SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark one)

T QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2005

OR

o 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: 000-1029142

DYNAVAX TECHNOLOGIES CORPORATION
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	**33-0728374**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification No.)

2929 Seventh St., Suite 100
Berkeley, CA 94710-2753
(Address Of The Registrant's Principal Executive Offices)

Registrant's Telephone Number, Including Area Code: **(510) 848-5100**

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes £ No T

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

The number of shares of the Registrant's Common Stock outstanding as of October 31, 2005 was 29,757,740.

INDEX

DYNAVAX TECHNOLOGIES CORPORATION

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 which are subject to a number of risks and uncertainties. All statements that are not historical facts are forward-looking statements, including statements about our business strategy, our future research and development, our preclinical and clinical product development efforts, our ability to commercialize our product candidates, the timing of the introduction of our products, the effect of GAAP accounting pronouncements, uncertainty regarding our future operating results and our profitability, anticipated sources of funds and all plans, objectives, expectations and intentions. These statements appear in a number of places and can be identified by the use of forward-looking terminology such as "may," "will," "should," "expect," "plan," "anticipate," "believe," "estimate," "predict," "future," "intend," or "certain" or the negative of these terms or other variations or comparable terminology, or by discussions of strategy.

Actual results may vary materially from those in such forward-looking statements as a result of various factors that are identified in "Item 2 — Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this document. No assurance can be given that the risk factors described in this Quarterly Report on Form 10-Q are all of the factors that could cause actual results to vary materially from the forward-looking statements. All forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. Readers should not place undue reliance on these forward-looking statements and are cautioned that any such forward-looking statements are not guarantees of future performance. We assume no obligation to update any forward-looking statements.

This Quarterly Report on Form 10-Q includes trademarks and registered trademarks of Dynavax Technologies Corporation. Products or service names of other companies mentioned in this Quarterly Report on Form 10-Q may be trademarks or registered trademarks of their respective owners.

PART I. FINANCIAL STATEMENTS

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Dynavax Technologies Corporation
Condensed Consolidated Balance Sheets
(In thousands, except per share amounts)

	September 30, 2005 (unaudited)	December 31, 2004 (Note 2)
Assets		
Current assets:		
Cash and cash equivalents	$ 19,168	$ 16,590
Marketable securities	31,561	49,254
Restricted cash	408	408
Accounts receivable	1,061	3,131
Prepaid expenses and other current assets	1,806	1,396
Total current assets	54,004	70,779
Property and equipment, net	2,286	2,465
Other assets	412	402
Total assets	$ 56,702	$ 73,646
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 2,259	$ 1,391
Accrued liabilities	3,910	4,371
Deferred revenues	—	1,000
Total current liabilities	6,169	6,762
Deferred revenues, noncurrent	750	6,750
Other long-term liabilities	205	258
Commitments and contingencies (Note 3)		
Stockholders' equity:		
Preferred stock: $0.001 par value; 5,000 shares authorized and no shares issued and outstanding at September 30, 2005 and December 31, 2004	—	—
Common stock: $0.001 par value; 100,000 shares authorized at September 30, 2005 and December 31, 2004; 24,758 and 24,627 shares issued and outstanding at September 30, 2005 and December 31, 2004, respectively	25	25
Additional paid-in capital	159,173	159,074
Deferred stock compensation	(2,383)	(3,366)
Notes receivable from stockholders	(8)	(419)
Accumulated other comprehensive loss:		
Unrealized loss on marketable securities available-for-sale	(96)	(102)
Cumulative translation adjustment	(4)	—
Accumulated deficit	(107,129)	(95,336)
Total stockholders' equity	49,578	59,876
Total liabilities and stockholders' equity	$ 56,702	$ 73,646

See accompanying notes.

Dynavax Technologies Corporation
Condensed Consolidated Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Revenues:				
Collaboration revenue	$ —	$ 3,769	$ 12,199	$ 11,644
Grant revenue	404	(109)	1,856	713
Total revenues	404	3,660	14,055	12,357
Operating expenses:				
Research and development	6,797	5,928	19,945	17,709
General and administrative	2,319	2,017	7,132	6,013
Total operating expenses	9,116	7,945	27,077	23,722
Loss from operations	(8,712)	(4,285)	(13,022)	(11,365)
Interest income, net	428	252	1,229	557
Net loss	$ (8,284)	$ (4,033)	$ (11,793)	$ (10,808)
Basic and diluted net loss per share	$ (0.33)	$ (0.16)	$ (0.48)	$ (0.54)
Shares used to compute basic and diluted net loss per share	24,751	24,609	24,740	20,034

See accompanying notes.

Dynavax Technologies Corporation
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2005	2004
Operating activities		
Net loss	$ (11,793)	$ (10,808)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	578	307
Loss on disposal of property and equipment	—	18
Accretion and amortization on marketable securities	850	80
Interest accrued on notes receivable from stockholders	(16)	(29)
Amortization of stock-based compensation expense	961	1,944
Changes in operating assets and liabilities:		
Accounts receivable	2,070	(3,324)
Prepaid expenses and other current assets	(410)	379
Other assets	(10)	(389)
Accounts payable	868	649
Accrued liabilities	(461)	1,896
Deferred revenues	(7,000)	7,250
Net cash used in operating activities	(14,363)	(2,027)
Investing activities		
Purchases of marketable securities	(39,203)	—
Maturities and sales of marketable securities	56,052	5,549
Purchases of property and equipment	(452)	(1,654)
Net cash provided by investing activities	16,397	3,895
Financing activities		
Proceeds from issuance of common stock, net of issuance costs	—	46,534
Proceeds from employee stock purchase plan	115	—
Exercise of stock options	6	—
Repayment of notes receivable from stockholders	427	52
Restricted cash	—	(408)
Net cash provided by financing activities	548	46,178
Effect of exchange rate on cash and cash equivalents	(4)	—
Net increase in cash and cash equivalents	2,578	48,046
Cash and cash equivalents at beginning of period	16,590	23,468
Cash and cash equivalents at end of period	$ 19,168	$ 71,514
Supplemental disclosure of non-cash investing and financing activities		
Net change in unrealized loss on marketable securities	$ 6	$ —
Change in cumulative translation adjustment	$ (4)	$ —
Exercise of stock options	$ 200	$ —
Repurchase of common stock for exercise of stock options	$ (200)	$ —
Conversion of preferred stock upon initial public offering	$ —	$ 83,635
Conversion of ordinary shares in Dynavax Asia upon initial public offering.	$ —	$ 14,733

See accompanying notes.

Dynavax Technologies Corporation
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Organization

Dynavax Technologies Corporation ("Dynavax" or the "Company") is a biopharmaceutical company that discovers, develops, and intends to commercialize innovative products to treat and prevent allergies, infectious diseases, and chronic inflammatory diseases. The Company was originally incorporated in California on August 29, 1996 and reincorporated in Delaware on March 26, 2001.

In February 2004, the Company sold a total of 6,900,000 shares of its common stock, after adjusting for a one-for-three reverse stock split, in an underwritten initial public offering, raising net proceeds of approximately $46.5 million. The effect of the reverse stock split is reflected in the Condensed Consolidated Financial Statements for all periods presented.

Subsidiaries

In October 2003, the Company formed Dynavax Asia Pte. Ltd. (Dynavax Asia), a 100% owned subsidiary in Singapore which focuses on the Company's clinical and preclinical hepatitis B programs. In December 2004, the Company formed Ryden Therapeutics KK (Ryden), a 100% owned Japan subsidiary, to explore development and commercialization options for ISS-based immunotherapies for cedar tree allergy in Japan.

2. Summary of Significant Accounting Policies

Basis of Presentation

Our accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X. In our opinion, these unaudited Condensed Consolidated Financial Statements include all adjustments, consisting only of normal recurring adjustments, which the Company considers necessary to fairly state our financial position and the results of our operations and cash flows. Interim-period results are not necessarily indicative of results of operations or cash flows for a full-year period. The balance sheet at December 31, 2004 has been derived from audited financial statements at that date, but does not include all disclosures required by U.S. generally accepted accounting principles for complete financial statements.

These unaudited Condensed Consolidated Financial Statements and the notes accompanying them should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2004 as filed with the Securities and Exchange Commission (SEC) on March 18, 2005.

The Condensed Consolidated Financial Statements include the accounts of Dynavax, Dynavax Asia and Ryden. All significant intercompany accounts and transactions have been eliminated. The Company operates in one business segment, which is the development of biopharmaceutical products.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the Condensed Consolidated Financial Statements and accompanying notes. Actual results may differ from these estimates.

Critical Accounting Policies

The Company believes that there have been no significant changes in its critical accounting policies during the nine months ended September 30, 2005 as compared with those disclosed in its Annual Report on Form 10-K for the year ended December 31, 2004.

Recent Accounting Pronouncements

On March 29, 2005, the SEC published Staff Accounting Bulletin (SAB) No. 107 regarding the interaction between Financial Accounting Standard (FAS) No. 123R (revised 2004), "Share-Based Payment" and certain SEC rules and regulations. The Financial Accounting Standards Board (FASB) issued FAS No. 123R on December 16, 2004, that requires all share-based payments to employees, including grants of employee stock options, to be recognized based on their fair values. Pro forma disclosure is no longer an alternative. FAS No. 123R supersedes Accounting Principles Board (APB) No. 25, "Accounting for Stock Issued to Employees," and amends FAS No. 95, "Statement of Cash Flows."

Under FAS No. 123R, share-based payments to employees result in a cost that will be measured at fair value on the awards' grant date, based on the estimated number of awards that are expected to vest. Compensation cost for awards that vest would not be reversed if the awards expire without being exercised. When measuring fair value, companies can choose an option-pricing model (e.g., Black-Scholes or binomial models) that appropriately reflects their specific circumstances and the economics of their transactions. Upon adoption of FAS No. 123R public companies are allowed to select from alternative transition methods, each having different reporting implications. FAS No. 123R is effective for the fiscal year beginning after June 15, 2005, and applies to all outstanding and unvested share-based payments as of the adoption date.

The Company will adopt FAS No. 123R as of January 1, 2006. The adoption of FAS No. 123R's fair value method will have a significant impact on our result of operations, although it will have no impact on our overall financial position. The impact of adoption of FAS No. 123R cannot be predicted at this time because the Company is in the process of reevaluating our methodology used to determine fair value, including consideration of an option-pricing model and related assumptions, and the method of adoption. In addition, the impact of adoption will depend on levels of share-based payments granted in the future.

Stock-Based Compensation

As permitted under FAS No. 123, "Accounting for Stock-Based Compensation" as amended by FAS No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure," the Company continues to recognize employee stock compensation under the intrinsic value method of accounting as prescribed by APB No. 25 and its interpretations. Under APB No. 25, compensation expense is based on the difference, if any, between the estimated fair value of our common stock and the option exercise price on the date of grant. The Company accounts for stock compensation to non-employees in accordance with FAS No. 123, as amended by FAS No. 148 and EITF Issue 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods or Services."

The following table illustrates the pro forma effect on our net loss and net loss per share as if the Company had applied the fair value recognition provisions of FAS No. 123 to employee stock compensation (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Net loss, as reported	$ (8,284)	$ (4,033)	$ (11,793)	$ (10,808)
Add: Stock-based employee compensation expense included in net loss	307	549	975	1,753
Less: Stock-based employee compensation expense determined under the fair value based method	(739)	(745)	(2,156)	(2,242)
Net loss, pro forma	$ (8,716)	$ (4,229)	$ (12,974)	$ (11,297)
Net loss per share:				
Basic and diluted net loss, as reported	$ (0.33)	$ (0.16)	$ (0.48)	$ (0.54)
Basic and diluted net loss, pro forma	$ (0.35)	$ (0.17)	$ (0.52)	$ (0.56)

Such pro forma disclosure may not be representative of future stock-based compensation expense because such options vest over several years and additional grants may be made each year.

The estimated fair value of each option and employee purchase right is estimated on the date of grant using the Black-Scholes option-pricing model, assuming no expected dividends and the following weighted-average assumptions:

	Employee Stock Options				Employee Stock Purchase Plan	
	Three Months Ended September 30,		Nine Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004	2005	2004
Weighted-average fair value	$ 3.42	$ 4.75	$ 3.82	$ 5.54	$ 2.15	$ 3.21
Risk-free interest rate	4.1%	3.1%	3.7%	3.0%	3.4%	2.0%
Expected life (in years)	4	4	4	4	0.5	0.5
Volatility	0.68	1.0	0.73	1.0	0.71	1.0

3. Commitments and Contingencies

The Company leases its facility under an operating lease that expires in September 2014. The lease can be terminated by the Company at no cost in September 2009 but otherwise extends automatically until September 2014.

Our facility lease agreement provides for periods of escalating rent. The total cash payments over the life of the lease were divided by the total number of months in the lease period and the average rent is charged to expense each month during the lease period. In addition, our lease agreement provides a tenant improvement allowance of $0.4 million, which is considered a lease incentive and accordingly, has been included in accrued liabilities and other long-term liabilities in the Condensed Consolidated Balance Sheets as of September 30, 2005 and December 31, 2004. The lease incentive is amortized as an offset to rent expense over the estimated initial lease term, through September 2009. Total net rent expense related to this operating lease for the nine months ended September 30, 2005 was $1.1 million. Deferred rent was $0.1 million as of September 30, 2005.

The Company has entered into a sublease agreement for a certain portion of the leased space with scheduled payments to the Company of $339,990 annually through 2007. This sublease agreement provides the Company an option for early termination in August 2006 but otherwise extends automatically until August 2007.

Future minimum payments under the non-cancelable portion of our operating lease at September 30, 2005, excluding payments from the sublease agreement, are as follows (in thousands):

Year ending December 31,	
2005	$ 421
2006	1,704
2007	1,755
2008	1,807
2009	1,231
	$ 6,918

During the fourth quarter of 2004, the Company established a letter of credit with Silicon Valley Bank as security for our property lease in the amount of $0.4 million. The letter of credit remained outstanding as of September 30, 2005 and is collateralized by a certificate of deposit which has been included in restricted cash in the Condensed Consolidated Balance Sheets as of September 30, 2005 and December 31, 2004. Under the terms of the lease agreement, if the total amount of our cash, cash equivalents and marketable securities falls below $20.0 million for a period of more than 30 consecutive days during the lease term, the amount of the required security deposit will increase to $1.1 million, until such time as our projected cash and cash equivalents will exceed $20.0 million for the remainder of the lease term, or until our actual cash and cash equivalents remains above $20.0 million for a period of 12 consecutive months.

The Company relies on research institutions and contract research organizations that conduct and manage clinical trials on our behalf. As of September 30, 2005, under the terms of our agreements with a contract research organization (CRO) and clinical investigator, the Company is obligated to make future payments as services are provided of up to $13.2 million through 2008. These agreements are terminable by the Company upon written notice to the CRO and the Company is only liable for actual effort expended by the CRO at any point in time during the contract.

The Company, as permitted under Delaware law and in accordance with its bylaws, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officers or directors are or were serving at the Company’s request in such capacity.

The term of the indemnification period is for each officer or director's lifetime. The maximum amount of potential future indemnification is unlimited; however, the Company has a director and officer insurance policy that limits its exposure up to $10.0 million and may enable the Company to recover a portion of any future amounts paid. The Company believes the estimated fair value of these indemnification agreements is minimal. Accordingly, the Company has no liabilities recorded for these agreements as of September 30, 2005.

The Company enters into indemnification provisions under its agreements with other companies in its ordinary course of business, typically with business partners, contractors, clinical sites and customers. Under these provisions, the Company generally indemnifies and holds harmless the indemnified party for losses suffered or incurred by the indemnified party as a result of the Company's activities relating to these contracts. These indemnification provisions generally survive termination of the underlying agreement. In certain circumstances, the maximum potential amount of future payments the Company could be required to make under these indemnification provisions is unlimited. The Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the estimated fair value of these agreements is minimal. Accordingly, the Company has no liabilities recorded for these agreements as of September 30, 2005.

4. Collaborative Research, Development, and License Agreements

UCB Farchim, S.A.

In March 2005, the Company agreed to end its collaboration with UCB Farchim, S.A. (UCB) and regained full rights to its allergy program. During the quarter ended June 30, 2005, the Company received cash payments in satisfaction of outstanding receivables due from UCB and obligations owed by UCB under the collaboration. Collaboration revenue for the nine months ended September 30, 2005 included accelerated recognition of $7.0 million in deferred revenue as the Company had no ongoing obligations under the collaboration and also included revenue associated with cash received following the ending of the collaboration.

University of California

The Company entered into a series of exclusive license agreements with the Regents of the University of California (UC) in March 1997 and October 1998. These agreements provide the Company with certain technology and related patent rights and materials. Under the terms of the agreements, the Company pays annual license or maintenance fees and will be required to pay milestones and royalties on net sales of products originating from the licensed technologies. The agreements will expire on either the expiration date of the last-to-expire patent licensed under the agreements or the date upon which the last patent application licensed under the agreements is abandoned.

In connection with these license agreements, the Company incurred license fees of $20,000 during the first nine months of 2005 and 2004 which was recorded as research and development expense, and the Company incurred patent expenses of $0.2 million and $0.3 million during the nine months ended September 30, 2005 and 2004, respectively, which was recorded as general and administrative expense. As partial consideration for the technology licenses, the Company also incurred a $0.4 million one-time charge due upon the closing of the Company's initial public offering in the first quarter of 2004, which was recorded as research and development expense. Additionally, as partial consideration for the technology licenses, the Company paid $0.2 million to UC related to the collaboration with UCB. During the nine months ended September 30, 2005, in conjunction with the ending of the UCB collaboration, the Company incurred $0.1 million in research and development expense from the accelerated amortization of the prepaid technology licenses fee.

BioSeek, Inc.

In June 2003, the Company entered into a development collaboration agreement with BioSeek, Inc. to analyze and characterize the activity of certain compounds using BioSeek's technology with the objective of advancing the development of such compounds. Under this agreement, the Company will make various payments to BioSeek based on the success and timing of the Company's signing of a third party partnering agreement where the Company grants to the third party, directly or indirectly, any right or option to market, sell, distribute or otherwise commercialize a thiazolopyrimidine (TZP) product in any geographic territory. During the nine months ended September 30, 2005, the Company paid BioSeek $0.3 million associated with the achievement of a contractual milestone.

Other Agreements

In the third quarter of 2003, the Company was awarded government grants totaling $8.4 million to be received over as long as three and one-half years, assuming annual review criteria are met, to fund research and development of certain biodefense programs. Revenue associated with these grants is recognized as the related expenses are incurred. During the second quarter of 2005, the indirect cost rate associated with these grants was approved by the National Institutes of Health. As a result, grant revenue for the nine months ended September 30, 2005 included a one-time increase of $0.5 million, reflecting the adjustment under the government grant awards from the previously utilized minimum cost overhead rate allowable to the final approved rate.

In the fourth quarter of 2004, the Company was awarded $0.5 million from the Alliance for Lupus Research to be received during 2005 and 2006 to fund research and development of new treatment approaches for lupus. For the nine months ended September 30, 2005, the Company recognized revenue of approximately $0.2 million associated with the lupus grant.

5. Net Income (Loss) Per Share

Basic net income (loss) per share is calculated by dividing net income (loss) for the period by the weighted-average shares outstanding for that period. Diluted net income (loss) per share takes into account the effect of diluted instruments, such as stock options and warrants, and uses the average share price for the period in determining the number of incremental shares that are to be added to the weighted-average number of shares outstanding.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Shares used to compute basic and diluted net income (loss) per share	24,751,479	24,609,156	24,739,697	20,033,426

Certain potentially dilutive shares were excluded from the shares used to compute diluted net income (loss) per share since their inclusion would have been anti-dilutive, either because the options' exercise prices exceeded the average fair market value of the stock during the period or due to the loss for the period.

6. Stockholders' Equity

At September 30, 2005, there were 24,757,740 shares of our common stock issued and outstanding. Activity under our stock option plans is set forth below:

	Options Available for Grant	Number of Options Outstanding	Weighted-Average Price Per Share
Balance at December 31, 2004 (1,528,007 exercisable at $2.55 weighted-average price per share)	3,342,976	1,828,314	$ 3.17
Options authorized	400,000	—	—
Options granted	(808,400)	808,400	$ 6.73
Options exercised	—	(136,416)	$ 1.51
Options canceled	18,471	(18,471)	$ 6.63
Shares repurchased	27,817	—	$ 7.19
Shares retired	(27,817)	—	$ 7.19
Balance at September 30, 2005 (1,514,374 exercisable at $3.01 weighted-average price per share)	2,953,047	2,481,827	$ 4.40

In April 2005, in accordance with the terms of the 2004 Stock Incentive Plan, the Board of Directors approved an increase of 400,000 shares of common stock available for grant. During the nine months ended September 30, 2005, the Company issued 136,416 shares of common stock resulting from option exercises, of which 27,817 shares were surrendered to the Company in lieu of cash payment for the option exercise.

Employee and director stock-based compensation expense and non-employee stock-based compensation expense for the three and nine months ended September 30, 2005 and 2004 were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Employees and directors stock-based compensation expense	$ 307	$ 549	$ 975	$ 1,753
Non-employees stock-based compensation expense	1	179	(14)	191
Total	$ 308	$ 728	$ 961	$ 1,944

In April 2005, in accordance with the terms of the 2004 Employee Stock Purchase Plan (the "Purchase Plan"), the Board of Directors approved an increase of 246,000 shares of common stock available for purchase. During the nine months ended September 30, 2005, employees acquired 21,995 shares of our common stock. At September 30, 2005, 461,308 shares of our common stock remained available for future purchases under the Purchase Plan.

Also in April 2005, the Company adopted a compensation plan for its Board of Directors in the form of revisions to its 2004 Non-employee Director Option Program and 2004 Director Cash Compensation Program. The plan generally provides that each director, other than the chair of the board, receive an option to purchase 20,000 shares of common stock on April 14, 2005, subsequent annual grants at the stockholders' meeting (beginning with the 2006 meeting) of 10,000 shares each year thereafter, a $20,000 annual retainer, and $2,000 for each in-person board meeting or $500 for each telephonic board meeting attended. The plan also provides that the chair of the board receive an option to purchase 30,000 shares of common stock on April 14, 2005, subsequent annual grants at the stockholders' meeting (beginning with the 2006 meeting) of 10,000 shares each year thereafter, a $30,000 annual retainer, and $2,000 for each in-person board meeting or $500 for each telephonic board meeting attended. In addition, the plan provides that the chair of the Audit Committee, Compensation Committee and Nominating Committee receive an annual retainer of $15,000, $6,000 and $3,000, respectively. Directors attending meetings of the Audit Committee will receive $1,500 per in-person meeting or $500 per telephonic meeting. Directors attending meetings of the Compensation and Nominating Committees will receive $1,000 per in-person meeting or $500 per telephonic meeting.

Certain of the Company's directors and their affiliates beneficially owned or controlled approximately 12% of our outstanding common stock as of September 30, 2005. For the three and nine months ended September 30, 2005, the Company incurred approximately $37,000 and $68,000, respectively, in general and administrative expense associated with payments to these directors under the compensation plan.

7. Related Party Transactions

From September 2000 through June 2001, the Company loaned $0.8 million to certain key employees and officers for the exercise of incentive stock options. These are full recourse notes, which accrue interest at rates ranging from 5.02% to 6.22% and are due through November 2005. The shares of common stock held by the employees collateralize these notes. During the nine month period ended September 30, 2005, approximately $0.4 million was repaid to the Company. As of September 30, 2005, the remaining balance of the notes receivable from stock holders was approximately $8,000.

8. Subsequent Events

On October 14, 2005 the Company announced the closing of an underwritten public offering of 5,000,000 shares of its common stock at a price of $6.25 per share. The offering was made under the company's existing shelf registration statement, filed in August 2005, and resulted in net proceeds to the company of approximately $29.4 million, after payment of underwriting discounts and commissions, but excluding offering expenses. On November 10, 2005 the underwriters purchased an additional 720,000 shares through the exercise of an option granted in conjunction with the offering, resulting in additional net proceeds to the company of approximately $4.2 million, after payment of underwriting discounts and commissions, but excluding offering expenses. The offering, including the exercise of the over-allotment option resulted in the total sale of 5,720,000 shares of the Company's common stock with net proceeds to the Company of approximately $33.6 million, after payment of underwriting discounts and commissions, but excluding offering expenses.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements under federal securities laws. Forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties. Our actual results could differ materially from those indicated by forward-looking statements as a result of various factors, including but not limited to those set forth under this Item, as well as those discussed elsewhere in this document and those that may be identified from time to time in our reports and registration statements filed with the Securities and Exchange Commission.

This discussion should be read in conjunction with the Condensed Consolidated Financial Statements and related Notes included in Item 1 of this quarterly report and the Consolidated Financial Statements and related Notes and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 18, 2005.

Overview

We discover, develop, and intend to commercialize innovative products to treat and prevent allergies, infectious diseases, and chronic inflammatory diseases using versatile, proprietary approaches that alter immune system responses in highly specific ways. Our clinical development programs are based on immunostimulatory sequences, or ISS, which are short DNA sequences that we believe enhance the ability of the immune system to fight disease and control chronic inflammation. The most advanced clinical programs in Dynavax's ISS-based pipeline are a ragweed allergy immunotherapeutic and a hepatitis B vaccine.

We have developed a novel injectable product candidate to treat ragweed allergy that we call TOLAMBA™ (formerly, Amb a 1 ISS Conjugate or AIC). TOLAMBA has completed Phase II trials, and is currently completing a two-year Phase II/III clinical trial. At the end of 2004, we reported that the one-year interim analysis of this Phase II/III trial showed a clear positive trend relative to the trial's major endpoint of nasal symptom scores, as well as other secondary endpoints, following the 2004 ragweed season. We intend to complete the Phase II/III clinical trial. In 2005, we initiated a clinical trial in ragweed allergic children designed to support our planned Phase III pivotal program. Pending the results of the Phase II/III study and the outcome of discussions with the U.S. Food and Drug Administration (FDA), we plan to initiate a pivotal Phase III clinical program in early 2006.

We have developed a product candidate for hepatitis B prophylaxis called HEPLISAV™. A Phase II/III trial in subjects who are more difficult to immunize with conventional vaccines conducted in Singapore has been completed. Results from the final analysis of this trial showed statistically significant superiority in protective antibody response and robustness of protective effect after three vaccinations when compared to Engerix-B. Results from a Phase II clinical trial in healthy adults conducted earlier in 2004 showed that HEPLISAV induced a more robust and durable antibody response than Engerix-B. In June 2005, we initiated a pivotal Phase III trial in the older, more difficult to immunize population in Asia. We anticipate initiating a second pivotal Phase III trial in adults in Canada in the first half of 2006. We believe that strategic opportunities for HEPLISAV exist in selected countries worldwide. Our initial commercialization strategies will likely target these markets and focus on high-value, underserved populations. These populations include pre-hemodialysis patients, HIV and HCV positive patients, other populations with compromised immune systems as well as professionals in healthcare and law enforcement for whom achieving seroprotection quickly is critical. In October, we announced the initiation of a US-based Phase 1 clinical trial of HEPLISAV in patients with end-stage renal failure (pre-hemodialysis).

We have an inhaled therapeutic product candidate for treatment of asthma, which has completed a Phase IIa trial in Canada. We are performing additional preclinical work to optimize the route of administration and regimen for the asthma clinical program and have postponed additional clinical trials in asthma.

We are evaluating the potential of ISS to enhance the effect of monoclonal antibodies in cancer therapies. We have conducted an open-label Phase I, dose-escalation trial of ISS in combination with Rituximab in 20 patients with Non-Hodgkin's lymphoma (NHL). Results of this study showed dose dependent pharmacological activity without significant toxicity. A follow-up Phase II trial of ISS with Rituximab in NHL is currently underway in 30 patients with histologically confirmed CD20+, B-cell follicular NHL who have received at least one previous treatment regimen for lymphoma. The primary objective is to assess the proportion of patients who are alive and without disease progression one year after initiating Rituximab therapy. Mechanistic studies will be performed to characterize the enhancement of antitumor activity by ISS.

For the nine months ended September 30, 2005, our net loss was $11.8 million, compared to $10.8 million for the same period in 2004. Our year to date operating results for 2005 reflect the financial impact resulting from the ending of our development and commercialization collaboration with UCB Farchim, S.A. (UCB) that occurred in March 2005. Total revenues for the nine months ended September 30, 2005 were $14.1 million, compared to $12.4 million for the same period in 2004. During the nine month period of 2005, 87% of our revenues were derived from our collaboration activities with UCB and the ending of our collaboration, while the remaining revenues were earned from government and private agency grants. Our ability to generate future collaboration revenue will be dependent on our ability to enter into new collaborative relationships.

As of September 30, 2005, we had an accumulated deficit of $107.1 million. We do not have any products that generate revenue. We expect to incur substantial and increasing losses as we continue the development of our lead product candidates and preclinical and research programs. If we were to receive regulatory approval for any of our product candidates, we would be required to invest significant capital to develop, or otherwise secure through collaborative relationships, commercial scale manufacturing, marketing and sales capabilities. Even if we are able to obtain approval for our product candidates, we are likely to incur increased operating losses until product sales grow sufficiently to support the organization.

In October 2005 we raised proceeds of approximately $29.4 million, net of underwriting discounts and commissions, but excluding offering expenses, in an underwritten public offering of 5,000,000 shares of common stock. In November the underwriters of the offering exercised an option to purchase an additional 720,000 shares of common stock to cover over-allotments resulting in additional proceeds of approximately $4.2 million, net of underwriting discounts and commissions, but excluding offering expenses. We intend to use the proceeds from this offering for general corporate purposes, including clinical trials, research and development expenses and general and administrative expenses.

For the year ended December 31, 2005, excluding the potential impact of any business collaborations or other transactions that may be entered into, we anticipate that our operating expenses will increase as compared to prior year in connection with our clinical development activities and overall organizational growth.

Critical Accounting Policies and the Use of Estimates

The Company believes that there have been no significant changes in its critical accounting policies during the nine months ended September 30, 2005 as compared with those disclosed in its Annual Report on Form 10-K for the year ended December 31, 2004.

Results of Operations

The following table sets forth the results of operations for the quarters ended September 30, 2005 and 2004 (in thousands, except percentages):

Results of Operations:	Three Months Ended September 30, 2005	2004	Increase (Decrease) from 2005 to 2004 $	%	Nine Months Ended September 30, 2005	2004	Increase (Decrease) from 2005 to 2004 $	%
Revenues:								
Collaboration revenue	$ —	$ 3,769	$ (3,769)	(100)%	$ 12,199	$ 11,644	$ 555	5%
Grant revenue	404	(109)	513	471%	1,856	713	1,143	160%
Total revenues	$ 404	$ 3,660	$ (3,256)	(89)%	$ 14,055	$ 12,357	$ 1,698	14%
Operating expenses:								
Research and development	$ 6,797	$ 5,928	$ 869	15%	$ 19,945	$ 17,709	$ 2,236	13%
General and administrative	2,319	2,017	302	15%	7,132	6,013	1,119	19%
Total operating expenses	$ 9,116	$ 7,945	$ 1,171	15%	$ 27,077	$ 23,722	$ 3,355	14%
Interest income, net	$ 428	$ 252	$ 176	70%	$ 1,229	$ 557	$ 672	121%

Revenues

Total revenues of approximately $0.4 million for the three months ended September 30, 2005 declined by $3.3 million compared to the same period in 2004, primarily resulting from the loss of collaboration revenue derived from our agreement with UCB as discussed below.

Total revenues of $14.1 million for the nine months ended September 30, 2005 increased by $1.7 million compared to the same period in 2004. Revenues for the first nine months of 2005 were comprised of $12.2 million from our collaboration activities including ending our collaboration with UCB and $1.9 million from government and private agency grants.

In March 2005, we agreed to end the collaboration with UCB and regained full rights to our allergy program. During the quarter ended June 30, 2005, we received cash payments in satisfaction of outstanding receivables due from UCB and obligations owed by UCB under the collaboration. Collaboration revenue for the nine months ended September 30, 2005 included accelerated recognition of $7.0 million in deferred revenue as we had no ongoing obligations under the collaboration and also included revenue associated with cash received following the ending of the collaboration. Our ability to generate future collaboration revenue and obtain additional capital will be dependent on our ability to enter into new collaborative relationships. Until we enter into new collaboration arrangements, we expect our future revenues will be limited to government and private agency grants, which will be significantly lower than during the period when we had our collaboration agreement with UCB.

During the second quarter of 2005, the indirect cost rate associated with our grants from the National Institutes of Health was approved. As a result, the grant revenue for the nine months ended September 30, 2005 included an increase of $0.5 million, reflecting the adjustment under the government grant awards from the previously utilized minimum cost overhead rate allowable to the final approved rate.

Research and Development

Research and development expense consists primarily of outside services related to our preclinical experiments and clinical trials, regulatory filings, manufacturing our product candidates for our preclinical experiments and clinical trials; compensation and related personnel costs which include benefits, recruitment, travel and supply costs; allocated facility costs and non-cash stock-based compensation. We expense our research and development costs as they are incurred.

The following is a summary of our research and development expense (in thousands):

	Three Months Ended September 30,		Increase (Decrease) from 2005 to 2004		Nine Months Ended September 30,		Increase (Decrease) from 2005 to 2004	
Research and development:	**2005**	**2004**	**$**	**%**	**2005**	**2004**	**$**	**%**
Compensation and related personnel costs	$ 2,162	$ 1,613	$ 549	34%	$ 6,505	$ 4,806	$ 1,699	35%
Outside services	3,571	3,360	211	6%	10,338	10,259	79	1%
Facility costs	922	611	311	51%	2,678	1,577	1,101	70%
Non-cash stock-based compensation	142	344	(202)	(59)%	424	1,067	(643)	(60)%
Total research and development	$ 6,797	$ 5,928	$ 869	15%	$19,945	$17,709	$ 2,236	13%

Research and development expenses of $6.8 million and $20.0 million for the three and nine months ended September 30, 2005 increased by $0.9 million, or 15%, and $2.2 million, or 13%, respectively, from the same periods in 2004. The increase over the prior year was primarily due to increased compensation and related personnel costs attributed to organizational growth. In addition, allocated rent and operating costs for our facility rose from the prior year. Outside costs for research, clinical trial and clinical manufacturing increased for the three months ended September 30, 2005 primarily associated with our ragweed allergy and hepatitis B vaccine programs.

During 2005, we anticipate that our research and development expense will increase as compared to prior year, in connection with our growing clinical development programs, including the TOLAMBA trial in ragweed allergic children designed to support our planned Phase III pivotal program and the Phase III clinical trial for our hepatitis B vaccine initiated in mid-2005.

General and Administrative

General and administrative expense consists primarily of compensation and related personnel costs, outside services such as accounting, consulting, investor relations and insurance, legal and patent costs, allocated facility costs and non-cash stock-based compensation.

The following is a summary of our general and administrative expense (in thousands):

	Three Months Ended September 30,		Increase (Decrease) from 2005 to 2004		Nine Months Ended September 30,		Increase (Decrease) from 2005 to 2004	
General and administrative:	**2005**	**2004**	**$**	**%**	**2005**	**2004**	**$**	**%**
Compensation and related personnel costs	$ 1,110	$ 807	$ 303	38%	$ 3,353	$ 2,454	$ 899	37%
Outside services	657	379	278	73%	1,931	1,270	661	52%
Legal and patent costs, net	258	306	(48)	(16)%	935	849	86	10%
Facility costs	128	141	(13)	(9)%	376	563	(187)	(33)%
Non-cash stock-based compensation	166	384	(218)	(57)%	537	877	(340)	(39)%
Total general and administrative	$ 2,319	$ 2,017	$ 302	15%	$ 7,132	$ 6,013	$ 1,119	19%

General and administrative expenses of $2.3 million and $7.1 million for the three and nine months ended September 30, 2005 increased by $0.3 million, or 15%, and $1.1 million, or 19%, respectively, from the same periods in 2004. The increase over the prior year primarily reflects higher compensation and related benefits associated with the expansion of our management team and overall organizational growth. In addition, outside services, including administrative, accounting and consulting fees, increased primarily as a result of the review and testing of our internal control systems in compliance with the requirements of the Sarbanes-Oxley Act. Legal and patent-related costs during the nine months ended September 30, 2005 were net of $0.2 million in reimbursable patent interference costs.

During 2005, we expect general and administrative expenses to increase as compared to prior year, primarily resulting from the full year impact of organizational growth that occurred in 2004 and expenses incurred to support public company compliance requirements.

Interest Income, Net

Interest income, net of interest expense and amortization of premiums on marketable securities, was $0.4 million and $1.2 million for the three and nine months ended September 30, 2005, respectively, compared to $0.3 million and $0.6 million for the three and nine months ended September 30, 2004, respectively. The increase was primarily due to the investment of proceeds from our initial public offering in higher yielding marketable securities in 2005.

Recent Accounting Pronouncements

On March 29, 2005, the SEC published Staff Accounting Bulletin (SAB) No. 107 regarding the interaction between Financial Accounting Standard (FAS) No. 123R (revised 2004), "Share-Based Payment" and certain SEC rules and regulations. The Financial Accounting Standards Board (FASB) issued FAS No. 123R on December 16, 2004, that requires all share-based payments to employees, including grants of employee stock options, to be recognized based on their fair values. Pro forma disclosure is no longer an alternative. FAS No. 123R supersedes Accounting Principles Board (APB) No. 25, "Accounting for Stock Issued to Employees," and amends FAS No. 95, "Statement of Cash Flows."

Under FAS No. 123R, share-based payments to employees result in a cost that will be measured at fair value on the awards' grant date, based on the estimated number of awards that are expected to vest. Compensation cost for awards that vest would not be reversed if the awards expire without being exercised. When measuring fair value, companies can choose an option-pricing model (e.g., Black-Scholes or binomial models) that appropriately reflects their specific circumstances and the economics of their transactions. Upon the adoption of FAS No. 123R public companies are allowed to select from three alternative transition methods, each having different reporting implications. FAS No. 123R is effective for the fiscal year beginning after June 15, 2005, and applies to all outstanding and unvested share-based payments as of the adoption date.

We will adopt FAS No. 123R as of January 1, 2006. The adoption of FAS No. 123R's fair value method will have a significant impact on our result of operations, although it will have no impact on our overall financial position. The impact of adoption of FAS No. 123R cannot be predicted at this time because we are in the process of reevaluating our methodology used to determine fair value, including consideration of an option-pricing model and related assumptions, and the method of adoption. In addition, the impact of adoption will depend on levels of share-based payments granted in the future.

Liquidity and Capital Resources

We have financed our operations since inception primarily through the sale of shares of our common stock, shares of our convertible preferred stock, and ordinary shares in a subsidiary, which have yielded a total of approximately $144.8 million in net cash proceeds and, to a lesser extent, through amounts received under collaborative agreements and government grants for biodefense programs. We completed an initial public offering in February 2004, raising net proceeds during fiscal 2004 of approximately $46.5 million from the sale of 6,900,000 shares of common stock. As of September 30, 2005, we had $50.7 million in cash, cash equivalents and marketable securities. Our funds are currently invested in a variety of securities, including highly liquid institutional money market funds, commercial paper, government and non-government debt securities and corporate obligations.

Cash used in operating activities of $14.4 million during the nine months ended September 30, 2005 compared to $2.0 million for the same period in 2004. The variance from the prior year was due primarily to the one-time $8.0 million upfront payment made to us by UCB in 2004 and a decline in working capital.

Cash provided by investing activities of $16.4 million during the nine months ended September 30, 2005 compared $3.9 million for the same period in 2004. The variance from the prior year was due primarily to net maturity of investments.

Cash provided by financing activities of $0.5 million during the nine months ended September 30, 2005 compared to $46.2 million for the same period in 2004. Cash provided by financing activities during the first half of 2004 resulted primarily from the issuance of common stock in our initial public offering.

In October 2005, we raised proceeds of approximately $29.4 million, net of underwriting discounts and commissions, but excluding offering expenses, from the sale of 5,000,000 shares of our common stock at a price of $6.25 per share. In November the underwriters purchased an additional 720,000 shares through the exercise of an option granted in conjunction with the offering, resulting in additional net proceeds to the company of approximately $4.2 million, after payment of underwriting discounts and commissions, but excluding offering expenses. The offering, including the exercise of the over-allotment option resulted in the total sale of 5,720,000 shares of the Company's common stock with net proceeds to the Company of approximately $33.6 million, after payment of underwriting discounts and commissions, but excluding offering expenses. Due to this equity offering we expect our cash, cash equivalents and marketable securities to increase from September 30, 2005 to December 31, 2005, partially offset by continued use of cash for operations.

We believe our existing capital resources will be adequate to satisfy our capital needs for at least the next twelve months. Because of the significant time it will take for any of our product candidates to complete the clinical trials process, be approved by regulatory authorities and successfully commercialized, we may require substantial additional capital resources. We may raise additional funds through public or private equity offerings, debt financings, capital lease transactions, corporate collaborations or other means. We may attempt to raise additional capital due to favorable market conditions or strategic considerations even if we have sufficient funds for planned operations.

Additional financing may not be available on acceptable terms, if at all. Capital may become difficult or impossible to obtain due to poor market or other conditions that are outside of our control. If at any time sufficient capital is not available, either through existing capital resources or through raising additional funds, we may be required to delay, scale back or eliminate some or all of our research or development programs, to lose rights under existing licenses or to relinquish greater or all rights to product candidates at an earlier stage of development or on less favorable terms than we would otherwise choose or may adversely affect our ability to operate as a going concern.

Contractual Obligations

The following summarizes our significant contractual obligations as of September 30, 2005 and the effect those obligations are expected to have on our liquidity and cash flow in future periods (in thousands):

	Payments Due by Period			
Contractual Obligations:	**Total**	**Less than 1 Year**	**1-3 Years**	**4-5 Years**
Future minimum payments under our operating lease	$ 6,918	$ 421	$ 3,459	$ 3,038
Total	$ 6,918	$ 421	$ 3,459	$ 3,038

We lease our facility under an operating lease that expires in September 2014. The lease can be terminated at no cost to us in September 2009 but otherwise extends automatically until September 2014. We have entered into a sublease agreement for a certain portion of the leased space with scheduled payments to us of $339,990 annually through 2007. This sublease agreement provides the Company an option for early termination in August 2006 but otherwise extends automatically until August 2007.

The table above excludes certain commitments that are contingent upon future events. The most significant of these contractual commitments that we consider to be contingent obligations are summarized below.

During the fourth quarter of 2004, we established a letter of credit with Silicon Valley Bank as security for our property lease in the amount of $0.4 million. The letter of credit remained outstanding as of September 30, 2005 and is collateralized by a certificate of deposit which has been included in restricted cash in the Condensed Consolidated Balance Sheets as of September 30, 2005 and December 31, 2004. Under the terms of the lease agreement, if the total amount of our cash, cash equivalents and marketable securities falls below $20.0 million for a period of more than 30 consecutive days during the lease term, the amount of the required security deposit will increase to $1.1 million, until such time as our projected cash and cash equivalents will exceed $20.0 million for the remainder of the lease term, or until our actual cash and cash equivalents remains above $20.0 million for a period of 12 consecutive months.

We rely on research institutions and contract research organizations that conduct and manage clinical trials on our behalf. As of September 30, 2005, under the terms of our agreements with a contract research organization (CRO) and clinical investigator, we are obligated to make future payments as services are provided of up to $13.2 million through 2008. These agreements are terminable by us upon written notice to the CRO and we are only liable for actual effort expended by the CRO at any point in time during the contract.

In March 2005, we agreed to end the collaboration with UCB and regained full rights to our allergy program. We assume financial responsibility for all further clinical, regulatory, manufacturing and commercial activities related to TOLAMBA and for preclinical development programs in grass and in peanut allergy. During the quarter ended June 30, 2005, we received cash payments in satisfaction of outstanding receivables due from UCB and obligations owed by UCB under the collaboration. The March 2005 agreement also provides for the continued partial reimbursement of certain patent interference fees and expenses, if and as incurred by the Company, subject to a maximum amount.

Under the terms of the exclusive license agreements with the Regents of the University of California, we are obligated to pay annual license or maintenance fees and will be required to pay future milestones and royalties on net sales of products originating from the licensed technologies. As partial consideration for the technology licenses, during the first quarter of 2004 we paid one-time charges of $0.4 million upon the closing of the Company's initial public offering and $0.2 million related to the collaboration with UCB. No other milestones were achieved as of September 30, 2005.

Under the development collaboration agreement with BioSeek, Inc., we will make various payments based on the success and timing of the Company's signing of a third party partnering agreement where the Company grants to the third party, directly or indirectly, any right or option to market, sell, distribute or otherwise commercialize a thiazolopyrimidine (TZP) product in any geographic territory. During the nine months ended September 30, 2005, we paid BioSeek $0.3 million associated with the achievement of a contractual milestone.

Under the terms of an agreement with Berna Biotech, we agreed to make certain commercialization and sales milestone payments to Berna regarding the Company's hepatitis B vaccine. None of these milestones were achieved as of September 30, 2005.

Risk Factors

Various statements in this Quarterly Report on Form 10-Q are forward-looking statements concerning our future products, expenses, revenues, liquidity and cash needs, as well as our plans and strategies. These forward-looking statements are based on current expectations and we assume no obligation to update this information. Numerous factors could cause our actual results to differ significantly from the results described in these forward-looking statements, including the following risk factors.

We have incurred substantial losses since inception and do not have any commercial products that generate revenue.

We have experienced significant operating losses in each year since our inception in August 1996. To date, our revenue has resulted from a collaboration agreement with UCB Farchim, S.A. (UCB) and government and private agency grants. The UCB collaboration agreement ended in March 2005. The grants are subject to annual review based on the achievement of milestones and other factors and will terminate in January 2007 at the latest. Our accumulated deficit was $107.1 million as of September 30, 2005, and we anticipate that we will incur substantial additional operating losses for the foreseeable future. These losses have been, and will continue to be, principally the result of the various costs associated with our research and development activities. We expect our losses to increase primarily as a consequence of our continuing product development efforts.

We do not have any products that generate revenue. In 2005, we continued a Phase II/III trial for TOLAMBA, an immunotherapy for ragweed allergy, and completed a Phase II/III trial for HEPLISAV in Singapore. In 2005, we also initiated a trial of TOLAMBA in ragweed allergic children designed to support our planned pivotal Phase III program and initiated a pivotal Phase III trial for HEPLISAV. These and our other product candidates may never be commercialized, and we may never generate product-related revenue. Our ability to generate product revenue depends upon:

- demonstrating in clinical trials that our product candidates are safe and effective, in particular, in the planned pivotal Phase III trials for TOLAMBA, the current Phase III trial of HEPLISAV, the planned additional Phase III trials in HEPLISAV;
- obtaining regulatory approvals for our product candidates in the United States and international markets;
- entering into collaborative relationships on commercially reasonable terms for the development, manufacturing, sales and marketing of our product candidates, and then successfully managing these relationships; and
- obtaining commercial acceptance of our products, in particular TOLAMBA and HEPLISAV.

If we are unable to generate revenues or achieve profitability, we may be required to significantly reduce or discontinue our operations or raise additional capital under adverse circumstances.

If we are unable to secure additional funding, we will have to reduce or discontinue operations.

We believe our existing capital resources will be adequate to satisfy our capital needs for at least the next twelve months. Because of the significant time and resources it will take to develop our product candidates, potentially commercialize them and generate revenues, we may require substantial additional capital resources in order to continue our operations, and any such funding may not cover our costs of operations. In the event we change our development plans or clinical programs, we may need additional capital sooner than we currently anticipate.

We expect capital outlays and operating expenditures to increase over the next several years as we expand our operations. We may be unable to obtain additional capital from financing sources or from agreements with collaborators on acceptable terms, or at all. If at any time sufficient capital is not available, we may be required to delay, reduce the scope of, or eliminate some or all of our research, preclinical or clinical programs or discontinue our operations.

All of our product candidates are unproven, and our success depends on our product candidates being approved through uncertain and time-consuming regulatory processes. Failure to prove our products safe and effective in clinical trials and obtain regulatory approvals could require us to discontinue operations.

None of our product candidates has been proven safe and effective in clinical trials or approved for sale in the United States or any foreign market. Any product candidate we develop is subject to extensive regulation by federal, state and local governmental authorities in the United States, including the FDA, and by foreign regulatory agencies. Our success is primarily dependent on our ability to obtain regulatory approval for TOLAMBA, our ragweed allergy product candidate, and HEPLISAV, our hepatitis B vaccine product candidate. Approval processes in the United States and in other countries are uncertain, take many years and require the expenditure of substantial resources. Product development failure can occur at any stage of clinical trials and as a result of many factors, many of which are not under our control.

We will need to demonstrate in clinical trials that each product candidate is safe and effective before we can obtain the necessary approvals from the FDA and foreign regulatory agencies. We initiated a two-year, multi-site Phase II/III trial in the first quarter of 2004 in the United States for TOLAMBA. We currently expect data from this trial in the early part of 2006; however, we cannot guarantee that results from this trial will be positive. Although we have not obtained data from the two-year Phase II/III trial, we initiated a trial of TOLAMBA in ragweed allergic children designed to support our planned pivotal Phase III program. If we do not obtain positive data from the two-year Phase II/III trial, or if we identify any safety issues associated with TOLAMBA, we may be forced to terminate or suspend our ongoing pediatric trial, and pending the outcome of discussions with the FDA, we may be delayed or prevented from initiating our planned pivotal Phase III trial for TOLAMBA in early 2006. We have initiated a pivotal Phase III trial for HEPLISAV in Asia. We anticipate initiating a second pivotal Phase III trial for HEPLISAV in Canada in the first half of 2006. The FDA or foreign regulatory agencies may require us to conduct additional clinical trials prior to approval in their jurisdictions.

Many new drug candidates, including many drug candidates that have completed Phase III clinical trials, have shown promising results in early clinical trials and subsequently failed to establish sufficient safety and efficacy to obtain regulatory approval. Despite the time and money expended, regulatory approvals are never guaranteed. Failure to complete clinical trials and prove that our products are safe and effective would have a material adverse effect on our ability to eventually generate revenues and could require us to reduce the scope of or discontinue our operations.

Our clinical trials may be suspended, delayed or terminated at any time. Even short delays in the commencement and progress of our trials may lead to substantial delays in the regulatory approval process for our product candidates, which will impair our ability to generate revenues.

We may suspend or terminate clinical trials at any time for various reasons, including regulatory actions by the FDA or foreign regulatory agencies, actions by institutional review boards, failure to comply with good clinical practice requirements, concerns regarding health risks to test subjects, or inadequate supply of the product candidate. In addition, our ability to conduct clinical trials for some of our product candidates, notably TOLAMBA, is limited due to the seasonal nature of ragweed allergy. Even a small delay in a trial for any product candidate could require us to delay commencement of the trial until the next appropriate season, which could result in a delay of an entire year. For example,

if we are unable to initiate our planned pivotal Phase III program for TOLAMBA by mid 2006, or if we do not receive FDA concurrence relative to the design of our planned pivotal Phase III we would not be able to file for registration in late 2007. Accordingly, the earliest we would be able to file for registration is late 2008. Consequently, we may experience additional delays in obtaining regulatory approval for these product candidates.

Suspension, termination or unanticipated delays of our clinical trials for TOLAMBA or HEPLISAV may:

- adversely affect our ability to commercialize or market any product candidates we may develop;
- impose significant additional costs on us;
- potentially diminish any competitive advantages that we may attain;
- adversely affect our ability to enter into collaborations, receive milestone payments or royalties
- from potential collaborators;
- cause us to abandon the development of the affected product candidate; or
- limit our ability to obtain additional financing on acceptable terms, if at all.

If third parties successfully assert that we have infringed their patents and proprietary rights or challenge the validity of our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and delay or prevent development or commercialization of our product candidates.

We may be exposed to future litigation by third parties based on claims that our product candidates, proprietary technologies or the licenses on which we rely, infringe their intellectual property rights, or we may be required to enter into litigation to enforce patents issued or licensed to us or to determine the scope or validity of another party's proprietary rights. If we become involved in any litigation, interference or other administrative proceedings related to our intellectual property or the intellectual property of others, we will incur substantial expenses and it will divert the efforts of our technical and management personnel. Others may succeed in challenging the validity of our issued and pending claims.

Two of our potential competitors relative to HEPLISAV, Merck & Co., Inc. and GlaxoSmithKline Plc, are exclusive licensees of broad patents covering hepatitis B surface antigen. In addition, the Institute Pasteur also owns or has exclusive licenses to patents covering hepatitis B surface antigen. While some of these patents have expired or will soon expire outside of the United States, they remain in force in the United States and are likely to be in force when we commercialize HEPLISAV or a similar product in the United States. To the extent we were to commercialize HEPLISAV in the United States, Merck and/or GlaxoSmithKline or the Institute Pasteur may bring claims against us.

If we are unsuccessful in defending or prosecuting our issued and pending claims or in defending potential claims against us, for example, as may arise to the extent we were to commercialize HEPLISAV or any similar product candidate in the United States, we could be required to pay substantial damages and we may be unable to commercialize our product candidates or use our proprietary technologies unless we obtain a license from these or other third parties. A license may require us to pay substantial royalties, require us to grant a cross-license to our technology or may not be available to us on acceptable terms or on any terms. In addition, we may be required to redesign our technology so it does not infringe a third party's patents, which may not be possible or could require substantial funds and time. Any of these outcomes may require us to change our business strategy and could reduce the value of our business.

Another of our potential competitors, Coley Pharmaceutical Group (Coley), has issued U.S. patent claims, as well as patent claims pending with the U.S. Patent and Trademark Office, that, if held to be valid, could require us to obtain a license in order to commercialize one or more of our formulations of ISS in the United States, including TOLAMBA and HEPLISAV. In December 2003 the U.S. Patent and Trademark Office declared an interference to resolve first-to-invent disputes between a patent application filed by the Regents of the University of California, which is exclusively licensed to us, and an issued U.S. patent owned by Coley relating to immunostimulatory DNA sequences. The declaration of interference named the Regents of the University of California as senior party, indicating that a patent application filed by the Regents of the University of California and licensed to us was filed prior to a patent application owned by Coley that led to an issued U.S. patent. The interference provides the first forum to challenge the validity and priority of certain of Coley's patents. On March 10, 2005, the

U.S. Patent and Trademark Office issued a decision in the interference which did not address the merits of the case, but dismissed it on a legal technicality related to the timing of Dynavax's filing of its claims and request for interference. Dynavax has appealed this non-final decision. If we prevail in the appeal, we will be able to continue the interference to address the merits of the case. If we prevail in the interference proceeding, it would establish our founders as the inventors of the inventions in dispute. However, even a favorable outcome in the interference would not prevent Coley from asserting its other patents or patent claims, that were not the subject of the interference, against our ISS products, which could harm our ability to commercialize those products. If we do not prevail in the interference proceeding, we may not be able to obtain patent protection on the subject matter of the interference, which would have a material adverse impact on our business. In addition, if Coley prevails in the interference, it may seek to enforce its rights under issued claims, including, for example, by suing us for patent infringement. Consequently, we may need to obtain a license to issued and/or pending claims held by Coley by paying cash, granting royalties on sales of our products or offering rights to our own proprietary technologies. Such a license may not be available to us on acceptable terms, if at all.

If we receive regulatory approval for our product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review, which may be costly and subject us to various enforcement actions.

Any regulatory approvals that we receive for our product candidates are likely to contain requirements for post-marketing follow-up studies, which may be costly. Product approvals, once granted, may be modified, resulting in limitations on our labeling indications or marketing claims, or withdrawn completely if problems occur after commercialization. Thus, even if we receive FDA and other regulatory approvals, our product candidates may later exhibit qualities that limit or prevent their widespread use or that force us to withdraw those products from the market.

In addition, we or our contract manufacturers will be required to adhere to federal regulations setting forth current good manufacturing practice. The regulations require that our product candidates be manufactured and our records maintained in a prescribed manner with respect to manufacturing, testing and quality control activities. Furthermore, we or our contract manufacturers must pass a pre-approval inspection of manufacturing facilities by the FDA and foreign regulatory agencies before obtaining marketing approval and will be subject to periodic inspection by the FDA and corresponding foreign regulatory agencies under reciprocal agreements with the FDA. Further, to the extent that we contract with third parties for the manufacture of our products, our ability to control third-party compliance with FDA requirements will be limited to contractual remedies and rights of inspection.

Failure to comply with regulatory requirements could prevent or delay marketing approval or require the expenditure of money or other resources to correct. Failure to comply with applicable requirements may also result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution, any of which could be harmful to our ability to generate revenues and our stock price.

Our product candidates in clinical trials rely on a single lead ISS compound, 1018 ISS, and most of our earlier stage programs rely on ISS-based technology. Serious adverse safety data relating to either 1018 ISS or other ISS-based technology may require us to reduce the scope of or discontinue our operations.

Our product candidates in clinical trials are based on 1018 ISS, and substantially all of our research and development programs use ISS-based technology. If any of our product candidates in clinical trials produce serious adverse safety data, we may be required to delay or discontinue all of our clinical trials. In addition, as all of our clinical product candidates contain 1018 ISS, potential collaborators may also be reluctant to establish collaborations for our products in distinct therapeutic areas due to the common safety risk across therapeutic areas. If adverse safety data are found to apply to our ISS-based technology as a whole, we may be required to discontinue our operations.

A key part of our business strategy is to establish collaborative relationships to commercialize and fund development of our product candidates. We may be unsuccessful in establishing and managing collaborative relationships, which may significantly limit our ability to develop and commercialize our products successfully, if at all.

We will need to establish collaborative relationships to obtain domestic and international sales, marketing and distribution capabilities for our product candidates. We also intend to enter into collaborative relationships to provide funding to support our research and development programs. We have established a collaborative relationship with Berna Biotech for HEPLISAV, a prophylactic vaccine, and for hepatitis B therapeutic product candidates. Our collaboration agreement with UCB for TOLAMBA and for grass allergy immunotherapy ended in March 2005. Future collaboration revenue will depend on our ability to enter into new collaborative relationships.

The process of establishing collaborative relationships is difficult, time-consuming and involves significant uncertainty. Moreover, even if we do establish collaborative relationships, our collaborators may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, a change in business strategy, a change of control or other reasons. If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development or commercialization efforts related to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for expenses or activities that would otherwise have been the responsibility of our collaborator. If we are unable to establish and maintain collaborative relationships on acceptable terms, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of capital.

We rely on third parties to supply component materials necessary for our clinical product candidates and manufacture product candidates for our clinical trials. Loss of these suppliers or manufacturers, or failure to replace them may delay our clinical trials and research and development efforts and may result in additional costs, which would preclude us from producing our product candidates on commercially reasonable terms.

We rely on a number of third parties for the multiple steps involved in the manufacturing process of our product candidates, including, for example, the manufacture of the antigens and ISS, the component materials that are necessary for our product candidates, the combination of the antigens and ISS, and the fill and finish. Termination or interruption of these relationships may occur due to circumstances that are outside our control, resulting in higher cost or delays in our product development efforts.

We and these third parties are required to comply with applicable current FDA good manufacturing practice regulations and similar requirements in Canada and other foreign countries. If one of these parties fails to maintain compliance with these regulations, the production of our product candidates could be interrupted, resulting in delays and additional costs. Additionally, these third parties must pass a preapproval inspection before we can obtain regulatory approval for any of our product candidates.

In particular, we have relied on a single supplier to produce our ISS for clinical trials. ISS is a critical component of both of TOLAMBA and HEPLISAV. To date, we have manufactured only small quantities of ISS ourselves for research purposes. If we were unable to maintain or replace our existing source for ISS, we would have to establish an in-house ISS manufacturing capability, incurring increased capital and operating costs and delays in developing and commercializing our product candidates. We or other third parties may not be able to produce ISS at a cost, quantity and quality that are available from our current third-party supplier.

In addition, we do not currently have a contract manufacturer for TOLAMBA or sufficient TOLAMBA to supply our potential commercial needs. We are currently manufacturing supplies of TOLAMBA for the second year of our current clinical trial in ragweed allergic children. We intend to enter into manufacturing agreements with one or more commercial-scale contract manufacturers to produce additional supplies of TOLAMBA as required for new clinical trials and commercialization. If we are unable to complete such agreements, we may be unable to commence and complete our clinical trials in a timely fashion, and we would have to establish an internal commercial scale manufacturing capability for TOLAMBA, incurring increased capital and operating costs, delays in the commercial development of TOLAMBA and higher manufacturing costs than we have experienced to date.

We have or intend to contract with one or more third parties to conduct our clinical trials for TOLAMBA and HEPLISAV. If these third parties do not carry out their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize TOLAMBA or HEPLISAV.

We are unable to independently conduct our planned clinical trials for TOLAMBA or HEPLISAV, and we have or intend to contract with third party contract research organizations to manage and conduct these trials. If these third parties do not carry out their contractual duties or obligations or meet expected deadlines, if the third parties need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to failure to adhere to our clinical protocols or for other reasons, our planned clinical trials may be extended, delayed or terminated. Any extension, delay or termination of our trials would delay our ability to commercialize TOLAMBA or HEPLISAV and generate revenues.

If any products we develop are not accepted by the market or if regulatory agencies limit our labeling indications or marketing claims, we may be unable to generate significant revenues, if any.

We do not anticipate that any of our product candidates will be commercially available until 2008 at the earliest, if at all. Furthermore, even if we obtain regulatory approval for our product candidates and are able to successfully commercialize them, our product candidates may not gain market acceptance among physicians, patients, health care payors and the medical community. The FDA or other regulatory agencies could limit the labeling indication for which our product candidates may be marketed or could otherwise constrain our marketing claims,

reducing our or our collaborators' ability to market the benefits of our products to particular patient populations. If we are unable to successfully market any approved product candidates, or are limited in our marketing efforts by regulatory limits on labeling indications or marketing claims, our ability to generate revenues could be significantly impaired.

In particular, treatment with TOLAMBA, if approved, will require a series of injections, and we expect that some of the patients that currently take oral or inhaled pharmaceutical products to treat their allergies would not consider using our product. We believe that market acceptance of TOLAMBA will also depend on our ability to offer competitive pricing, increased efficacy and improved ease of use as compared to existing or potential new allergy treatments.

We may seek partners for purposes of commercialization of HEPLISAV in selected markets worldwide in addition to or as a replacement for our current collaborative partner, Berna Biotech. Berna Biotech has an exclusive option to commercialize HEPLISAV and therapeutic product candidates. Marketing challenges vary by market and could limit or delay acceptance in any particular country. We believe that market acceptance of HEPLISAV will depend on our ability to offer increased efficacy and improved ease of use as compared to existing or potential new hepatitis B vaccine products.

We face uncertainty related to coverage, pricing and reimbursement and the practices of third party payors, which may make it difficult or impossible to sell our product candidates on commercially reasonable terms.

In both domestic and foreign markets, our ability to generate revenues from the sales of any approved product candidates in excess of the costs of producing the product candidates will depend in part on the availability of reimbursement from third party payors. Existing laws affecting the pricing and coverage of pharmaceuticals and other medical products by government programs and other third party payors may change before any of our product candidates are approved for marketing. In addition, third party payors are increasingly challenging the price and cost-effectiveness of medical products and services. Significant uncertainty therefore exists as to coverage and reimbursement levels for newly approved health care products, including pharmaceuticals. Because we intend to offer products, if approved, that involve new technologies and new approaches to treating disease, the willingness of third party payors to reimburse for our products is particularly uncertain. We will have to charge a price for our products that is sufficiently high to enable us to recover the considerable capital resources we have spent and will continue to spend on product development. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize a return on our investment in product development. If it becomes apparent, due to changes in coverage or pricing of pharmaceuticals in our market or a lack of reimbursement, that it will be difficult, if not impossible, for us to generate revenues in excess of costs, we will need to alter our business strategy significantly. This could result in significant unanticipated costs, harm our future prospects and reduce our stock price.

Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors despite these disadvantages we may be unable to generate revenues and our business will be harmed.

We compete with many companies and institutions, including pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing alternative therapies to treat or prevent allergy, infectious diseases, asthma and cancer, as well as those focusing more generally on the immune system. Competitors may develop more effective, more affordable or more convenient products or may achieve earlier patent protection or commercialization of their products. These competitive products may render our product candidates obsolete or limit our ability to generate revenues from our product candidates. Many of the companies developing competing technologies and products have significantly greater financial resources and expertise in research and development, manufacturing, preclinical and clinical testing, obtaining regulatory approvals and marketing than we do.

TOLAMBA, if approved, will compete directly with conventional allergy shots and indirectly with antihistamines, corticosteroids and anti-leukotriene agents, used to treat seasonal allergy symptoms, including those produced by GlaxoSmithKline Plc, Merck & Co., Inc. and AstraZeneca Plc. Since our TOLAMBA ragweed allergy treatment would require a series of injections, we expect that some patients that currently take oral or inhaled pharmaceutical products to treat their allergies would not consider our product.

HEPLISAV, if approved, will compete with existing vaccines produced by GlaxoSmithKline Plc and Merck & Co., Inc., among others.

Existing and potential competitors may also compete with us for qualified scientific and management personnel, as well as for technology that would be advantageous to our business. If we are unable to compete with existing and potential competitors we may not be able to obtain financing, sell our product candidates or generate revenues.

We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees would affect our ability to develop and commercialize our product candidates and achieve our objectives.

We are highly dependent on the principal members of our management, operations and scientific staff, including our Chief Executive Officer, Dino Dina. We experience intense competition for qualified personnel. Our future success also depends in part on the continued service of our executive management team, key scientific and management personnel and our ability to recruit, train and retain essential scientific personnel for our drug discovery and development programs, including those who will be responsible for overseeing our preclinical testing and clinical trials as well as for the establishment of collaborations with other companies. If we lose the services of any of these people, our research and product development goals, including the identification and establishment of key collaborations, operations and marketing efforts could be delayed or curtailed.

We intend to develop, seek regulatory approval for and market our product candidates outside the United States, requiring a significant commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of HEPLISAV and therapeutic product candidates.

We plan to introduce HEPLISAV initially in various markets outside the United States. Developing, seeking regulatory approval for and marketing our product candidates outside the United States could impose substantial burdens on our resources and divert management's attention from domestic operations. We may also conduct operations in other foreign jurisdictions.

International operations are subject to risk, including:

- the difficulty of managing geographically distant operations, including recruiting and retaining qualified employees, locating adequate facilities and establishing useful business support relationships in the local community;
- compliance with varying international regulatory requirements;
- securing international distribution, marketing and sales capabilities;
- adequate protection of our intellectual property rights;
- difficulties and costs associated with complying with a wide variety of complex international laws and treaties;
- legal uncertainties and potential timing delays associated with tariffs, export licenses and other trade barriers;
- adverse tax consequences;
- the fluctuation of conversion rates between foreign currencies and the U.S. dollar; and
- geopolitical risks.

If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of HEPLISAV and therapeutic product candidates, as well as other product candidates that we may choose to commercialize internationally, which would impair our ability to generate revenues.

We use hazardous materials in our business. Any claims or liabilities relating to improper handling, storage or disposal of these materials could be time consuming and costly to resolve.

Our research and product development activities involve the controlled storage, use and disposal of hazardous and radioactive materials and biological waste. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and certain waste products. We are currently in compliance with all government permits that are required for the storage, use and disposal of these materials. However, we cannot eliminate the risk of accidental contamination or injury to persons or property from these materials. In the event of an accident related to hazardous materials, we could be held liable for damages, cleanup costs or penalized with fines, and this liability could exceed the limits of our insurance policies and exhaust our internal resources. We may have to incur significant costs to comply with future environmental laws and regulations.

We face product liability exposure, which, if not covered by insurance, could result in significant financial liability.

While we have not experienced any product liability claims to date, the use of any of our product candidates in clinical trials and the sale of any approved products will subject us to potential product liability claims and may raise questions about a product's safety and efficacy. As a result, we could experience a delay in our ability to commercialize one or more of our product candidates or reduced sales of any approved product candidates. In addition, a product liability claim may exceed the limits of our insurance policies and exhaust our internal resources. We have obtained limited product liability insurance coverage in the amount of $1 million for each occurrence for clinical trials with umbrella coverage of an additional $4 million. This coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. We also may not be able to obtain commercially reasonable product liability insurance for any product approved for marketing in the future. A product liability claim, product recalls or other claims, as well as any claims for uninsured liabilities or in excess of insured liabilities, would divert our management's attention from our business and could result in significant financial liability.

If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our product candidates will decrease.

Our success depends on our ability to:

- obtain and protect commercially valuable patents or the rights to patents both domestically and abroad;
- operate without infringing upon the proprietary rights of others; and
- prevent others from successfully challenging or infringing our proprietary rights.

We will be able to protect our proprietary rights from unauthorized use only to the extent that these rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We try to protect our proprietary rights by filing and prosecuting United States and foreign patent applications. However, in certain cases such protection may be limited, depending in part on existing patents held by third parties, which may only allow us to obtain relatively narrow patent protection. In the United States, legal standards relating to the validity and scope of patent claims in the biopharmaceutical field can be highly uncertain, are still evolving and involve complex legal and factual questions for which important legal principles remain unresolved.

The biopharmaceutical patent environment outside the United States is even more uncertain. We may be particularly affected by this uncertainty, given that several of our product candidates may initially address market opportunities outside the United States. For example, we expect to market HEPLISAV, if approved, in various foreign countries with high incidences of hepatitis B, including Canada, Europe and selected markets in Asia, where we may only be able to obtain limited patent protection.

The risks and uncertainties that we face with respect to our patents and other proprietary rights include the following:

- we might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- we might not have been the first to file patent applications for these inventions;
- the pending patent applications we have filed or to which we have exclusive rights may not result in issued patents or may take longer than we expect to result in issued patents;
- the claims of any patents that are issued may not provide meaningful protection;
- our issued patents may not provide a basis for commercially viable products or may not be valid or enforceable;
- we might not be able to develop additional proprietary technologies that are patentable;
- the patents licensed or issued to us or our collaborators may not provide a competitive advantage;
- patents issued to other companies, universities or research institutions may harm our ability to do business;

- other companies, universities or research institutions may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent; and
- other companies, universities or research institutions may design around technologies we have licensed, patented or developed.

We also rely on trade secret protection and confidentiality agreements to protect our interests in proprietary know-how that is not patentable and for processes for which patents are difficult to enforce. We cannot be certain that we will be able to protect our trade secrets adequately. Any leak of confidential data into the public domain or to third parties could allow our competitors to learn our trade secrets. If we are unable to adequately obtain or enforce proprietary rights we may be unable to commercialize our products, enter into collaborations, generate revenues or maintain any advantage we may have with respect to existing or potential competitors.

We rely on our licenses from the Regents of the University of California. Impairment of these licenses or our inability to maintain them would severely harm our business.

Our success depends upon our license arrangements with the Regents of the University of California. These licenses are critical to our research and product development efforts. Our dependence on these licenses subjects us to numerous risks, such as disputes regarding the invention and corresponding ownership rights in inventions and know-how resulting from the joint creation or use of intellectual property by us and the Regents of the University of California, or scientific collaborators. Additionally, our agreements with the Regents of the University of California generally contain diligence or milestone-based termination provisions. Our failure to meet any obligations pursuant to these provisions could allow the Regents of the University of California to terminate any of these licensing agreements or convert them to non-exclusive licenses. In addition, our license agreements with the Regents of the University of California may be terminated or may expire by their terms, and we may not be able to maintain the exclusivity of these licenses. If we cannot maintain licenses that are advantageous or necessary to the development or the commercialization of our product candidates, we may be required to expend significant time and resources to develop or license similar technology.

Our stock price is subject to volatility, and your investment may suffer a decline in value.

The market prices for securities of biopharmaceutical companies have in the past been, and are likely to continue in the future to be, very volatile. The market price of our common stock is subject to substantial volatility depending upon many factors, many of which are beyond our control, including:

- progress or results of any of our clinical trials, in particular any announcements regarding the progress or results of our planned Phase III trials for TOLAMBA and HEPLISAV;
- progress of regulatory approval of our product candidates, in particular TOLAMBA and HEPLISAV, and compliance with ongoing regulatory requirements;
- our ability to establish collaborations for the development and commercialization of our product candidates;
- market acceptance of our product candidates;
- our ability to raise additional capital to fund our operations, whether through the issuance of equity securities or debt;
- technological innovations, new commercial products or drug discovery efforts and preclinical and clinical activities by us or our competitors;
- changes in our intellectual property portfolio or developments or disputes concerning the proprietary rights of our products or product candidates;
- our ability to obtain component materials and successfully enter into manufacturing relationships for our product candidates or establish manufacturing capacity on our own;
- our ability to form strategic partnerships or joint ventures;

- maintenance of our existing licensing agreements with the Regents of the University of California;
- changes in government regulations;
- issuance of new or changed securities analysts' reports or recommendations;
- general economic conditions and other external factors;
- actual or anticipated fluctuations in our quarterly financial and operating results; and
- degree of trading liquidity in our common stock

One or more of these factors could cause a decline in the price of our common stock. In addition, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because we have experienced greater than average stock price volatility, as have other biotechnology companies in recent years. We may in the future be the target of similar litigation. Securities litigation could result in substantial costs, and divert management's attention and resources, which could harm our business, operating results and financial conditions.

Anti-takeover provisions of our certificate of incorporation, bylaws and Delaware law may prevent or frustrate a change in control, even if an acquisition would be beneficial to our stockholders, which could affect our stock price adversely and prevent attempts by our stockholders to replace or remove our current management.

Provisions of our certificate of incorporation and bylaws may delay or prevent a change in control, discourage bids at a premium over the market price of our common stock and adversely affect the market price of our common stock and the voting or other rights of the holders of our common stock. These provisions include:

- authorizing our Board of Directors to issue additional preferred stock with voting rights to be determined by the Board of Directors;
- limiting the persons who can call special meetings of stockholders;
- prohibiting stockholder actions by written consent;
- creating a classified board of directors pursuant to which our directors are elected for staggered three year terms;
- providing that a supermajority vote of our stockholders is required for amendment to certain provisions of our certificate of incorporation and bylaws; and
- establishing advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, we are subject to the provisions of the Delaware corporation law that, in general, prohibit any business combination with a beneficial owner of 15% or more of our common stock for five years unless the holder's acquisition of our stock was approved in advance by our Board of Directors.

We will continue to implement additional finance and accounting systems, procedures or controls as we grow our business and organization and to satisfy new reporting requirements.

As a public company, we are required to comply with the Sarbanes-Oxley Act of 2002 and the related rules and regulations of the SEC, including expanded disclosures and accelerated reporting requirements and more complex accounting rules. Compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and other requirements will increase our costs and require additional management resources. We may need to continue to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to comply with new reporting requirements. Compliance with Section 404 will apply in 2005, and Section 404 reporting will first occur in our Form 10-K for our fiscal year ending December 31, 2005. There can be no assurance that we will be able to complete a favorable assessment as to the adequacy of our internal control reporting. If we are unable to obtain an unqualified report as to the effectiveness of our internal controls over financial reporting, investors could lose confidence in the reliability of our internal controls over financial reporting and the reliability of our financial statements, which could harm our business and could adversely impact the market price of our common stock.

The adoption of Statement of Financial Accounting Standard No. 123R and changes to existing accounting pronouncements, rules or practices may affect how we conduct our business and affect our reported financial results.

On December 16, 2004, the Financial Accounting Standards Board issued Financial Accounting Standard (FAS) No. 123R (revised 2004), "Share-Based Payment" which will require us to measure compensation costs for all stock-based compensation at fair value. We will adopt FAS No. 123R as of January 1, 2006. Adoption of FAS No. 123R will have a material impact on our financial statements, as we will be required to record compensation expense in our statement of operations for stock option grants and stock purchases under our employee stock purchase plan, rather than disclose the impact on our net loss within our footnotes, as is our current practice. The impact of adoption of FAS No. 123R cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. Changes to existing rules, current practices, or future changes, if any, may adversely affect our reported financial results or the way we conduct our business.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our investment activities is to preserve principal while at the same time maximize the income we receive from our investments without significantly increasing risk. Some of the securities that we invest in may have market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. To minimize this risk, we maintain our portfolio of cash equivalents and investments in a variety of securities, including commercial paper, money market funds, government and non-government debt securities and corporate obligations. Because of the short-term maturities of our cash equivalents and marketable securities, we do not believe that an increase in market rates would have any significant negative impact on the realized value of our investments.

Interest Rate Risk. We do not use derivative financial instruments in our investment portfolio. Due to the short duration and conservative nature of our cash equivalents and marketable securities, we do not expect any material loss with respect to our investment portfolio.

Foreign Currency Risk. We have no significant investments outside the U.S. and have nominal transactional foreign currency risk because nearly all of our business is transacted in U.S. dollars. As a result, we currently have little exposure to foreign exchange rate fluctuations.

ITEM 4. CONTROLS AND PROCEDURES

(a) Evaluation of disclosure controls and procedures

The Company’s management, under the supervision and with the participation of the Company’s Chief Executive Officer (CEO) and Chief Financial Officer (CFO), performed an evaluation of the effectiveness of the design and operation of the Company’s disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the CEO and CFO concluded that the Company’s disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”)) as of the end of period covered by this report have been designed and are functioning effectively to provide reasonable assurance that the information required to be disclosed by us in reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

(b) Changes in internal controls

No changes in the Company’s internal control over financial reporting occurred during the Company’s last fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

On February 24, 2004, we completed our initial public offering of 6,900,000 shares of common stock, including 900,000 shares subject to the underwriters' over-allotment option (which was exercised in full) at a public offering price of $7.50 per share and realized an aggregate offering price of $51.8 million. Our registration statement on Form S-1 (Reg. No. 333-109965) was declared effective by the SEC on February 11, 2004. The underwriters for the initial public offering were Bear, Stearns & Co. Inc., Deutsche Bank Securities Inc. and Piper Jaffray & Co.

We received net proceeds from the offering of approximately $46.5 million. These proceeds are net of $3.6 million in underwriting discounts and commissions, $1.4 million in legal, accounting and printing fees and $0.3 million in other expenses. We used $0.4 million of the net proceeds to make a one-time cash payment to the University of California pursuant to the terms of several license agreements with them. During 2004, the net proceeds were used for research and development activities and general corporate purposes. We will retain broad discretion over the use of the net proceeds received from our offering. The amount and timing of our actual expenditures may vary significantly depending on numerous factors, such as the progress of our product candidate development and commercialization efforts and the amount of cash used by our operations.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Document
3.1*	Amended and Restated Bylaws
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

* Filed herewith

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has caused this report to be signed on its behalf by the undersigned, thereunto due authorized, in the City of Berkeley, State of California.

DYNAVAX TECHNOLOGIES CORPORATION

By: /s/ DINO DINA, M.D.
Dino Dina, M.D.
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: November 11, 2005

By: /s/ DEBORAH A. SMELTZER
Deborah A. Smeltzer
Vice President, Operations and Chief Financial Officer
(Principal Financial Officer)

Date: November 11, 2005

By: /s/ TIMOTHY G. HENN
Timothy G. Henn
Vice President, Finance and Administration and Chief Accounting Officer
(Principal Accounting Officer)

Date: November 11, 2005

Exhibit 3.1

AMENDED AND RESTATED
BYLAWS
OF
DYNAVAX TECHNOLOGIES CORPORATION

a Delaware corporation

TABLE OF CONTENTS

AMENDED AND RESTATED

BYLAWS

OF

DYNAVAX TECHNOLOGIES CORPORATION

(A DELAWARE CORPORATION)

ARTICLE I

Offices

Section 1.1 Registered Office.

The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 1.2 Other Offices.

The corporation shall also have and maintain an office or principal place of business at 717 Potter Street, Suite 100, Berkeley, California 94710, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

Stockholders' Meetings

Section 2.1 Place of Meetings.

(a) Meetings of stockholders may be held at such place, either within or without this State, as may be designated by or in the manner provided in these bylaws or, if not so designated, as determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (b) of this Section 2.1.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(1) Participate in a meeting of stockholders; and

(2) Be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the corporation shall implement reasonable measures to verify

that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

(c) For purposes of this Section 2.1, "remote communication" shall include (1) telephone or other voice communications and (2) electronic mail or other form of written or visual electronic communications satisfying the requirements of Section 2.11(b).

Section 2.2 Annual Meetings.

The annual meetings of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held at the hour of 10:00 o'clock a.m. local time, on the 15th day of May in each year if not a legal holiday, and, if a legal holiday, at the same hour and place on the next succeeding full business day or on any other day and time which may be designated by resolution of the Board of Directors.

Section 2.3 Special Meetings.

Special Meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board, the President, the Secretary or by the Board of Directors at any time.

Section 2.4 Notice of Meetings.

(a) Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders, specifying the place, if any, date and hour and purpose or purposes of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote thereat, directed to his address as it appears upon the books of the corporation; except that where the matter to be acted on is a merger or consolidation of the Corporation or a sale, lease or exchange of all or substantially all of its assets, such notice shall be given not less than 20 nor more than 60 days prior to such meeting.

(b) If at any meeting action is proposed to be taken which, if taken, would entitle stockholders fulfilling the requirements of section 262(d) of the Delaware General Corporation Law to an appraisal of the fair value of their shares, the notice of such meeting shall contain a statement of that purpose and to that effect and shall be accompanied by a copy of that statutory section.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communication,

if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken unless the adjournment is for more than thirty days, or unless after the adjournment a new record date is fixed for the adjourned meeting, in which event a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(d) Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, either before or after such meeting, and, to the extent permitted by law, will be waived by any stockholder by his attendance thereat, in person or by proxy. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

(e) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of Delaware General Corporation Law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subparagraph (e) shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of these bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2.5 Quorum and Voting.

(a) At all meetings of stockholders except where otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Shares, the voting of which at said meeting have been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at said meeting. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares

represented thereat, but no other business shall be transacted at such meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the original meeting. The stockholders present at a duly called or convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation.

(c) Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter, and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

Section 2.6 Voting Rights.

(a) Except as otherwise provided by law, only persons in whose names shares entitled to vote stand on the stock records of the corporation on the record date for determining the stockholders entitled to vote at said meeting shall be entitled to vote at such meeting. Shares standing in the names of two or more persons shall be voted or represented in accordance with the determination of the majority of such persons, or, if only one of such persons is present in person or represented by proxy, such person shall have the right to vote such shares and such shares shall be deemed to be represented for the purpose of determining a quorum.

(b) Every person entitled to vote or to execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary of the corporation at or before the meeting at which it is to be used. Said proxy so appointed need not be a stockholder. No proxy shall be voted on after three (3) years from its date unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it or of his legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for him as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the stockholder or his authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(2) A stockholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telephone, telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telephone, telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telephone, telegram, cablegram or other electronic transmission was authorized by the stockholder. Such authorization can be established by the signature of the stockholder on the proxy, either in writing or by a signature stamp or facsimile signature, or by a number or symbol from which the identity of the stockholder can be determined, or by any other procedure deemed appropriate by the inspectors or other persons making the determination as to due authorization.

If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.7 Voting Procedures and Inspectors of Elections.

(a) The corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Sections 211(e) or 212(c)(2) of the Delaware General Corporation Law, or any information provided pursuant to Section 211(a)(2)(B)(i) or (iii) thereof, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 2.8 List of Stockholders.

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. The corporation need not include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.9 Stockholder Proposals at Annual Meetings.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors, or otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation

not less than 60 days nor more than 90 days prior to the one year anniversary of the date of the previous year's annual meeting of stockholders (or the date on which the corporation mails its proxy materials for the current year if during the prior year the corporation did not hold an annual meeting or if the date of the annual meeting was changed more than 30 days from the prior year). A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder, and (iv) any material interest of the stockholder in such business.

Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in Section 2.1 and this Section 2.9, provided, however, that nothing in this Section 2.9 shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting in accordance with said procedure.

The Chairman of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of Section 2.1 and this Section 2.9, and if he should so determine he shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted.

Nothing in this Section 2.9 shall affect the right of a stockholder to request inclusion of a proposal in the corporation's proxy statement to the extent that such right is provided by an applicable rule of the Securities and Exchange Commission.

Section 2.10 Nominations of Persons for Election to the Board of Directors.

In addition to any other applicable requirements, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors, by any nominating committee or person appointed by the Board of Directors or by any stockholder of the corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.10. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation. To be timely a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than 60 days nor more than 90 days prior to the one year anniversary of the date of the previous year's annual meeting of stockholders (or the date on which the corporation mails its proxy materials for the current year if during the prior year the corporation did not hold an annual meeting or if the date of the annual meeting was changed more than 30 days from the prior year). Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of the

corporation which are beneficially owned by the person, and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Rule 14a under the Securities Exchange Act of 1934; and (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder, and (ii) the class and number of shares of the corporation which are beneficially owned by the stockholder. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as a director of the corporation. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth herein. These provisions shall not apply to nomination of any persons entitled to be separately elected by holders of preferred stock.

The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2.11 Action Without Meeting.

The stockholders of the Corporation may not take action by written consent without a meeting but must take any such action at a duly called annual or special meeting.

ARTICLE III

Directors

Section 3.1 Number and Term of Office.

The number of directors of the corporation shall not be less than six (6) nor more than eleven (11) until changed by amendment of the Certificate of Incorporation or by a Bylaw amending this Section 3.1 duly adopted by the vote or written consent of holders of a majority of the outstanding shares or by the Board of Directors. The exact number of directors shall be fixed from time to time, within the limits specified in the Certificate of Incorporation or in this Section 3.1, by a bylaw or amendment thereof duly adopted by the vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of the holders of a majority of the outstanding shares entitled to vote, or by the Board of Directors. Subject to the foregoing provisions for changing the number of directors, the number of directors of the corporation has been fixed at nine (9).

The directors shall be divided into three classes, designated Class I, Class II, and Class III, as nearly equal in number as the then total number of directors permits. The provisions described herein with respect to the corporation’s classified board are in addition to the provisions in the corporation’s Certificate of Incorporation (and such provisions of the corporation’s Certificate of Incorporation shall govern in case of a conflict with the provisions hereof). If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as

possible, and any additional directors of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the applicable terms of these Bylaws and any certificate of designation creating such class or series of Preferred Stock, and such directors so elected shall not be divided into classes pursuant to this Section 3.1 unless expressly provided by such terms.

With the exception of the first Board of Directors, which shall be elected by the incorporators, and except as provided in Section 3.3 of this Article III, the directors shall be elected by a plurality vote of the shares represented in person or by proxy, at the stockholders annual meeting in each year and entitled to vote on the election of directors. Elected directors shall hold office until the next annual meeting for the years in which their terms expire and until their successors shall be duly elected and qualified. Directors need not be stockholders. If, for any cause, the Board of Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 3.2 Powers.

The powers of the corporation shall be exercised, its business conducted and its property controlled by or under the direction of the Board of Directors.

Section 3.3 Vacancies.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office for the unexpired portion of the term of the director whose place shall be vacant and until his successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this section in the case of the death, removal or resignation of any director, or if the stockholders fail at any meeting of stockholders at which directors are to be elected (including any meeting referred to in Section 3.4 below) to elect the number of directors then constituting the whole Board.

Section 3.4 Resignations and Removals.

(a) Any director may resign at any time by delivering his resignation to the Secretary in writing or by electronic transmission, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such

vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

(b) At a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors or any individual director may be removed from office, with or without cause, and a new director or directors elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of directors unless the certificate of incorporation otherwise provides.

Section 3.5 Meetings.

(a) The annual meeting of the Board of Directors shall be held immediately after the annual stockholders' meeting and at the place where such meeting is held or at the place announced by the Chairman at such meeting. No notice of an annual meeting of the Board of Directors shall be necessary, and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 1.2 of Article I hereof. Regular meetings of the Board of Directors may also be held at any place, within or without the State of Delaware, which has been designated by resolutions of the Board of Directors or the written consent of all directors.

(c) Special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board or the President or any vice president or the Secretary of the corporation or any two (2) directors.

(d) Written notice of the time and place of all regular and special meetings of the Board of Directors shall be delivered personally to each director or sent by telegram or facsimile transmission or other form of electronic transmission at least 48 hours before the start of the meeting, or sent by first class mail at least 120 hours before the start of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat.

Section 3.6 Quorum and Voting.

(a) A quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 3.1 of Article III of these Bylaws, but not less than one; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation, or these Bylaws.

(c) Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) The transactions of any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.7 Action Without Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.8 Fees and Compensation.

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.9 Committees.

(a) **Executive Committee:** The Board of Directors may appoint an Executive Committee of not less than one member, each of whom shall be a director. The Executive Committee, to the extent permitted by law, shall have and may exercise when the Board of Directors is not in session all powers of the Board in the management of the business and affairs of the corporation, except such committee shall not have the power or authority to amend these Bylaws or to approve or recommend to the stockholders any action which must be submitted to stockholders for approval under the General Corporation Law.

(b) **Other Committees:** The Board of Directors may, by resolution passed by a majority of the whole Board, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating

such committee, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term:** The members of all committees of the Board of Directors shall serve a term coexistent with that of the Board of Directors which shall have appointed such committee. The Board, subject to the provisions of subsections (a) or (b) of this Section 3.9, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee; provided that no committee shall consist of less than one member. The membership of a committee member shall terminate on the date of his death or voluntary resignation, but the Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings:** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 3.9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter; special meetings of any such committee may be held at the principal office of the corporation required to be maintained pursuant to Section 1.2 of Article I hereof; or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time after the meeting and will be waived by any director by attendance thereat. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

ARTICLE IV

Officers

Section 4.1 Officers Designated.

The officers of the corporation shall be a President, a Secretary and a Treasurer. The Board of Directors or the President may also appoint a Chairman of the Board, one or more Vice-Presidents, assistant secretaries, assistant treasurers, and such other officers and agents with such powers and duties as it or he shall deem necessary. The order of the seniority of the Vice-

Presidents shall be in the order of their nomination unless otherwise determined by the Board of Directors. The Board of Directors may assign such additional titles to one or more of the officers as they shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 4.2 Tenure and Duties of Officers.

(a) General: All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Nothing in these Bylaws shall be construed as creating any kind of contractual right to employment with the corporation.

(b) Duties of the Chairman of the Board of Directors: The Chairman of the Board of Directors (if there be such an officer appointed) when present shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) Duties of President: The President shall be the chief executive officer of the Corporation and shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. The President shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) Duties of Vice-Presidents: The Vice-Presidents, in the order of their seniority, may assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. The Vice-President shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) Duties of Secretary: The Secretary shall attend all meetings of the stockholders and of the Board of Directors and any committee thereof, and shall record all acts and proceedings thereof in the minute book of the corporation, which may be maintained in either paper or electronic form. The Secretary shall give notice, in conformity with these Bylaws, of all meetings of the stockholders and of all meetings of the Board of Directors and any Committee thereof requiring notice. The Secretary shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any assistant secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each assistant secretary shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Treasurer: The Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform all other duties commonly incident to his office and shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct any assistant treasurer to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each assistant treasurer shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

ARTICLE V

Execution of Corporate Instruments, and Voting of Securities Owned by the Corporation

Section 5.1 Execution of Corporate Instruments.

(a) The Board of Directors may in its discretion determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the corporation.

(b) Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the corporation, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board (if there be such an officer appointed) or by the President; such documents may also be executed by any Vice-President and by the Secretary or Treasurer or any assistant secretary or assistant treasurer. All other instruments and documents requiring the corporate signature but not requiring the corporate seal may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

(c) All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

(d) Execution of any corporate instrument may be effected in such form, either manual, facsimile or electronic signature, as may be authorized by the Board of Directors.

Section 5.2 Voting of Securities Owned by Corporation.

All stock and other securities of other corporations owned or held by the corporation for itself or for other parties in any capacity shall be voted, and all proxies with respect thereto shall

be executed, by the person authorized so to do by resolution of the Board of Directors or, in the absence of such authorization, by the Chairman of the Board (if there be such an officer appointed), or by the President, or by any Vice-President.

ARTICLE VI

Shares of Stock

Section 6.1 Form and Execution of Certificates.

The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman of the Board (if there be such an officer appointed), or by the President or any Vice-President and by the Treasurer or assistant treasurer or the Secretary or assistant secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 6.2 Lost Certificates.

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to indemnify the corporation in such manner as it shall require and/or to give the corporation a

surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.3 Transfers.

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a certificate or certificates for a like number of shares, properly endorsed.

Section 6.4 Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the date on which the meeting is held. A determination of stockholders of record entitled notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, when no prior action by the Board of Directors is required by the Delaware General Corporation Law, shall be the first date on which a signed written consent or electronic transmission setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded; provided that any such electronic transmission shall satisfy the requirements of Section 2.11(b) and, unless the Board of Directors otherwise provides by resolution, no such consent by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate

action in writing or by electronic transmission without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.5 Registered Stockholders.

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

Other Securities of the Corporation

All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board (if there be such an officer appointed), or the President or any Vice-President or such other person as may be authorized by the Board of Directors and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an assistant secretary, or the Treasurer or an assistant treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signature of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an assistant treasurer of the corporation, or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon has ceased to be an officer of the corporation or before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE VIII

Corporate Seal

The corporate seal shall consist of a die bearing the name of the corporation and the state of its incorporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE IX

Indemnification of Officers, Directors, Employees and Agents

Section 9.1 Right to Indemnification.

Each person who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a "Proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee, or agent (hereafter an "Agent"), shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended or interpreted (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability, and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid or to be paid in settlement, and any interest, assessments, or other charges imposed thereon, and any federal, state, local, or foreign taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article) reasonably incurred or suffered by such person in connection with investigating, defending, being a witness in, or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (hereinafter "Expenses"); *provided, however*, that except as to actions to enforce indemnification rights pursuant to Section 9.3 of this Article, the corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Article shall be a contract right.

Section 9.2 Authority to Advance Expenses.

Expenses incurred by an officer or director (acting in his capacity as such) in defending a Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding, provided, however, that if required by the Delaware General Corporation Law, as amended, such Expenses shall be advanced only upon delivery to the corporation of an

undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article or otherwise. Expenses incurred by other Agents of the corporation (or by the directors or officers not acting in their capacity as such, including service with respect to employee benefit plans) may be advanced upon such terms and conditions as the Board of Directors deems appropriate. Any obligation to reimburse the corporation for Expense advances shall be unsecured and no interest shall be charged thereon.

Section 9.3 Right of Claimant to Bring Suit.

If a claim under Section 9.1 or 9.2 of this Article is not paid in full by the corporation within 90 days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending a Proceeding in advance of its final disposition where the required undertaking has been tendered to the corporation) that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. The burden of proving such a defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 9.4 Provisions Nonexclusive.

The rights conferred on any person by this Article shall not be exclusive of any other rights that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. To the extent that any provision of the Certificate, agreement, or vote of the stockholders or disinterested directors is inconsistent with these bylaws, the provision, agreement, or vote shall take precedence.

Section 9.5 Authority to Insure.

The corporation may purchase and maintain insurance to protect itself and any Agent against any Expense, whether or not the corporation would have the power to indemnify the Agent against such Expense under applicable law or the provisions of this Article.

Section 9.6 Survival of Rights.

The rights provided by this Article shall continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 9.7 Settlement of Claims.

The corporation shall not be liable to indemnify any Agent under this Article (a) for any amounts paid in settlement of any action or claim effected without the corporation's written consent, which consent shall not be unreasonably withheld; or (b) for any judicial award if the corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 9.8 Effect of Amendment.

Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.

Section 9.9 Subrogation.

In the event of payment under this Article, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

Section 9.10 No Duplication of Payments.

The corporation shall not be liable under this Article to make any payment in connection with any claim made against the Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder.

ARTICLE X

Notices

Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, the same shall be given either (1) in writing, timely and duly deposited in the United States Mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent, or (2) by a means of electronic transmission that satisfies the requirements of Section 2.4(e) of these Bylaws, and has been consented to by the stockholder to whom the notice is given. Any notice required to be given to any director may be given by either of the methods hereinabove stated, except that such notice other than one which is delivered personally, shall be sent to such address or (in the case of electronic communication) such e-mail address, facsimile telephone number or other form of electronic address as such director shall have filed in writing or by electronic communication

with the Secretary of the corporation, or, in the absence of such filing, to the last known post office address of such director. If no address of a stockholder or director be known, such notice may be sent to the office of the corporation required to be maintained pursuant to Section 1.2 of Article I hereof. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by means of electronic transmission shall be deemed to have been given as at the sending time recorded by the electronic transmission equipment operator transmitting the same. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such a stockholder or such director to receive such notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation, or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE XI

Amendments

(a) These Bylaws may be repealed, altered or amended or new Bylaws adopted by written consent of stockholders in the manner authorized by Section 2.11 of Article II, or at any meeting of the stockholders, either annual or special, by the affirmative vote of a majority of the stock entitled to vote at such meeting, unless a larger vote is required by these Bylaws or the Certificate of Incorporation. The Board of Directors shall also have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaws setting forth the number of directors who shall constitute the whole Board of

Directors) by unanimous written consent or at any annual, regular, or special meeting by the affirmative vote of a majority of the whole number of directors, subject to the power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, or term of office of directors.

(b) Notwithstanding the foregoing, any amendment, change or repeal of Sections 2.9, 2.10 or 3.1 of these Bylaws or any other amendment to these Bylaws that will have the effect of permitting circumvention of or modifying Sections 2.9, 2.10 or 3.1, shall require the favorable vote, at a stockholders' meeting, of the holders of at least 66 2/3% of the then-outstanding shares of stock of the Corporation entitled to vote.

CERTIFICATE OF SECRETARY

The undersigned, Secretary of Dynavax Technologies Corporation, a Delaware corporation, hereby certifies that the foregoing is a full, true and correct copy of the Bylaws of said corporation, with all amendments to date of this Certificate.

WITNESS the signature of the undersigned this 17th day of August, 2005.

/s/ JOHN W. CAMPBELL

John W. Campbell, Secretary

Exhibit 31.1

Rule 13a-14(a) Certification of Chief Executive Officer

CERTIFICATIONS

I, Dino Dina, M.D., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and

   d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably like to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 11, 2005

By: /s/ DINO DINA, M.D.
Dino Dina, M.D.
President, Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 31.2

Rule 13a-14(a) Certification of Chief Financial Officer

CERTIFICATIONS

I, Deborah A. Smeltzer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and

   d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably like to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 11, 2005

By: /s/ DEBORAH A. SMELTZER
Deborah A. Smeltzer
Vice President, Operations and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

Certification Pursuant to Section 1350 of Chapter 63
of Title 18 of the United States Code

I, Dino Dina, M.D., hereby certify, pursuant to 18 U.S.C § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, in my capacity as an officer of Dynavax Technologies Corporation (the "Company"), that, to the best of my knowledge:

(i) The Quarterly Report of the Company on Form 10-Q for the period ended September 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and

(ii) The information contained in the Report fairly represents, in all material respects, the financial condition and results of operations of the Company.

Date: November 11, 2005

By: /s/ DINO DINA, M.D.
Dino Dina, M.D.
President, Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 32.2

Certification Pursuant to Section 1350 of Chapter 63
of Title 18 of the United States Code

I, Deborah A. Smeltzer, hereby certify, pursuant to 18 U.S.C § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, in my capacity as an officer of Dynavax Technologies Corporation (the "Company"), that, to the best of my knowledge:

(iii) The Quarterly Report of the Company on Form 10-Q for the period ended September 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and

(iv) The information contained in the Report fairly represents, in all material respects, the financial condition and results of operations of the Company.

Date: November 11, 2005

By: /s/ DEBORAH A. SMELTZER
Deborah A. Smeltzer
Vice President, Operations and Chief Financial Officer
(Principal Financial Officer)