest | — | 3,845 |
| Total equity | 803,621 | 799,416 |
| Total liabilities and equity | \$1,675,400 | \$1,640,140 |

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

| (unaudited) | Three Months Ended | | Nine Months Ended | |
|---|--------------------|-----------|-------------------|------------|
| | September 30, | | September 30, | |
| | 2018 | 2017 | 2018 | 2017 |
| Revenue | | | | |
| Product revenue | \$242,030 | \$227,321 | \$728,232 | \$690,100 |
| Service revenue | 29,271 | 19,730 | 85,155 | 65,363 |
| Total revenue | 271,301 | 247,051 | 813,387 | 755,463 |
| Cost of revenue (excluding below amortization of intangible assets) | | | | |
| Cost of products sold | 54,741 | 50,856 | 168,134 | 147,292 |
| Cost of services | 19,419 | 14,651 | 56,896 | 45,844 |
| Total cost of revenue | 74,160 | 65,507 | 225,030 | 193,136 |
| Gross profit | 197,141 | 181,544 | 588,357 | 562,327 |
| Operating expenses: | | | | |
| Sales, marketing and administrative | 141,211 | 125,649 | 433,635 | 404,984 |
| Research and development | 15,254 | 12,720 | 44,601 | 37,706 |
| Amortization of intangible assets | 12,349 | 11,630 | 37,402 | 35,040 |
| Purchase of in-process research and development | 8,913 | — | 8,913 | — |
| Litigation liability loss | — | 750 | 27,800 | 750 |
| Business transition costs | 1,443 | 345 | 7,694 | 1,769 |
| Total operating expenses | 179,170 | 151,094 | 560,045 | 480,249 |
| Interest and other expense, net: | | | | |
| Interest income | 130 | 79 | 380 | 355 |
| Interest expense | (9,035) | (8,898) | (28,458) | (28,780) |
| Other income (expense), net | 4,239 | (139) | (7,843) | (382) |
| Total interest and other expense, net | (4,666) | (8,958) | (35,921) | (28,807) |
| Income (loss) before income taxes | 13,305 | 21,492 | (7,609) | 53,271 |
| Income tax benefit | 2,618 | 11,604 | 7,931 | 3,543 |
| Consolidated net income | \$15,923 | \$33,096 | \$322 | \$56,814 |
| Add back net loss attributable to non-controlling interest | \$— | \$(432) | \$— | \$(1,307) |
| Net income attributable to NuVasive, Inc. | \$15,923 | \$33,528 | \$322 | \$58,121 |
| Net income per share attributable to NuVasive, Inc.: | | | | |
| Basic | \$0.31 | \$0.66 | \$0.01 | \$1.14 |
| Diluted | \$0.30 | \$0.64 | \$0.01 | \$1.03 |
| Weighted average shares outstanding: | | | | |
| Basic | 51,439 | 50,747 | 51,341 | 50,799 |
| Diluted | 53,189 | 52,794 | 52,296 | 56,304 |

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(in thousands)

| (unaudited) | Three Months | | Nine Months | |
|--|-----------------|----------|-----------------|----------|
| | Ended September | | Ended September | |
| | 30, | 30, | 30, | 30, |
| | 2018 | 2017 | 2018 | 2017 |
| Consolidated net income | \$15,923 | \$33,096 | \$322 | \$56,814 |
| Other comprehensive (loss) income: | | | | |
| Unrealized loss on marketable securities, net of tax | — | — | — | (1) |
| Translation adjustments, net of tax | (1,318) | 1,276 | (3,261) | 3,777 |
| Other comprehensive (loss) income | (1,318) | 1,276 | (3,261) | 3,776 |
| Total consolidated comprehensive income (loss) | 14,605 | 34,372 | (2,939) | 60,590 |
| Net loss attributable to non-controlling interest | — | (432) | — | (1,307) |
| Comprehensive income (loss) attributable to NuVasive, Inc. | \$14,605 | \$34,804 | \$(2,939) | \$61,897 |

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

| (unaudited) | Nine Months Ended September 30, | |
|--|------------------------------------|-----------|
| | 2018 | 2017 |
| Operating activities: | | |
| Consolidated net income | \$322 | \$56,814 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 96,409 | 88,922 |
| Purchase of in-process research and development | 8,913 | — |
| Amortization of non-cash interest | 14,986 | 15,676 |
| Stock-based compensation | 22,062 | 14,984 |
| Reserves on current assets | 11,116 | 1,745 |
| Net loss on strategic investments | 3,867 | — |
| Other non-cash adjustments | 16,560 | 11,029 |
| Deferred income taxes | (9,938) | (4,277) |
| Changes in operating assets and liabilities, net of effects from acquisitions: | | |
| Accounts receivable | 8,622 | (12,448) |
| Inventory | (33,491) | (36,661) |
| Contingent consideration liabilities | (300) | (11,200) |
| Prepaid expenses and other current assets | (1,047) | 169 |
| Accounts payable and accrued liabilities | 21,700 | (5,974) |
| Accrued payroll and related expenses | (9,566) | 245 |
| Litigation liability | 166 | 1,000 |
| Income taxes | 108 | (1,195) |
| Net cash provided by operating activities | 150,489 | 118,829 |
| Investing activities: | | |
| Acquisitions and investments | (52,555) | (62,371) |
| Purchases of intangible assets | (7,682) | (2,270) |
| Purchases of property and equipment | (78,405) | (97,030) |
| Net cash used in investing activities | (138,642) | (161,671) |
| Financing activities: | | |
| Proceeds from the issuance of common stock | 5,563 | 5,517 |
| Purchase of treasury stock | (2,817) | (11,709) |
| Payment of contingent consideration | (18,700) | (18,800) |
| Repurchases of convertible notes | — | (63,317) |
| Proceeds from revolving line of credit | 82,000 | 60,000 |
| Repayments on revolving line of credit | (77,000) | (20,000) |
| Other financing activities | (236) | (2,316) |
| Net cash used in financing activities | (11,190) | (50,625) |
| Effect of exchange rate changes on cash | (1,349) | 1,967 |

Edgar Filing: NUVASIVE INC - Form 10-Q

| | | |
|--|----------|-----------|
| Decrease in cash, cash equivalents, restricted cash and investments | (692) | (91,500) |
| Cash, cash equivalents, restricted cash and investments at beginning of period | 78,198 | 161,048 |
| Cash, cash equivalents, restricted cash and investments at end of period | \$77,506 | \$69,548 |

The following table provides a reconciliation of cash, cash equivalents, restricted cash and investments reported on our Unaudited Consolidated Statements of Cash Flows for the periods presented:

| | Nine Months Ended September 30, | |
|---|---------------------------------------|----------|
| | 2018 | 2017 |
| Cash and cash equivalents | \$75,112 | \$62,200 |
| Restricted cash and investments, current | — | 2,402 |
| Restricted cash and investments, non-current | 2,394 | 4,946 |
| Total cash, cash equivalents, restricted cash and investments shown in the Unaudited Consolidated Statement of Cash Flows | \$77,506 | \$69,548 |

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business and Basis of Presentation

Description of Business

NuVasive, Inc. (the “Company” or “NuVasive”) was incorporated in Delaware on July 21, 1997, and began commercializing its products in 2001. The Company’s principal product offering includes a minimally-disruptive surgical platform called Maximum Access Surgery, or MAS. The MAS platform combines three categories of solutions that collectively minimize soft tissue disruption during spine fusion surgery, provide maximum visualization and are designed to enable safe and reproducible outcomes for the surgeon and the patient. The platform includes the Company’s proprietary software-driven nerve detection and avoidance systems and Intraoperative Monitoring (“IOM”) services and support; MaXcess, an integrated split-blade retractor system; and a wide variety of specialized implants and biologics. To assist with surgical procedures the Company offers a technology platform called Integrated Global Alignment (“iGA”); in which products and computer assisted technology under the MAS platform help achieve more precise spinal alignment. The individual components of the MAS platform, and many of the Company’s products, can also be used in open or traditional spine surgery. The Company continues to focus research and development efforts to expand its MAS product platform and advance the applications of its unique technology into procedurally-integrated surgical solutions. The Company dedicates significant resources toward training spine surgeons on its unique technology and products.

The Company’s procedurally integrated solutions use innovative, technological advancements and the MAS platform to provide surgical efficiency, operative reliability, and procedural versatility. The Company offers a range of implants for spinal surgery, which include its branded CoRoent products and porous titanium and polyetheretherketone implants under its Advanced Materials Science portfolio, fixation devices such as customizable rods, plates and screws, bone allograft in patented saline packaging, allogeneic and synthetic biologics, and disposables used in IOM. The Company makes available MAS instrument sets, MaXcess and neuromonitoring systems to hospitals to facilitate surgeon access to the spine to perform restorative and fusion procedures using the Company’s implants and fixation devices. The Company sells MAS instrument sets, MaXcess and neuromonitoring systems to hospitals, however, such sales are immaterial to the Company’s results of operations.

The Company also designs and sells expandable growing rod implant systems that can be non-invasively lengthened following implantation with precise, incremental adjustments via an external remote controller using magnetic technology called MAGnetic External Control, or MAGEC, which allows for the minimally invasive treatment of early-onset and adolescent scoliosis. This technology is also the basis for the Company’s PRECICE limb lengthening system, which allows for the correction of long bone limb length discrepancy, as well as enhanced bone healing in patients that have experienced traumatic injury.

The Company intends to continue development on a wide variety of projects intended to broaden surgical applications for greater procedural integration of its MAS techniques and additional applications of the MAGEC technology. Such applications include tumor, trauma, and deformity, as well as increased fixation options, sagittal alignment products, imaging and navigation. The Company also expects to continue expanding its other product and services offerings as it executes on its strategy to offer customers an end-to-end, procedurally integrated solution for spine surgery. The

Company intends to continue to pursue business and technology acquisition targets and strategic partnerships.

Basis of Presentation and Principles of Consolidation

The accompanying Unaudited Consolidated Financial Statements include the accounts of the Company and its majority-owned or controlled subsidiaries, collectively referred to as either NuVasive or the Company. The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. When there is a portion of equity in an acquired subsidiary not attributable, directly or indirectly, to the respective parent entity, the Company records the fair value of the non-controlling interest at the acquisition date and classifies the amounts attributable to non-controlling interest separately in equity in the Company's Consolidated Financial Statements. Any subsequent changes in a parent's ownership interest while the parent retains its controlling financial interest in its subsidiary are accounted for as equity transactions. All significant intercompany balances and transactions have been eliminated in consolidation.

Table of Contents

The accompanying Unaudited Consolidated Financial Statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual Consolidated Financial Statements prepared in accordance with generally accepted accounting principles in the United States (“GAAP”). Operating results for the three and nine months ended September 30, 2018 are not necessarily indicative of the results that may be expected for any other interim period or for the full year. These Unaudited Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements and notes thereto for the year ended December 31, 2017 included in the Company’s Annual Report on Form 10-K filed with the SEC. In the opinion of management, the Unaudited Consolidated Financial Statements and notes thereto include all adjustments that are of a normal and recurring nature that are necessary for the fair presentation of the Company’s financial position and of the results of operations and cash flows for the periods presented.

The Company has reclassified historically presented revenue and cost of revenue to conform to the current year presentation, which now reflects revenue and costs allocated to the Company’s product and service offerings. These reclassifications had no impact on previously reported results of operations. Additionally, as required by Accounting Standards Update 2014-09 Revenue from Contracts with Customers (“ASU 2014-09”), on January 1, 2018 the Company adopted Accounting Standards Codification 606 Revenue from Contracts with Customers (“ASC 606”), electing full retrospective method of adoption.

Use of Estimates

To prepare financial statements in conformity with GAAP, management must make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Recent Accounting Pronouncements Not Yet Adopted

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2016-02, Leases, which introduced ASC 842 – Leases, a new comprehensive lease accounting model that supersedes the current lease guidance under ASC 840 – Leases. The new accounting standard requires lessees to recognize right-of-use assets and corresponding lease liabilities for all leases with lease terms of greater than twelve months. It also changes the definition of a lease and expands the disclosure requirements of lease arrangements. The new accounting standard will be effective for the Company starting in the first quarter of fiscal 2019. Early adoption is permitted. The Company will adopt ASU 2016-02 on January 1, 2019 and expects to elect the practical expedients permitted under the transition guidance. Additionally, the Company will elect the optional transition method that allows for a cumulative-effect adjustment in the period of adoption and will not restate prior periods. The Company is in the process of determining the impact the adoption will have on its Consolidated Financial Statements and expects significant changes relating to the recognition of right-of-use assets and liabilities associated with its operating leases on its Consolidated Balance Sheet.

In June 2016, the FASB issued Accounting Standards Update No. 2016-13, Financial Instruments – Credit Losses, which changes the accounting for recognizing impairments of financial assets. Under the new guidance, credit losses for certain types of financial instruments will be estimated based on expected losses. The new guidance also modifies the impairment models for available-for-sale debt securities and for purchased financial assets with credit deterioration since their origination. The new guidance will be effective for the Company starting in the first quarter of fiscal 2021.

Early adoption is permitted starting in the first quarter of fiscal 2020. The Company believes the adoption will modify the way the Company analyzes financial instruments, but it does not anticipate a material impact on results of operations. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In January 2017, the FASB issued Accounting Standards Update No. 2017-04, Intangibles – Goodwill and Other, which eliminates the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. Instead, entities will record an impairment charge based on the excess of a reporting unit’s carrying amount over its fair value. The standard has tiered effective dates, starting in 2020 for calendar-year public business entities that meet the definition of an SEC filer. Early adoption is permitted for annual and interim goodwill impairment testing dates after January 1, 2017. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In July 2017, the FASB issued Accounting Standards Update No. 2017-11, Earnings Per Share, Distinguishing Liabilities from Equity, Derivatives and Hedging, which changes the accounting treatment and the earnings per share calculation for certain instruments with down round features. The amendments in this update should be applied using a cumulative-effect adjustment as of the beginning of the fiscal year of adoption or retrospective adjustment to each period presented. This update is effective for annual periods beginning after December 15, 2018, and interim periods within those periods and early adoption is permitted. The Company is in the process of determining the impact the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

Table of Contents

In August 2017, the FASB issued Accounting Standards Update No. 2017-12, Derivatives and Hedging, which is intended to more closely align hedge accounting with companies' risk management strategies, simplify the application of hedge accounting and increase transparency as to the scope and results of hedging programs. The amendments in this update will be applied using a cumulative-effect adjustment as of the beginning of the fiscal year of adoption. This update is effective for annual periods beginning after December 15, 2018, and interim periods within those periods and early adoption is permitted. The Company is in the process of determining the impact the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In March 2018, the FASB issued Accounting Standards Update No. 2018-05, Income taxes (Topic 740): Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118, which provides guidance regarding the recording of tax impacts where uncertainty exists, in the period of adoption of the 2017 U.S. Tax Cuts and Jobs Act (the "Act"). To the extent that a company's accounting for certain income tax effects of the Act is incomplete but it is able to determine a reasonable estimate, it must record a provisional estimate to be included in the condensed financial statements. If a company cannot determine a provisional estimate to be included in the condensed financial statements, it should continue to apply ASC 740 on the basis of the provision of the tax laws that were in effect immediately before the enactment of the Act. See Note 8 to the Unaudited Consolidated Financial Statements for further discussion on the impact of the Act.

In August 2018, the FASB issued Accounting Standards Update No. 2018-13, Fair Value Measurement: Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement, which adds and modifies certain disclosure requirements for fair value measurements. Under the new guidance, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, or valuation processes for Level 3 fair value measurements. However, public companies will be required to disclose the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and related changes in unrealized gains and losses included in other comprehensive income. This update is effective for annual periods beginning after December 15, 2019, and interim periods within those periods, and early adoption is permitted. The Company is in the process of determining the impact the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In September 2018, the FASB issued Accounting Standards Update No. 2018-15, Intangible – Goodwill and Other – Internal-Use Software, which requires a customer in a cloud computing arrangement to determine which implementation costs to capitalize as assets or expense as incurred. Under the new guidance, capitalized implementation costs related to a hosting arrangement that is a service contract will be amortized over the term of the hosting arrangement, beginning when the module or component of the hosting arrangement is ready for its intended use. This update is effective for annual periods beginning after December 15, 2019, and interim periods within those periods, and early adoption is permitted. The Company is in the process of determining the impact the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

Recently Adopted Accounting Standards

In May 2014, the FASB issued ASU 2014-09, an updated standard on revenue recognition. The standard effectively replaces Accounting Standards Codification 605 Revenue Recognition ("ASC 605") with ASC 606. In summary, the changes to the guidance in revenue recognition under ASC 606 focuses on the existence of a contract with the customer (whether written, oral, or implied by an entity's customary business practices), the concept that the performance obligation is fulfilled when the customer obtains control of the asset/service, versus the transfer of risk

and reward, and the requirement that variable consideration (including rebates, discounts, etc.) and incremental costs must be estimated and recognized in the amount that is expected or most likely to be realized over the term of the contract fulfillment.

Prior to the adoption of ASC 606, the Company recognized revenue in accordance with ASC 605 when all four of the following criteria were met: (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectability is reasonably assured. Specifically, revenue from the sale of implants, biologics and disposables was generally recognized upon a purchase order from the hospital or acknowledgment from the hospital indicating product use or implantation or upon shipment to third-party customers who immediately accepted title. Revenue from the sale of instrument sets was recognized upon receipt of a purchase order and the subsequent shipment to customers who immediately accepted title. Revenue from neuromonitoring services was recognized in the period the service was performed for the amount of payment expected to be received.

The Company adopted ASC 606 as of January 1, 2018, electing full retrospective method of adoption, which resulted in a change in its accounting policy for revenue recognition and related adjustments to the Consolidated Financial Statements for all periods presented. The Company applied the practical expedients permitted under ASC 606 for which (i) contracts with customers originating prior to January 1, 2016 do not require disclosure for the amount of consideration allocated to remaining performance obligations or an explanation of when the Company expects to recognize that amount as revenue; (ii) contracts beginning and completing in the same annual reporting period need not be restated; and (iii) hindsight for estimating variable consideration for completed contracts is permitted.

Table of Contents

The Company recognizes revenue from spinal surgery hardware and ancillary products at a point in time in two types of transactions: (i) procedural based transactions with products used during surgery defined as “charge sheet orders”, and (ii) shipping transactions which represent the stocking of product or the purchase of instrumentation to support future surgeries defined as “stocking and capital orders”. The Company also recognizes revenue at a point in time associated with surgical-related servicing procedures, including neuromonitoring services which are defined as “surgical-related services”. Other sources of revenue, such as leasing revenue and royalties, are immaterial to the Consolidated Financial Statements.

For charge sheet orders, the sale occurs when the surgery is performed and a charge sheet is submitted to the Company by its sales representative identifying the products consumed during the surgery. The charge sheet, as signed by the hospital, serves as a confirmation and acknowledgement of the Company’s products consumed during a surgery. Under ASC 605, persuasive evidence of an arrangement and delivery of product was deemed to have occurred once the charge sheet was processed, and an associated authorization or acknowledgement from the customer was received. Under ASC 606, the Company’s charge sheet orders are considered to be a contract with a customer when a surgery is scheduled with the Company as requested by the hospital or surgeon, and the products are consumed during the surgery or implanted into the patient. Revenue recognition under ASC 606 occurs upon completion of the Company’s performance obligation, which occurs upon consumption of the products during surgery and receipt of the charge sheet. In the event that information related to the surgical event and consumption of product is not readily available the Company recognizes revenue upon a purchase order from the hospital or acknowledgment from the hospital indicating product use.

For stocking and capital orders, under ASC 605, delivery was deemed to have occurred when the title, including all risks and rewards of ownership of the products specified in the sales agreement had passed to the buyer. Accordingly, title, including all risks and rewards of ownership, passed based on the shipping terms. Under ASC 606, the Company’s stocking and capital order performance obligation is considered to be satisfied when the hospital assumes control of the asset, either upon shipment or delivery depending on the terms, and ability to direct the use of the asset as appropriate without the Company’s consent.

Under both ASC 605 and ASC 606, revenue from surgical-related services, such as neuromonitoring services, is recognized in the period the service is performed based on the delivery of a services report to the customer. The Company recognizes revenue for the amount of payment expected to be received. The Company bills either hospitals or insurance companies for different aspects of the service, as applicable. Revenue from hospitals is recognized based on agreed upon pricing. Revenue from insurance companies is recognized using the expected value method, as the Company bills at a gross rate which is generally not the rate ultimately collected.

Under ASC 605, the Company has historically estimated the amounts of returns, trade-ins, discounts, rebates, credits or incentives as offsets to the total transaction price or revenue associated with the sale. In limited situations, when historical information was not available or reliable, the Company would defer revenue recognition until completion of all performance obligations. Under ASC 606, the Company analyzes sales that could include variable consideration, and estimates the expected or most likely amount of revenue after returns, trade-ins, discounts, rebates, credits, and incentives. In making these estimates, the Company considers whether the amount of variable consideration is constrained and is included in revenue only to the extent that it is probable that a significant reversal of the revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

The Company earns sales-based royalty revenue over time from sales of products using existing biologics intellectual property (“IP”) that is out-licensed to certain companies. Under ASC 605, royalty revenue was recognized as earned and when collection was reasonably assured and was generally estimated and recorded in the same period as the sales that generated the royalty obligation. ASC 606 provides an exception for sales or usage-based royalties from the guidance for accounting for variable consideration, allowing the royalty revenue from the license of IP to be recognized when the performance obligation has been satisfied and the subsequent sale has occurred. Therefore, the Company estimates monthly royalty revenue as its performance obligation is satisfied. The Company does not expect a significant impact to royalty revenue under the adoption of ASC 606 as it has historically estimated and accrued royalty revenue in the period earned.

The Company historically expensed incremental costs, such as commissions associated with sales contracts, as incurred. Under ASU 2014-09, ASC 340-40, Other Assets and Deferred Costs – Contracts with Customers was added along with ASC 606 to codify accounting guidance for the incremental costs to obtain or fulfill a contract with a customer. Under the guidance, the incremental costs must be deferred and recorded over the period in which the contract revenue is recognized. The Company typically does not associate quarterly or annual sales bonuses directly with a sale or master contract; however, commissions are directly associated with individual sales and expensed in the same period as the related contract revenue. The associated commissionable sales would not typically have a future benefit unless the revenue is recognized over time. The Company does not typically have situations where revenue is deferred in excess of one year. Given the practical expedient for contracts completing within one year, the Company does not expect these capitalized costs to be material in a given period.

Table of Contents

The cumulative effect of the change on retained earnings for the full retrospective method of adoption of ASC 606 was \$0.3 million as of December 31, 2017. The following tables summarize in a condensed presentation the impact of the adoption of ASC 606 on the Company's previously reported Consolidated Balance Sheet as of December 31, 2017, the Unaudited Consolidated Statement of Operations and Comprehensive Income for the three and nine months ended September 30, 2017, and the Unaudited Consolidated Statement of Cash Flows for the nine months ended September 30, 2017.

NUVASIVE, INC.
CONSOLIDATED BALANCE SHEET
(in thousands)

| | As reported | (Unaudited) Adjustments | (Unaudited) As Adjusted |
|--|----------------|----------------------------|-------------------------------|
| As of December 31, 2017 | | | |
| Accounts receivable, gross | \$212,709 | \$ 537 | [a] \$213,246 |
| Allowances on accounts receivable | (13,669) | 643 | [b] (13,026) |
| Inventory, net | 247,245 | (107) | [c] 247,138 |
| Other current assets | 112,705 | — | 112,705 |
| Total current assets | 558,990 | 1,073 | 560,063 |
| Remaining other assets | 1,080,077 | — | 1,080,077 |
| Total assets | \$1,639,067 | \$ 1,073 | \$ 1,640,140 |
| Accounts payable and accrued liabilities | 75,076 | 691 | [d] 75,767 |
| Accrued payroll and related expenses | 55,582 | 36 | [e] 55,618 |
| Other current liabilities | 30,010 | — | 30,010 |
| Total current liabilities | 160,668 | 727 | 161,395 |
| Deferred and income tax liabilities, non-current | 18,786 | 84 | [f] 18,870 |
| Other long-term liabilities | 660,459 | — | 660,459 |
| Total NuVasive, Inc. stockholders' equity | 795,309 | 262 | [g] 795,571 |
| Non-controlling interests | 3,845 | — | 3,845 |
| Total equity | 799,154 | 262 | 799,416 |
| Total liabilities and equity | \$1,639,067 | \$ 1,073 | \$ 1,640,140 |

[a] Represents cumulative impact from January 1, 2016 to the period presented on accounts receivable for the full retrospective method of adoption of ASC 606.

[b] Represents cumulative impact from January 1, 2016 to the period presented on allowances on accounts receivable for the full retrospective method of adoption of ASC 606.

[c] Represents cumulative impact from January 1, 2016 to the period presented on inventory for the full retrospective method of adoption of ASC 606.

[d] Represents cumulative impact from January 1, 2016 to the period presented on commissions payable and accrued returns for the full retrospective method of adoption of ASC 606.

[e] Represents cumulative impact from January 1, 2016 to the period presented on commissions payable for the full retrospective method of adoption of ASC 606.

[f] Represents cumulative impact from January 1, 2016 to the period presented on deferred tax liabilities for the full retrospective method of adoption of ASC 606.

[g] Represents cumulative impact from January 1, 2016 to the period presented on retained earnings for the full retrospective method of adoption of ASC 606.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENT OF OPERATIONS AND COMPREHENSIVE INCOME

(in thousands, except per share amounts)

| (Unaudited) | As reported | Adjustments | As adjusted |
|---|----------------|-------------|----------------|
| Three months ended September 30, 2017 | | | |
| Revenue | | | |
| Product revenue | \$227,701 | \$ (380) | [a] \$227,321 |
| Service revenue | 19,730 | — | 19,730 |
| Total revenue | 247,431 | (380) | 247,051 |
| Cost of revenue (excluding amortization of intangible assets) | | | |
| Cost of products sold | 50,932 | (76) | [b] 50,856 |
| Cost of services | 14,651 | — | 14,651 |
| Total cost of revenue | 65,583 | (76) | 65,507 |
| Gross profit | 181,848 | (304) | 181,544 |
| Operating expenses: | | | |
| Sales, marketing and administrative | 125,800 | (151) | [c] 125,649 |
| Other operating expenses | 25,445 | — | 25,445 |
| Total operating expenses | 151,245 | (151) | 151,094 |
| Total interest and other expense, net | (8,958) | — | (8,958) |
| Income tax benefit | 11,540 | 64 | [d] 11,604 |
| Consolidated net income | \$33,185 | \$ (89) | [e] \$33,096 |
| Add back net loss attributable to non-controlling interests | \$(432) | \$ — | \$(432) |
| Net income attributable to NuVasive, Inc. | \$33,617 | \$ (89) | [e] \$33,528 |
| Net income per share attributable to NuVasive, Inc.: | | | |
| Basic | \$0.66 | \$ (0.00) | [f] \$0.66 |
| Diluted | \$0.64 | \$ (0.00) | [f] \$0.64 |
| Comprehensive income attributable to NuVasive, Inc. | \$34,893 | \$ (89) | [e] \$34,804 |

[a] Represents net change in sales revenue for charge sheet orders recognized under ASC 606.

[b] Represents net change in cost of products sold for charge sheet orders recognized under ASC 606.

[c] Represents net change in accrued sales commissions for charge sheet orders recognized under ASC 606.

[d] Represents deferred income tax liability on net change associated with charge sheet orders recognized under ASC 606.

[e] Represents change in net income and comprehensive income resulting from net change in charge sheet orders recognized under ASC 606.

[f] Represents earnings per share impact resulting from net change in charge sheet orders recognized under ASC 606.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENT OF OPERATIONS AND COMPREHENSIVE INCOME

(in thousands, except per share amounts)

| (Unaudited) | As reported | Adjustments | As adjusted |
|---|----------------|-------------|----------------|
| Nine months ended September 30, 2017 | | | |
| Revenue | | | |
| Product revenue | \$ 692,505 | \$ (2,405) | [a] \$ 690,100 |
| Service revenue | 65,363 | — | 65,363 |
| Total revenue | 757,868 | (2,405) | 755,463 |
| Cost of revenue (excluding amortization of intangible assets) | | | |
| Cost of products sold | 147,773 | (481) | [b] 147,292 |
| Cost of services | 45,844 | — | 45,844 |
| Total cost of revenue | 193,617 | (481) | 193,136 |
| Gross profit | 564,251 | (1,924) | 562,327 |
| Operating expenses: | | | |
| Sales, marketing and administrative | 405,411 | (427) | [c] 404,984 |
| Other operating expenses | 75,265 | — | 75,265 |
| Total operating expenses | 480,676 | (427) | 480,249 |
| Total interest and other expense, net | (28,807) | — | (28,807) |
| Income tax benefit | 2,971 | 572 | [d] 3,543 |
| Consolidated net income | \$ 57,739 | \$ (925) | [e] \$ 56,814 |
| Add back net loss attributable to non-controlling interests | \$ (1,307) | \$ — | \$ (1,307) |
| Net income attributable to NuVasive, Inc. | \$ 59,046 | \$ (925) | [e] \$ 58,121 |
| Net income per share attributable to NuVasive, Inc.: | | | |
| Basic | \$ 1.16 | \$ (0.02) | [f] \$ 1.14 |
| Diluted | \$ 1.05 | \$ (0.02) | [f] \$ 1.03 |
| Comprehensive income attributable to NuVasive, Inc. | \$ 62,822 | \$ (925) | [e] \$ 61,897 |

[a] Represents net change in sales revenue for charge sheet orders recognized under ASC 606.

[b] Represents net change in cost of products sold for charge sheet orders recognized under ASC 606.

[c] Represents net change in accrued sales commissions for charge sheet orders recognized under ASC 606.

[d] Represents deferred income tax liability on net change associated with charge sheet orders recognized under ASC 606.

[e] Represents change in net income and comprehensive income resulting from net change in charge sheet orders recognized under ASC 606.

[f] Represents earnings per share impact resulting from net change in charge sheet orders recognized under ASC 606.

Table of Contents

NUVASIVE, INC.
CONSOLIDATED STATEMENT OF CASH FLOWS
(in thousands)
(Unaudited)

| | As reported | Adjustments | As adjusted |
|---|----------------|-------------|----------------|
| Nine months ended September 30, 2017 | | | |
| Consolidated net income | \$57,739 | \$ (925) | [a] \$56,814 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Reserves on current assets | 1,741 | 4 | [b] 1,745 |
| Deferred income tax benefit | (3,705) | (572) | [c] (4,277) |
| Other adjustments to reconcile net income | 130,611 | — | 130,611 |
| Changes in operating assets and liabilities, net of effects from acquisitions: | | | |
| Accounts receivable | (14,796) | 2,348 | [d] (12,448) |
| Inventory | (36,180) | (481) | [e] (36,661) |
| Prepaid expenses and other current assets | 169 | — | 169 |
| Accounts payable and accrued liabilities | (17,057) | (117) | [f] (17,174) |
| Litigation liability | 1,000 | — | 1,000 |
| Accrued payroll and related expenses | 502 | (257) | [f] 245 |
| Income taxes | (1,195) | — | (1,195) |
| Net cash provided by operating activities | 118,829 | — | 118,829 |
| Net cash used in investing activities | (161,671) | — | (161,671) |
| Net cash used in financing activities | (50,625) | — | (50,625) |
| Effect of exchange rate changes on cash | 1,967 | — | 1,967 |
| Decrease in cash, cash equivalents and restricted cash | \$(91,500) | \$ — | \$(91,500) |

[a] Represents change in net income resulting from charge sheet orders recognized under ASC 606.

[b] Represents net change in allowances on accounts receivable for charge sheet orders recognized under ASC 606.

[c] Represents deferred income tax liability on net change associated with charge sheet orders recognized under ASC 606.

[d] Represents net change in accounts receivable for charge sheet orders recognized under ASC 606.

[e] Represents net change in inventory for charge sheet orders recognized under ASC 606.

[f] Represents net change in accrued sales commissions for charge sheet orders recognized under ASC 606.

Table of Contents

In January 2016, the FASB issued Accounting Standards Update No. 2016-01, Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities (“ASU 2016-01”), which requires that (i) all equity investments, other than equity-method investments, in unconsolidated entities generally be measured at fair value through earnings and (ii) when the fair value option has been elected for financial liabilities, changes in fair value due to instrument-specific credit risk will be recognized separately in other comprehensive income. Additionally, ASU 2016-01 changes the disclosure requirements for financial instruments. ASU 2016-01 provides a practicability exception for investments that do not have readily determinable fair values, which allows investments to be measured at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. The Company adopted ASU 2016-01 as of January 1, 2018 and elected to apply the practicability exception for measuring equity investments that do not have readily determinable fair market. The adoption did not have any impact on its Consolidated Financial Statements.

In August 2016, the FASB issued Accounting Standards Update No. 2016-15, Classification of Certain Cash Receipts and Cash Payments (“ASU 2016-15”), which eliminates the diversity in practice related to the classification of certain cash receipts and payments for debt prepayment or extinguishment costs, the maturing of a zero coupon bond, the settlement of contingent liabilities arising from a business combination, proceeds from insurance settlements, distributions from certain equity method investees and beneficial interests obtained in a financial asset securitization. ASU 2016-15 designates the appropriate cash flow classification, including requirements to allocate certain components of these cash receipts and payments among operating, investing and financing activities. The retrospective transition method, requiring adjustment to all comparative periods presented, is required unless it is impracticable for some of the amendments, in which case those amendments would be made prospectively as of the earliest date practicable. The Company adopted ASU 2016-15 as of January 1, 2018. The adoption did not have any significant impact on its Consolidated Financial Statements.

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, Restricted Cash (“ASU 2016-18”), which requires entities to show the changes in the total of cash, cash equivalents, restricted cash and restricted cash equivalents in the statement of cash flows. As a result, entities will no longer present transfers between cash and cash equivalents and restricted cash and restricted cash equivalents in the statement of cash flows. The amendments in this update will be applied using a retrospective transition method to each period presented. The Company adopted ASU 2016-18 as of January 1, 2018 and adjusted the presentation of its Statement of Cash Flows for the periods presented. The adoption did not have any significant impact on its Consolidated Financial Statements.

In January 2017, the FASB issued Accounting Standards Update No. 2017-01, Clarifying the Definition of a Business (“ASU 2017-01”), which clarifies and provides a more robust framework to use in determining when a set of assets and activities is a business. The amendments in this update should be applied prospectively on or after the effective date. The Company adopted ASU 2017-01 as of January 1, 2018.

In February 2017, the FASB issued Accounting Standards Update No. 2017-05, Other Income – Gains and Losses from the Derecognition of Nonfinancial Assets (“ASU 2017-05”), which clarifies the scope of asset derecognition and adds guidance for partial sales and nonfinancial assets. An entity is required to apply the amendments in this update at the same time that it applies the amendments in ASU 2014-09. The Company adopted ASU 2017-05 as of January 1, 2018. The adoption did not have any significant impact on its Consolidated Financial Statements.

In May 2017, the FASB issued Accounting Standards Update No. 2017-09, Compensation – Stock Compensation (“ASU 2017-09”), which clarifies when changes to the terms or conditions of a share-based payment award must be

accounted for as a modification. Entities will apply the modification accounting guidance if the value, vesting conditions, or classification of the award changes. The Company adopted ASU 2017-09 as of January 1, 2018. The adoption did not have any significant impact on its Consolidated Financial Statements.

In June 2018, the FASB issued Accounting Standards Update No. 2018-07, Compensation – Stock Compensation, which aligns the measurement and classification guidance for share-based payment to non-employees with the guidance for share-based payments to employees. Under the new guidance, the measurement period for equity-classified non-employee awards will be fixed at the grant date. The Company adopted ASU 2018-07 as of July 1, 2018. The Company will not apply ASU 2018-07 to previously issued interim-period financial statements and will not restate those financial statements the next time they are presented. The cumulative effect of the change on retained earnings was immaterial as of January 1, 2018.

Table of Contents

Revenue Recognition

In accordance with ASC 606 guidance, the Company recognizes revenue upon the transfer of goods or services to a customer at an amount that reflects the expected consideration to be received in exchange for those goods or services. The principles in ASC 606 are applied using the following five steps: (i) identify the contract with a customer; (ii) identify the performance obligation(s) in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligation(s) in the contract; and (v) recognize revenue when (or as) the Company satisfies its performance obligation(s). Specifically, revenue from the sale of implants and disposables is generally recognized at an amount that reflects the expected consideration upon notice that the Company's products have been used in a surgical procedure or upon shipment to a third-party customer assuming control of the products. Revenue from neuromonitoring services is recognized in the period the service is performed for the amount of consideration expected to be received. Revenue from the sale of instrument sets is generally recognized upon receipt of a purchase order and the subsequent shipment to a customer who assumes control. In certain cases, the Company does offer the ability for customers to lease instrumentation primarily on a non-sales type basis. Instrument sales and leasing revenue represent an immaterial amount of the Company's total revenue in all periods presented. Revenue associated with products holding rights of return or trade-in are recognized when the Company concludes there is not a risk of significant revenue reversal in future periods for the expected consideration in the transaction. Costs incurred by the Company associated with sales contracts with customers are deferred over the performance obligation period and recognized in the same period as the related revenue, with the exception of contracts that complete within one year or less, in which case the associated costs are expensed as incurred.

Inventory

Net inventory as of September 30, 2018 primarily consisted of \$258.3 million of finished goods, \$5.3 million of work in progress and \$7.7 million of raw materials. Net inventory as of December 31, 2017 consisted of \$232.4 million of finished goods, \$9.8 million of work in progress and \$5.0 million of raw materials. Finished goods include specialized implants and disposables and are stated at the lower of cost or market determined by utilizing a standard cost method, which includes assessment of capitalized variances, which approximates the weighted average cost. Work in progress and raw materials represent the underlying material, and labor for work in progress, that ultimately yield finished goods upon completion and are subject to lower of cost or market. The Company reviews the components of its inventory on a periodic basis for excess and obsolescence and adjusts inventory to its net realizable value as necessary.

Comprehensive Income

Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income includes net of tax, unrealized gains or losses on the Company's marketable securities and foreign currency translation adjustments. The cumulative translation adjustments included in accumulated other comprehensive loss were \$10.2 million and \$6.9 million at September 30, 2018 and December 31, 2017, respectively.

Product Shipment Costs

Product shipment costs, included in sales, marketing and administrative expense in the accompanying Unaudited Consolidated Statements of Operations, were \$6.5 million and \$18.9 million for the three and nine months ended

September 30, 2018, respectively, and \$6.0 million and \$17.5 million for the three and nine months ended September 30, 2017, respectively. The majority of the Company's shipping costs are related to the loaning of instrument sets, which are not typically sold as part of the Company's core sales offering. Amounts billed to customers for shipping and handling of products are reflected in revenues and are not material for any period presented.

Business Transition Costs

The Company incurs certain costs related to acquisition, integration and business transition activities, which include severance, relocation, consulting, leasehold exit costs, third-party merger and acquisition costs, contingent consideration fair value adjustments and other costs directly associated with such activities.

The Company incurred \$1.4 million and \$7.7 million of such costs during the three and nine months ended September 30, 2018, respectively, which consisted primarily of acquisition, integration and business transition activities, but also includes \$0.7 million and \$1.5 million, respectively, of fair value adjustments on contingent consideration liabilities associated with the Company's 2017 and 2016 acquisitions.

The Company incurred \$0.3 million and \$1.8 million of such costs during the three and nine months ended September 30, 2017, respectively, which consisted primarily of acquisition, integration and business transition activities, but also includes \$(0.9) million and \$(1.6) million, respectively, of fair value adjustments on contingent consideration liabilities associated with the Company's 2017 and 2016 acquisitions.

Table of Contents

2. Net Income Per Share

The following table sets forth the computation of basic and diluted net income per share attributable to the Company:

| (in thousands, except per share data) | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|--|----------|---------------------------------------|----------|
| | 2018 | 2017 | 2018 | 2017 |
| Numerator: | | | | |
| Net income attributable to NuVasive, Inc. | \$15,923 | \$33,528 | \$322 | \$58,121 |
| Denominator for basic and diluted net income per share: | | | | |
| Weighted average common shares outstanding for basic | 51,439 | 50,747 | 51,341 | 50,799 |
| Dilutive potential common stock outstanding: | | | | |
| Stock options and employee stock purchase plan | 41 | 129 | 37 | 163 |
| Restricted stock units | 1,059 | 875 | 701 | 1,216 |
| Warrants | — | — | — | 1,991 |
| Senior Convertible Notes | 650 | 1,043 | 217 | 2,135 |
| Weighted average common shares outstanding for diluted | 53,189 | 52,794 | 52,296 | 56,304 |
| Basic net income per share attributable to NuVasive, Inc. | \$0.31 | \$0.66 | \$0.01 | \$1.14 |
| Diluted net income per share attributable to NuVasive, Inc. | \$0.30 | \$0.64 | \$0.01 | \$1.03 |

The following weighted-average outstanding common stock equivalents were not included in the calculation of net income per diluted share because their effects were anti-dilutive:

| (in thousands) | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|----------------------------------|--------|---------------------------------|--------|
| | 2018 | 2017 | 2018 | 2017 |
| Stock options, employee stock purchase plan, and restricted stock units | 11 | 7 | 198 | 50 |
| Warrants | 10,865 | 10,865 | 10,865 | 10,865 |
| Senior Convertible Notes | — | — | 7,244 | — |
| Total | 10,876 | 10,872 | 18,307 | 10,915 |

3. Financial Instruments and Fair Value Measurements

Foreign Currency and Derivative Financial Instruments

The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations.

Some of the Company's reporting entities conduct a portion of their business in currencies other than the entity's functional currency. These transactions give rise to receivables and payables that are denominated in currencies other than the entity's functional currency. The value of these receivables and payables is subject to changes in currency exchange rates from the point at which the transactions are originated until the settlement in cash. Both realized and unrealized gains and losses in the value of these receivables and payables are included in the determination of net income. Net currency exchange (losses) gains, which include gains and losses from derivative instruments, were \$(0.9) million and \$(3.4) million for the three and nine months ended September 30, 2018, respectively, and \$0.2 million and \$(0.1) million for the three and nine months ended September 30, 2017, respectively, and are included in other income (expense), net in the Unaudited Consolidated Statements of Operations.

To manage foreign currency exposure risks, the Company uses derivatives for activities in entities that have short-term intercompany receivables and payables denominated in a currency other than the entity's functional currency. The fair value is based on a quoted market price (Level 1). As of September 30, 2018 and December 31, 2017 a notional principal amount of \$16.8 million and \$14.3 million, respectively, was outstanding to hedge currency risk relative to the Company's foreign receivables and payables. Derivative instrument net gains (losses) on the Company's forward exchange contracts were \$0.2 million and \$0.5 million for the three and nine months ended September 30, 2018, respectively, and \$(0.4) million and \$(1.7) million for the three and nine months ended September 30, 2017, respectively, and are included in other income (expense), net in the Unaudited Consolidated Statements of Operations. The fair value of the forward contract exchange derivative instrument asset (liability) was \$0.1 million and \$(0.1) million as of September 30, 2018 and December 31, 2017, respectively. The derivative instruments are recorded in other current assets or other current liabilities in the Consolidated Balance Sheets commensurate with the nature of the instrument at period end.

Table of Contents

Fair Value Measurements

The Company measures certain assets and liabilities in accordance with authoritative guidance which requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.

Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value measurement hierarchy during the periods presented.

The fair values of the Company's assets and liabilities, including cash equivalents, marketable securities, restricted investments, derivatives, and contingent obligations are measured at fair value on a recurring basis. As of September 30, 2018 and December 31, 2017, the Company held investments in securities classified as cash equivalents. During the periods presented, the Company did not hold any investments that were in a significant unrealized loss position and no impairment charges were recorded. Realized gains and losses and interest income related to marketable securities were immaterial during all periods presented. Cash equivalents are determined under the fair value categories as follows:

| (in thousands) | Total | Quoted Price in Active Market (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|----------------------------|----------|---|---|---|
| September 30, 2018: | | | | |
| Cash equivalents: | | | | |
| Money market funds | \$24,000 | \$ 24,000 | \$ — | \$ — |
| Total cash equivalents | \$24,000 | \$ 24,000 | \$ — | \$ — |
| December 31, 2017: | | | | |
| Cash equivalents: | | | | |
| Money market funds | \$27,000 | \$ 27,000 | \$ — | \$ — |
| Total cash equivalents | \$27,000 | \$ 27,000 | \$ — | \$ — |

The carrying amounts of certain financial instruments such as cash equivalents, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses, and other current liabilities as of September 30, 2018 and December 31, 2017 approximate their related fair values due to the short-term maturities of these instruments.

The fair value of certain financial instruments was measured and classified within Level 1 of the fair value hierarchy based on quoted prices. Certain financial instruments classified within Level 2 of the fair value hierarchy include the types of instruments that trade in markets that are not considered to be active, but are valued based on quoted market

prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency.

Fair Value of Senior Convertible Notes

The fair value, based on a quoted market price (Level 1), of the Company's outstanding Senior Convertible Notes due 2021 at September 30, 2018 and December 31, 2017, was \$826.0 million and \$779.5 million, respectively. See Note 6 to the Unaudited Consolidated Financial Statements for further discussion on the carrying value of the notes.

Contingent Consideration Liabilities

The fair value of contingent consideration liabilities assumed in business combinations is recorded as part of the purchase price consideration of the acquisition, and is determined using a discounted cash flow model or probability simulation model. The significant inputs of such models are not observable in the market, such as certain financial metric growth rates, volatility rates, projections associated with the applicable milestone, the interest rate, and the related probabilities and payment structure in the contingent consideration arrangement. Fair value adjustments to contingent consideration liabilities are recorded through operating expenses in the Consolidated Statement of Operations. Contingent consideration arrangements assumed by an asset purchase will be measured and accrued when such contingency is resolved.

Contingent consideration liabilities were \$57.2 million and \$67.9 million as of September 30, 2018 and December 31, 2017, respectively, and were recorded in the Consolidated Balance Sheet commensurate with the respective payment terms. The following table sets forth the changes in the estimated fair value of the Company's liabilities measured on a recurring basis using significant unobservable inputs (Level 3):

18

Table of Contents

| (in thousands) | Nine Months Ended | |
|--|-------------------|----------|
| | September 30, | |
| | 2018 | 2017 |
| Fair value measurement at beginning of period | \$67,941 | \$67,501 |
| Contingent consideration liability recorded upon acquisition | 6,663 | 32,471 |
| Change in fair value measurement | 1,539 | (1,830) |
| Changes resulting from foreign currency fluctuations | 17 | 70 |
| Contingent consideration paid or settled | (19,000) | (30,000) |
| Fair value measurement at end of period | \$57,160 | \$68,212 |

During the nine months ended September 30, 2018, the Company paid \$19.0 million in outstanding milestone obligations associated with the LessRay acquisition, of which \$9.0 million related to the achievement of a commercial milestone, and \$10.0 million related to the achievement of a regulatory approval milestone. In accordance with the guidance outlined in ASU 2016-15, \$18.7 million of the \$19.0 million represented the initial purchase price allocation and is presented as a cash outflow for financing activities on the Unaudited Consolidated Statement of Cash Flows, and the remaining \$0.3 million related to increased fair value adjustment is presented as a cash outflow in operating activities.

During the nine months ended September 30, 2017, the Company recorded contingent consideration liabilities of \$32.5 million in connection with certain acquisitions. Such acquisitions included the acquisition in September 2017 of a medical device company that manufactures interbody implants for spinal fusion using patented porous polyetheretherketone technology, which was incorporated into the Company's interbody portfolio. The Company recorded a purchase accounting fair value estimate of \$31.3 million for contingent consideration liabilities related to the achievement of certain manufacturing and commercial milestones.

During the nine months ended September 30, 2017, the Company paid the \$30.0 million outstanding milestone obligation associated with the Ellipse Technologies acquisition. In accordance with the guidance outlined in ASU 2016-15, \$18.8 million of the \$30.0 million represented the initial purchase price allocation and is presented as a cash outflow for financing activities on the Unaudited Consolidated Statement of Cash Flows, and the remaining \$11.2 million related to increased fair value adjustment is presented as a cash outflow in operating activities.

Non-financial assets and liabilities measured on a nonrecurring basis

Certain non-financial assets and liabilities are measured at fair value, usually with Level 3 inputs including the discounted cash flow method or cost method, on a nonrecurring basis in accordance with authoritative guidance. These include items such as non-financial assets and liabilities initially measured at fair value in a business combination and non-financial long-lived assets measured at fair value for an impairment assessment. In general, non-financial assets, including goodwill, intangible assets and property and equipment, are measured at fair value when there is an indication of impairment and are recorded at fair value only when any impairment is recognized. The carrying values of the Company's capital lease obligations approximated their estimated fair value as of September 30, 2018 and December 31, 2017.

During the three months ended September 30, 2018, the Company expensed \$8.9 million for a purchased in-process research and development asset which had no future alternative use.

During the nine months ended September 30, 2018, the Company recorded an impairment charge of \$9.0 million on a strategic investment. The impairment was recorded in other income (expense), net in the Unaudited Consolidated Statement of Operations.

Table of Contents

4. Goodwill and Intangible Assets

Goodwill and intangible assets consisted of the following:

| (in thousands, except years) | Weighted- Average Amortization Period | Gross | Accumulated | Intangible |
|---|--|-----------|---------------|----------------|
| | (in years) | Amount | Amortization | Assets, net |
| September 30, 2018: | | | | |
| Intangible assets subject to amortization: | | | | |
| Developed technology | 8 | \$271,747 | \$ (123,618) | \$ 148,129 |
| Manufacturing know-how and trade secrets | 13 | 30,826 | (17,330) | 13,496 |
| Trade name and trademarks | 9 | 25,500 | (13,059) | 12,441 |
| Customer relationships | 9 | 143,652 | (54,773) | 88,879 |
| Total intangible assets subject to amortization | 9 | \$471,725 | \$ (208,780) | \$ 262,945 |
| Intangible assets not subject to amortization: | | | | |
| Goodwill | | | | \$ 560,401 |
| Total goodwill and intangible assets, net | | | | \$ 823,346 |

| (in thousands, except years) | Weighted- Average Amortization Period | Gross | Accumulated | Intangible |
|---|--|-----------|---------------|----------------|
| | (in years) | Amount | Amortization | Assets, net |
| December 31, 2017: | | | | |
| Intangible assets subject to amortization: | | | | |
| Developed technology | 8 | \$271,748 | \$ (98,693) | \$ 173,055 |
| Manufacturing know-how and trade secrets | 13 | 30,653 | (15,542) | 15,111 |
| Trade name and trademarks | 9 | 25,200 | (10,559) | 14,641 |
| Customer relationships | 9 | 122,249 | (44,282) | 77,967 |
| Total intangible assets subject to amortization | 9 | \$449,850 | \$ (169,076) | \$ 280,774 |
| Intangible assets not subject to amortization: | | | | |
| Goodwill | | | | \$ 536,926 |
| Total goodwill and intangible assets, net | | | | \$ 817,700 |

The following table summarizes the changes in the carrying value of the Company's goodwill:

(in thousands)

Edgar Filing: NUVASIVE INC - Form 10-Q

| | |
|--|------------|
| December 31, 2017 | |
| Gross goodwill | \$ 545,226 |
| Accumulated impairment loss | (8,300) |
| | 536,926 |
| Changes to gross goodwill | |
| Increases recorded in business combinations | 26,303 |
| Changes in purchase price allocation | (1,075) |
| Changes resulting from foreign currency fluctuations | (1,753) |
| | 23,475 |
| September 30, 2018 | |
| Gross goodwill | 568,701 |
| Accumulated impairment loss | (8,300) |
| | \$ 560,401 |

Total expense related to the amortization of intangible assets, which is recorded in both cost of revenue and operating expenses in the Unaudited Consolidated Statements of Operations depending on the functional nature of the intangible asset, was \$13.3 million and \$40.2 million for the three and nine months ended September 30, 2018, respectively, and \$12.6 million and \$37.8 million for the three and nine months ended September 30, 2017, respectively.

Table of Contents

Total future amortization expense related to intangible assets subject to amortization at September 30, 2018 is set forth in the table below:

| | |
|-----------------------------------|------------|
| (in thousands) | |
| Remaining 2018 | \$ 13,170 |
| 2019 | 51,612 |
| 2020 | 50,990 |
| 2021 | 48,930 |
| 2022 | 41,519 |
| Thereafter through 2031 | 56,724 |
| Total future amortization expense | \$ 262,945 |

Table of Contents

5. Business Combinations

The Company recognizes the assets acquired, liabilities assumed, and any non-controlling interest at fair value at the date of acquisition. Certain acquisitions contained contingent consideration arrangements that required the Company to assess the acquisition date fair value of the contingent consideration liabilities, which was recorded as part of the purchase price allocation of the acquisition, with subsequent fair value adjustments to the contingent consideration recorded in the Consolidated Statements of Operations. See Note 3 to the Unaudited Consolidated Financial Statements for further discussion on contingent consideration liabilities.

Acquisitions

In January 2018, the Company acquired SafePassage, a privately-held provider of IOM services, which now operates as a wholly-owned subsidiary of the Company. The acquisition was not considered material to the overall Unaudited Consolidated Financial Statements. The Company's NuVasive Clinical Services division (including SafePassage) represents the reported service revenue on the Unaudited Consolidated Statement of Operations.

The Company has completed other acquisitions that were not considered material, individually or collectively, to the overall Unaudited Consolidated Financial Statements during the periods presented. These acquisitions have been included in the Unaudited Consolidated Financial Statements from the respective dates of acquisition. The Company does not believe that collectively the acquisitions made during the periods presented are material to the overall financial statements.

For certain acquisitions completed during the periods presented, the Company is still in the process of finalizing the purchase price allocation given the timing of the acquisitions and the size and scope of the assets and liabilities subject to valuation. While the Company does not expect material changes in the valuation outcome, certain assumptions and findings that were in place at the date of acquisition could result in changes in the purchase price allocation.

Variable Interest Entities

Progentix Orthobiology B.V.

In 2009, the Company purchased forty percent (40%) of the capital stock of Progentix Orthobiology B.V. ("Progentix"), a company organized under the laws of the Netherlands, from existing shareholders pursuant to a Preferred Stock Purchase Agreement for \$10.0 million in cash (the "Initial Investment"). The Company also loaned Progentix cumulatively a total of \$5.3 million at an interest rate of 6% per year (the "Loan"). Concurrently, with the Initial Investment, the Company and Progentix entered into a Distribution Agreement (as amended, the "Distribution Agreement") for a term of ten years, whereby Progentix appointed the Company as its exclusive distributor for certain Progentix products.

Following the Initial Investment, in accordance with authoritative guidance, the Company determined that Progentix was a variable interest entity ("VIE"), as it did not have the ability to finance its activities without additional subordinated financial support and its equity investors would not absorb their proportionate share of expected losses and would be limited in the receipt of the potential residual returns of Progentix.

Edgar Filing: NUVASIVE INC - Form 10-Q

In January 2018, the Company completed the acquisition of the remaining 60% of the capital stock of Progentix (the “Non-Controlling Interest Acquisition”). Subsequent to the Non-Controlling Interest Acquisition, the Company owns 100% of the capital stock of Progentix, which now operates as its wholly-owned subsidiary and is no longer accounted for as a VIE or a separate reporting unit as of the date of the Non-Controlling Interest Acquisition. In accordance with authoritative guidance, the non-controlling interest associated with Progentix was reclassified to additional paid-in capital, including the difference between the non-controlling interest and consideration paid. The Loan plus accrued interest and the related receivable between the Company and Progentix is still outstanding as of September 30, 2018.

The following is a reconciliation of equity (net assets) attributable to the non-controlling interest:

| (in thousands) | Nine Months Ended September 30, | |
|--|---------------------------------------|---------|
| | 2018 | 2017 |
| Non-controlling interest at beginning of period | \$3,845 | \$5,588 |
| Acquired non-controlling interest reclassified to additional paid-in capital | (3,845) | — |
| Less: Net loss attributable to the non-controlling interest | — | (1,307) |
| Non-controlling interest at end of period | \$— | \$4,281 |

Table of Contents

Total assets and liabilities of Progentix as a VIE included in the accompanying Consolidated Balance Sheets are as follows:

| (in thousands) | September 30, 2018 | December 31, 2017 |
|---------------------------------------|-----------------------|----------------------|
| Total current assets | \$ — | \$ 670 |
| Identifiable intangible assets, net | — | 8,752 |
| Goodwill | — | 12,654 |
| Accounts payable and accrued expenses | — | 562 |
| Deferred tax liabilities, net | — | 331 |
| Non-controlling interest | — | 3,845 |

NuVasive Clinical Services and Physician Practices

The Company's NuVasive Clinical Services division (including SafePassage), which provides IOM services to surgeons and healthcare facilities across the U.S., maintain contractual relationships with several physician practices ("PCs"). In accordance with authoritative guidance, the Company has determined that the PCs are VIEs and therefore, the accompanying Unaudited Consolidated Financial Statements include the accounts of the PCs from the date of acquisition. During the periods presented, the results of the PCs were immaterial to the Company's financials. The creditors of the PCs have claims only on the assets of the PCs, which are not material, and the assets of the PCs are not available to the Company.

6. Indebtedness

The carrying values of the Company's Senior Convertible Notes due 2021 are as follows:

| (in thousands) | September 30, 2018 | December 31, 2017 |
|--|-----------------------|----------------------|
| 2.25% Senior Convertible Notes due 2021: | | |
| Principal amount | 650,000 | 650,000 |
| Unamortized debt discount | (44,380) | (56,839) |
| Unamortized debt issuance costs | (8,102) | (10,241) |
| Total Senior Convertible Notes | \$ 597,518 | \$ 582,920 |

2.25% Senior Convertible Notes due 2021

In March 2016, the Company issued \$650.0 million principal amount of unsecured Senior Convertible Notes with a stated interest rate of 2.25% and a maturity date of March 15, 2021 (the "2021 Notes"). The net proceeds from the offering, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$634.1 million. The 2021 Notes may be settled in cash, stock, or a combination thereof, solely at the Company's discretion. It is the Company's current intent and policy to settle all conversions through combination settlement, which involves satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of the Company's common stock. The initial conversion rate of the 2021 Notes is 16.7158 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$59.82 per share, subject to adjustments. The Company uses the treasury share method for assumed conversion of the 2021 Notes

to compute the weighted average shares of common stock outstanding for diluted earnings per share. The Company also entered into transactions for a convertible note hedge (the "2021 Hedge") and warrants (the "2021 Warrants") concurrently with the issuance of the 2021 Notes.

The cash conversion feature of the 2021 Notes required bifurcation from the notes and was initially accounted for as an equity instrument classified to stockholders' equity, which resulted in recognizing \$84.8 million in additional paid-in-capital during 2016.

The interest expense recognized on the 2021 Notes during the three months ended September 30, 2018 includes \$3.7 million, \$4.2 million and \$0.7 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. The interest expense recognized on the 2021 Notes during the nine months ended September 30, 2018 includes \$11.0 million, \$12.5 million and \$2.1 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. The interest expense recognized on the 2021 Notes during the three months ended September 30, 2017 includes \$3.7 million, \$4.0 million and \$0.7 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. The interest expense recognized on the 2021 Notes during the nine months ended September 30, 2017 includes \$11.0 million, \$11.8 million and \$2.0 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. The effective interest rate on the 2021 Notes is 5.8%, which includes the interest on the notes, amortization of the debt discount and debt issuance costs. Interest on the 2021 Notes began accruing upon issuance and is payable semi-annually.

Table of Contents

Prior to September 15, 2020, holders may convert their 2021 Notes only under the following conditions: (a) during any calendar quarter beginning June 30, 2016, if the reported sale price of the Company's common stock for at least 20 days out of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than 130% of the conversion price on each applicable trading day; (b) during the five business day period in which the trading price of the 2021 Notes falls below 98% of the product of (i) the last reported sale price of the Company's common stock and (ii) the conversion rate on that date; and (c) upon the occurrence of specified corporate events, as defined in the 2021 Notes. From September 15, 2020 and until the close of business on the second scheduled trading day immediately preceding March 15, 2021, holders may convert their 2021 Notes at any time (regardless of the foregoing circumstances). The Company may not redeem the 2021 Notes prior to March 20, 2019. The Company may redeem the 2021 Notes, at its option, in whole or in part on or after March 20, 2019 until the close of business on the business day immediately preceding September 15, 2020 if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company delivers written notice of a redemption. The redemption price will be equal to 100% of the principal amount of such 2021 Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date. No principal payments are due on the 2021 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2021 Notes do not contain any financial covenants and do not restrict the Company from paying dividends or issuing or repurchasing any of its other securities. The Company is unaware of any current events or market conditions that would allow holders to convert the 2021 Notes.

2021 Hedge

In connection with the offering of the 2021 Notes, the Company entered into the hedge transaction with the initial purchasers of the 2021 Notes and/or their affiliates (the "2021 Counterparties") entitling the Company to purchase up to 10,865,270 shares of the Company's common stock at an initial stock price of \$59.82 per share, each of which is subject to adjustment. The cost of the 2021 Hedge was \$111.2 million and accounted for as an equity instrument by recognizing \$111.2 million in additional paid-in-capital during 2016. The 2021 Hedge will expire on March 15, 2021. The 2021 Hedge is expected to reduce the potential equity dilution upon conversion of the 2021 Notes if the daily volume-weighted average price per share of the Company's common stock exceeds the strike price of the 2021 Hedge. An assumed exercise of the 2021 Hedge by the Company is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

2021 Warrants

The Company sold warrants to the 2021 Counterparties to acquire up to 10,865,270 shares of the Company's common stock. The 2021 Warrants will expire on various dates from June 2021 through December 2021 and may be settled in cash or net shares. It is the Company's current intent and policy to settle all conversions in shares of the Company's common stock. The Company received \$44.9 million in cash proceeds from the sale of the 2021 Warrants, which was recorded in additional paid-in-capital. The 2021 Warrants could have a dilutive effect on the Company's earnings per share to the extent that the price of the Company's common stock during a given measurement period exceeds the strike price of the 2021 Warrants, which is \$80.00 per share. The Company uses the treasury share method for assumed conversion of its 2021 Warrants to compute the weighted average common shares outstanding for diluted earnings per share.

2.75% Senior Convertible Notes due 2017

In June 2011, the Company issued \$402.5 million principal amount of the unsecured Senior Convertible Notes with a stated interest rate of 2.75% and a maturity date of July 1, 2017 (the “2017 Notes”). The 2017 Notes provided for settlement in cash, stock, or a combination thereof, solely at the Company’s discretion. The initial conversion rate of the 2017 Notes was 23.7344 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$42.13 per share, subject to adjustments. The Company used the treasury share method for assumed conversion of the 2017 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share.

During 2016, the Company repurchased a majority of the 2017 Notes, which resulted in a cumulative loss of approximately \$19.1 million recorded in other expense on the accompanying Consolidated Statements of Operations for the year ended December 31, 2016. In July 2017, the Company settled the remaining 2017 Notes upon maturity via combination settlement, which involved satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of the Company’s common stock.

The interest expense recognized on the 2017 Notes during the nine months ended September 30, 2017 includes \$0.9 million, \$1.4 million and \$0.2 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. The effective interest rate on the 2017 Notes was 8.0%, which includes the interest on the notes, amortization of the debt discount and debt issuance costs. Interest on the 2017 Notes began accruing upon issuance and was payable semi-annually.

Table of Contents

Concurrently, with the offering of the 2017 Notes the Company also entered into transactions for a convertible note hedge (the “2017 Hedge”) and warrants (the “2017 Warrants”). The 2017 Hedge entitled the Company to purchase up to 9,553,096 shares of the Company’s common stock at an initial price of \$42.13 per share. Prior to its maturity, an assumed exercise of the 2017 Hedge by the Company was considered anti-dilutive since the effect of inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share. The 2017 Warrants entitled its holders to acquire up to 477,654 shares of the Company’s Series A Participating Preferred Stock at an initial strike price of \$988.51 per share. Each share of Series A Participating Preferred Stock was convertible into 20 shares of the Company’s common stock, or up to 9,553,080 common shares in total. The 2017 Warrants were scheduled to expire on various dates from September 2017 through January 2018 with settlement in cash or net shares. The Company used the treasury share method for assumed conversion of its 2017 Warrants to compute the weighted average common shares outstanding for diluted earnings per share. In 2017, the Company exercised the 2017 Hedge and also entered into warrant termination agreements which settled the 2017 Warrants on a net share basis.

Revolving Senior Credit Facility

In April 2017, the Company entered into an Amended and Restated Credit Agreement (the “2017 Credit Agreement”) for a revolving senior credit facility (the “2017 Facility”), which replaced the previous Credit Agreement the Company had entered into in February 2016. The 2017 Credit Agreement provides for secured revolving loans, multicurrency loan options and letters of credit in an aggregate amount of up to \$500.0 million. The 2017 Credit Agreement also contains an expansion feature, which allows the Company to increase the aggregate principal amount of the 2017 Facility provided the Company remains in compliance with the underlying financial covenants, including but not limited to, compliance with the consolidated interest coverage ratio and certain consolidated leverage ratios. The 2017 Facility matures in April 2022 (subject to an earlier springing maturity date), and includes a sublimit of \$100.0 million for multicurrency borrowings, a sublimit of \$50.0 million for the issuance of standby letters of credit, and a sublimit of \$5.0 million for swingline loans. All assets of the Company and its material domestic subsidiaries are pledged as collateral under the 2017 Facility (subject to customary exceptions) pursuant to the term set forth in the Amended and Restated Security and Pledge Agreement (the “2017 Security Agreement”) executed in favor of the administrative agent by the Company. Each of the Company’s material domestic subsidiaries guarantees the 2017 Facility. In connection with the 2017 Facility, the Company incurred issuance costs which will be amortized over the term of the 2017 Facility. As of September 30, 2018, the Company had \$5.0 million outstanding under the 2017 Facility, at an interest rate of 3.88% (one month LIBOR plus 1.75%).

Borrowings under the 2017 Facility are used by the Company to provide financing for working capital and other general corporate purposes, including potential mergers and acquisitions. Borrowings under the 2017 Facility bear interest, at the Company’s option, at a rate equal to an applicable margin plus: (a) the applicable Eurocurrency Rate (as defined in the 2017 Credit Agreement), or (b) a base rate determined by reference to the highest of (1) the federal funds effective rate plus 0.50%, (2) the Bank of America prime rate, and (3) LIBOR for an interest period of one month plus 1.00%. The margin for the 2017 Facility ranges, based on the Company’s consolidated leverage ratio, from 0.00% to 1.00% in the case of base rate loans and from 1.00% to 2.00% in the case of Eurocurrency Rate loans. The 2017 Facility includes an unused line fee ranging, based on the Company’s consolidated leverage ratio, from 0.20% to 0.35% per annum on the revolving commitment.

The 2017 Credit Agreement contains affirmative, negative, permitted acquisition and financial covenants, and events of default customary for financings of this type. The financial covenants require the Company to maintain ratios of consolidated earnings before interest, taxes, depreciation and amortization (EBITDA) in relation to consolidated

interest expense and consolidated debt, respectively, as defined in the 2017 Credit Agreement. The 2017 Facility grants the lenders preferred first priority liens and security interests in capital stock, intercompany debt and all of the present and future property and assets of the Company and each guarantor. The Company is currently in compliance with the 2017 Credit Agreement covenants.

7. Stock-Based Compensation

The compensation cost that has been included in the Unaudited Consolidated Statements of Operations for all stock-based compensation arrangements was as follows:

| (in thousands) | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|--|---------|---------------------------------------|----------|
| | 2018 | 2017 | 2018 | 2017 |
| Sales, marketing and administrative expense (benefit) | \$10,095 | \$(961) | \$19,539 | \$13,725 |
| Research and development expense | 863 | 438 | 2,201 | 1,005 |
| Cost of revenue | 110 | 96 | 322 | 254 |
| Stock-based compensation expense (benefit) before taxes | 11,068 | (427) | 22,062 | 14,984 |
| Related income tax expense (benefit) | (2,767) | 162 | (5,516) | (5,694) |
| Stock-based compensation expense (benefit), net of taxes | \$8,301 | \$(265) | \$16,546 | \$9,290 |

At September 30, 2018, there was \$46.2 million of unamortized compensation expense for restricted stock units (“RSUs”) and performance-based restricted stock units (“PRSUs”) to be recognized over a weighted average period of 2.1 years.

Table of Contents

Restricted Stock Units

The Company issued approximately 32,000 and 182,000 shares of common stock, before net share settlement, upon vesting of RSUs (including PRSUs) during the three and nine months ended September 30, 2018 and issued approximately 359,000 shares of common stock in settlement of RSUs (including PRSUs) upon their vesting during the year ended December 31, 2017.

Stock Options and Purchase Rights

The weighted average assumptions used to estimate the fair value of stock purchase rights under the employee stock purchase plan (“ESPP”) are as follows:

| | Three Months Ended September 30, 2018 | | Nine Months Ended September 30, 2017 | |
|-------------------------|--|-------|---|-------|
| ESPP | | | | |
| Volatility | 28 % | 20 % | 32 % | 22 % |
| Expected term (years) | 0.5 | 0.5 | 0.5 | 0.5 |
| Risk free interest rate | 2.1 % | 1.0 % | 1.6 % | 0.7 % |
| Expected dividend yield | — % | — % | — % | — % |

Under the terms of the ESPP, the Company’s employees (referred to as “shareowners”) can elect to have up to 15% of their annual compensation, up to a maximum of \$21,250 per year, withheld to purchase shares of the Company’s common stock for a purchase price equal to 85% of the lower of the fair market value per share (at closing) of the Company’s common stock on (i) the commencement date of the six-month offering period, or (ii) the respective purchase date.

The Company has not granted any options since 2011. The Company issued approximately 23,000 and 126,000 shares of common stock, before net share settlement, upon the exercise of outstanding stock options during the three and nine months ended September 30, 2018 and issued approximately 232,000 shares of common stock, before net share settlement, upon the exercise of outstanding stock options during the year ended December 31, 2017.

8. Income Taxes

Income taxes are determined using an estimated annual effective tax rate applied against income, and then adjusted for the tax impacts of certain significant and discrete items. For the nine months ended September 30, 2018, the Company treated the tax impact of the following significant items as discrete events for which the tax effect was recognized separately from the application of the annual effective tax rate: tax benefits associated with the release of uncertain tax positions, return to provision adjustments, and favorable audit settlements offset by tax expenses related to net shortfalls on share-based payments and limitations on certain officer’s compensation. The Company’s effective tax rate recorded for the nine months ended September 30, 2018 was 104%.

On December 22, 2017, President Trump signed U.S. tax reform legislation, commonly referred to as the Tax Cuts and Jobs Act (the "Act"), which became effective January 1, 2018. Due to insufficient guidance on certain aspects of the Act, such as officer's compensation, as well as uncertainty around the GAAP treatment associated with many other parts of the Act, such as the implementation of certain international provisions, the Company recorded certain provisional amounts related to the revaluation and realization of its deferred taxes in its December 31, 2017 tax provision. During the nine months ended September 30, 2018, the Company further analyzed the impact of the Act on certain executive compensation related deferred taxes as well as the federal tax rate revaluation impact on certain other existing deferred taxes and determined that an aggregate write-down of approximately \$0.3 million was required, which would have increased the 2017 full year effective tax rate by 0.5% and the fourth quarter 2017 effective tax rate by 1.7%. The Company is continuing to analyze the impact of the Act during which adjustments to the 2017 year-end provisional calculation will be subject to change during the Staff Accounting Bulletin No. 118 measurement period. As the Company finalizes its analysis and adjusts its tax balances accordingly, it will describe the issue and impact on previously recorded provisional amounts. At September 30, 2018, the Company has not completed its accounting for the tax effects of the global intangible low-taxed income ("GILTI"), foreign derived intangible income, and base erosion and anti-abuse tax provisions of the Act on current year tax expense; however, the Company has made a reasonable estimate and determined that these provisions will have no impact on its 2018 results. Because the Company continues to evaluate the impact of the Act's GILTI provisions, it has yet to elect an accounting policy to treat the tax impact as either a future period charge or as a current component of deferred taxes.

Table of Contents

In accordance with the disclosure requirements as described in ASC Topic 740, Income Taxes, the Company has classified unrecognized tax benefits as non-current income tax liabilities, or a reduction in deferred tax assets, unless expected to be paid within one year. The Company's continuing practice is to recognize interest and/or penalties related to income tax matters in income tax expense. The Company had a decrease in gross unrecognized tax benefits of approximately \$7.2 million during the nine months ended September 30, 2018, primarily related to decreases in uncertain tax position reserves as a result of the expiration of applicable statute of limitations offset by increases in uncertain tax position reserves for the current year relating to ongoing operations. The Company believes it is reasonably possible that approximately \$0.7 million of its remaining unrecognized tax benefits may be recognized within the next twelve months as certain statute of limitations expire, the amount of which is primarily attributable to tax positions involving the valuation of intercompany transactions.

The Company is subject to routine compliance reviews on various tax matters around the world in the ordinary course of business. Currently, income tax audits are being conducted with U.S. federal and Germany. U.S. states and most foreign jurisdictions remain subject to examination in all years due to prior year net operating losses and research and development credits.

9. Business Segment, Product and Geographic Information

The Company operates in one segment based upon the Company's organizational structure, the way in which the operations and investments are managed and evaluated by the chief operating decision maker ("CODM") as well as the lack of availability of discrete financial information at a lower level. The Company's CODM reviews revenue at the product line offering level, and manufacturing, operating income and expenses, and net income at the Company wide level to allocate resources and assess the Company's overall performance. The Company shares common, centralized support functions, including finance, human resources, legal, information technology, and corporate marketing, all of which report directly to the CODM. Accordingly, decision-making regarding the Company's overall operating performance and allocation of Company resources is assessed on a consolidated basis. As such, the Company operates as one reporting segment. The Company has disclosed the revenues for each of its product line offerings to provide the reader of the financial statements transparency into the operations of the Company.

The Company reports under two distinct product lines; spinal hardware and surgical support. The Company's spinal hardware product line offerings include implants and fixation products. The Company's surgical support product offerings include IOM services, disposables and biologics, all of which are used to aid spinal surgery.

The Company has reclassified historically presented product line revenue to conform to the current period presentation. The reclassification had no impact on previously reported results of operations.

Revenue by product line was as follows:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|------------------|-------------------------------------|------------|------------------------------------|------------|
| (in thousands) | 2018 | 2017 | 2018 | 2017 |
| Spinal hardware | \$ 193,626 | \$ 180,670 | \$ 581,587 | \$ 540,482 |
| Surgical support | 77,675 | 66,381 | 231,800 | 214,981 |

Edgar Filing: NUVASIVE INC - Form 10-Q

Total revenue \$271,301 \$247,051 \$813,387 \$755,463

Revenue and property and equipment, net, by geographic area were as follows:

| (in thousands) | Revenue | | | | Property and Equipment, Net | |
|--------------------------------------|--------------------|--------------------|--------------------|--------------------|-----------------------------|--------------|
| | Three Months Ended | | Nine Months Ended | | September 30, | December 31, |
| | September 30, 2018 | September 30, 2017 | September 30, 2018 | September 30, 2017 | 2018 | 2017 |
| United States | \$221,318 | \$200,606 | \$661,570 | \$629,935 | \$200,877 | \$179,891 |
| International (excludes Puerto Rico) | 49,983 | 46,445 | 151,817 | 125,528 | 36,614 | 35,435 |
| Total | \$271,301 | \$247,051 | \$813,387 | \$755,463 | \$237,491 | \$215,326 |

Table of Contents

10. Commitments

Licensing and Purchasing Agreements

As of September 30, 2018 the Company has obligations under certain consulting arrangements to pay up to approximately \$48.0 million in the aggregate in the event that specified revenue-based milestones are achieved prior to 2027. Any such payment will be made in a combination of cash and the Company's common shares as provided in the agreements. Any payments in satisfaction of these contingent obligations are considered either a research and development expense or a cost of revenue depending on the nature of the arrangement and are recognized ratably as and if milestones are achieved. These agreements expire on various dates through 2027.

Executive Severance Plans

The Company has employment contracts with key executives and maintains severance plans that provide for the payment of severance and other benefits if such executives are terminated for reasons other than cause, as defined in those agreements and plans. Certain agreements call for payments that are based on historical compensation, and accordingly, the amount of the contractual commitment will change over time commensurate with the executive's earnings. At September 30, 2018, future commitments for such key executives were approximately \$23.7 million. In certain circumstances, the agreements call for the acceleration of equity vesting. Those figures are not reflected in the above information.

11. Contingencies

The Company is subject to potential liabilities under government regulations and various claims and legal actions that are pending or may be asserted from time-to-time. These matters arise in the ordinary course and conduct of the Company's business and include, for example, commercial, intellectual property, environmental, securities and employment matters. The Company intends to continue to defend itself vigorously in such matters and when warranted, take legal action against others. Furthermore, the Company regularly assesses contingencies to determine the degree of probability and range of possible loss for potential accrual in its financial statements.

During the nine months ended September 30, 2018, the Company settled its ongoing litigation and related matters with Madsen Medical, Inc. for \$27.8 million, which is recorded within operating expenses in the Unaudited Consolidated Statements of Operations.

An estimated loss contingency is accrued in the Company's financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Based on the Company's assessment, it has adequately accrued an amount for contingent liabilities currently in existence. The Company does not accrue amounts for liabilities that it does not believe are probable or that it considers immaterial to its overall financial position. Litigation is inherently unpredictable, and unfavorable resolutions could occur. As a result, assessing contingencies is highly subjective and requires judgment about future events. The amount of ultimate loss may exceed the Company's current accruals, and it is possible that its cash flows or results of operations could be materially affected in any particular period by the unfavorable resolution of one or more of these contingencies.

Table of Contents

Legal Proceedings

Securities Litigation

On August 28, 2013, a purported securities class action lawsuit was filed in the U.S. District Court for the Southern District of California naming the Company and certain of its current and former executive officers for allegedly making false and materially misleading statements regarding the Company's business and financial results, specifically relating to the purported improper submission of false claims to Medicare and Medicaid. The operative complaint asserts a putative class period stemming from October 22, 2008 to July 30, 2013. The complaint alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder and seeks unspecified monetary relief, interest, and attorneys' fees. On February 13, 2014, Brad Mauss, the lead plaintiff in the case, filed an Amended Class Action Complaint for Violations of the Federal Securities Laws. The Company answered the complaint on August 25, 2016, and discovery commenced. The plaintiffs filed motions for class certification on October 28, 2016 and the Company's opposition papers were filed on January 9, 2017. On March 22, 2017, the court issued an order granting class certification. The Company filed a petition to appeal the order granting class certification with the U.S. Court of Appeals for the Ninth Circuit (the "Ninth Circuit") on April 5, 2017 and the plaintiffs filed an opposition to the petition. On August 15, 2017, the Ninth Circuit denied the Company's petition. The Company filed a motion for summary judgment on September 8, 2017. On February 1, 2018, the court entered an order denying the Company's motion for summary judgment. On February 13, 2018, the Company entered into a memorandum of understanding with the plaintiffs to settle the case for \$7.9 million. On March 23, 2018, the parties executed a stipulation of settlement, which was preliminarily approved by the court on June 11, 2018. A hearing on the final approval of the settlement by the court has been scheduled for November 19, 2018. The Company expects the settlement will be fully funded by insurance proceeds. The settlement includes the dismissal of all claims against the Company and the named individuals in the lawsuit without any liability or wrongdoing attributed to them. There can be no assurance that a settlement will be finalized and approved or as to the ultimate outcome of this litigation. However, in connection with the proposed settlement and in accordance with authoritative guidance, the Company has recorded the loss contingency of \$7.9 million as a current litigation liability and the expected insurance proceeds of \$7.9 million as a current receivable in the Consolidated Balance Sheets as of September 30, 2018 and December 31, 2017.

Madsen Medical, Inc. Litigation

On February 19, 2016, an unfavorable jury verdict was delivered against the Company in its litigation in the U.S. District Court for the Southern District of California against Madsen Medical, Inc. ("MMI"), a former sales agent. Specifically, the jury awarded MMI \$7.5 million in lost profits for tortious interference, \$14.0 million for unjust enrichment, \$20.0 million in punitive damages, and approximately \$0.3 million in damages for breach of contract. On March 18, 2016, the trial court entered judgment in favor of MMI in the amount of \$27.8 million, which amount excluded the \$14.0 million disgorgement awarded by the jury. On July 5, 2016, the trial court also awarded MMI attorney's fees and costs of approximately \$1.1 million. The Company's post-trial motions for judgment as a matter of law and/or for a new trial were denied, and the Company appealed both the verdict and the court's subsequent award of attorney's fees and costs. The U.S. Court of Appeals for the Ninth Circuit held oral argument on April 12, 2018. During pendency of the appeal, the Company secured a bond to cover the amount of the judgment and attorneys' fees and costs.

As of December 31, 2017, the Company believed that the outcome of the case did not constitute a probable nor an estimable loss associated with the litigation, but rather a reasonably possible loss. The Company, based on its own assessment as well as that of outside counsel, believed that it was probable upon appeal the judgment would be vacated. Accordingly, the Company did not record a loss contingency at December 31, 2017, but assessed a reasonable range of potential loss, which would be from zero to the current amount entered as a judgment, as well as attorney's fees and interest.

Following the April 12, 2018 oral argument, the Company believed that the prior judgments against it, in part or as a whole, may be upheld. Accordingly, at March 31, 2018, the Company believed that the outcome of the case constituted a probable loss. While the actual amount of the probable loss was not known, the Company assessed a range of potential loss in accordance with Accounting Standards Codification 450, Contingencies, which would be from zero to \$29.0 million, and recorded an additional estimated loss contingency in the amount of \$29.0 million as a current litigation liability in the Unaudited Consolidated Balance Sheet as of March 31, 2018, resulting in an aggregate litigation liability of \$29.0 million accrued for this matter. In May 2018, the Company entered into an agreement to settle all outstanding matters with MMI for \$27.8 million. As a result of the settlement, the Company adjusted its litigation liability from \$29.0 million to \$27.8 million, which resulted in a \$1.2 million gain which was recorded in the Unaudited Consolidated Statement of Operations during the three months ended June 30, 2018. The Company has paid the settlement amount and no longer has any remaining liability related to this matter as of September 30, 2018.

Table of Contents

12. Regulatory Matters

On August 31, 2015, the Company received a civil investigative demand (“CID”) issued by the Department of Justice (“DOJ”) pursuant to the federal False Claims Act. The CID requires the delivery of a wide range of documents and information related to an investigation by the DOJ concerning allegations that the Company assisted a physician group customer in submitting improper claims for reimbursement and made improper payments to the physician group in violation of the Anti-Kickback Statute. The Company is cooperating with the DOJ. No assurance can be given as to the timing or outcome of this investigation. At September 30, 2018, the probable outcome of this matter cannot be determined, nor can the Company estimate a range of potential loss. In accordance with authoritative guidance on the evaluation of loss contingencies, the Company has not recorded an accrual related to this matter.

On June 9, 2017, the Company received a subpoena from the Office of the Inspector General of the U.S. Department of Health and Human Services (“OIG”) in connection with an investigation into possible false or otherwise improper claims submitted to Medicare and Medicaid. The subpoena seeks discovery of documents for the period January 2014 through June 2017, primarily associated with sales to a particular customer and relationships related to that customer account. The Company is working with the OIG to understand the scope of the subpoena and its request for documents, and the Company intends to fully cooperate with the OIG's request. No assurance can be given as to the timing or outcome of this investigation. At September 30, 2018, the probable outcome of this matter cannot be determined, nor can the Company estimate a range of potential loss. In accordance with authoritative guidance on the evaluation of loss contingencies, the Company has not recorded an accrual related to this matter.

13. Subsequent Events

On October 15, 2018, the Company’s Board of Directors (the “Board”) approved the appointment of J. Christopher Barry to succeed Gregory T. Lucier as the Company’s Chief Executive Officer and the election of Mr. Barry to the Board, effective November 5, 2018. Mr. Lucier will continue to serve as Chairman of the Board.

Table of Contents

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements May Prove Inaccurate

This quarterly report on Form 10-Q (“Quarterly Report”), including the following discussion and analysis, may contain forward-looking statements that involve risks, uncertainties, assumptions and other factors which, if they do not materialize or prove correct, could cause our results to differ from historical results or those expressed or implied by such forward-looking statements. In some cases, you can identify these forward-looking statements by words like “may”, “will”, “should”, “could”, “expects”, “plans”, “anticipates”, “believes”, “estimates”, “predicts”, “potential”, “intends”, the negative of those words and other comparable words). Forward-looking statements include, but are not limited to, statements about:

- our intentions, beliefs and expectations regarding our expenses, sales, operations and future financial performance;
- our operating results;
- our plans for future products and enhancements of existing products;
- anticipated growth and trends in our business;
- the timing of and our ability to maintain and obtain regulatory clearances or approvals;
- our belief that our cash and cash equivalents and investments will be sufficient to satisfy our anticipated cash requirements;
- our expectations regarding our revenues, customers and distributors;
- our beliefs and expectations regarding our market penetration and expansion efforts;
- our expectations regarding the benefits and integration of recently-acquired businesses and our ability to make future acquisitions and successfully integrate any such future-acquired businesses;
- our anticipated trends and challenges in the markets in which we operate; and
- our expectations and beliefs regarding and the impact of investigations, claims and litigation.

These statements are not guarantees of future performance or events. Our actual results may differ materially from those discussed here. The potential risks and uncertainties that could cause actual results to differ materially include, but are not limited to those set forth under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2017, and this Quarterly Report on Form 10-Q, and similar discussions in our other Securities and Exchange Commission filings. We assume no obligation to update any forward looking statements to reflect new information, future events or circumstances or otherwise.

This information should be read in conjunction with the Unaudited Consolidated Financial Statements and the notes thereto included in Part I, Item 1 of this Quarterly Report and with Management’s Discussion and Analysis of Financial Condition and Results of Operations for the year ended December 31, 2017 contained in our 2017 Annual Report on Form 10-K.

Table of Contents

Overview

We are a leading medical device company in the global spine surgery market, focused on developing minimally-disruptive surgical products and procedurally-integrated solutions for spine surgery. Our currently-marketed product portfolio is focused on applications for spine fusion surgery, including ancillary products and services used to aid in the surgical procedure. Our procedurally integrated solutions use innovative, technological advancements and a minimally-disruptive surgical platform called Maximum Access Surgery, or MAS, to provide surgical efficiency, operative reliability, and procedural versatility.

Our principal product offering includes the MAS platform which combines three categories of solutions that collectively minimize soft tissue disruption during spine fusion surgery, provide maximum visualization and are designed to enable safe and reproducible outcomes for the surgeon and the patient. The platform includes our proprietary software-driven nerve detection and avoidance systems, NVM5, and Intraoperative Monitoring, or IOM, services and support offered by our NuVasive Clinical Services division; MaXcess, an integrated split-blade retractor system; and a wide variety of specialized implants and biologics. Many of our products, including the individual components of our MAS platform can also be used in open or traditional spine surgery. Our spine surgery product line offerings, which include products for the thoracolumbar and the cervical spine, are primarily used to enable surgeon access to the spine to perform restorative and fusion procedures in a minimally-disruptive fashion. To assist with surgical procedures, we offer a platform called Integrated Global Alignment, or iGA, in which products and computer assisted technology under our MAS platform help achieve more precise spinal alignment.

Our MAS platform and its related offerings are designed to provide a unique and comprehensive solution for the safe and reproducible minimally-disruptive surgical treatment of spine disorders by enabling surgeons to access the spine in a manner that affords both direct visualization and detection and avoidance of critical nerves along with intraoperative reconciliation. The fundamental difference between our MAS platform, which is sometimes referred to in the industry as “minimally invasive surgery” or “MIS”, is the ability to customize safe and reproducible access to the spine while allowing surgeons to continue to use instruments that are familiar to them and effective during surgery. Accordingly, the MAS platform does not force surgeons to reinvent or learn new approaches that add complexity and undermine safety, ease of use and/or efficacy. We have dedicated and continue to dedicate significant resources toward training spine surgeons around the world; both those who are new to our MAS and other product platforms, as well as ongoing education for MAS-trained surgeons attending advanced courses. An important ongoing objective of ours has been to maintain a leading position in access and nerve avoidance, as well as to pioneer and remain the ongoing leader in minimally invasive spine surgery. Our MAS platform, with the unique advantages provided by our neuromonitoring systems, enables an innovative lateral procedure known as eXtreme Lateral Interbody Fusion, or XLIF, in which surgeons access the spine for a fusion procedure from the side of the patient’s body, rather than from the front or back. It has been demonstrated clinically that XLIF and other procedures facilitated by our MAS platform decrease trauma and blood loss, and lead to faster overall patient recovery times compared to open spine surgery.

We offer a range of implants for spinal surgery, which include our branded CoRoent products and porous titanium and polyetheretherketone implants under our Advanced Materials Science portfolio, fixation devices such as customizable rods, plates and screws, bone allograft in patented saline packaging, allogeneic and synthetic biologics, and disposables used in IOM. We also design and sell expandable growing rod implant systems that can be non-invasively lengthened following implantation with precise, incremental adjustments via an external remote controller using magnetic technology called MAGnetic External Control, or MAGEC, which allows for the minimally invasive treatment of early-onset and adolescent scoliosis. This technology is also the basis for our PRECICE limb lengthening

system, which allows for the correction of long bone limb length discrepancy, as well as enhanced bone healing in patients that have experienced traumatic injury. The PRECICE limb lengthening system is sold by our NuVasive Specialized Orthopedics division.

We intend to continue development on a wide variety of projects intended to broaden surgical applications for greater procedural integration of our MAS techniques and additional applications of the MAGEC technology. Such applications include tumor, trauma, and deformity, as well as increased fixation options, sagittal alignment products, imaging and navigation. We also expect to continue expanding our other product and services offerings as we execute on our strategy to offer customers an end-to-end, procedurally integrated solution for spine surgery. We intend to continue to pursue business and technology acquisition targets and strategic partnerships.

Recent Developments

On October 15, 2018, our Board of Directors (the “Board”) approved the appointment of J. Christopher Barry to succeed Gregory T. Lucier as Chief Executive Officer and the election of Mr. Barry to the Board, effective November 5, 2018. Mr. Lucier will continue to serve as Chairman of the Board.

Table of Contents

Revenues and Operations

The majority of our revenues are derived from the sale of implants, biologics and disposables and we expect this trend to continue for the foreseeable future. Additionally, with our recent acquisitions of IOM service providers, we expect our IOM service and support revenue to increase compared to previous periods. Our implants, biologics and disposables are currently sold and shipped from our distribution and warehousing operations. We generally recognize revenue for implants, biologics and disposables upon notice that our products have been used in a surgical procedure or upon shipment to a third-party customer assuming control of the products. Revenue from IOM services is recognized in the period the service is performed for the amount of payment we expect to receive. We make available MAS instrument sets, MaXcess and neuromonitoring systems to hospitals to facilitate surgeon access to the spine to perform restorative and fusion procedures using our implants and fixation devices. We sell MAS instrument sets, MaXcess devices, and our proprietary software-driven neuromonitoring systems, however this does not make up a material part of our business. Currently, sales and leases of capital equipment, including our LessRay software technology suite, represent a small portion of our consolidated revenues.

The majority of our operations are located and the majority of our sales have been generated in the United States. We sell our products in the United States through a sales force comprised primarily of independent sales agents and directly-employed sales representatives. Our sales force provides a delivery and consultative service to our surgeon and hospital customers and is compensated based on sales and product placements in their territories. Sales force commissions are reflected in the sales, marketing and administrative operating expense line item within our Unaudited Consolidated Statements of Operations. We continue to invest in international expansion with a focus on European, Asia-Pacific and Latin American markets. Our international sales force is comprised of directly-employed sales personnel, independent sales agents, as well as exclusive and non-exclusive independent third-party distributors.

Results of Operations

Revenue

| | September 30, | | \$ | | |
|---------------------------|------------------|------------------|-----------------|-----------|----------|
| (in thousands, except %) | 2018 | 2017 | Change | % Change | |
| Three Months Ended | | | | | |
| Revenue | | | | | |
| Spinal hardware | \$193,626 | \$180,670 | \$12,956 | 7 | % |
| Surgical support | 77,675 | 66,381 | 11,294 | 17 | % |
| Total revenue | \$271,301 | \$247,051 | \$24,250 | 10 | % |
| Nine Months Ended | | | | | |
| Revenue | | | | | |
| Spinal hardware | \$581,587 | \$540,482 | \$41,105 | 8 | % |
| Surgical support | 231,800 | 214,981 | 16,819 | 8 | % |
| Total revenue | \$813,387 | \$755,463 | \$57,924 | 8 | % |

Our spinal hardware product line offerings include our implants and fixation products. Our surgical support product line offerings include IOM services, disposables and biologics, all of which are used to aid spinal surgery.

The continued adoption of minimally invasive procedures for spine has led to the expansion of our procedure volume. In addition, increased market acceptance in our international markets contributed to the increase in revenues for the periods presented. We expect continued adoption of our innovative minimally invasive procedures and deeper penetration into existing accounts and international markets as our sales force executes on our strategy of selling the full mix of our products and services. However, the continued consolidation and increased purchasing power of our hospital customers and group purchasing organizations, the continued existence of physician-owned distributorships, continued changes in the public and private insurance markets regarding reimbursement, and ongoing policy and legislative changes in the United States have created less predictability in the lumbar portion of the spine market. Although the market for procedurally-integrated spine surgery solutions should continue to grow over the long term, economic, political and regulatory influences are subjecting our industry to significant changes that may slow the growth rate of the spine surgery market. Our growth in revenue in 2018 is expected to come primarily from market share gains in the shift toward less invasive spinal surgery, revenue from new products and services, and international growth.

Revenue from our spinal hardware product line offerings increased \$13.0 million and \$41.1 million, or 7% and 8%, during the three and nine months ended September 30, 2018, respectively, compared to the same periods in 2017. Product volume in spinal hardware increased our revenue by approximately 9% for both the three and nine months ended September 30, 2018, offset by unfavorable pricing impacts of approximately 2% for both the three and nine months ended September 30, 2018, as compared to the same periods in 2017. Foreign currency fluctuation had an insignificant impact on revenue from spinal hardware for the three months ended September 30, 2018, as compared to the same period in 2017. Foreign currency fluctuation increased our spinal hardware revenue by approximately 1% for the nine months ended September 30, 2018, as compared to the same period in 2017.

Table of Contents

Revenue from our surgical support product line offerings increased \$11.3 million and \$16.8 million, or 17% and 8%, during the three and nine months ended September 30, 2018, respectively, compared to the same periods in 2017. Excluding the impact from our 2018 acquisitions, product volume in surgical support increased our revenue by approximately 11% and 2% for the three and nine months ended September 30, 2018, respectively, offset by unfavorable pricing impacts of approximately 1% for both the three and nine months ended September 30, 2018, as compared to the same periods in 2017. Revenue associated with our 2018 acquisitions accounted for approximately 7% of the increase in surgical support revenue for both the three and nine months ended September 30, 2018, as compared to the same periods in 2017. Foreign currency fluctuation had an insignificant impact on revenue from surgical support for the periods presented.

Cost of Revenue, Excluding Below Amortization of Intangible Assets

| | September 30, | | \$ | | |
|---------------------------|---------------|-----------|----------|----------|---|
| (in thousands, except %) | 2018 | 2017 | Change | % Change | |
| Three Months Ended | | | | | |
| Cost of revenue | \$74,160 | \$65,507 | \$8,653 | 13 | % |
| % of total revenue | 27 | % 27 | % | | |
| Nine Months Ended | | | | | |
| Cost of revenue | \$225,030 | \$193,136 | \$31,894 | 17 | % |
| % of total revenue | 28 | % 26 | % | | |

Cost of revenue consists primarily of purchased goods, raw materials, labor and overhead associated with product manufacturing, inventory-related costs and royalty expenses, as well as the cost of providing IOM services, which includes personnel and physician oversight costs. We primarily procure and manufacture our goods in the United States, and accordingly, foreign currency fluctuations have not materially impacted our cost of revenue.

Cost of revenue increased \$8.7 million and \$31.9 million, or 13% and 17%, during the three and nine months ended September 30, 2018, respectively, compared to the same periods in 2017. The cost of revenue associated with the operations of our 2018 acquisitions accounted for approximately 4% of the total increase during both the three and nine months ended September 30, 2018, compared to the same periods in 2017. Cost of revenue for our business, excluding our 2018 acquisitions, increased primarily due to growth in volume, but also includes product mix and shifts in production costs, for an overall increase of approximately 10% during both the three and nine months ended September 30, 2018, compared to the same periods in 2017.

Cost of revenue as a percentage of revenue increased for the nine months ended September 30, 2018 compared to the same period in 2017. On a long-term basis, we expect cost of revenue, as a percentage of revenue, to decrease moderately due to our manufacturing insourcing efforts.

Operating Expenses

| | Three Months Ended September 30, | | \$ | % Change | |
|-------------------------------------|-------------------------------------|---------|----------|----------|---|
| (in thousands, except %) | 2018 | 2017 | Change | | |
| Sales, marketing and administrative | \$141,211 | 125,649 | \$15,562 | 12 | % |

Edgar Filing: NUVASIVE INC - Form 10-Q

| | | | | | | |
|---|--------|---|--------|---|-------|--------|
| % of total revenue | 52 | % | 51 | % | | |
| Research and development | 15,254 | | 12,720 | | 2,534 | 20 % |
| % of total revenue | 6 | % | 5 | % | | |
| Amortization of intangible assets | 12,349 | | 11,630 | | 719 | 6 % |
| Purchase of in-process research and development | 8,913 | | — | | 8,913 | * |
| Litigation liability loss | — | | 750 | | (750) | (100)% |
| Business transition costs | 1,443 | | 345 | | 1,098 | 318 % |

Nine Months Ended
September 30,

| (in thousands, except %) | 2018 | 2017 | \$ Change | % Change | |
|---|-----------|---------|--------------|-------------|---|
| Sales, marketing and administrative | \$433,635 | 404,984 | \$28,651 | 7 | % |
| % of total revenue | 53 | % | 54 | % | |
| Research and development | 44,601 | 37,706 | 6,895 | 18 | % |
| % of total revenue | 5 | % | 5 | % | |
| Amortization of intangible assets | 37,402 | 35,040 | 2,362 | 7 | % |
| Purchase of in-process research and development | 8,913 | — | 8,913 | * | |
| Litigation liability loss | 27,800 | 750 | 27,050 | 3,607 | % |
| Business transition costs | 7,694 | 1,769 | 5,925 | 335 | % |

Table of Contents

Sales, Marketing and Administrative

Sales, marketing and administrative expenses consist primarily of compensation costs, commissions and training costs for our employees (who we refer to as “shareowners”) engaged in sales, marketing and customer support functions. The expense also includes commissions to sales representatives, freight expenses, surgeon training costs, depreciation expense for property and equipment such as surgical instrument sets, and administrative expenses for both shareowners and third party service providers.

Sales, marketing and administrative expenses increased by \$15.6 million and \$28.7 million, or 12% and 7%, during the three and nine months ended September 30, 2018, respectively, compared to the same periods in 2017. The increase during the three months ended September 30, 2018 is primarily due to the reversal of stock-based compensation expense previously recognized on unvested equity awards forfeited during the three months ended September 30, 2017 and fair value increases to certain awards during the three months ended September 30, 2018, that we mark-to-market every quarter. The increase during both the three and nine months ended September 30, 2018 includes increased shareowner compensation and other expenses resulting from increased headcount as compared to the same periods in 2017. Other costs that increased as a function of the increase in revenue and international expansion included consulting, travel, equipment and freight. Sales, marketing and administrative expenses associated with our 2018 acquisitions, which is included in the results discussed herein, accounted for approximately 1% of the increase in sales, marketing and administrative expenses for both the three and nine months ended September 30, 2018, compared to the same periods in 2017.

Sales, marketing and administrative expenses as a percentage of revenue increased during the three months ended September 30, 2018 and decreased during the nine months ended September 30, 2018, compared to the same periods in 2017. On a long-term basis, we expect total sales, marketing and administrative costs, as a percentage of revenue, to decrease moderately. To date, foreign currency fluctuations have not materially impacted our sales, marketing, and administrative expense.

Research and Development

Research and development expense consists primarily of product research and development, clinical trial and study costs, regulatory and clinical functions, and compensation and other shareowner related expenses. In the last several years, we have introduced numerous new products and product enhancements that have significantly expanded our MAS platform, including iGA, and our comprehensive product portfolio. We have also acquired complementary and strategic assets and technology, particularly in the area of spinal hardware products. We continue to invest in research and development programs.

Research and development expense increased by \$2.5 million and \$6.9 million, or 20% and 18%, during the three and nine months ended September 30, 2018, respectively, compared to the same periods in 2017. The increase in spending is primarily due to increased headcount and increased spending for further enhancement and functionality of our product offerings.

Research and development costs as a percentage of revenue increased during the three months ended September 30, 2018 compared to the same period in 2017. On a long-term basis, we expect total research and development costs as a percentage of revenue to increase moderately in support of our ongoing development and regulatory approval efforts.

Purchase of In-Process Research and Development

During the three months ended September 30, 2018, we expensed \$8.9 million for a purchased in-process research and development asset which had no future alternative use.

Litigation Liability Loss

In May 2018, we settled our ongoing litigation with Madsen Medical, Inc. for \$27.8 million. We paid the settlement amount and no longer have any remaining liability related to this matter as of September 30, 2018. See Note 11 to the Unaudited Consolidated Financial Statements for further discussion.

Business Transition Costs

We incur certain costs related to acquisition, integration and business transition activities, which include severance, relocation, consulting, leasehold exit costs, third-party merger and acquisition costs, contingent consideration fair value adjustments and other costs directly associated with such activities.

We incurred \$1.4 million and \$7.7 million of such costs during the three and nine months ended September 30, 2018, respectively, which consisted primarily of acquisition, integration and business transition activities, but also includes \$0.7 million and \$1.5 million, respectively, of fair value adjustments on contingent consideration liabilities associated with our 2017 and 2016 acquisitions.

We incurred \$0.3 million and \$1.8 million of such costs during the three and nine months ended September 30, 2017, respectively, which consisted primarily of acquisition, integration and business transition activities, but also includes \$(0.9) million and \$(1.6) million, respectively, of fair value adjustments on contingent consideration liabilities associated with our 2017 and 2016 acquisitions.

Table of Contents

Interest and Other Expense, Net

| (in thousands, except %) | September 30, | | \$ | % Change | |
|--|--------------------|--------------------|-------------------|--------------|----------|
| | 2018 | 2017 | | | |
| Three Months Ended | | | | | |
| Interest income | \$ 130 | \$ 79 | 51 | 65 | % |
| Interest expense | (9,035) | (8,898) | (137) | 2 | % |
| Other income (expense), net | 4,239 | (139) | 4,378 | (3,150) | % |
| Total interest and other expense, net | \$ (4,666) | \$ (8,958) | \$ 4,292 | (48) | % |
| Nine Months Ended | | | | | |
| Interest income | \$ 380 | \$ 355 | 25 | 7 | % |
| Interest expense | (28,458) | (28,780) | 322 | (1) | % |
| Other expense, net | (7,843) | (382) | (7,461) | 1,953 | % |
| Total interest and other expense, net | \$ (35,921) | \$ (28,807) | \$ (7,114) | 25 | % |

Total interest and other expense, net for the three months ended September 30, 2018 decreased \$4.3 million, compared to the same period in 2017 primarily due to gains of \$5.1 million recognized on strategic investments during the three months ended September 30, 2018. Total interest and other expense, net for the nine months ended September 30, 2018 increased \$7.1 million, compared to the same period in 2017 primarily due to a net loss of \$3.9 million on strategic investments and our pro rata allocation of net income or loss from our equity method investments during the nine months ended September 30, 2018. Total interest and other expense, net for the periods presented also included gains and losses from derivative instruments and foreign currency impacts on settled receivables and payables.

Income Tax Benefit

| (in thousands, except %) | September 30, | | | |
|---------------------------|---------------|------------|--|--|
| | 2018 | 2017 | | |
| Three Months Ended | | | | |
| Income tax benefit | \$(2,618) | \$(11,604) | | |
| Effective income tax rate | 20 % | 54 % | | |
| Nine Months Ended | | | | |
| Income tax benefit | \$(7,931) | \$(3,543) | | |
| Effective income tax rate | 104 % | 7 % | | |

The provision for income tax expense as a percentage of pre-tax income from continuing operations reflected a tax benefit of 20% for the three months ended September 30, 2018 compared with a tax benefit of 54% on pre-tax income for the three months ended September 30, 2017. The tax benefit was lower in 2018 due primarily to a large one-time tax benefit in 2017 associated with a deduction of excess tax over book basis in one of our wholly-owned U.S. subsidiaries which exceeded tax benefits in 2018 associated primarily with a decrease in uncertain tax position reserves as a result of the expiration of a prior year statute of limitations.

The provision for income tax expense as a percentage of pre-tax loss from continuing operations reflected a tax benefit of 104% for the nine months ended September 30, 2018 compared with a tax benefit of 7% on pre-tax income for the nine months ended September 30, 2017. The tax benefit was higher in 2018 primarily due to a lower pre-tax base and relatively significant reversals of uncertain tax position reserves as a result of the expiration of a prior year statute of limitations.

On December 22, 2017, President Trump signed U.S. tax reform legislation, commonly referred to as the Tax Cuts and Jobs Act (the “Act”), which became effective January 1, 2018. Due to insufficient guidance on certain aspects of the Act, such as officer’s compensation, as well as uncertainty around the GAAP treatment associated with many other parts of the Act, such as the implementation of certain international provisions, we recorded certain provisional amounts related to the revaluation and realization of our deferred taxes in our December 31, 2017 tax provision. During the nine months ended September 30, 2018, we further analyzed the impact of the Act on certain executive compensation related deferred taxes as well as the federal tax rate revaluation impact on certain other existing deferred taxes and determined that an aggregate write-down of approximately \$0.3 million was required, which would have increased the 2017 full year effective tax rate by 0.5% and the fourth quarter 2017 effective tax rate by 1.7%. We are continuing to analyze the impact of the Act during which adjustments to the 2017 year-end provisional calculation will be subject to change during the Staff Accounting Bulletin No. 118 measurement period. As we finalize our analysis and adjust our tax balances accordingly, we will describe the issue and impact on previously recorded provisional amounts. At September 30, 2018, we have not completed our accounting for the tax effects of the global intangible low-taxed income (“GILTI”), foreign derived intangible income, and base erosion and anti-abuse tax provisions of the Act on current year tax expense; however, we have made a reasonable estimate and determined that these provisions will have no impact on our 2018 results. Because we continue to evaluate the impact of the Act’s GILTI provisions, we have yet to elect an accounting policy to treat the tax impact as either a future period charge or as a current component of deferred taxes.

Table of Contents

Liquidity, Cash Flows and Capital Resources

Liquidity and Capital Resources

Our principal sources of liquidity are our existing cash, cash equivalents and marketable securities, cash generated from operations, proceeds from our convertible notes issuances, and access to our revolving line of credit. We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, working capital requirements and capital deployment decisions. We have historically invested our cash primarily in the U.S. treasuries and government agencies, corporate debt, and money market funds. Certain of these investments are subject to general credit, liquidity and other market risks. The general condition of the financial markets and the economy may increase those risks and may affect the value and liquidity of investments and restrict our ability to access the capital markets.

Our future capital requirements will depend on many factors including our rate of revenue growth, the timing and extent of spending to support development efforts, the expansion of sales, marketing and administrative activities, the timing of introductions of new products and enhancements to existing products, successful vertical integration of our manufacturing process, the continuing market acceptance of our products, the expenditures associated with possible future acquisitions or other business combination transactions, the outcome of current and future litigation, the evolution of our globalization initiative, and continuous international expansions of our business. Our cash flow from operations and growing operations should continue to fund the ongoing core business. As current borrowing sources become due, we may be required to access the capital markets for additional funding. As we assess inorganic growth strategies, we may need to supplement our internally generated cash flow with outside sources. In the event that we are required to access the debt market, we should be able to secure reasonable borrowing rates. As part of our liquidity strategy, we will continue to monitor our current level of earnings and cash flow generation as well as our ability to access the market in light of those earning levels.

A substantial portion of our operations are located in the United States, and the majority of our sales and cash generation since inception have been made in the United States. Accordingly, we do not have material net cash flow exposures to foreign currency rate fluctuations. However, as our business in markets outside of the United States continues to increase, we will be exposed to foreign currency exchange risk related to our foreign operations. Fluctuations in the rate of exchange between the United States dollar and foreign currencies, primarily in the pound sterling, the euro, the Australian dollar, the Brazilian real, the Singapore dollar, and the yen, could adversely affect our financial results, including our revenues, revenue growth rates, gross margins, income and losses as well as assets and liabilities. We enter into forward currency contracts to partially offset the impact from fluctuations of the foreign currency rates on our third party and short-term intercompany receivables and payables between our domestic and international operations. We currently do not hedge future forecasted transactions but will continue to assess whether that strategy is appropriate. At September 30, 2018, the cash balance held by our foreign subsidiaries with currencies other than the United States dollar was approximately \$37.4 million and it is our intention to indefinitely reinvest all of current foreign earnings in order to partially support foreign working capital and to expand our existing operations outside the United States. As of September 30, 2018, our account receivable balance held by our foreign subsidiaries with currencies other than the United States dollar was approximately \$39.0 million. We have operations in markets in which there is governmental financial instability which could impact funds that flow into the medical reimbursement system. In addition, loss of financial stability within these markets could lead to delays in reimbursement or inability to remit payment due to currency controls. Specifically, we have operations and/or sales in Puerto Rico, Brazil, Argentina and Venezuela. We do not have any material financial exposure to one customer or one

country that would significantly hinder our liquidity.

On August 31, 2015, we received a civil investigative demand, or CID, issued by the Department of Justice, or DOJ, pursuant to the federal False Claims Act. The CID requires the delivery of a wide range of documents and information related to an investigation by the DOJ concerning allegations that we assisted a physician group customer in submitting improper claims for reimbursement and made improper payments to the physician group in violation of the Anti-Kickback Statute. We are cooperating with the DOJ. No assurance can be given as to the timing or outcome of this investigation, and the probable outcome of this matter cannot be determined.

On June 9, 2017, we received a subpoena from the Office of the Inspector General of the U.S. Department of Health and Human Services, or OIG, in connection with an investigation into possible false or otherwise improper claims submitted to Medicare and Medicaid. The subpoena seeks discovery of documents for the period January 2014 through June 2017, primarily associated with sales to a particular customer and relationships related to that customer account. We are working with the OIG to understand the scope of the subpoena and its request for documents, and we intend to fully cooperate with the OIG's request. No assurance can be given as to the timing or outcome of this investigation, and the probable outcome of this matter cannot be determined.

In May 2018, we settled all outstanding matters with Madsen Medical, Inc. for \$27.8 million, which was funded by cash on hand and our available line of credit. We no longer have any remaining liability related to this matter. See Note 11 to the Unaudited Consolidated Financial Statements for further discussion.

Table of Contents

We are involved in a number of legal actions and investigations arising out of the normal course of our business as discussed in Note 11 of the Unaudited Consolidated Financial Statements. Due to the inherent uncertainties associated with pending legal actions and investigations, we cannot predict the outcome, and, with respect to certain pending litigation or claims where no liability has been accrued, to make a meaningful estimate of the reasonably possible loss or range of loss that could result from an unfavorable outcome, other than those matters disclosed in this Quarterly Report. We have no material accruals for pending litigation or claims for which accrual amounts are not disclosed in our Unaudited Consolidated Financial Statements. It is reasonably possible, however, that an unfavorable outcome that exceeds our current accrual estimate, if any, for one or more of the matters described in our Unaudited Consolidated Financial Statements could have a material adverse effect on our liquidity and access to capital resources. Additionally, it is possible that in connection with a legal proceeding we are required to pay fees and expenses of the other party or set aside funds in an escrow or purchase a performance bond, regardless of our assessment of the probability of a loss. These requirements to pay fees and expenses or escrow funding in connection with a legal proceeding could have an adverse impact on our liquidity or impact our access to additional capital resources.

In January 2018, we drew \$50.0 million from our \$500.0 million revolving senior credit facility to be used for working capital, general corporate purposes, and strategic investments and acquisitions, including the acquisition of SafePassage, a privately-held provider of IOM services. As of September 30, 2018, we had \$5.0 million outstanding under the revolving senior credit facility.

On September 7, 2017, we completed an acquisition of a medical device company that developed interbody implants for spinal fusion using patented porous PEEK technology. In connection with the acquisition we recorded a purchase accounting fair value estimate of \$31.4 million for contingent consideration liabilities related to the achievement of certain manufacturing and commercial milestones. We anticipate these milestones will become payable at varying times between 2019 and 2021, but are subject to change based on the achievement of those manufacturing and commercial milestones.

On September 12, 2016, we completed an acquisition of an imaging software and technology platform known as LessRay. In connection with the acquisition we recorded a purchase accounting fair value estimate of \$34.1 million for contingent consideration liabilities related to the achievement of certain regulatory and commercial milestones. In January 2018, we paid \$9.0 million of the outstanding contingent consideration liabilities for the achievement of a commercial milestone. In July 2018, we paid \$10.0 million of the outstanding contingent consideration liabilities for the achievement of a regulatory approval milestone. We anticipate the remaining sales-based milestones will become payable at varying times between 2022 and 2023. We expect the imaging software and technology platform to be incorporated into our MAS platform to form a foundational element in our imaging, navigation and automation platform development strategy.

Cash and cash equivalents were \$75.1 million and \$72.8 million at September 30, 2018 and December 31, 2017, respectively. We believe that our existing cash, cash equivalents, marketable securities and available liquidity will be sufficient to meet our anticipated cash needs for the next twelve months. We could have varying needs for cash as a result of the achievement of certain acquisition related milestones. We anticipate funding these milestones from cash on hand and operations, however, we also have the ability to fund these from our existing line of credit if necessary. The increase in liquidity during the nine months ended September 30, 2018 of \$2.3 million was mainly driven by \$150.8 million cash inflow from operations and \$5.0 million outstanding on the line of credit, offset by \$78.4 million in cash used for purchases of property and equipment, \$60.2 million in cash used for business combinations, strategic

investments and intangible assets, and \$19.0 million in cash used for payments of contingent consideration. At September 30, 2018, we have cash totaling \$2.4 million in restricted accounts which is not available to us to meet any ongoing capital requirements if and when needed. Future litigation or requirements to escrow funds could materially impact our liquidity and our ability to invest in and run our business on an ongoing basis.

Cash Flows from Operating Activities

Cash provided by operating activities was \$150.5 million for the nine months ended September 30, 2018, compared to \$118.8 million for the same period in 2017. The \$31.7 million increase in cash provided by operating activities was primarily due to increased operational cash flows in 2018 related to timing of spending and cash receipts, offset by \$27.8 million in cash paid for the settlement of the Madsen litigation matter in 2018.

Cash Flows from Investing Activities

Cash used in investing activities was \$138.6 million for the nine months ended September 30, 2018, compared to \$161.7 million used for the same period in 2017. The \$23.1 million decrease in cash used in investing activities was primarily due to an \$18.6 million decrease in cash used for purchases of property and equipment and a decrease of \$4.4 million in cash used for business combinations, strategic investments and intangible assets during the nine months ended September 30, 2018 as compared to the same period in 2017.

Cash Flows from Financing Activities

Cash used in financing activities was \$11.2 million for the nine months ended September 30, 2018, compared to \$50.6 million cash used for the same period in 2017. The \$39.4 million decrease in cash used in financing activities was primarily due to the \$63.3 million settlement of the remaining principal on the senior convertible notes due July 2017 during the third quarter of 2017, offset by a

Table of Contents

decreased net draw on the line of credit for \$35.0 million and decreased treasury stock purchases of \$8.9 million during the nine months ended September 30, 2018 as compared to the same period in 2017.

Treasury stock purchases related to equity award vesting and stock option exercises totaled \$2.8 million during the nine months ended September 30, 2018. We use net share settlement on stock issuances, which results in cash tax payments we make on behalf of shareowners and a decrease in the cash receipt from the issuance of common stock upon the exercising of stock options. Net share settlement is generally used in lieu of cash payments by shareowners for minimum tax withholding or exercise costs for equity awards. The net share settlement is accounted for as a treasury share repurchase transaction, with the cost of any deemed repurchased shares included in treasury stock and reported as a reduction in total equity at the time of settlement. Additionally, net share settlement for tax withholding requires us to fund a significant amount of cash for certain tax payment obligations from time-to-time with respect to the shareowner tax obligations for vested equity awards. We anticipate using cash generated from operating activities to fund such payments.

Senior Convertible Notes

2.25% Senior Convertible Notes due 2021

In March 2016, we issued \$650.0 million principal amount of unsecured senior convertible notes with a stated interest rate of 2.25% and a maturity date of March 15, 2021, which we refer to as the 2021 Notes. The net proceeds from the offering, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$634.1 million. Interest on the 2021 Notes began accruing upon issuance and is payable semi-annually. The 2021 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. It is our current intent and policy to settle all conversions through combination settlement, which involves satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of our common stock. The initial conversion rate of the 2021 Notes is 16.7158 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$59.82 per share, subject to adjustments. Prior to September 15, 2020, holders may convert their 2021 Notes only under the following conditions: (a) during any calendar quarter beginning June 30, 2016, if the reported sale price of our common stock for at least 20 days out of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than 130% of the conversion price on each applicable trading day; (b) during the five business day period in which the trading price of the 2021 Notes falls below 98% of the product of (i) the last reported sale price of our common stock and (ii) the conversion rate on that date; and (c) upon the occurrence of specified corporate events, as defined in the 2021 Notes. From September 15, 2020 and until the close of business on the second scheduled trading day immediately preceding March 15, 2021, holders may convert their 2021 Notes at any time (regardless of the foregoing circumstances). We may not redeem the 2021 Notes prior to March 20, 2019. We may redeem the 2021 Notes, at our option, in whole or in part on or after March 20, 2019 until the close of business on the business day immediately preceding September 15, 2020 if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which we deliver written notice of a redemption. The redemption price will be equal to 100% of the principal amount of such 2021 Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date. No principal payments are due on the 2021 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2021 Notes do not contain any financial covenants and do not restrict us from paying dividends or issuing or repurchasing any of our other securities. We are unaware of any current events or market conditions that would allow

holders to convert the 2021 Notes. The impact of the convertible feature will be dilutive to our earnings per share when our average stock price for the period is greater than the conversion price.

In connection with the offering of the 2021 Notes, we entered into transactions for convertible notes hedge, which we refer to as the 2021 Hedge, and warrants, which we refer to as the 2021 Warrants. The 2021 Hedge was entered into with the initial purchasers of the 2021 Notes and/or their affiliates, which we refer to as the 2021 Counterparties, entitling us to purchase up to 10,865,270 shares of our own common stock at an initial stock price of \$59.82 per share, each of which is subject to adjustment. The cost of the 2021 Hedge was \$111.2 million. The 2021 Hedge will expire on March 15, 2021. The 2021 Hedge is expected to reduce the potential equity dilution upon conversion of the 2021 Notes if the daily volume-weighted average price per share of our common stock exceeds the strike price of the 2021 Hedge. Our assumed exercise of the 2021 Hedge is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

In addition, we sold the 2021 Warrants to the 2021 Counterparties to acquire up to 10,865,270 common shares of our stock. The 2021 Warrants will expire on various dates from June 2021 through December 2021 and may be settled in cash or net shares. It is our current intent and policy to settle all conversions in shares of our common stock. We received \$44.9 million in cash proceeds from the sale of the 2021 Warrants. The 2021 Warrants could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeds the strike price of the 2021 Warrants, which is \$80.00 per share.

Table of Contents

Revolving Senior Credit Facility

In April 2017, we entered into an Amended and Restated Credit Agreement (the “2017 Credit Agreement”) for a revolving senior credit facility (the “2017 Facility”), which replaced the previous credit agreement we had entered into in February 2016. The 2017 Credit Agreement provides for secured revolving loans, multicurrency loan options and letters of credit in an aggregate amount of up to \$500.0 million. The 2017 Credit Agreement also contains an accordion feature, which allows us to increase the aggregate principal amount of the 2017 Facility provided we remain in compliance with the underlying financial covenants, including but not limited to, compliance with the consolidated interest coverage ratio and certain consolidated leverage ratios. The 2017 Facility matures in April 2022 (subject to an earlier springing maturity date), and includes a sublimit of \$100.0 million for multicurrency borrowings, a sublimit of \$50.0 million for the issuance of standby letters of credit, and a sublimit of \$5.0 million for swingline loans. All of our assets including the assets of our material domestic subsidiaries are pledged as collateral under the 2017 Facility (subject to customary exceptions) pursuant to the term set forth in the Amended and Restated Security and Pledge Agreement (the “2017 Security Agreement”) executed in favor of the administrative agent. Each of our material domestic subsidiaries guarantees the 2017 Facility. In connection with the 2017 Facility, we incurred issuance costs which will be amortized over the term of the 2017 Facility. As of September 30, 2018, we had \$5.0 million outstanding under the 2017 Facility, at an interest rate of 3.88% (one month LIBOR plus 1.75%).

Borrowings under the 2017 Facility bear interest, at our option, at a rate equal to an applicable margin plus: (a) the applicable Eurocurrency Rate (as defined in the 2017 Credit Agreement), or (b) a base rate determined by reference to the highest of (1) the federal funds effective rate plus 0.50%, (2) the Bank of America prime rate, and (3) LIBOR for an interest period of one month plus 1.00%. The margin for the 2017 Facility ranges, based on our consolidated leverage ratio, from 0.00% to 1.00% in the case of base rate loans and from 1.00% to 2.00% in the case of Eurocurrency Rate loans. The 2017 Facility includes an unused line fee ranging, based on our consolidated leverage ratio, from 0.20% to 0.35% per annum on the revolving commitment.

The 2017 Credit Agreement contains affirmative, negative, permitted acquisition and financial covenants, and events of default customary for financings of this type. The financial covenants require us to maintain ratios of consolidated earnings before interest, taxes, depreciation and amortization (EBITDA) in relation to consolidated interest expense and consolidated debt, respectively, as defined in the 2017 Credit Agreement. The 2017 Facility grants the lenders preferred first priority liens and security interests in capital stock, intercompany debt and all of our present and future property and assets including each guarantor. We are currently in compliance with the Credit Agreement covenants.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations is based upon our Unaudited Consolidated Financial Statements, which have been prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate our estimates including those related to bad debts, inventories, valuation of goodwill, intangibles, other long-term assets, stock-based compensation, income taxes, and legal proceedings. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities not readily apparent from other sources. Actual results may differ from these estimates. Our critical accounting policies and estimates are discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017 and there have been no material

changes, other than the adoption of Accounting Standards Codification 606 Revenue from Contracts with Customers during the nine months ended September 30, 2018.

Off-Balance Sheet Arrangements

As of September 30, 2018, we did not have any off-balance sheet arrangements.

Contractual Obligations and Commitments

During the nine months ended September 30, 2018, we increased our obligations for certain consulting arrangements by approximately \$39.6 million in the aggregate in the event that specified revenue-based milestones are achieved prior to 2027. Any such payment will be made in a combination of cash and common shares as provided in the agreements. There were no other material changes outside of the ordinary course of business, in our outstanding contractual obligations from those disclosed within “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As of September 30, 2018, there has been no material change in our assessment of our sensitivity to market risk since our presentation set forth in Item 7A, “Quantitative and Qualitative Disclosures About Market Risk”, in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

Table of Contents

Item 4. Controls and Procedures

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported within the time lines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in SEC Rules 13a - 15(e) and 15d - 15(e)) as of September 30, 2018. Based on such evaluation, our management has concluded that as of September 30, 2018, the Company's disclosure controls and procedures are effective.

Changes in Internal Control Over Financial Reporting

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of any potential changes in our internal control over financial reporting during the fiscal quarter covered by this Quarterly Report.

There has been no change to our internal control over financial reporting during our most recent fiscal quarter that our certifying officers concluded materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

For a description of our material pending legal proceedings, refer to Note 11 "Contingencies" of the Notes to Unaudited Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report, which is incorporated herein by reference.

Item 1A. Risk Factors

There were no material changes to the risk factors previously disclosed and included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017. An investment in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described under Item 1A of Part I of our Annual Report on

Edgar Filing: NUVASIVE INC - Form 10-Q

Form 10-K, together with all other information contained or incorporated by reference in this report before you decide to invest in our common stock. If any of the Risk Factors were to actually occur, our business, financial condition, results of operations and our future growth prospects could be materially and adversely affected. Under the circumstances, the trading price of our common stock could decline, and you may lose all or part of your investment.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

None.

41

Table of Contents

Item 6. Exhibits

Exhibit Description

Number

- 3.1 Restated Certificate of Incorporation (incorporated by reference to our Quarterly Report on Form 10-Q filed with the SEC on August 13, 2004)
- 3.2 Certificate of Amendment to the Restated Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K filed with the SEC on September 28, 2011)
- 3.3 Restated Bylaws (incorporated by reference to our Current Report on Form 8-K filed with the SEC on January 6, 2012)
- 3.4 Amendment No. 1 to the Restated Bylaws (incorporated by reference to our Current Report on Form 8-K filed with the SEC on May 19, 2014)
- 3.5 Amendment No. 2 to the Restated Bylaws (incorporated by reference to our Current Report on Form 8-K filed with the SEC on August 1, 2016)
- 10.1# Employment Letter dated October 16, 2018 between the Company and J. Christopher Barry (incorporated by reference to our Current Report on Form 8-K Filed with the SEC on October 19, 2018)
- 10.2# Amendment to Employment Letter effective October 16, 2018 between the Company and Gregory T. Lucier (incorporated by reference to our Current Report on Form 8-K Filed with the SEC on October 19, 2018)
- 10.3# General Consulting and Services Agreement effective October 16, 2018 between the Company and Gregory T. Lucier (incorporated by reference to our Current Report on Form 8-K Filed with the SEC on October 19, 2018)
- 10.4# Amendment No. 1 to Proprietary Information, Inventions Assignment and Restrictive Covenant Agreement effective October 16, 2018 between the Company and Gregory T. Lucier (incorporated by reference to our Current Report on Form 8-K Filed with the SEC on October 19, 2018)
- 10.5# Employment Letter dated October 17, 2018 between the Company and Matthew Link (incorporated by reference to our Current Report on Form 8-K Filed with the SEC on October 19, 2018)
- 31.1* Certification of the Chief Executive Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. section 1350
- 31.2* Certification of the Chief Financial Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. section 1350
- 32.1* Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase
- 101.DEF XBRL Taxonomy Extension Definition Linkbase
- 101.LAB XBRL Taxonomy Extension Label Linkbase
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase

Indicates management contract or compensatory plan.

* These certifications are being furnished solely to accompany this annual report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and

are not to be incorporated by reference into any filing of NuVasive, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

NUVASIVE, INC.

Date: October 30, 2018 By: /s/ Gregory T. Lucier
Gregory T. Lucier
Chairman and Chief Executive Officer

Date: October 30, 2018 By: /s/ Rajesh J. Asarpota
Rajesh J. Asarpota
Executive Vice President and Chief Financial Officer