

NUVIM INC  
Form 424B1  
June 21, 2005

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Registration No. 333-120938

**PROSPECTUS**

**2,700,000 Units**

**Each unit consisting of one share of common stock,  
one Class A warrant and one Class B warrant**

This is a firm commitment initial public offering of units by NuVim, Inc. Each unit consists of (i) one share of common stock; (ii) one Class A redeemable public warrant to purchase one share of common stock; and (iii) one Class B public non-redeemable warrant to purchase one share of common stock. The terms of the warrants are described under the heading, Description of Securities. The initial public offering price of our units is \$1.00 per unit. Prior to this offering, there has been no public market for our securities. The units, the common stock, the Class A public warrants and the Class B public warrants will be quoted on the OTC Bulletin Board® ( OTCBB ) under the symbols NUVMU, NUVM, NUVMW and NUVMZ, respectively.

The common stock, Class A public warrants and Class B public warrants will trade only as units for 30 days following this offering, after which the common stock, the Class A public warrants and the Class B public warrants will trade separately.

**THE COMPANY IS CONSIDERED TO BE IN UNSOUND FINANCIAL CONDITION. PERSONS SHOULD NOT INVEST UNLESS THEY CAN AFFORD TO LOSE THEIR ENTIRE INVESTMENT. INVESTING IN OUR SECURITIES INVOLVES SIGNIFICANT RISKS. SEE RISK FACTORS BEGINNING ON PAGE 7.**

	<u>Per Unit</u>	<u>Total</u>
Initial public offering price	\$ 1.00	\$ 2,700,000
Underwriting discount	\$ 0.09	\$ 243,000
Proceeds, before expenses, to NuVim	\$ 0.91	\$ 2,457,000

**THE SECURITIES AND EXCHANGE COMMISSION AND STATE SECURITIES REGULATORS HAVE NOT APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. IT IS ILLEGAL FOR ANY PERSON TO TELL YOU OTHERWISE.**

We have agreed to pay a non-accountable expense allowance payable to the representative equal to 3% of the gross offering proceeds from the sale of the units offered hereby. We have also agreed to issue a warrant to the representative, entitling it to purchase 270,000 units identical to the units offered to the public, at a per unit price of \$1.20. Other terms of the representative's warrant are described under the heading Underwriting.

The underwriters may purchase up to an additional 405,000 units from us at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus, to cover over-allotments.

Contemporaneously with this offering, we have registered 654,911 shares of common stock for resale by certain selling stockholders, all of whom have agreed not to sell their shares for six months from the date of this prospectus. The selling stockholders shares will be offered pursuant to a separate prospectus.

**Paulson Investment Company, Inc.**

*The date of this Prospectus is June 20, 2005.*

## TABLE OF CONTENTS

	<u>Page</u>
<u>Prospectus Summary</u>	3
<u>Risk Factors</u>	7
<u>Forward-Looking Statements</u>	13
<u>Use of Proceeds</u>	14
<u>Dividend Policy</u>	14
<u>Capitalization</u>	14
<u>Dilution</u>	16
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	18
<u>Business</u>	29
<u>Management</u>	37
<u>Related Party Transactions</u>	44
<u>Principal Stockholders</u>	49
<u>Description of Securities</u>	52
<u>Shares Eligible for Future Sale</u>	56
<u>Underwriting</u>	58
<u>Legal Matters</u>	61
<u>Experts</u>	61
<u>Where You Can Find More Information</u>	61
<u>Index to Financial Statements</u>	F-1

**Until September 18, 2005 (90 days after the commencement of this offering), all dealers that buy, sell or trade our units, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.**

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. Information contained on our website does not constitute a part of this prospectus. The information in this prospectus may only be accurate as of the date appearing on the cover page of this prospectus, regardless of the time this prospectus is delivered or our units are sold.

We are not, and the underwriters are not, making an offer to sell the units in any jurisdiction where the offer or sale is not permitted. No action is being taken in any jurisdiction outside the United States to permit a public offering of our securities or the possession or distribution of this prospectus in any such jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside of the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus applicable in that jurisdiction.

NuVim, LactoActin and LactoMune are trademarks used by NuVim, Inc. under a license from Stolle Milk Biologics, Inc., the trademarks owner. The trademark Fruit Symphony is owned by NuVim, Inc. All other brand names or trademarks appearing in this prospectus are the property of their respective owners.

*Notice to California investors:* Each purchaser of units in California must meet one of the following suitability standards: (1) annual gross income of at least \$200,000; (2) net worth of at least \$1,000,000 (inclusive of home, home furnishings and automobiles); (3) liquid net worth of at least \$500,000 (exclusive of home, home furnishings and automobiles); or (4) liquid net worth (exclusive of home, home furnishings and automobiles) of at least \$250,000 plus annual gross income of at least \$65,000. This offering was approved in California on the basis of a limited offering qualification where offers/sales can only be made to investors who meet one or more of the foregoing suitability standards. The company did not have to demonstrate compliance with some or all of the merit regulations of the Department of Corporations as found in Title 10, California Code of Regulations, Rule 260.140 et seq. Furthermore, the exemptions for secondary trading available under California Corporations Code Section 25104(h) will be withheld, but there may be other exemptions available to cover private sales.

*Notice to New Jersey investors:* Offers and sales in this offering in New Jersey may only be made to accredited investors as defined in Rule 501(a) of Regulation D under the Securities Act of 1933. Under Rule 501(a), to be an accredited investor an individual must have: (1) net worth or joint net worth with the individual's spouse of more than \$1,000,000; or (2) income of more than \$200,000 in each of the two most recent years or joint income with the individual's spouse of more than \$300,000 in each of those years and a reasonable expectation of reaching the same income level in the current year. Other standards apply to investors who are not individuals. There will be no secondary sales of the securities to persons who are not accredited investors for 90 days after the date of this offering in New Jersey by the underwriter and selected dealers.



## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus. It does not contain all of the information you should consider before purchasing our units. Therefore, you should read the prospectus in its entirety, including the risk factors and the financial statements and related notes appearing elsewhere in this prospectus. References to we, us, our and NuVim or the company generally refer to NuVim, Inc., and where the context dictates, to our majority-owned subsidiary, NuVim Powder LLC.*

### Our Company

We market and distribute NuVim dietary supplement beverages, which contain two proprietary micronutrients derived from cow's milk, known as LactoActin and LactoMune. These two micronutrients, in their patented formulation, have been shown in independent clinical studies to help strengthen the immune system, support muscle flexibility and promote sturdy joints when consumed over time in certain minimum quantities. NuVim dietary supplement beverages are non-dairy, virtually lactose-free and fortified with vitamins and minerals. By incorporating these micronutrients into our nutritional beverages, we believe that we are able to provide consumers with a good-tasting beverage choice that provides benefits unlike any other on the market. Except for Asia, Australia and New Zealand, we have an exclusive worldwide license agreement with Stolle Milk Biologics, Inc. ( SMBI ) to use these proprietary micronutrients in carbonated and non-carbonated beverages (and in powders based on such beverages designed for reconstitution), excluding certain milk, yogurt and nutritional meal replacement products.

Our goal is to become a leading provider of good-tasting, dietary supplement beverages and beverage products. Our product line currently consists of three flavors of refrigerated fruit-flavored nutritional beverages, including Orange Tangerine, Fruit Symphony and Strawberry Vanilla. Our products are primarily sold in 64-ounce cartons, typically in the juice section of supermarkets. Sixteen-ounce bottles of NuVim are typically sold in small supermarkets and delicatessens and in a limited number of chain supermarkets in the New York metropolitan area. Our plans contemplate expanding our customer base to include, for example, club stores, convenience stores, nutrition centers, health food outlets and other retail establishments that carry, or would like to broaden their offerings to carry, nutritional foods and beverages.

In the future we plan to introduce three new flavors of the 64-ounce size beverage – chocolate, vanilla and peach – at least one of which we expect to test in the next 12 months. Within this same time frame, we expect to conduct a limited test of a line of shelf-stable (non-refrigerated) sports drinks and, through our majority-owned subsidiary, NuVim Powder LLC, chocolate, vanilla and strawberry flavors of a powder version of our nutritional beverage. Both the sports drink and the powder drink mix product will deliver the same health benefits as our existing refrigerated beverages.

We first introduced NuVim refrigerated dietary supplement beverages in the New York, New Jersey and Connecticut metropolitan area during the second quarter of 2000. Our products are currently available in approximately 2,800 retail outlets located in 13 states and the District of Columbia. We believe there are two broad categories of NuVim consumers: (i) those who are seeking products that will provide the specific benefits of immune system enhancement, improved flexibility and sturdier joints to help to enhance long term quality of life; and (ii) those who seek products that provide other benefits that NuVim products deliver, such as a beverage that is lactose-free, fat free and caffeine free, as well as being fortified with Vitamins A, C, B12 and Zinc. Business Communications Company, Inc. estimates that the functional beverage market, a market segment that includes our products, will grow from approximately \$8.7 billion in 2002 to approximately \$11.5 billion by 2007. We therefore believe there is a large and growing market opportunity to introduce consumers to our beverage products, despite formidable competition by large multi-national corporations. In July 2004, we launched a nationally televised advertising campaign, featuring Dick Clark, our media spokesperson, to begin building greater brand awareness of our products and their health benefits. The national television advertising campaign was put on temporary hiatus in January 2005, due to lack of funding, but will be restarted in the future if sufficient funds are available. Mr. Clark also is our partner in NuVim Powder LLC.

We have a sole source supply agreement with SMBI for our requirements of the whey protein concentrate ( WPC ) that contains the patented micronutrients required to produce the health benefits of our products. The whey protein concentrate is produced through a proprietary immunization process on dairy cows in New Zealand and is imported in dry powder form into the United States by SMBI. Our products are currently manufactured at a dairy co-packer in Reading, Pennsylvania. Finished products are warehoused in Orefield, Pennsylvania and shipped to our customers by a third party transportation company. As we expand our business into new geographic areas and introduce new products, we expect also to expand our co-packing, warehousing and transportation relationships, which we anticipate will reduce certain expenses we currently must incur, particularly transportation costs. We believe there are sufficient qualified dairies and warehouses available for our purposes.

Prior to this offering, we have funded our operations principally through equity financings and borrowings from our stockholders and our executive officers. Spencer Trask Specialty Group LLC and certain of its affiliated entities (collectively, Spencer Trask ), have played a significant role in providing us with capital, having loaned us over \$2.4 million. They also participated in our Series A financing round and have acted as our placement agent. Spencer Trask also is the controlling stockholder of SMBI, which was one of our founders and the owner of the proprietary rights and the sole supplier of the micronutrients we incorporate into our products. Donald F. Farley, the chief executive officer



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of Spencer Trask Specialty Group LLC and Chairman of SMBI, has been on our board of directors since inception. Concurrently with the closing, Spencer Trask has agreed to extinguish all of the outstanding principal and accrued interest on the indebtedness owed to it (approximately \$3.4 million), plus to repay our bank line (approximately \$2.7 million), which they have guaranteed, and to cancel all of their outstanding warrants that they have been issued. In turn, we have agreed to issue them 461,700 shares of our common stock. As a result, they will own approximately 10.1% of our company after the offering. Aggregating their shares with SMBI's, they will control approximately 12.5% of our stock after the offering.

We were incorporated in Delaware in September 1999. Our principal place of business is 12 Route 17 North, Suite 210, Paramus, New Jersey 07652. Our telephone number is (201) 556-1010. Our web address is [www.nuvim.com](http://www.nuvim.com). Information contained in or accessible through our website is not part of this prospectus.

### The Offering

#### Securities offered

2,700,000 units. Each unit consists of (i) one share of common stock; (ii) one Class A redeemable public warrant to purchase one share of common stock; and (iii) one Class B non-redeemable public warrant to purchase one share of common stock.

The common stock and Class A and Class B public warrants will trade only as a unit for 30 days following this offering, after which the common stock, the Class A public warrant and the Class B public warrant will each trade separately.

#### Class A public warrants

The Class A public warrants included in the units will be exercisable commencing 30 days after the effectiveness of this offering. The exercise price of a Class A public warrant is \$1.50. The Class A public warrants expire on the fifth anniversary of the effective date of this offering.

We have the right to redeem the Class A public warrants issued in this offering at a redemption price of \$0.25 per warrant under the following circumstances. The redemption right arises if the last reported sale price of our common stock equals or exceeds \$2.00 for five consecutive trading days ending prior to the date of the notice of redemption. We are required to provide 30 days' prior written notice to the Class A public warrant holders of our intention to redeem the warrants.

#### Class B public warrants

The Class B public warrants included in the units will be exercisable commencing 30 days after the effectiveness of this offering. The exercise price of a Class B public warrant is \$2.00. The Class B public warrants expire on the fifth anniversary of the effective date of this offering.

We do not have the right to redeem the Class B public warrants.

#### Common stock outstanding after this offering

4,630,297 shares

#### Use of proceeds

We intend to use the net proceeds from this offering for expanding our sales and marketing efforts, repaying certain outstanding indebtedness, funding our operating losses and general corporate and working capital purposes.

#### OTCBB Symbols

Units	NUVMU
Common stock	NUVM
Class A public warrants	NUVMW
Class B public warrants	NUVMZ

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The number of shares of common stock outstanding after this offering is based on 1,930,297 shares of common stock outstanding immediately prior to this offering. This number includes:

the automatic conversion of 4,875,850 shares of Series A preferred stock and 3,623,000 shares of Series C preferred stock into an aggregate of 154,613 shares of common stock, effective upon the closing of this offering (the preferred stock conversion);

the automatic conversion of a convertible promissory note that is convertible into that number of unregistered units calculated by dividing \$245,000 by the initial public offering price (the Clark note conversion); based on the initial public offering price of \$1.00, the conversion will result in the issuance of 245,000 units (including 245,000 shares of common stock) effective upon the closing of this offering;

the conversion of approximately \$6.1 million of outstanding indebtedness into an aggregate of 461,700 shares of common stock effective upon the closing of this offering (the Spencer Trask debt extinguishment transaction);

the conversion of (i) accrued salaries through March 31, 2005 in the amount of \$514,584 owed to our executive officers into 171,529 shares of common stock; (ii) \$261,096 of principal and accrued interest on notes payable through March 31, 2005 into 87,034 shares of common stock; (iii) \$500,000 of principal on the bridge loan into 250,000 shares of common stock; (iv) \$63,000 of advances from our chief executive officer through March 31, 2005 to fund manufacturing costs into 21,000 shares of common stock; and (v) accounts payable of \$109,000 into 36,334 shares of common stock, plus an additional 5,999 shares to complete the issuance of shares owed to three vendors resulting from the November 2004 settlement of accounts payable, which conversions will all occur concurrently with the closing of this offering; and

the conversion of (i) accrued salaries for April and May 2005 in the amount of \$79,167 owed to our executive officers into 79,167 shares of common stock; (ii) \$5,544 of accrued interest on notes payable for April and May 2005 into 1,848 shares of common stock; and (iii) \$6,000 of advances from our chief executive officer made in April and May 2005 to fund manufacturing costs into 2,000 shares of common stock, which conversions total 83,015 shares and which will all occur concurrently with the closing of this offering. Certain pro forma information in this prospectus is presented as of March 31, 2005 and therefore does not include these 83,015 shares.

The conversions referred to in the fourth and fifth bullets above are sometimes collectively referred to as the concurrent debt extinguishment issuances).

All of the above transactions are sometimes collectively referred to as the restructuring events. See Related Party Transactions for a description of the Clark note conversion, the bridge loan, the salary conversions and the Spencer Trask debt extinguishment transaction.

Unless the context indicates otherwise, all share and per-share common stock information in this prospectus:

reflects a 1-for-55 reverse stock split of our common stock effective on November 30, 2004;

assumes no exercise of the Class A public warrants or the Class B public warrants;

assumes no exercise of the underwriters' over-allotment option;

assumes no exercise of the representative's warrants; and

excludes the issuance of (i) up to 670,979 shares of common stock, which is an estimate of the number of shares issuable upon exercise of outstanding warrants; (ii) up to 15,316 shares issuable upon exercise of options granted under our option plans, at a weighted exercise price of \$19.38; and (iii) up to 1,700,000 shares issuable upon exercise of options that may be granted under our 2005 Incentive Stock Option Plan and 2005 Directors Stock Option Plan, of which 982,500 options to our executive officers and 133,500 options to our directors that are expected to be granted on the effective date of the plans.

Because the units offered hereby consist of one share of common stock, one Class A public warrant and one Class B public warrant, whenever there is a reference in this prospectus to the per share price of the unit sold in this offering, the price refers to \$1.00, which is the price of one share of common stock contained in the unit, with no value allocated to the warrants.

### Summary Financial Information

In the table below, we provide you with historical summary financial information for each of the two years ended December 31, 2003 and 2004, derived from our audited financial statements included elsewhere in this prospectus. We also provide below financial information for the three months ended March 31, 2004 and 2005, derived from our unaudited financial statements included elsewhere in this prospectus. These unaudited results include, in the opinion of management, all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of such information. When you read this historical summary financial information, you should also consider the historical financial statements and related notes and the section entitled Management's Discussion and Analysis of Financial Condition and Results of Operations. Historical results are not necessarily indicative of the results that may be expected for any future period. The pro forma balance sheet data presented below reflect the effect of the following restructuring events that will occur concurrently with the closing of this offering: (i) the preferred stock conversion; (ii) the Clark note conversion; (iii) the Spencer Trask debt extinguishment transaction; and (iv) the concurrent debt extinguishment issuances. The pro forma as adjusted balance sheet presented below reflects the effect of (i) the restructuring events mentioned above, plus (ii) the sale by us of 2,700,000 units in this offering at an assumed public offering price of \$1.00 per unit (less the underwriting discount and estimated offering expenses payable by us).

	Years Ended December 31,		Three Months Ended March 31,	
	2003	2004	2004	2005
<b>Selected Statement of Operations Data:</b>				
Gross Sales	\$ 2,335,676	\$ 1,411,355	\$ 421,555	\$ 375,719
Net Sales	1,710,929	958,785	317,904	208,876
Gross Profit	226,866	221,143	96,828	1,041
Loss From Operations	(1,740,929)	(1,871,755)	(255,642)	(535,650)
Net Loss	(2,239,440)	(2,131,581)	(396,646)	(714,452)
Basic and Diluted Loss Per Share	\$ (15.25)	\$ (10.26)	\$ (2.56)	\$ (1.73)
Weighted Average Number of Common Shares Outstanding Basic and Diluted	146,866	207,740	155,073	414,073
<b>March 31, 2005</b>				
			<b>Actual</b>	<b>Pro Forma</b>
				<b>As Adjusted</b>
<b>Selected Balance Sheet Data:</b>				
Working Capital (Deficit)		\$ (10,865,583)	\$ (2,513,983)	\$ (992,863)
Cash and Cash Equivalents				1,408,958
Total Assets		858,264	858,264	1,612,342
Total Liabilities		11,043,646	3,372,246	2,605,204
Total Stockholders' Deficit		(10,185,382)	(2,513,982)	(992,862)

#### Selling Stockholder Offering

Concurrently with this offering, we have registered a total of 654,911 shares of common stock for resale by certain selling stockholders. These shares are being issued to 14 creditors, most of whom are officers, directors and principal stockholders, each of whom has agreed to accept shares of common stock to extinguish certain amounts owed to them, rather than being paid cash out of the net proceeds of this offering. Each selling stockholder has agreed to not sell any of the shares registered for resale for six months from the date of this prospectus. The sales will be made pursuant to a separate prospectus unless later sold pursuant to Rule 144 or another applicable exemption from registration.



## RISK FACTORS

*An investment in our securities involves a high degree of risk and many uncertainties. You should carefully consider the specific factors listed below, together with the cautionary statement that follows this section and the other information included in this prospectus, before purchasing our units in this offering. If one or more the possibilities described as risks below actually occur, our operating results and financial condition would likely suffer, and the trading price of our securities could fall, causing you to lose some or all of your investment in the securities we are offering. The following is a description of what we consider our key challenges and material risks.*

### Risks Related to Our Business

#### **We will need to raise additional capital.**

We are currently operating at a loss and expect our expenses to continue to increase as we expand our product line as well as our geographic presence throughout the United States. To date, we have relied primarily on financing transactions to fund operations. We expect to net approximately \$1,753,705 from this offering, which, together with revenues from product sales, we believe will be sufficient to fund our operations for only the next nine to twelve months, and our projections could be wrong. We could face unforeseen costs such as an increase in transportation costs resulting from the recent significant increases in the cost of fuel; or our revenues could fall short of our projections because retail outlets discontinue ordering our products or for reasons unrelated to our products, such as a revenue decline due to changes in consumer habits and preferences or we may achieve lower margins than planned on our products due to cost increases or competitive pricing pressure. We will need another infusion of capital within a year from this offering in order to continue in business. However, we do not have any currently identified sources of additional capital. New sources of capital may not be available to us when we need it or may be available only on terms we would find unacceptable. If such capital is not available on satisfactory terms, or is not available at all, we will be unable to continue to fully develop our business, and our operations and financial condition will be materially and adversely affected. Such a lack of additional funding could force us to cease operations altogether. Debt financing, if obtained, could increase our expenses and would be required to be repaid regardless of operating results. Equity financing, if obtained, could result in additional dilution to our existing stockholders. Therefore, any additional capital we raise could have a negative impact on us and our stockholders by increasing dilution and/or indebtedness.

#### **Our auditors have substantial doubt about our ability to continue as a going concern.**

In their report in connection with our 2004 financial statements, our auditors included an explanatory paragraph stating that, because we have incurred net losses and have a net capital deficiency for the years ended December 31, 2003 and 2004, and, as of May 31, 2005, we are in default on approximately \$8.1 million of notes payable and stockholder loans and accrued interest, there is substantial doubt about our ability to continue as a going concern. Our continued existence will depend in large part upon our ability to successfully secure additional financing to fund future operations. This offering will not be sufficient to completely alleviate these concerns. Even after this offering, if we are not able to achieve positive cash flow from operations or to secure additional financing as needed, we may again experience the risk that we will not be able to continue as a going concern.

#### **We are in default on over \$8.1 million of indebtedness and are not raising a sufficient capital from this offering to ensure that we will have adequate resources to pay our debts in the future.**

We have not had sufficient capital to operate our business for approximately three years, and as a result, we are in default on approximately \$8.1 million of indebtedness. Although we have secured agreements that will cure these current defaults, primarily through the issuance of stock and, to a lesser extent, making payments from the net proceeds of this offering or arranging extended payment terms in the future, following this offering, we will still owe approximately \$950,000 in past due indebtedness and will not be able to pay those obligations out of the net proceeds from this offering. We will also have approximately \$1.2 million of past due payables with vendors, including \$200,000 owed to SMBI, which is due on January 16, 2006. In addition, we are not raising sufficient capital from this offering to ensure that we will have enough funds to operate our business after approximately nine to twelve months from the date of this offering. Therefore, we cannot be certain that we will not once again need to borrow money, nor can we be sure that if we do borrow money, that we will be able to repay it on time, if at all.

**Our limited operating history makes evaluation of our business difficult.**

We have a limited operating history and have encountered, and expect to continue to encounter, many of the difficulties and uncertainties often faced by early stage companies. We commenced our business operations in 1999 and began marketing our initial products in 2000 on a limited basis. Accordingly, we have only a limited operating history with which you can evaluate our business and prospects. An investor in our units must consider our business and prospects in light of the risks, uncertainties and difficulties frequently encountered by early stage companies, including limited capital, delays in product development, possible marketing and sales obstacles and delays, inability to gain customer acceptance or to achieve significant distribution of our products to customers and significant competition. We cannot be certain that we will successfully address these risks. If we are unable to address these risks, our business may not grow, our stock price may suffer and/or we may be unable to stay in business.

**We have a history of losses and we expect to continue to operate at a loss for the foreseeable future.**

Since our inception in 1999, we have incurred net losses in every year, including net losses of \$2,239,440 for the year ended December 31, 2003, \$2,131,581 for the year ended December 31, 2004 and \$714,452 for the three months ended March 31, 2005. We had a working capital deficit of \$10,865,583 at March 31, 2005 and have negative cash flows from operations. As a result of ongoing operating losses, we also had an accumulated deficit of \$18,562,611 and a stockholders' deficit of \$10,185,382 at the same date. After this offering, we will have a stockholders' deficit of \$992,862. We expect to incur losses until at least 2007 and may never become profitable. We also expect that our expenses will increase substantially for the foreseeable future as we seek to expand our product line and sales and distribution network, implement internal systems and infrastructure and comply with the legal, accounting and corporate governance requirements imposed upon public companies. These ongoing financial losses may adversely affect our stock price.

**Our success substantially depends on maintaining our relationships with SMBI.**

SMBI is the holder of certain patents and trademarks that cover the micronutrients that we use in our products and is our only supplier of those micronutrients. We have a license agreement and a supply agreement with SMBI, both of which are critical to our business and expire in 2014. Under the SMBI license agreement, we have the right to use SMBI's intellectual property for the production and distribution of carbonated and noncarbonated beverages incorporating the micronutrients that provide the health benefits of our products. SMBI also supplies the key ingredient in our products under the terms of the supply agreement. These agreements contain cross-termination provisions, and therefore, we risk losing both our rights to the licensed use of the micronutrients and other SMBI intellectual property needed for our business, as well as our sole source of supply, if either agreement is terminated in accordance with its terms. Furthermore, any exclusive rights we enjoy under the license and supply agreements may be jeopardized if we fail to satisfy certain minimum purchase requirements described in more detail later in this prospectus under Related Party Transactions. In addition, SMBI and its affiliate, Spencer Trask Specialty Group, LLC (Spencer Trask), are founders and significant stockholders of our company and, as such, SMBI has provided us with favorable terms under the supply contract. However, due to our relationship with Spencer Trask, there is a potential for conflicts of interest between SMBI and us. If we are unable to obtain the whey protein concentrate from SMBI for any reason, our manufacturing and distribution processes could be severely disrupted, and our operations could be adversely affected. We are aware of only one other source that might be able to provide an immune enhancement whey protein but it does not contain LactoActin and LactoMune, which are proprietary to SMBI, and we are not certain of its effectiveness. Moreover, it is our understanding that this ingredient would not provide the muscle flexibility health benefit that we achieve by using the SMBI whey protein concentrate. In addition, even if we are able to find acceptable alternative sources of supply, the new terms would likely be less favorable than those that we receive from SMBI. Accordingly, it is critical that we continue to meet all of our material obligations under both the license agreement and the supply agreement. In the past, we have not always been able to do so because of a lack of financial resources, and we owe SMBI a total of \$450,000 under these agreements, of which \$250,000 will be paid out of the net proceeds of the offering. The remaining \$200,000 is due in January 2006. If we do not make that payment on time, the NuVim trademark will revert to SMBI, and we will be in default under our license and supply agreements.

**Our business depends on the acceptance of our products in both existing and new marketing areas.**

We intend to use a portion of the net proceeds from this offering to expand into new geographic areas and broaden our product offerings. Our refrigerated beverage products are currently available in the northeastern United States and, recently, portions of the south, but our beverage products have not yet been widely distributed. We do not know whether the level of market acceptance we have received in the northeastern United States for our initial products will be matched or exceeded in the geographic locations we are newly serving, or in other areas of the country as we expand our distribution in the future.

As we expand our product line to include additional flavors of the refrigerated beverage, as well as the shelf-stable sports drink and the powder mix, we will face the additional uncertainty of whether these new products will gain market acceptance in any market. We can give no assurance that we will expand into new geographic areas or successfully expand our product line. It is unlikely that we will achieve profitability and otherwise have a successful business unless we are able to gain market acceptance of our existing and future products over a wide geographic area.

**Consumers who try our products may not experience the health benefits we claim, which may cause them to discontinue using our products.**

There have been approximately 20 independent clinical studies that have demonstrated the health benefits of the micronutrient components of our products. However, there has been only one, small-scale study of the effects of NuVim beverages directly. That study required the subjects to consume 12 ounces of NuVim daily for six weeks. While the study did validate the positive health claims we believe our products provide, it did not consider whether a smaller quantity of the beverage or a shorter period of continued usage might provide similar benefits. Therefore, we currently cannot confirm that the health benefits of our products will be evident to casual consumers of our products. Consumers may determine that drinking 12 ounces of NuVim per day for a minimum of six weeks requires more discipline and expense than they are willing to devote. If consumers do not use our product in the quantity or for the duration we recommend, they may not achieve the health benefits we claim, which may cause them to make alternative nutritional beverage and/or dietary supplement purchasing decisions.

**Our business may suffer from lack of diversification.**

Our business is centered on nutritional beverages. The risks associated with focusing on a limited product line are substantial. If consumers do not accept our products or if there is a general decline in market demand for, or any significant decrease in, the consumption of nutritional beverages, we are not financially or operationally capable of introducing alternative products within a short time frame. As a result, such lack of acceptance or market demand decline could cause us to cease operations.

**Expansion of our business is dependent on our ability to expand production.**

We currently manufacture our entire product line at Clover Farms Dairy in Reading, Pennsylvania. Our ability to expand beyond our current marketing areas depends on, among other things, the ability to produce our product in commercial quantities sufficient to satisfy the increased demand. Although our present production capacity is sufficient to meet our current and short-term future production needs, production capacity may not be adequate to supply future needs. If additional production capacity becomes needed, it will be necessary to engage additional co-packers or to expand production capacity at our present co-packer facility. If we expand production at Clover Farms Dairy, we risk having to pay significantly greater transportation costs to transport our products to warehouses in other regions of the United States. Any new co-packing arrangement raises the additional risk of higher marginal costs than we currently enjoy since we would be required to negotiate new terms with any new co-packer. We may not be able to pass along these higher costs to our customers. If we are unable to pass along the higher production costs imposed by new co-packers to our customers, we either will suffer lower gross margins and lower profitability, once achieved, or we may be unable to expand our business as we have planned, which could disappoint our stockholders.

**Our business contains risks due to the perishable nature of our product.**

Our current refrigerated product is a perishable beverage that has a limited shelf-life of approximately 83 days. This restricted shelf life means that we do not have any significant finished goods inventory and our operating results are highly dependent on our ability to accurately forecast near term sales in order to adjust our raw materials sourcing and production needs. When we do not accurately forecast product demand, we are either unable to meet higher than anticipated demand or we produce excess inventory that cannot be profitably sold. Additionally, our customers have the right to return products that are not sold by their expiration date. Therefore, inaccurate forecasts that either mean that we are unable meet higher than anticipated demand or that result in excess production, or significant amounts of product returns on any of our products that are not sold by the expiration date could cause customer dissatisfaction, unnecessary expense and a possible decline in profitability.

**Government regulation may adversely affect our business.**

Our business is subject to government regulation, principally the United States Food and Drug Administration (the FDA), which regulates the processing, formulation, packaging, labeling and advertising of dietary products, and to a lesser

extent, state governments, where state attorneys general have authority to enforce their state consumer protection acts. Specifically, we are subject to the Dietary Supplement and Health Education Act ( DSHEA ). Under DSHEA, dietary supplements are permitted to make statements of nutritional support with notice to the FDA, but without FDA pre-approval. The FDA does not allow claims that a dietary product may mitigate, treat, cure or prevent disease. There can be no assurance that at some future time the FDA will not determine that the statement of nutritional support we make on our packaging is a prohibited claim rather than an acceptable nutritional support statement. Such a determination by the FDA would require deletion of the treatment, cure or prevention of disease claim, or, if it is to be used at all, submission by our company and the approval by the FDA of a new drug application, which would entail costly and time-consuming clinical studies, or revision to a health claim, which would require demonstration of substantiated scientific evidence to support such claim and would also consume considerable management time and financial resources.

Our advertising of dietary supplement products is also subject to regulation by the Federal Trade Commission (the FTC ) under the Federal Trade Commission Act, which prohibits unfair or deceptive trade practices, including false or misleading advertising. The FTC in recent years has brought a number of actions challenging claims made by companies that suggest that their products are dietary supplements. No assurance can be given that actions will not be brought against us by the FTC or any other party challenging the validity of our product advertising claims.

**Our business may be subject to product liability claims relating to consumer use of our products.**

As a marketer of beverages that are ingested by consumers, we face an inherent risk of exposure to product liability claims if the use of our products results in injury or our labeling contains inadequate warnings concerning potential side effects. With respect to product liability claims, we have obtained a \$2.0 million liability insurance policy (\$2.0 million per occurrence), which we believe is adequate for our kind of business activity. The policy contains certain exclusions that would pertain to food products such as the additional products exclusion for bodily injury or property damage arising out of the manufacture, handling, distribution, sale, application or use of certain specified products (e.g., silicone, latex, and dexfenfluramine, among others), the intended injury and the willful and intentional acts exclusions. There can be no assurance that such insurance will continue to be available at a reasonable cost, or, if available, that it will be adequate to cover potential liabilities. If we are found liable for product liability claims that exceed our coverage or are subject to a policy exclusion, such liability could require us to pay financial losses for which we have not budgeted and may not have adequate resources to cover. If the uninsured losses were significantly large enough to impact our ability to continue our then-existing level of operations, we might experience a decline in net income and earnings per share, and our stock price might suffer. In an effort to limit any liability, we generally obtain contractual indemnification from parties supplying raw materials or marketing our products. Such indemnification is limited, however, by the terms of each related contract and, as a practical matter, by the creditworthiness of the indemnifying party.

Despite the insurance coverage that we plan on maintaining, it is possible that we may be sued if one or more consumers believe our products have caused them harm. While no such claims have been made to date, the results of any such suit could result in significant financial damages to us, as well as serious damage to the reputation and public perception of our company, even if we are ultimately found not to be at fault.

**Risks Related to Investment in Our Securities**

**There is no present public trading market for our securities, and an active market may not develop or, if developed, be sustained. If a public trading market does not develop, our security holders may not be able to sell any of their securities.**

There is presently no public trading market for our units, common stock, Class A public warrants or Class B public warrants, and following this offering, our securities will trade on the OTCBB, which is generally considered to be a less efficient market than an exchange or Nasdaq and is typified by thinly-traded market activity. We can provide no assurance that an active market will develop or be sustained for any of these securities. If an active public trading market for our securities does not develop or is not sustained, it may be difficult or impossible for purchasers in this offering to resell their securities at any price. Even if an active public market does develop, the market price could decline below the amount our public investors paid for their units, or the assumed allocated price of the components of the units.

**We will have broad discretion in using the proceeds from this offering.**

Although we have identified generally in this prospectus how we expect to use the proceeds from this offering, we will have broad discretion in determining the specific uses of the proceeds. As a result, our stockholders will not have the opportunity to evaluate the economic, financial or other information on which we base our decisions on how to use the proceeds.

**A portion of the net proceeds from this offering will be used to repay past indebtedness and therefore will not be available for growing the business.**

We expect to receive approximately \$1,753,705 in net proceeds from this offering. Of that amount, we have allocated approximately \$564,000, or approximately 32.2% of the net proceeds, to pay past due indebtedness for outstanding loans, advances and accounts payable. As a result, these funds will not be available to build our business.

**We are in default on a substantial amount of indebtedness and have accrued significant other payables.**

As of May 31, 2005, we are in default on approximately \$8.1 million of outstanding indebtedness, including accrued interest. This includes approximately \$3.4 million owed to Spencer Trask, approximately \$2.7 million owed to Bank of Wachovia on our line of credit and approximately \$2.0 million in subordinated convertible notes payable owed to certain of our executive officers, directors and stockholders. After this offering, we will no longer be in technical default on these obligations, either because of agreements with our creditors to issue shares of common stock in payment of the indebtedness or because we have paid or renegotiated extended payment terms. We will have approximately \$950,000 in renegotiated indebtedness following this offering. Accordingly, even with the net proceeds from this offering, we will still have substantial debts and limited working capital, and we do not expect to have the resources to repay this indebtedness without additional financing. Additionally, we have past due accrued expenses and accounts payable of approximately \$2.3 million at May 31, 2005. We expect to have approximately \$1.2 million of past due payables remaining after payments and issuances of common stock made in connection with this offering, of which \$200,000 is due to SMBI on January 16, 2006.

**Certain of our directors, executive officers and investors will personally benefit from this offering through the registration of their shares of common stock.**

We are not raising a sufficient amount of capital from this offering to repay most of the past due obligations we owe to certain of our executive officers, directors, lenders and other creditors. We will be issuing a total of 654,911 shares of common stock, concurrently with the closing of this offering, to officers, directors, our bridge lenders and other creditors who have loaned us money or provided services in the past, all of whom have agreed to accept our stock to repay past due obligations owed to them at prices at least equal to the initial public offering price and, in most cases, at least 100% greater than the IPO price. We have registered those shares for resale on the registration statement of which this prospectus is a part, and those shares will be available for resale, pursuant to a separate prospectus, after the expiration of a six month lockup period. It is highly unlikely that these individuals and entities would have received cash to satisfy the indebtedness owed to them at any time in the foreseeable future, which would have left them with claims against us, but with no realistic possibility of receiving payment. As such, these stockholders will personally benefit from receiving shares that will be available for resale, thereby giving them the opportunity to obtain cash from the sale of shares in the future.

**The Class A public warrants may be redeemed on short notice. This may have an adverse effect on their price.**

We may redeem the Class A public warrants for \$0.25 per warrant on 30 days' notice at any time after the last reported sale price per share of our common stock equals or exceeds \$2.00 for five consecutive trading days. If we give notice of redemption, holders of our Class A public warrants will be forced to sell or exercise the Class A public warrants they hold or accept the redemption price. The notice of redemption could come at a time when it may not be advisable or possible for holders of our public warrants to sell or exercise the Class A public warrants they hold.

**If we do not maintain an effective registration statement or comply with applicable state securities laws, our warrant holders may not be able to exercise the Class A or Class B public warrants.**

In order for the holders of our Class A or Class B public warrants to be able to exercise their warrants, the shares of our common stock to be issued upon exercise of those warrants must be covered by an effective and current registration statement and qualify or be exempt under the securities laws of the state or other jurisdiction in which the warrant holders live. We can give no assurance that we will be able to continue to maintain a current registration statement relating to the shares of our common stock underlying the Class A or Class B public warrants or that an exemption from registration or qualification will be available throughout their term. This may have an adverse effect on demand for the Class A or Class B public warrants and the prices that can be obtained from reselling them.

**While the public warrants are outstanding, it may be more difficult to raise additional equity capital.**

During the term that the Class A public warrants and Class B public warrants are outstanding, the holders of the public warrants will be given the opportunity to profit from a rise in the public market price of our common stock, which public market



price did not exist prior to this offering. In addition, the Class B public warrants are not redeemable by us. We may find it more difficult to raise additional equity capital while these warrants are outstanding. At any time during which these public warrants are likely to be exercised, we may be able to obtain additional equity capital on more favorable terms from other sources.

**The ability of our stockholders to sell our common stock and warrants in the secondary market could be restricted because our stock is considered to be penny stock.**

The Securities and Exchange Commission has adopted regulations which generally define penny stock to be an equity security that has a market price, as defined, of less than \$5.00 per share or an exercise price of less than \$5.00 per share, subject to certain exceptions that do not apply to us. So long as our common stock trades below \$5.00, and our securities trade on the OTCBB, our securities are deemed to be penny stock. As such, our securities will be subject to rules that impose additional sales practice requirements on broker-dealers who sell them. For transactions covered by these rules, the broker-dealer must make a special suitability determination for the purchaser of such securities and have received the purchaser's written consent to the transactions prior to the purchase. Additionally, for any transaction involving a penny stock, unless exempt, the rules require the delivery, prior to the transaction, of a disclosure schedule prepared by the Securities and Exchange Commission relating to the penny stock market. The broker-dealer also must disclose the commissions payable to both the broker-dealer and the registered underwriter, current quotations for the securities and, if the broker-dealer is the sole market maker, the broker-dealer must disclose this fact and the broker-dealer's presumed control over the market. Finally, among other requirements, monthly statements must be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks. Many brokerage firms have policies prohibiting their brokers from trading in penny stocks. As such, the penny stock rules may restrict the ability of stockholders to sell our common stock and warrants in the secondary market.

**Future sales or the potential for future sales of shares of our common stock may cause the trading price of our common stock and public warrants to decline and could impair our ability to raise capital through subsequent equity offerings.**

Approximately 42% of our outstanding common stock will be held by our current stockholders following this offering. If these stockholders sell substantial amounts of our common stock in the public market following this offering, the market price of our common stock could fall. Prior to this offering, there has been no public market for any of our securities. However, once a market is created, if these stockholders publicly sell substantial amounts of common stock, the market price of our common stock could fall. These sales could also make it more difficult for us to sell shares of our common stock or equity-related securities in the future, and we expect to need to do so within the next year.

Immediately after the sale of the units in this offering, we will have 4,630,297 shares of common stock outstanding. Of these shares, 654,911 shares will be registered for resale and available to be sold by the owners of those shares upon expiration of a six-month lockup, commencing on the effective date of this offering. Assuming that all the remaining existing stockholders sign lock-up agreements with the underwriters that restrict their ability to transfer stock for up to one year from the effective date of this prospectus, approximately 1,275,386 shares of common stock will become eligible for sale in the public market after this one-year period, subject to the restrictions of Rule 144 promulgated under the Securities Act of 1933, as amended. For more information see Shares Eligible for Future Sale.

In addition, we intend to file a registration statement under the Securities Act of 1933, as amended, after the completion of this offering to register our existing option plans. We expect this registration statement to become effective immediately upon filing. Holders of stock options have also signed one-year lock-up agreements, and if all holders of outstanding options exercisable at the end of the one-year period were to exercise and sell the shares issuable upon exercise of these options, approximately 578,316 additional shares of common stock (including 563,000 option shares issuable upon exercise of options expected to be granted on the effective date of our 2005 option plans) will become eligible for sale and freely tradeable in the public markets at the end of the one-year period.

### FORWARD-LOOKING STATEMENTS

We make forward-looking statements in this prospectus that are subject to risks and uncertainties. These forward-looking statements include information about possible or assumed future results of our business, financial condition, liquidity, results of operations, plans and objectives. In some cases, you may identify forward-looking statements by words such as may, should, plan, intend, potential, continue, expect, predict, anticipate and estimate, the negative of these words or other comparable words. These statements are only predictions. You should not place undue reliance on these forward-looking statements. The forward-looking statements are qualified by their terms and/or important factors, many of which are outside our control, involve a number of risks, uncertainties and other factors, that could cause actual results and events to differ materially from the statements made including, but not limited to, the following:

our ability to generate sufficient cash flows to support capital expansion plans and general operating activities;

our ability to obtain additional financing within approximately one year from the date of this offering;

decreased demand for our products resulting from changes in consumer preferences;

competitive products and pricing pressures and our ability to gain or maintain our share of sales in the marketplace as a result of actions by our competitors;

the introduction of new products;

an inability to achieve volume growth through new distribution points, marketing and advertising;

laws and regulations, and/or any changes therein, including changes in accounting standards, taxation requirements (including tax rate changes, new tax laws and revised tax law interpretations) and environmental laws as well as the Federal Food Drug and Cosmetic Act, the Dietary Supplement Health and Education Act, and regulations made thereunder or in connection therewith, as well as changes in any other food and drug laws, especially those that may affect the way in which our products are marketed, labeled or sold, including the contents thereof, as well as laws and regulations or rules made or enforced by the Food and Drug Administration or the Federal Trade Commission, as well as certain state regulatory agencies;

changes in the cost and availability of raw materials and the ability to maintain favorable supply arrangements and relationships and procure timely and/or adequate production of all or any of our products;

our ability to achieve earnings forecasts, which may be based on projected volumes and sales of many product types and/or new products, certain of which are more profitable than others; consequently, we can give no assurance that we will achieve projected levels or mixes of product sales;

our ability to penetrate new markets;

the marketing efforts of distributors of our products, most of which distribute products that are competitive with our products;

unilateral decisions by distributors, grocery chains, specialty chain stores, club stores and other customers to discontinue carrying all or any of our products that they are carrying at any time;

the terms and/or availability of our loan agreements and the actions of our creditors;

the effectiveness of our advertising, marketing and promotional programs;

changes in product category consumption;

unforeseen economic and political changes;

possible recalls of our products; and

our ability to make suitable arrangements for the co-packing of our products.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, including those events and factors described by us in Risk Factors, not all of which are known to us. Neither we nor any other person assumes responsibility for the accuracy or completeness of these statements. We will update this prospectus only to the extent required under applicable securities laws. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements.





**USE OF PROCEEDS**

We estimate that the net proceeds from the sale of the 2,700,000 units that we are selling in this offering will be approximately \$1,753,705, or \$2,122,255 if the underwriters exercise their over-allotment option in full, based on the initial public offering price of \$1.00 per unit, and after deducting the estimated underwriting discount of \$243,000 and estimated offering expenses of approximately \$703,295 payable by us, together totaling approximately \$946,295.

We currently expect to allocate the net proceeds of this offering as follows:

Sampling/coupons	\$ 400,000	22.8%
Advertising	300,000	17.1
Payment to SMBI for assignment of NuVim trademark and payable	250,000	14.3
Repayment of short-term loans from the representative	222,000	12.7
Funding of NuVim Powder LLC	100,000	5.7
Repayment of advertising payables	50,000	2.9
Repayment of accrued Series B preferred rescission notes payable	42,000	2.4
Repayment of notes payable	35,000	2.0
Working capital	354,705	20.2
<b>Total</b>	<b>\$ 1,753,705</b>	<b>100.0%</b>

The short-term loans from the representative includes a 10% loan of \$20,000 made in July 2004 and an additional \$200,000 loan in May 2005, which is interest-free. We used the proceeds from these loans for working capital and general corporate purposes, including the repayment of \$30,000 of advances made by certain of our executive officers to fund manufacturing costs.

Our general corporate and working capital needs include general and administrative salaries, accounting, legal and consulting fees, payment of accounts payable, rent and other facilities expenses and other working capital needs. No payments will be made to insiders on outstanding loans, advances or past due salaries out of proceeds allocated to working capital, except \$25,000 to repay accrued salary owed to our chief financial officer.

The foregoing discussion is merely an estimate based on our current business plan. We may find it necessary or advisable to use portions of the net proceeds we receive from this offering for other purposes, and we will have broad discretion in applying the net proceeds of this offering. Pending the uses described above, we intend to invest the net proceeds of this offering in short-term, investment-grade interest-bearing securities.

**DIVIDEND POLICY**

We have never declared or paid any dividends on our capital stock and do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently expect to retain our future earnings, if any, for use in the operation and expansion of our business. Any future decision to pay cash dividends will be at the discretion of our board of directors and will be dependent upon our financial condition, results of operations, capital requirements and other factors our Board of Directors may deem relevant. Following this offering, there will be no restrictions that limit our ability to pay dividends on our capital stock.

**CAPITALIZATION**

The following table sets forth our:

actual debt and capitalization as of March 31, 2005;

pro forma debt and capitalization after giving effect to the following restructuring events that occurred subsequent to March 31, 2005: (i) the Spencer Trask debt extinguishment transaction; (ii) the Clark note conversion; (iii) the preferred stock conversion; (iv) the concurrent debt extinguishment issuances, other than 83,015 shares of common stock that will be issued at the closing but are the result of conversions of April and

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May 2005 accrued salaries, accrued interest on notes payable and advances (see Prospectus Summary ); plus additional debt of \$200,000 incurred subsequent to March 31, 2005; and

pro forma as adjusted debt and capitalization after giving effect to (i) the restructuring events described above; and (ii) the sale by us of 2,700,000 units in this offering at \$1.00 per unit, after deducting the underwriting discount and estimated offering expenses payable by us.

You should read this table in conjunction with the sections of this prospectus captioned Use of Proceeds, and Management s Discussion and Analysis of Financial Condition and Results of Operations as well as the financial statements and related notes included elsewhere in this prospectus.

	March 31, 2005		
	Actual	Pro Forma	Pro Forma As Adjusted
<b>DEBT</b>			
Note payable-representative		\$ 200,000	
Senior note payable-related party	\$ 1,000,000	500,000	\$ 500,000
Accrued interest-senior notes payable related parties (spokesperson)	59,146	59,146	59,146
Demand note payable-bank	2,500,000		
Accrued interest-demand payable note-bank	154,620		
Senior convertible promissory notes-related party	2,480,000		
Accrued interest-senior convertible promissory-notes-related party	900,051		
Convertible note-related party	175,000		
Shareholder loans-subordinated convertible promissory notes	385,000	260,000	225,000
Accrued interest shareholder loans	162,860	26,764	11,722
Rescinded series B offering payable	42,000	42,000	
Related party advances	113,000	50,000	
Other note payable	150,000	150,000	150,000
<b>Total Debt</b>	<b>\$ 8,121,677</b>	<b>\$ 1,287,910</b>	<b>\$ 945,868</b>
<b>STOCKHOLDERS DEFICIT</b>			
Preferred stock, \$0.00001 par value; 65,000,000 shares authorized; 4,875,850 shares of Series A designated and issued and outstanding; and 50,000,000 shares of Series C designated and 3,623,000 shares of Series C issued and outstanding actual; no shares issued and outstanding pro forma and pro forma as adjusted	\$ 85		
Common stock, \$0.00001 par value; 120,000,000 shares authorized; 414,073 shares issued and outstanding actual; 1,847,282 shares issued and outstanding pro forma; 4,547,282 shares issued and outstanding pro forma as adjusted (1)	4	\$ 18	\$ 45
Additional paid-in capital	8,377,140	16,118,611	17,639,704
Accumulated deficit	(18,562,611)	(18,632,611)	(18,632,611)
<b>Total stockholders deficit</b>	<b>\$ (10,185,382)</b>	<b>\$ (2,513,982)</b>	<b>\$ (992,862)</b>
<b>Total debt and stockholders deficit</b>	<b>\$ (2,063,705)</b>	<b>\$ (1,226,072)</b>	<b>\$ (46,994)</b>

- (1) Taking into account the issuance of an additional 83,015 shares of common stock that will be issued concurrently with the closing of this offering that are attributable to payment in stock of April and May 2005 accrued salaries, accrued interest on notes payable and advances, the pro forma common shares outstanding would be 1,930,297 and the pro forma as adjusted common shares outstanding would be 4,630,297.

**DILUTION**

If you invest in our units, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the as adjusted net tangible book value per share of our common stock after this offering. As of March 31, 2005, our net tangible book value was a negative \$10,185,382 or a deficiency of \$24.60 per share of common stock. Our pro forma net tangible book value prior to the offering was a negative deficiency of approximately \$2,513,982, or a deficiency of \$1.36 per share of common stock, assuming the effects of (i) the debt restructuring events occurring concurrently with this offering in which a total of 461,700 shares of common stock were issued to extinguish outstanding debt owed to Spencer Trask totaling \$6,034,671 and the issuance of an aggregate of 571,896 shares of common stock upon conversion of debt owed to our executive officers, the bridge lenders and others in the amount of \$1,447,680; (ii) the conversion of all outstanding shares of Series A preferred stock and Series C preferred stock into 154,613 shares of common stock; and (iii) the automatic conversion of a convertible note into 245,000 unregistered units, including 245,000 shares of common stock. The pro forma net tangible book value per share does not include the additional issuance of a total of 83,015 shares of common stock that will also be issued concurrently with the closing of this offering, but which shares are attributable to conversion of accrued salaries, accrued interest on notes payable and advances recorded in April and May 2005 (the April and May restructuring events). Pro forma net tangible book value per share represents the amount of our total assets less intangible assets and less our total liabilities, divided by the total pro forma number of shares of common stock outstanding.

For purposes of the dilution calculation and the following tables, we have allocated the full purchase price of a unit to the share of common stock included in the unit and nothing to the warrants included in the unit. After giving effect to the sale of our shares of common stock in this offering at the initial public offering price of \$1.00 per share and our receipt of the estimated net proceeds of the offering, our pro forma as adjusted net tangible book value as of March 31, 2005 would have been approximately \$(992,862), or a deficiency of \$0.22 per share. This represents an immediate increase in pro forma as adjusted net tangible book value of \$1.14 per share to existing stockholders and an immediate dilution of \$1.22 per share or \$1.16 to new investors in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share		\$	1.00
Net tangible book value (deficiency) per share as of March 31, 2005		\$	(24.60)
Effect of conversion of preferred stock into common stock	\$	6.69	
Effect of debt restructuring concurrent with this offering		16.55	
			<hr/>
Pro forma net tangible book value (deficiency) per share prior to this offering			(1.36)
Increase per share attributable to new investors			1.14
			<hr/>
Pro forma as adjusted net tangible book value per share after this offering			(0.22)
			<hr/>
Dilution in net tangible book value per share to new investors as of March 31, 2005		\$	1.22
			<hr/>

If the underwriters' over-allotment option is exercised in full, dilution per share to new investors would be \$1.18 or 118% per share of common stock.

If the 83,015 shares of common stock issued for April and May 2005 accrued salaries, accrued interest on notes payable and advances were included in the above calculation, dilution per share to new investors would be \$1.21 or 121% per share of common stock.

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The following table summarizes, as of March 31, 2005, on the pro forma basis described above, but also including the 83,015 shares of common stock issuable in the April and May 2005 restructuring events, the differences between existing stockholders and the new investors with respect to the number of shares of common stock purchased from us, the total consideration paid and the average price per share paid before deducting the underwriters' discount and our estimated offering expenses.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Original common stockholders	118,176	2.6%	\$ 6,490	%\$	0.05
Conversion of preferred stock	154,613	3.3	5,600,450	31.9	36.22
Stock-based compensation	465,459	10.1	1,819,818	10.4	4.51
Conversion of outstanding debt and accrued interest	1,192,049	25.7	7,430,854	42.3	7.12
<b>Total Existing Stockholders</b>	<b>1,930,297</b>	<b>41.7</b>	<b>14,857,612</b>	<b>84.6</b>	<b>8.62</b>
New investors	2,700,000	58.3	2,700,000	15.4	1.00
<b>Total</b>	<b>4,630,297</b>	<b>100.0%</b>	<b>\$ 17,557,612</b>	<b>100.0%</b>	

The above computations assume no exercise of outstanding options or warrants to purchase common stock, the underwriters' over-allotment option, the public warrants included in units sold in this offering, or the representative's warrants. To the extent that these options and warrants are exercised, there will be further dilution to new investors.

If the underwriters exercise their over-allotment option in full, our existing stockholders would own 37.7% and our new investors would own 62.3% of the total number of shares of our common stock outstanding after this offering.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion of our financial condition and results of operations should be read in conjunction with the financial statements and related notes to the financial statements included elsewhere in this prospectus. This discussion contains forward-looking statements that relate to future events or our future financial performance. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These risks and other factors include, among others, those listed under Forward-Looking Statements and Risk Factors and those included elsewhere in this prospectus.*

### Overview

We produce, market and distribute NuVim dietary supplement beverages, which contain two proprietary micronutrients derived from cow's milk, known as LactoActin and LactoMune. NuVim beverages are non-dairy, virtually lactose-free and fortified with vitamins and minerals. Except for Asia, Australia and New Zealand, we have an exclusive worldwide license agreement with Stolle Milk Biologics, Inc. (SMBI) to use these proprietary micronutrients in carbonated and non-carbonated beverages (and in powders designed for reconstitution based on those beverages), excluding certain milk, yogurt and nutritional meal replacement products. We currently sell our ready-to-drink dietary supplement beverages in 13 states, principally in the northeast and southeast, and the District of Columbia.

We currently generate sales, income and cash flows by developing and marketing refrigerated beverage products. Our products are produced by third party manufacturers of beverage products. We generally sell these products to retailers as well as distributors.

A primary component of our costs is marketing expenditures to support our brand including advertising costs, sponsorship fees and special promotional events. We focus on developing brand awareness, and trial and repeat purchases through advertising and sampling, both in stores and at events. Retailers receive rebates, promotional pricing incentives and slotting fees, which are fixed amounts that we pay to gain preferable shelf location for our products. We also use in-store promotions and in-store placement of point-of-sale materials and endorsements from selected public figures. Consumers receive coupons, discounts and promotional incentives. These marketing expenditures help to enhance distribution and availability of our products as well as increase consumer awareness and preference for our brands. We believe that these marketing and promotional activities are critical to the growth of our business.

NuVim was established in 1999 in conjunction with SMBI, the owner of the proprietary technology, to produce, market and distribute beverages that use this proprietary micronutrient technology. Our product line currently consists of three varieties of a natural, fruit-flavored dietary supplement beverage. We also have three new flavors in development. Our future plans include a limited test of our three-variety line of NuVim-branded shelf-stable sports beverages. This test will be conducted to further understand how NuVim might fit into the dynamics of the sport drink beverage market. The NuVim sport drink, called NuVim Body Quencher, contains the same consumer benefits, vitamins and minerals as the refrigerated products. In addition, the three variety line of the NuVim powder version will be marketed on a national basis through the NuVim website and tested with television infomercials through our subsidiary, the NuVim Powder LLC. The NuVim powder mix will also contain the same consumer benefits as the original refrigerated product and NuVim Body Quencher. Although we have demonstrated the concepts and manufactured the product lines on a trial basis to prepare for commercialization, we have not yet begun marketing either product. Development and testing of new products and flavors do not have a material impact on our results of operations.

We plan to test market the sports drink and introduce the NuVim powder product within 12 months of the date of this prospectus. We also intend to test market one new flavor of our refrigerated beverage during this same time period. If the results of the refrigerated product test are successful, we expect to spend approximately \$80,000 to \$120,000 in additional slotting fees and working capital to add the flavor to our existing product line. We plan to begin marketing the sports drink through distributors, and the powder mix through NuVim Powder LLC and our website. Initial production for these products will require a working capital outlay of approximately \$75,000 for ingredients, packaging and production. Additionally, we expect to provide funding of approximately \$100,000 to NuVim Powder LLC for advertising and promotion.

Our products are primarily sold in 64-ounce cartons in supermarkets. In our initial product launch in 2000, we distributed the product through supermarkets in the New York metropolitan area. We later expanded to the Baltimore/ Washington, Philadelphia, Harrisburg, Pittsburgh, Rochester, Buffalo, Syracuse and Richmond metropolitan areas. The product launch was supported by radio advertising, product sampling, store circular advertising and other promotional activities. The product launch resulted in increased gross sales in each of the years 2000, 2001 and 2002, to a high of \$3,539,118 in 2002. However, the cost of marketing and promotional programs to support the growth resulted in negative cash flows in each of these years. Because we were not able to raise additional financing required to support the promotional and marketing programs at historical levels, we stopped substantially all advertising and sampling programs and reduced promotions of our products in the second half of 2002. As a result of these cutbacks in advertising, sampling and promotional activities, our gross revenues declined each quarter, from the fourth quarter of 2002, through the second quarter of 2004. During the third quarter of 2004, we added distribution in the southeastern United States, primarily through the Publix supermarket chain. We also secured \$1,000,000 in senior secured debt financing, part of which was used to launch a television advertising campaign to promote our refrigerated product. We experienced increased gross case shipments over the immediately preceding quarter of approximately 4.6% in the third quarter of 2004, 2.8% in the fourth quarter of 2004 and 9.3% in the first quarter of 2005, as a result of the expansion and advertising. We also increased sampling, coupon and promotional activities in the first quarter of 2005. We believe that one of the keys to success in the nutritional beverage industry is continued advertising and promotion to drive consumer awareness, trial, and repeat purchases of our product. We intend to use a portion of the net proceeds of this offering for advertising and sampling activities to build brand awareness but will require additional capital to significantly expand the business.

Our business plan contemplates increasing consumer sales in the current approximately 2,800 supermarkets where our product is sold and expanding the number of supermarkets. We expect to accomplish this by increasing trial and repeat purchases through advertising, sampling and promotion. We also expect to expand our customer base to include convenience stores, club stores, nutrition centers and health food outlets and other retail establishments to carry our 16-ounce product. In July 2004, we secured \$1,000,000 in bridge financing and, in the third and fourth quarters of 2004, launched advertising and promotion activities to support our business, which we will reinstate on a limited basis following the completion of this offering. Additionally, in 2004, we added the Publix Supermarket chain to gain supermarket distribution in Florida, South Carolina, Tennessee and Georgia and began test marketing in certain Wal-Mart stores.

The table set forth below discloses selected data regarding sales for the two years ended December 31, 2003 and 2004 and for the three months ended March 31, 2004 and 2005. Data from any one or more quarters is not necessarily indicative of annual results or continuing trends.

Sales of beverages are expressed in unit case volume. A unit case means a unit of measurement equal to 512 U.S. fluid ounces of finished beverage (eight 64-ounce servings). Unit case volume means the number of unit cases (or unit case equivalents) of beverages directly or indirectly sold by us. Gross cases sold to the customer represents the number of cases shipped to the customer prior to any returned cases for product that has not been sold by its expiration date.

#### Unit Case Volume/Case Sales

	Year Ended December 31,		Three Months Ended March 31,	
	2003	2004	2004	2005
Gross Cases Sold	127,609	77,395	22,494	20,679
Gross Sales	\$ 2,335,676	\$ 1,411,355	\$ 421,555	\$ 375,719
Net Sales	\$ 1,710,929	\$ 958,785	\$ 317,904	\$ 208,876

Gross sales are the amount invoiced to customers, while net sales deduct from gross sales any payment or discount terms, promotional allowances, slotting fees, warehouse damage and returned goods in accordance with the Financial Accounting Standards Board Emerging Issues Task Force Issue No. 01-09, Accounting For Consideration Given By a Vendor to a Customer. We pay slotting fees when our products are initially introduced to a new account and run price feature promotions to encourage trials of our product. As the product matures, we anticipate that we will be able to run fewer price promotions and will not incur additional slotting fees. Cases sold decreased 50,214, or 39%, for the year ended December 31, 2004, when compared to the prior year and 8.1% for the quarter ended March 31, 2005 when compared to the same quarter last year. As discussed above, we believe the declining sales volume incurred from the fourth quarter of 2002 through the second quarter of 2004 was the result of decreased advertising, sampling and marketing activities in support of our refrigerated product. Since we added distribution in the southeastern United States, and reinstated advertising and sampling programs in the

third quarter of 2004, we have experienced increased sales volume in each successive quarter. We intend to use a portion of the proceeds from this offering to increase advertising and sampling activities that were begun in the third quarter of 2004.

## Results of Operations

*Results of operations for the three months ended March 31, 2005 compared to the three months ended March 31, 2004*

**Gross Sales.** For the three months ended March 31, 2005, gross sales were \$375,719, a decrease of \$45,836, or 11% lower than gross sales of \$421,555 for the three months ended March 31, 2004. The decrease in gross sales is primarily attributable to a decrease in case volume. We suspended substantially all advertising after the first half of 2002 due to a lack of funding. This resulted in a steady decline in sales volume in each successive quarter through the second quarter of 2004, due to a decrease in repeat purchases of our products and the loss of certain accounts, due to the lower sales volume per store. During the third quarter of 2004, we secured \$1,000,000 of financing from senior secured promissory notes and reinstated advertising and sampling programs. We also added distribution in the Southeastern United States through the Publix and Wal-Mart supermarket chains. Since that time, we have experienced increased gross sales over each of the immediately preceding quarters of approximately 4.6%, 2.8% and 9.3% for the third and fourth quarter of 2004, and first quarter of 2005, respectively.

**Discounts, Allowances and Promotional Payments.** For the three months ended March 31, 2005, promotional allowances and discounts were \$166,843, an increase of \$63,192, or 61%, over the promotional allowances and discounts of \$103,651 for the three months ended March 31, 2004. This increase is primarily attributable to increased promotional price allowances, coupons and other incentives of \$57,940 and slotting fees of \$11,700. Promotional price allowances, coupons and other incentives increased primarily due to a \$53,000 increase in coupon expense. We distributed coupons at in-store sampling programs, through our brokers and through direct mail during the first quarter of 2005. We record the estimated redemptions based on our historical experience at the time the coupon is distributed in accordance with Financial Accounting Standards Board Emerging Issues Task Force, No. 01-09, Accounting for Consideration Given by a Vendor to a Customer. We expect to continue to use coupon distribution as a means to promote consumer sampling and trial of our product into the foreseeable future. As the product matures and a higher percentage of users of our product are repeat purchasers, we expect coupon expense, relative to gross sales, to decline. Discounts, Allowances and Promotional Payments are comprised of the following:

	Three Months Ended March 31,		Increase (Decrease)	Percentage
	2004	2005		
Discounts for timely payment	\$ 8,265	\$ 4,685	\$ (3,580)	(43)%
Product returned after its expiration date	33,869	31,001	(2,868)	(0.09)%
Promotional price allowances, coupons and other incentives	57,217	115,157	57,940	101%
Slotting fees	4,300	16,000	11,700	272%
<b>Total Discounts, Allowances and Promotional Payments</b>	<b>\$ 103,651</b>	<b>\$ 166,843</b>	<b>\$ 63,192</b>	<b>61%</b>

**Net Sales.** Net sales for the three months ended March 31, 2005 were \$208,876, a decrease of \$109,028, or 34% lower than net sales of \$317,904 for the year ended March 31, 2004. The decrease in net sales is primarily attributable to the coupon redemptions discussed above.

**Cost of Sales.** For the three months ended March 31, 2005, cost of sales were \$207,835, a decrease of \$13,241, or 6% lower than cost of sales of \$221,076 for the three months ended March 31, 2004. The decrease in cost of sales is due to the decreased sales volume discussed above.

**Gross Profit.** Gross profit was \$1,041 for the three months ended March 31, 2005, a decrease of \$95,787, or 99%, over the \$96,828 gross profit for the three months ended March 31, 2004. Gross profit as a percentage of gross sales was .2% for the three months ended March 31, 2005 compared to gross profit of 23% for the three months ended March 31, 2004. The decrease in gross profit as a percentage of gross sales was primarily due to the expense related to anticipated coupon redemptions discussed above.



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*Selling, General and Administrative Expenses.* Selling, general and administrative expenses were \$536,691 for the three months ended March 31, 2005, an increase of \$184,221, or 52%, from selling, general and administrative expenses of \$352,470 for the three months ended March 31, 2004. Selling, general and administrative expenses exceeded net sales in each period as we are in an early stage of our development and have not achieved sales volumes sufficient to generate net sales in excess of our selling, general and administrative expenses. The increase in selling, general and administrative expenses was primarily attributable to increased expenses related to the in store sampling programs during the first quarter of 2005 of approximately \$120,000, increased administrative salaries of approximately \$30,000 due to the addition of a full time chief financial officer and increased shipping charges of \$14,000 related to distribution to the Southeast markets from the distribution facility in Pennsylvania.

*Loss from Operations.* Loss from operations was \$535,650 for the three months ended March 31, 2005 compared to \$255,642 for the three months ended March 31, 2004. The \$280,008 increase in loss from operations was primarily attributable to the decreased gross profit and increased operating expenses described above.

*Interest Expense.* Interest expense was \$178,802 for the three months ended March 31, 2005, an increase of \$37,798, or 27%, from interest expense of \$141,004 for the three months ended March 31, 2004. The increase in interest expense is primarily attributable to an increase in interest on borrowings from the senior notes related party. Between July and December 2004, we borrowed \$1,000,000 under a loan agreement with our spokesperson to fund operations and advertising programs.

*Net Loss.* Net loss was \$714,452 for the three months ended March 31, 2005 compared to \$396,646 for the three months ended March 31, 2004. The \$317,806 increase in net loss was primarily attributable to the lower gross profit and higher operating expenses discussed above.

### *Results of operations for the year ended December 31, 2003 compared to the year ended December 31, 2004*

*Gross Sales.* For the year ended December 31, 2004, gross sales were \$1,411,355, a decrease of \$924,321, or 40% lower than gross sales of \$2,335,676 for the year ended December 31, 2003. The decrease in gross sales is primarily attributable to a 39% decrease in case volume resulting from reduced promotional and discontinued advertising spending. We suspended substantially all advertising after the first half of 2002 due to a lack of funding. This has resulted in a steady decline in sales since these programs were reduced or terminated, due to a decrease in repeat purchases of our products and the loss of certain accounts due to the lower sales volume per store.

*Discounts, Allowances and Promotional Payments.* For the year ended December 31, 2004, promotional allowances and discounts were \$452,570, a decrease of \$172,177 or 28% lower than the promotional allowances and discounts of \$624,747 for the year ended December 31, 2003. This decrease is primarily attributable to decreased promotional allowances of \$109,178, product returned after its expiration date of \$43,686 and discounts for timely invoice payment of \$22,728. Promotional price allowances and discounts for early payment are generally earned based on the number of cases purchased by the retailer and total gross sales invoiced, respectively. Therefore, these amounts decreased primarily as a result of the 39% decline in case volume discussed above. Product returns decreased at a lower rate than gross sales. While gross sales volume has declined due to the reduction of sampling and advertising support described above, we have continued to ship product to supermarkets to keep shelves stocked and maintain distribution in the stores until funding is obtained to reinstate the advertising programs. Therefore, the amount of returns has not decreased in proportion to sales. Discounts, Allowances and Promotional payments as a percentage of gross sales increased slightly from 27% for the year ended December 31, 2003 to 32% for the year ended December 31, 2004, primarily due to the increased returns of product not sold by its expiration date in proportion to sales revenue discussed above. Discounts, Allowances and Promotional Payments are comprised of the following:

	Year Ended December 31,		Increase (Decrease)	Percentage
	2003	2004		
Discounts for timely payment	\$ 48,323	\$ 25,595	\$ (22,728)	(47)%
Product returned after its expiration date	204,999	161,313	(43,686)	(21)%
Promotional price allowances, coupons and other incentives	366,710	257,532	(109,178)	(30)%
Slotting fees	4,715	8,130	3,415	72%
<b>Total Discounts, Allowances and Promotional Payments</b>	<b>\$ 624,747</b>	<b>\$ 452,570</b>	<b>\$ (172,177)</b>	<b>(28)%</b>

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*Net Sales.* Net sales for the year ended December 31, 2004 were \$958,785, a decrease of \$752,144, or 43% lower than net sales of \$1,710,929 for the year ended December 31, 2003. The decrease in net sales is primarily attributable to the decrease in cases sold discussed above.

*Cost of Sales.* For the year ended December 31, 2004, cost of sales were \$737,642, a decrease of \$533,014 or 42% lower than cost of sales of \$1,270,656 for the year ended December 31, 2003. The decrease in cost of sales was primarily attributable to a 39% decrease in cases sold discussed above.

*Write Down of Obsolete Inventory.* Write off of obsolete inventory represents inventory related to our sports drink product. In 2003, we wrote off ingredients, packaging and finished goods related to the sports drink. We developed and commercially produced the product. However, we decided not to actively market and distribute the product due to a lack of funding to support the product launch. We plan to test market this product in 2005 for a relaunch, following receipt of the net proceeds from this offering.

*Gross Profit.* Gross profit was \$221,143 for the year ended December 31, 2004, a decrease of \$5,723, or 3%, over the \$226,866 gross profit for the year ended December 31, 2003. Gross profit as a percentage of gross sales was 16% for the year ended December 31, 2004, compared to a gross profit as a percentage of gross sales of 10% for the year ended December 31, 2003. The increase in gross profit as a percentage of gross sales was primarily due to the write off of inventory related to the sports drink in 2003, partially offset by the increase in credits for product not sold by its expiration date, both of which are described above. Gross profit as a percentage of net sales, excluding the impact of inventory write offs was 19% in for the year ended December 31, 2003.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses were \$2,092,898 for the year ended December 31, 2004, an increase of \$125,103, or 6%, from selling, general and administrative expenses of \$1,967,795 for the year ended December 31, 2003. Selling, general and administrative expenses exceeded net sales in each period as we are in an early stage of our development and have not achieved sales volumes sufficient to generate net sales in excess of our selling, general and administrative expenses. The increase in selling, general and administrative expenses was primarily attributable to increased advertising expenses in the third and fourth quarter of 2004, resulting from increased television advertising. Media expenses related to a new television advertising campaign increased approximately \$564,000 in 2004. This was partially offset by a decrease in sampling, trade advertising, spokesperson fees, and other promotion expenses of approximately \$345,000 decreased sales commissions, shipping, royalties and other administrative costs of approximately \$94,000.

*Loss from Operations.* Loss from operations was \$1,871,755 for the year ended December 31, 2004 compared to \$1,740,929 for the year ended December 31, 2003. The \$130,826 increase in loss from operations was primarily attributable to the increased operating expenses described above.

*Interest Expense.* Interest expense was \$578,560 for the year ended December 31, 2004, a decrease of \$130,650, or 18%, from interest expense of \$709,210 for the year ended December 31, 2003. The decrease in interest expense is primarily attributable to non-cash interest expense of \$178,000 related to warrants issued in connection with borrowings from related party senior notes incurred during 2003, partially offset by an increase in interest on borrowings from the senior notes related party issued in the second half of 2004.

*Gain on Forgiveness of Accounts Payable.* Gain on forgiveness of accounts payable represents the difference between the invoiced amount and the amount in the form of a note payable for fees to a law firm incurred and expensed in 2002.

*Income Tax Benefit.* Income tax benefit was \$258,476 for the year ended December 31, 2004, and \$211,131 for the year ended December 31, 2003. This amount represents net proceeds realized from the sale of State of New Jersey tax benefits resulting from net operating losses.

*Net Loss.* Net loss was \$2,131,581 for the year ended December 31, 2004 compared to \$2,239,440 for the year ended December 31, 2003. The \$107,859 decrease in net loss from operations was primarily attributable to the lower interest expense and gain on forgiveness of accounts payable, offset by the increased advertising expense discussed above.

## Liquidity and Capital Resources

Our operations to date have generated significant operating losses that have been funded through the issuance of common stock, preferred stock and external borrowings, including a line of credit with a bank and loans from our executive officers, directors and principal stockholders. We will require additional sources of outside capital to continue our operations and currently have no identifiable source.

In May 2005, we borrowed \$200,000 from the investment bank that is managing this offering. The note was payable upon the closing of the stock offering if closed by May 31, 2005, or on demand thereafter. The note does not bear any interest.

We anticipate that we will receive approximately \$1,753,705 in net proceeds from this offering and believe that this amount, together with revenues from product sales will be sufficient to fund our operations for approximately 9 to 12 months. We expect to use approximately \$222,000 of the net proceed to repay loans we received from the representative of the underwriters, \$250,000 to pay a portion of the amounts owed to SMBI for ingredients and royalties, \$35,000 to pay notes payable, \$50,000 for payables related to the television advertising campaign in 2004 and \$250,000 to settle or gain extended payment terms on past due accounts payable and accrued expenses. The remaining proceeds will be available to fund our business, but we expect we will need additional capital within one year in order to continue our business as planned. We have not identified any sources for that anticipated additional funding, and there is no assurance that it will be available when we need it or that we can procure it on acceptable terms.

As of March 31, 2005, we had no cash on hand, a working capital deficit of \$10,865,582 and were in default on approximately \$8.1 million of principal and accrued interest on outstanding indebtedness. Concurrently with this offering, we plan to restructure and reduce our outstanding indebtedness by approximately \$6.1 million through the issuance of 461,700 shares of common stock to our principal debt holder and guarantor of our bank loan. Additionally, concurrently with the closing of this offering, a convertible note payable of \$175,000 that is in default will automatically convert \$245,000 of value into 245,000 unregistered units of one share of common stock, one \$1.50 warrant and one \$2.00 warrant, and we will issue 654,911 shares of common stock to eliminate approximately \$1.5 million of advances, past due salaries owed to executive officers, notes payable and accrued interest thereon. As a result of these restructuring agreements and agreements to defer payment on subordinated notes payable and accrued interest thereon aggregating \$236,000 and \$150,000, respectively, until we secure additional financing or earn net income of \$1.0 million, we will eliminate the defaults on these debt agreements. We will still owe past due amounts to SMBI, one noteholder with unpaid principal and interest aggregating approximately \$150,000, our bridge lenders, and vendors for past advertising and other expenses.

The details of these defaults are as follows:

We have not paid interest due monthly on a demand note for \$2.5 million with the Bank of Wachovia since March 2003. The note is secured by all of our assets, subordinated to the rights of the lenders of the bridge loan issued in July 2004, and guaranteed by Spencer Trask Specialty Group. The bank has not made a demand for payment on the note, and we have not recorded any default interest thereon. By agreement dated as of May 31, 2005 between Spencer Trask and Wachovia, the indebtedness we owe to the bank was assigned and assumed by Spencer Trask. We are in default of approximately \$2,480,000 in senior convertible notes payable, plus accrued interest, to a group of entities related to Spencer Trask, with maturity dates ranging from December 31, 2002 to September 3, 2003. Please see Related Party Transactions for details regarding the identity of the specific Spencer Trask-related entities and the amounts owed to each, including interest. The notes bear default interest at 14% and are secured by all of our assets. The group of entities related to Spencer Trask have agreed, upon consummation of this offering, to accept 461,700 shares of our common stock in consideration for payment of outstanding principal and interest on the Wachovia loan and satisfaction of senior notes payable to them.

We are also in default on approximately \$385,000 in subordinated convertible notes payable to management, directors and certain of our preferred stock investors, all of which have maturity dates of December 31, 2002. The notes accrue default interest at a rate of 14% per year. We have reached agreements with the noteholders to satisfy \$125,000 of the outstanding principal and \$54,814 of accrued interest balances on the notes through the issuance of stock at \$3.00 per share and have agreed to pay \$35,000 of principal and defer \$15,042 of outstanding interest to a noteholder. We have reached agreement to defer payment of the remaining \$225,000 of principal until we secure a second round of financing or attain \$1,000,000 in net income. Outstanding interest payable on the loans through April 30, 2005 of approximately \$87,000 will be settled by issuing shares of common stock at a value of \$3.00 per share. The loans will accrue interest at a rate of 8% per annum thereafter.

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We have not repaid our \$1 million senior secured bridge loan and \$175,000 convertible note to our spokesperson by their maturity dates. Therefore, by their original terms, they are due on demand and are accruing interest at the default rate of 15%, effective January 1, 2005. By subsequent agreement, 50% of the bridge loan will be converted into 250,000 shares of common stock at \$2.00 per share, concurrently with this offering. The balance, plus accrued interest, will be due on the earlier of a subsequent financing, sale on November 30, 2006 and will bear interest at 8%. If the note is not repaid according to the extended terms, interest will accrue at the default rate of 15% from that date forward. The convertible note will automatically convert into 245,000 units consisting of 245,000 shares of common stock, 245,000 \$1.50 warrants and 245,000 \$2.00 warrants.

We have reached an agreement with a former law firm to defer payment on a \$150,000 demand note payable that would have been due upon completion of this offering. The noteholder has agreed not to make a demand for payment until we secure a subsequent round of financing, provided we make a \$5,000 payment upon consummation of our initial public offering and \$2,000 each month thereafter. If we have not repaid the entire obligation by December 31, 2005, the indebtedness we owe will accrue interest at 10% per annum from January 1, 2006 until paid in full.

Additionally, at May 31, 2005, we owe approximately \$593,751, representing accrued and unpaid salaries and taxes due to three executive officers. In April 2005, these executive officers agreed to convert accrued salaries owed to them through February 28, 2005, aggregating \$514,584, into 171,529 shares of common stock at \$3.00 per share, and in May 2005, they further agreed to convert April and May 2005 accrued salaries, aggregating \$79,167 into 79,167 shares of common stock, at \$1.00 per share, all to take place concurrently with the closing of this offering.

At March 31, 2005, we had approximately \$2,200,000 in accounts payable and accrued expenses. SMBI, our provider of the exclusive whey protein used in our product, accounts for \$450,000 of the balance, representing amounts due under our license and supply agreements. SMBI has agreed to defer \$200,000 of the balance due to January 16, 2006, if \$250,000 of the balance is paid from the proceeds of this offering. Various television stations to which we owe approximately \$500,000 have agreed to accept monthly payments of approximately \$5,000 until we are able to secure additional financing. No interest will accrue on the deferred accounts payable balance. Of the remaining balance of approximately \$1,250,000 of accounts payable and accrued expenses due to vendors, approximately \$350,000 represents expenses related to this offering which will be paid out of the proceeds and \$109,000 will be settled by issuing shares of common stock. We intend to use approximately \$250,000 of the net proceeds to settle or negotiate payment schedules or deferrals for the remaining balances until we secure additional financing.

A summary of the amounts we will owe following this offering, including the interest rates and maturity dates applicable to each obligation are as follows:

Creditor or Obligation (5)	Amount Owed as of June 30, 2005	Interest Rate	Maturity Date
Senior notes payable related party (spokesperson)	\$ 593,729	8%	November 30, 2006 (1)
Shareholders loans convertible promissory notes	\$ 239,854	0-14%	(2)
Other note payable	\$ 150,000	10% after January 1, 2006	(3)
Payable balance due to SMBI	\$ 200,000	N/A	January 16, 2006
Deferred accounts payable advertising	\$ 500,000	N/A	(4)

- (1) Balance payable in full on the earlier of a subsequent financing, sale, or November 30, 2006.
- (2) Balance payable in full upon subsequent financing or NuVim achieving \$1,000,000 in profits.
- (3) Balance payable in full upon any subsequent offering of NuVim securities.
- (4) Balance payable in full upon any subsequent financing.
- (5) Excludes other accounts payable and accrued expenses of approximately \$1,250,000, see discussion above.

Net cash used in operating activities for the year ended December 31, 2004 was \$388,450 compared to cash used in operating activities of \$386,889 during 2003. The decrease in cash used by operating activities of \$1,561 was primarily attributable to a decreased net loss of \$107,859 and a decrease in cash from the changes in operating assets and liabilities of \$855,489, offset by a decrease in adjustments to reconcile net loss to cash used in operating activities of \$746,069. The increase in cash from the changes in operating assets and liabilities is primarily due to: (i) an increase in accounts payable of 362,890 resulting from the television advertising campaign in the third and fourth quarter of 2004; (ii) a reduction in uncollected accounts receivable of \$133,660 due to decreased sales; and (iii) increased accrued expenses related to the proposed public offering of common stock of \$69,317, offset by a reduced benefit from the decrease in restricted cash of \$100,000 resulting from the application of prepayments to SMBI against accounts payable in 2003. The decrease in adjustments to reconcile net loss to cash used in operating activities is primarily due to a decrease in the provision for discounts, allowances and promotional payments of \$172,177, stock-based compensation for shares of stock issued to employees for services of \$231,647, decreased non-cash interest expense related to warrants issued in connection with debt of \$178,000 and increased write-offs of inventory related to discontinued flavors and excess sports drink inventory of \$213,407. Net cash used in operating activities for the three months ended March 31, 2005 was \$94,570 compared to cash used in operating activities of \$65,943 during the three months ended March 31, 2004. The increase in cash used by operating activities of \$28,627 was primarily attributable to an increased net loss of \$317,806, offset by an increase in cash from the changes in operating assets and liabilities, is primarily due to: (i) an increase in accounts payable of \$219,272 resulting from the television advertising campaign in the third and fourth quarter of 2004; and (ii) accrued expenses of \$98,161, primarily due to professional fees related to the proposed offering.

Net cash provided by (used in) financing activities was \$440,956, \$613,757 and \$(182,637) for the years ending December 31, 2003 and 2004, and for the three months end March 31, 2005, respectively. Net cash provided by financing activities primarily consisted of loans from stockholders and related parties in 2003 and 2004. Costs incurred related to the proposed public offering of \$441,243 have been recorded as a reduction of cash provided by financing activities.

#### **Pro Forma Financial Information**

The pro forma financial information set forth in Summary Financial Information reflects certain restructuring events that will occur concurrently with this offering after March 31, 2005 as follows:

The holders of our Series A and C preferred stock agreed to automatically convert their shares into 154,613 shares of common stock upon the consummation of an underwritten public offering and waive any anti-dilution rights related to the preferred stock;

Four entities related to Spencer Trask Specialty Group LLC have agreed to accept 461,700 shares of common stock in settlement of senior convertible promissory notes and accrued interest thereon, aggregating \$3,380,051 and the payment of loan from the Bank of Wachovia aggregating \$2,654,620; and

Automatic conversion of a convertible promissory note issued in payment of past services to our spokesperson, Dick Clark, resulting in the issuance of 245,000 unregistered units, including 245,000 shares of common stock, 245,000 \$1.50 warrants and 245,000 \$2.00 warrants.

Conversion of (i) executive salaries into 171,529 shares of common stock; (ii) \$261,096 of principal and accrued interest on notes payable into 87,034 shares of common stock; (iii) conversion of \$500,000 of principal on senior secured promissory notes (the bridge loan ) into 250,000 shares of common stock; (iv) advances from our chief executive officer of \$63,000 into 21,000 shares of common stock and (v) conversion of accounts payable of \$109,000 into 42,333 shares of common stock, all to take place concurrently with the closing of this offering.

The pro forma Selected Balance Sheet Data included in the Summary Financial Information reflect the restructuring events described above, as if they occurred on March 31, 2005. The pro forma balance sheet is presented to assess the impact of the restructuring on historical results. However, it is not intended to forecast our actual financial position at the

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date of the offering. Results at the date of the offering may differ due to, among other things, the use of the bridge loan proceeds to fund operations. The table below describes the adjustments to the March 31, 2005 results.

	March 31, 2005		
	Total Liabilities	Total Stockholders Equity (Deficit)	Common Shares Outstanding
Actual, as reported	\$ 11,043,646	\$ (10,185,382)	414,073
Conversion of Series A and Series C preferred stock to common stock			154,613
Issuance of common stock in exchange for subordinated convertible notes and accrued interest thereon, and the payment of demand note to a bank on behalf of the Company and accrued interest thereon	(6,034,671)	6,034,671	461,700
Automatic conversion of note payable to spokesperson	(189,049)	189,049	245,000
Conversion of executive officers' salaries to common stock	(514,584)	514,584	171,529
Conversion of note payable and accrued interest into common stock	(261,096)	261,096	87,034
Conversion of advances from executive officer into common stock	(63,000)	63,000	21,000
Conversion of senior secured promissory notes	(500,000)	500,000	250,000
Conversion of accounts payable to common stock	(109,000)	109,000	42,333
Pro forma for the restructuring events described above as if the offering took place on March 31, 2005	\$ 3,372,246	\$ (2,513,982)	1,847,282
Pro forma shares as of March 31, 2005			1,847,282
Conversion to common stock of executive officers' salaries for April and May 2005			79,167
Conversion to common stock of April and May 2005 accrued interest			1,848
Conversion to common stock of April and May 2005 increase in advances from executive officer			2,000
Total pro forma shares attributable to April and May 2005 events			83,015
Pro forma shares outstanding before the offering			1,930,297
Shares being issued in the offering			2,700,000
Total shares outstanding after the offering			4,630,297

**Application of Recent and Critical Accounting Policies and Pronouncements**

*Recent Accounting Pronouncements*

In January 2003, the FASB issued interpretation No. 46 ( FIN 46 ), Consolidation of Variable Interest Entities . The primary objectives of this interpretation are to provide guidance on the identification of entities for which control is achieved through means other than through voting rights ( variable interest entities ) and how to determine when and which business enterprise (the primary beneficiary ) should consolidate the variable interest entity. This new model for consolidation applies to an entity in which either (i) the equity investors (if any) do not have a controlling financial interest; or (ii) the equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support from other parties. In addition, FIN 46 requires that the primary beneficiary, as well as all other enterprises with a significant variable interest entity, make additional disclosures. Certain disclosure requirements of FIN 46 were effective for financial statements issued after January 31, 2003. In December 2003, the FASB issued FIN 46 (revised December 2003), Consolidation of Variable Interest Entities ( FIN 46-R ) to address certain FIN 46 implementation issues. The effective

dates and impact of FIN 46 and FIN 46-R are as follows: (i) Special-purpose entities ( SPEs ) created prior to February 1, 2003: We must apply either the provisions of FIN 46 or early adopt the provisions of FIN 46-R at the end of the first interim or annual reporting period ended after December 15, 2003. (ii) Non-SPEs created prior to February 1, 2003: We were required to adopt FIN 46-R at the end of the first interim or annual reporting period ending after March 15, 2004. (iii) All entities, regardless of whether SPE, that were created subsequent to December 31, 2003: The interpretation applies immediately. We do not have any arrangements with variable interest entities that will require consolidation of their financial information in our financial statements.

#### *Critical Accounting Estimates*

The discussion and analysis of our financial condition and results of operations are based upon our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amount of assets and liabilities, revenues and expenses, and related disclosure on contingent assets and liabilities at the date of our financial statements. Actual results may differ from these estimates under different assumptions and conditions.

Critical accounting policies are defined as those that are reflective of significant judgments, estimates and uncertainties and potentially result in materially different results under different assumptions and conditions. For a detailed discussion on the application of these and other accounting policies see Note 2 to our financial statements.

#### **Placement and Promotional Allowances and Credits for Product Returns**

As an inducement to our customers to promote our products in preferred locations of their stores, we provide placement and promotional allowances to certain customers. We also provide credits for customer coupon redemptions and product which has not been sold by its expiration date. These allowances and credits are reflected as a reduction of revenue in accordance with Emerging Issues Task Force ( EITF ) No. 01-9, which requires certain sales promotions and customer allowances previously classified as selling, general and administrative expenses to be classified as a reduction of sales or as cost of goods sold. Provisions for promotional allowances are recorded upon shipment and are typically based on shipments to the retailer during an agreed upon promotional period. We expect to offer promotional allowances at historical levels in the near future as an incentive to our customers. Slotting or placement fees are deducted from revenue in the period paid. Provisions for coupon redemptions and product returned that has reached its expiration date are based on historical trends. Information such as the historical number of cases returned per unit shipped, product shelf life, current sales volume, and coupons distributed during the period are used to derive estimates of the required allowance. As we expand production and introduce new products, we may incur increased levels of returned goods. Also, our estimates assume we will continue as a going concern and maintain distribution with wholesalers and supermarkets that currently carry our product. If a supermarket or wholesaler discontinues our product, we may experience return rates in excess of our historical trend. This could result in material charges to future earnings for reimbursements to our customers for returned, unsold product.

#### **Accounts Receivable**

We evaluate the collectibility of our trade accounts receivable based on a number of factors. Accounts receivable are unsecured, non-interest bearing obligations that are typically due from customers within 30 days of the invoice date. We apply collections in accordance with customer remittance advices or to the oldest outstanding invoice if no remittance advice is presented with payment.

We estimate an allowance for doubtful accounts and revenue adjustments based on historical trends and other criteria. Further, as accounts receivable outstanding are deemed uncollectible or subject to adjustment, these allowances are adjusted accordingly. In circumstances where we become aware of a specific customer's inability to meet its financial obligations to us, a specific reserve for bad debts is estimated and recorded which reduces the recognized receivable to the estimated amount we believe will ultimately be collected. In addition to specific customer identification of potential bad debts, bad debt charges are recorded based on our recent past history and an overall assessment of past due trade accounts receivable outstanding. We also estimate the amount of credits for product placement, promotion and expired product that are expected to be issued for product sold based on an evaluation of historical trends and record an allowance when the sale is recorded.

**Inventories**

Inventories are stated at the lower of cost to purchase and/or manufacture the inventory or the current estimated market value of the inventory. We regularly review our inventory quantities on hand and record a provision for excess and obsolete inventory based primarily on our estimated forecast of product demand and/or our ability to sell the products and production requirements. Demand for the our products can fluctuate significantly. Factors which could affect demand for our products include unanticipated changes in consumer preferences, general market conditions or other factors, which may result in cancellations of advance orders or a reduction in the rate of reorders placed by customers and/or continued weakening of economic conditions. Additionally, our estimates of future product demand may be inaccurate, which could result in an understated or overstated provision required for excess and obsolete inventory.

**Inflation**

We do not believe that inflation had a significant impact on our results of operations for the periods presented.

**Off-Balance Sheet Transactions**

At December 31, 2003 and 2004, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.



## BUSINESS

### Introduction

We produce, market and distribute NuVim dietary supplements in beverage form, which contain two proprietary micronutrients derived from cow's milk, known as LactoActin and LactoMune. These two micronutrients, in their patented formulation, have been shown in independent clinical studies to help strengthen the immune system, support muscle flexibility and promote sturdy joints when consumed over time in certain quantities. NuVim dietary supplement beverages are non-dairy, virtually lactose-free and fortified with vitamins and minerals. By incorporating these micronutrients into our nutritional beverages, we believe that we are able to provide consumers with a good-tasting beverage choice that provides benefits unlike any other on the market. Except for Asia, Australia and New Zealand, we have an exclusive worldwide license agreement with SMBI to use these proprietary micronutrients in carbonated and non-carbonated beverages (and powders based on such beverages designed for reconstitution), excluding certain milk, yogurt and nutritional meal replacement products.

Our first product line was introduced in May 2000. Our product line currently consists of three flavors of refrigerated dietary supplement beverages, including Orange Tangerine, Fruit Symphony and Strawberry Vanilla and are available in 64-ounce cartons. Orange Tangerine and Strawberry Vanilla are also available in 16-ounce bottles.

NuVim beverages are currently available in 13 states and the District of Columbia. Our 64-ounce cartons are currently sold in over 2,800 supermarkets, as of December 31, 2004, including, but not limited to ShopRite Supermarkets, Publix Super Markets, Pathmark Supermarkets, Giant Supermarkets, A&P Supermarkets, Stop & Shop, Food Emporium, Waldbaums, Mars Super Markets, Wegmans Food Markets, Supervalu Supermarkets and Acme Markets. Our relationship with Publix, which expanded our distribution by 830 supermarkets and four states, began in September 2004. Our 16-ounce bottles are sold in selected retail locations, including small grocery stores, delicatessens and a limited number of chain supermarkets in the New York metropolitan area, but accounted for less than 5% of our net revenues for the nine months ended September 30, 2004.

In the future we plan to introduce three new flavors of the 64-ounce size beverage — chocolate, vanilla and peach — at least one of which we expect to test market within the next 12 months. Also during that time period, we expect to introduce a line of shelf-stable (non-refrigerated) sports drinks and, through our majority-owned subsidiary, NuVim Powder LLC, chocolate, vanilla and strawberry flavors of a powder version of our nutritional beverage. Both the sports drink and the powder product will deliver the same health benefits as our existing refrigerated product.

### Industry Background

NuVim, as a dietary supplement in beverage form, is considered part of the functional foods category of the nutrition industry. Functional foods are defined as foods and beverages that promise health benefits beyond their inherent nutritional value. The largest segment of the functional foods category is beverages according to Business Communications Company, Inc. ( BCC ) Functional beverages include a variety of drinks, such as sports drinks, energy drinks, enhanced fruit drinks, soy beverages, ready-to-drink tea and bottled water.

The functional beverage market in the United States has developed beyond being a niche category of drinks meant for better health and well-being. The wide variety of functional beverages makes available options that can appeal to many types of consumers who have become taste- and ingredient-conscious as well as more sophisticated about their overall food consumption. In its 2004 report on the United States functional beverages market, Frost & Sullivan cites the following trends in the functional beverages market:

physical fitness and mental well-being are the core needs driving the functional beverage industry;

the variety of functional beverages has grown to appeal to almost all demographics of consumers;

the growing ethnic population in the United States influences beverage consumption patterns with their use of novel ingredients;  
and

while still a small segment of the competitive and already crowded beverage industry, functional beverages have splintered into many subcategories with their own consumer target markets.

BCC estimates that the functional beverage segment of the industry will grow from approximately \$8.7 billion in 2002 to approximately \$11.5 billion in 2007, despite a decline in overall beverage industry growth rate. BCC estimates that the chilled juice market will increase from approximately \$3.0 billion to approximately \$4.2 billion from 2002 to 2007 and that sports drinks will increase from approximately \$2.0 billion in 2002 to approximately \$2.6 billion in 2007.

According to *New Nutrition Business*, a journal for healthy eating, functional foods and nutraceuticals, in recent years, there has been a trend toward increased consumption of dietary supplements, as well as foods and beverages that assist the human body in preventing and controlling certain diseases. We believe that the growing demand and awareness for functional beverages will increase consumer acceptance of dietary supplements and enlarge this category's share of the total beverage market.

We believe growth in the functional foods market is driven by the following trends:

increasing medical acceptance and recommendation of supplements, vitamins and health foods;

increasing consumer desire to avoid prescription drugs and seek non-medical treatment options;

growing number of consumers seeking health benefits in food and beverages;

growing number of consumers seeking to avoid certain unhealthy attributes in foods and beverages; and

growing scientific interest in the problems of inflammation and a compromised immune system.

Many of these trends are a result of the fact that the U.S. population over 35 years of age is growing 20% faster than the overall population. Therefore, these issues are of concern to an increasing proportion of the population.

#### **Micronutrients: History and Development of LactoActin and LactoMune**

Micronutrients, which include vitamins, minerals and certain other chemical agents, are nutrients that play important roles in the production of enzymes, hormones and other substances that help to regulate growth, activity, development and functioning of the immune and other body systems. Cow's milk naturally contains many vital micronutrients, but generally in minute quantities. The body receives these nutrients only in minute quantities, which is why they are referred to as micronutrients.

The health benefits of our beverages are based on more than 35 years of clinical research conducted by Stolle Milk Biologics, Inc. (SMBI). SMBI's work was based on earlier research that demonstrated that a cow's natural process of creating antibodies to the antigens present in an immune stimulant injected into the cow was passed to the milk of that cow and could benefit humans who consumed that milk. In addition, that milk could be concentrated, and the biological factors present in liquid milk could be maintained in concentrated form and could benefit humans who consumed the milk or the concentrated milk.

Dairy cows are routinely immunized for the purpose of protecting the cow from diseases known to affect cows, some of which may also affect humans. SMBI developed and patented proprietary cow immune stimulants that target a broad spectrum of bacterial antigens that are specific to humans. The immune stimulants are the Stolle Milk Biologics Inc. Series 100 Immune Stimulant. The stimulant consists of 26 different strains of killed bacteria. The stimulant is manufactured by independent licensed serum manufacturing companies. The immunization induces the treated cows to produce antibodies, Immunoglobulin G (IGG) and Anti-Inflammatory Factor (AIF). The presence and level of the micronutrients is measured through the full production process, beginning with the levels present at the first milking after inoculation, through collection of the fluid milk and the concentration process. SMBI trademarked these micronutrients under the name LactoMune for the immune stimulant and LactoActin for the anti-inflammatory stimulant.

SMBI's unique immune stimulant, as well as the SMBI micronutrients resulting from the immunizations, are the subject of patent protection. LactoMune and LactoActin are secreted into the milk of the treated cows, which is then processed into nonfat skim milk powder, milk protein concentrate and whey protein concentrate under strictly controlled conditions to minimize inactivation and prevent destruction of the micronutrients. This gentle, low heat process reduces the lactose and salts in the milk. The resulting products also are free of hormones, antibiotics and genetic alteration.

The milk and whey micronutrient concentrates produced from the cows injected with SMBI's proprietary immunizations have been used in more than 20 independent but small-scale human and animal clinical studies, which generally conclude that milk and whey protein concentrates from these cows are effective in promoting the health benefits of LactoMune and LactoActin. In 2002, C.M. Colker, M. Swain, L. Lynch and D.A. Gingerich published in *Nutrition Magazine* a study of our NuVim beverage entitled, *The Effects of a Milk-Based Bioactive Micronutrient Beverage on Pain Symptoms and Activity of Adults with Osteoarthritis: A Double Blind, Placebo-Controlled Clinical Evaluation*. This clinical study involved 31 human subjects and yielded similar results to the other micronutrient studies, when subjects consumed 12 ounces of NuVim daily for six weeks. There has been no followup study, and therefore, we do not have clinical evidence that a shorter period of daily consumption might provide similar beneficial results.

## **Our Strategy**

Our objective is to become a leading provider of good-tasting, nutritional beverages and beverage products based on the technology we license from SMBI. The elements of our business strategy include:

- increasing brand awareness of the NuVim brand through increased television advertising, sampling and other marketing activities;
- expanding sales for our existing product line into additional geographic markets and increasing sales in our current markets;
- introducing new products that we have developed, including the NuVim powder mix and the shelf-stable sports drink;
- expanding our distribution channels beyond the current concentration in supermarkets, to club warehouses, convenience stores, schools, business cafeterias, the military, drug stores, fast food outlets and other locations using the 16-ounce plastic bottle single-serving size; and using e-commerce and infomercials for selling of our powder mix product; and
- building the brand, growing revenues and achieving profitability in order to position NuVim as a possible joint venture or merger partner, in which NuVim's brand as well as its marketing strengths could contribute to the combined venture, or as a possible acquisition candidate for one of the 13 multi-national food and beverage companies that might seek to add healthy product choices to their product offerings.

## **Our Products**

We have developed the NuVim beverage line of products to provide consumers with good-tasting beverages that also help strengthen the immune system, support muscle flexibility and promote sturdier joints. All of our products contain the proprietary micronutrients, LactoActin and LactoMune.

### *Current Products*

Our initial product line consists of natural, fruit-flavored, refrigerated dietary supplement beverages. It is available in three flavors: Strawberry Vanilla, Orange Tangerine and Fruit Symphony. The product is available in 64-ounce cartons and currently is sold primarily in supermarkets. We also sell single-serving, 16-ounce bottles, which are available in Strawberry Vanilla and Orange Tangerine flavors. The smaller containers are currently marketed primarily to small grocery stores and delicatessens, plus a limited number of chain supermarkets in the New York metropolitan area.

In addition to containing LactoActin and LactoMune, NuVim refrigerated beverages are also fortified with vitamins and minerals including in an eight-ounce serving 100% of the minimum daily requirement of Vitamins E, C, B-12 and zinc, smaller quantities of Vitamin A and calcium and complete protein with all nine essential amino acids. The beverage is readily digestible, is virtually lactose-free and contains no fat, cholesterol or caffeine. An eight-ounce serving contains 70 calories, 10 grams of sugar and 12 grams of carbohydrates.

The 64-ounce size of NuVim is typically priced from \$2.78 to over \$4.00, depending on the supermarket, which is approximately a \$0.10 to \$0.20 premium over the everyday price of a 64-ounce carton of a nationally branded orange juice. The 16-ounce bottle is typically priced at approximately \$1.29 to \$1.59.

### *New Product Development*

We intend to develop the following additional products that deliver the same clinically-demonstrated health benefits as our current products:

*Powdered Drink Mix.* Through our subsidiary, NuVim Powder LLC, within the next 12 months, we plan to introduce a powdered drink mix that may be added to almost any milk, juice, yogurt, cereal or other beverage. We initially expect to have three flavors chocolate, vanilla and strawberry which will be sold in boxes of 30-packets of individual servings.

*New Flavors.* We plan to introduce three new flavors of our 64-ounce size beverage chocolate, vanilla and peach at least one of which should be available for test marketing within the next 12 months.

*Shelf-Stable Sports Drinks.* We plan to conduct a limited test of a shelf-stable NuVim sports drinks within the next 12 months. We will market this product in 20-ounce bottles, initially in three flavors lemon lime, tangerine and fruit punch.

### **Sales and Marketing**

We target consumers seeking specific health benefits in foods or beverages, people taking vitamins or other supplements, healthy, active people and weight conscious consumers. The health profile of our consumers includes people with health concerns, people trying to boost their immunity and people with restrictive diets, such as diabetics or lactose-intolerant consumers.

Approximately 80% of our current sales are to refrigerated food warehouses that deliver our product and other brands of refrigerated products to individual supermarkets. Some of these warehouses are owned by the supermarket chains that stock our product, while others have contracts with a supermarket chain to warehouse and then deliver refrigerated products to their stores. For the year ended December 31, 2004, White Rose, a wholesaler that sells to a number of supermarket chains in New York such as Foodtown, Gristedes and Key Food, and Wakefern Foods, which supplies Shop Rite Supermarkets in the New York/New Jersey area, accounted for approximately 14% and 13% of our total gross sales, respectively. For the three months ended March 31, 2005, Publix Supermarkets, White Rose, C&S NJ, a wholesaler that sells to supermarket chains such as Pathmark and Stop & Shop, and Wakefern accounted for approximately 18.7%, 12.2%, 11.2% and 10% of gross sales, respectively.

Our 64-ounce refrigerated beverage product is primarily sold to consumers through supermarkets. We also sell the 16-ounce refrigerated beverage product to refrigerated food warehouses. Some of these warehouses sell their refrigerated products to independent smaller grocery stores or to large supermarkets that have only one or two stores. In addition, our 16-ounce beverage product is sold to distributors who only sell to foodservice outlets, such as cafeterias, schools, hospitals and convenience stores. Once adequate funding is available, we plan to expand the categories of customers to include club stores, nutrition centers and health food outlets.

During the third and fourth quarters of 2004, advertising activities included national television advertisements on CNN, TNT and TBS. We also ran television advertisements on CBS in the fourth quarter in selected markets. Although we temporarily discontinued these television advertisements in January 2005, we intend to resume limited television advertising following this offering. We also make use of supermarket advertising and consumer promotions, Internet advertising in conjunction with Dialog Group's network of health-related consumer sites, product sampling and, when appropriate opportunities arise, sponsorship of sporting, health and wellness events and joint promotional opportunities with third parties. We also attend and present at health and nutraceutical trade shows and conferences. We also reach our customers and consumers through direct delivery of coupons and promotional materials, our website at [www.nuvim.com](http://www.nuvim.com) and our toll-free number for consumer inquiries. Mr. Kundrat, our chairman and chief executive officer, is a member of the board of directors of the Dialog Group, Inc., and Mr. DeCrescenzo, who joined our board in January 2005, is the chairman and chief executive officer of Dialog Group. To date, we have not been charged for services provided to us by Dialog Group. However, we anticipate incurring charges for their services in upgrading our website in the near future and for their future web hosting services, although no specific agreements have been made.

Dick Clark is our public spokesperson and has appeared in our television advertisements, point of sale materials and on our website. We expect that he also will appear in the infomercials we are creating for broadcast on cable television beginning in 2005 to market our powder drink mix product.

Our public relations campaign helps to build awareness and credibility, as well as communicate the benefits of our products in a grass roots format to stimulate trial and repeat purchases. To accomplish this awareness, we have used user

testimonials, press releases, regional publications and channel trade magazines, health, sports and lifestyle publications and third-party outreach to medical associations and foundations such as the American Cancer Society and American Diabetes Association, dieticians, health and wellness organizations. When the opportunity arises, we also participate in local television and radio appearances with our spokesperson, Dick Clark.

## **Distribution**

We first introduced NuVim refrigerated beverages in the New York, New Jersey and Connecticut metropolitan area during the second quarter of 2000. We then expanded the distribution of our products into the Philadelphia, Baltimore, Washington, D.C., Harrisburg, Scranton, Wilkes-Barre and the State of Delaware marketing areas during the first quarter of 2001. In 2002 we further expanded into Virginia, Pittsburgh, Cleveland and upstate New York. In September 2004, began selling to Publix Super Markets, a chain of approximately 830 grocery stores located in Florida, Alabama, Georgia, Tennessee and South Carolina. As of November 30, 2004, our refrigerated beverages are available in approximately 2,800 supermarkets in all or part of 13 states (New York, New Jersey, Connecticut, Maryland, Pennsylvania, Delaware, Virginia, Ohio, Florida, Alabama, Georgia, Tennessee and South Carolina) and the District of Columbia. These accounts are serviced by a network of eight food brokers.

In August 2004, we established NuVim Powder LLC, of which we own 51%. The remaining 49% is owned 24% by the owner of our advertising production company, and 12.5% each by Dick Clark, our spokesperson, and Stanley H. Moger, one of our directors. The business plan for NuVim Powder contemplates that NuVim, Inc. will provide the powder mix product pursuant to our SMBI license and supply agreements to NuVim Powder for distribution. NuVim Powder will market the powder drink mix product through infomercials created for cable television by the advertising production company, featuring Dick Clark as NuVim's spokesperson. Orders for our powder drink mix will be taken by telephone and mail-in response to our infomercials and on our website. We anticipate that NuVim Powder will begin distributing NuVim powder products within 12 months from the date of this offering, with a target of commencing initial distribution in 2005.

## **Supply, Manufacturing and Order Processing**

SMBI whey protein concentrate ( WPC ) containing LactoActin and LactoMune, which is the unique ingredient in our products, is extracted from the milk of approximately 30,000 pasture-fed cows in New Zealand, which is well known for maintaining high standards for dairy production and quality. We obtain our requirements of WPC under a supply agreement with SMBI (the Supply Agreement ). See Related Party Transactions for information concerning our license agreement with SMBI (the License Agreement ), which gives us the exclusive right to incorporate SMBI's WPC into our dietary supplement beverages and the Supply Agreement under which we obtain our requirements of WPC from SMBI.

Our products are currently manufactured solely at Clover Farms Dairy in Reading, Pennsylvania, using WPC supplied by SMBI, plus milk protein concentrate and a blend of customized flavors, as well as other ingredients purchased from major domestic and international companies. Clover Farms purchases and maintains inventories of select ingredients, which allows for purchasing leverage that results in more favorable prices and service. We purchase all the other ingredients. Our refrigerated nutritional beverage is then packaged in 64-ounce juice cartons and 16-ounce plastic single-serving bottles. NuVim beverages have an 83-day shelf-life from the date of production. This compares favorably with fresh juice not made from concentrate and pasteurized milk.

NuVim beverages are produced under a strict quality assurance program. The product formulation and process steps for the production of NuVim products are documented in the NuVim, Inc. Quality Manual. This manual contains production formula and process instructions, as well as quality assurance testing required on a daily, batch basis, including, without limitation, daily microbiological testing. The HACCP (Hazard Analysis Critical Control Point), which is in place at Clover Farms Dairy and is a requirement for all dairy operations in the United States, will be implemented at any new production site.

We expect to contract with other co-packer dairies in addition to Clover Farms in the future as the geographic scope of our distribution expands. We believe there are numerous qualified dairies throughout the United States that have sufficient capacity to meet our needs. This strategy allows us to operate without investing in plant and production equipment.

Our beverages are currently warehoused exclusively at Orefield Cold Storage in Orefield, Pennsylvania and transported to our customers by Sommer Maid Creamery. The services provided by Orefield Cold Storage are available to us, in a competitive business environment. We have identified four competitive storage facilities within a 100 mile radius of the Orefield location. Each of the four facilities provide access to trucking services equal to the services provided by Sommer Maid Creamery. We do not consider our purchase order relationship with Orefield and Sommer Maid to be a material risk.

We use eight food broker organizations to obtain product orders from our major supermarket accounts which they send to us for fulfillment. These broker organizations also provide retail coverage in the supermarkets to insure that our products are stocked properly, priced correctly and rotated as needed. Each broker organization is paid on a commission basis for cases sold in their territory.

Upon receiving an order, our products are shipped directly from the Orfield warehouse to customer warehouses, enabling just in time inventory levels for our finished products. Customers typically receive the product with a minimum of 50 days of shelf life. We control inventory management, production and invoicing.

### **Patents and Trademarks**

SMBI has over 100 U.S. and foreign patents and patent applications that apply directly to NuVim products, which expire at various times between February 2005 and April 2017. In addition, in November 2003, NuVim was awarded a manufacturing process patent for milk protein concentrate beverages, which expires in March 2021.

SMBI granted to us for the term of the License Agreement the exclusive irrevocable license to use the NuVim trademark (the NuVim Trademark ) (i) in North America for all purposes; and (ii) for certain prescribed uses outside North America. Upon the written consent of SMBI, which consent may not be unreasonably withheld, we also have a non-exclusive right to use and/or sublicense the NuVim Trademark outside of North America for uses not contemplated in, or subject to the License Agreement. Upon an agreed upon payment by us to SMBI on amounts owed to SMBI under the Supply Agreement, SMBI will assign the NuVim Trademark to us upon our written consent, provided that we are adequately funded to enable us to use the rights and fulfill the obligations under the License Agreement and the Supply Agreement. We anticipate that the assignment of this trademark will be consummated soon after completion of this offering. The trademark is currently in escrow pending completion of this offering.

LactoActin and LactoMune are trademarks of SMBI. Fruit Symphony is a trademark of NuVim.

SMBI retains responsibility for patent maintenance and filing applications for new technology and for infringement actions for the intellectual property licensed from SMBI. We are responsible for maintenance of our trademarks and for protecting those trademarks against infringement.

### **Competition**

In a broad sense, all beverages are competitive with our dietary supplement beverages. When consumers buy NuVim, they most likely are not purchasing some alternative beverage choice, which could be any beverage, from bottled water to carbonated soda to milk or juice. Competition in the nutritional beverages market, in particular, which includes all of our existing and currently planned products, is intense, growing and evolving. The industry trend has moved from small start-up companies to industry participants that are large beverage companies or food conglomerates. These companies often have better cost control, product promotion and distribution networks than we are able to generate.

Competition is based primarily on product benefits, price, quality, customer service and marketing support. Our competition includes national, regional and local producers and distributors. Most of our competitors have significantly greater financial, managerial and technical resources than we do, which may put us at a competitive disadvantage. For instance, channels of distribution for our products often require the expenditure of significant and ongoing capital, which may put us at a disadvantage to better capitalized competition.

We believe that our current products are best positioned as a nutritional beverage and placed in supermarkets or other retail outlets in the refrigerated juice section. Competition is particularly intense among products in these nutritional beverage market segments. We believe our direct beverage competition in this market segment includes national, regional and local beverage manufacturers. We compete within the refrigerated fruit drink category, which includes national and regional brands such as Tropicana (owned by PepsiCo, Inc.), Minute Maid (owned by The Coca-Cola Company) and Florida's Natural (a division of Citrus World, Inc.). In addition, a number of major supermarkets and other retail outlets market their own brand of fresh juices that compete with our products. Significant competitive pressure from these or other companies could negatively impact our sales and results of operations.

We have not yet begun producing, marketing and distributing our shelf-stable sports drink. When we enter that market, we will be principally competing with two widely known brands, Gatorade (owned by PepsiCo, Inc.) and Powerade (owned by The Coca-Cola Company). We believe we will be able to compete effectively through independent distributions with these products on the basis of the price, taste, quality, plus the added health benefits our products will provide. However, our competition has significantly greater name recognition, financial, managerial and technical resources than we do, which may put us at a competitive disadvantage. Our intent is to try to capture a small share of this very large and growing segment of the beverage industry.

We also have not yet introduced our powder mix product. There are products on the market in tablet form, such as glucosamine and chondroitin, which claim to provide anti-inflammatory benefits, and powder whey and other products, of which there are many carried in health food stores, that claim to enhance the immune system. The competitors marketing these products include both small and large multi-national companies. We do not believe there is a competitive powder product currently available that offers the specific health benefits that our powder mix product will provide.

NuVim dietary supplement beverages are the only beverages sold in the United States containing the proprietary micronutrients LactoActin and LactoMune. Other companies sell milk and whey protein concentrate or products containing milk or whey protein concentrate, but they do not include the antibodies in the NuVim products that are secreted into the SMBI milk from the specially immunized cows. Therefore, we believe, our products provide health benefits to consumers that are not available in other products that contain milk-derived antibodies. We believe that NuVim is the only beverage product on the market derived from milk that has the anti-inflammatory as well as the enhanced immunity factor.

Although we have an exclusive licensing agreement with SMBI and are aware of no other beverage brands that are positioned as dietary supplements with claims promoting healthy joints and immune enhancement, it is possible that another larger, established company might enter the dietary supplement market and offer a product similar to ours with comparable benefits. Such a potential competitor may have a longer operating history and substantially greater financial, technical support and other assets and resources and may be able to respond more quickly to new or changing business situations. If such a company were to enter the segment of the beverage market we currently occupy, this could have a material adverse effect on our business and prospects.

### **Government Regulation**

The FDA has primary regulatory authority over dietary supplements. In 1976, the FDA's ability to regulate the composition of dietary supplements was restricted in several material respects by the Proxmire Amendment to the Federal Food, Drug and Cosmetic Act. Under this Amendment, the FDA is precluded from establishing maximum limits on the potency of vitamins, minerals and other dietary supplements, from limiting the combination or number of any vitamins, minerals or other food ingredients in dietary supplements and from classifying a vitamin, mineral or combination of vitamins and minerals, or dietary supplements as drugs solely because of their potency. However, the Proxmire Amendment did not affect the FDA's authority to determine that a vitamin, mineral or other dietary supplement is a new drug on the basis of disease claims made in the product's labeling. Such a determination would require deletion of the disease claims, or submission and FDA approval of a new drug application, which entails costly and time-consuming clinical studies over successive phases.

In October 1994, the DSHEA was enacted, which introduced a new statutory framework governing the composition and labeling of dietary supplements. Under this law, dietary supplements are permitted to make statements of nutritional support without FDA pre-approval. Such statements may describe how particular dietary ingredients affect the structure, function or general well-being of the body, or the mechanism of action by which a dietary ingredient may affect body structure, function or well-being, but may not state that a dietary supplement will diagnose, mitigate, treat, cure or prevent a disease. Nor can a claim be made that would be interpreted as a health claim. A company making a statement of nutritional support must possess adequate substantiating scientific evidence for the statement, disclose on the label that the FDA has not reviewed the statement and that the product is not intended to mitigate, treat, cure or prevent disease, and notify the FDA of the statement within 30 days after its initial use. Although the FDA has been notified of the statements of nutritional support made for our products, there can be no assurance that, at some time in the future, the FDA will not determine that a given statement of nutritional support which we make is a disease claim rather than an acceptable nutritional support statement relating to body function or structure. Such a determination would require deletion of the disease claim or, if it is to be used at all, our submission and the approval by the FDA of a new drug application (which would entail costly and time-consuming clinical studies) or revision to a health claim, which would, as noted above, require demonstration of significant scientific agreement and prior FDA approval.

We believe that we currently meet the requirements of DSHEA. Our structure/function claims are that the product helps build a strong total immune system, supports muscle flexibility and promotes sturdy joints. We believe that we are currently compliant with all material laws and that we maintain all material permits and licenses relating to our operation based on the current food labeling requirements under DSHEA.

### **Property**

We currently lease approximately 2,200 square feet of office space in Paramus, New Jersey under a two-year lease that expires on December 31, 2006. The lease space is used as our executive offices, which we use for marketing and administrative needs. Since we use off-site co-packing and warehousing arrangements for the manufacture and distribution of our products, we do not require extensive facilities. We believe that our current leased property is adequate for our needs, but that additional or alternative space will be available at commercially reasonable rates if our requirements change.

### **Employees**

As of May 31, 2005, we had seven employees. Of these seven, four are full-time employees and are our executive officers, and three are part-time employees, one of whom is in credit collection and management, one of whom is in consumer affairs and one of whom is in administration. Our corporate secretary also is a part-time consultant who, among other responsibilities, provides advice on Federal Trade Communication law.

### **Legal Proceedings**

We are not a party to any material legal proceedings.



## MANAGEMENT

### Executive Officers and Directors

Our executive officers and directors, including their ages as of April 30, 2005, and certain information about them are as follows:

Name	Age	Position
Richard P. Kundrat	61	Chairman of the Board and Chief Executive Officer
Paul J. Young	67	Vice President of Operations
John L. Sullivan	60	Vice President of Sales
Michael Vesey	43	Chief Financial Officer
Donald F. Farley	62	Director
William C. Franke, Ph.D.	59	Director
Stanley H. Moger	68	Director
Frederick S. Pierce	71	Director
Calvin L. Hodock	69	Director
Peter V. DeCrescenzo	54	Director

### Background and Business Experience of Directors and Executive Officers

The following is a brief description of the principal occupation and recent business experience of each of our executive officers and directors:

*Richard P. Kundrat* has served since our inception as a director and our Chief Executive Officer. He was elected as our Chairman of the Board in March 2000. He has more than 30 years experience in the beverage industry, including a total of 27 years in various positions at Thomas J. Lipton, Inc., the Lipton subsidiary of Unilever NV, Englewood Cliffs, New Jersey ( Unilever/Lipton ) from which he retired in June 1996. Upon his retirement from Unilever/Lipton, he founded the business management firm, Kundrat Associates, Mahwah, New Jersey, which he operated full-time until he joined NuVim in September 1999. From November 1991 to June 1996, Mr. Kundrat was the General Manager of the Unilever/Lipton and Pepsi-Cola partnership. From June 1987 to November 1991, he was the Vice President/General Manager of the Foodservice, Bottler, Dairy Division at Unilever/Lipton. Mr. Kundrat received his B.A. degree from the University of Scranton. He currently is a director of Dialog Group, Inc.

*Paul J. Young* has been our Vice President of Operations since March 2000. He has more than 30 years of manufacturing and processing experience as a senior executive in the food and beverage industry, holding various operating positions with Unilever/Lipton from which he retired in January 1998. Upon his retirement from Unilever/Lipton, Mr. Young operated a consulting business, Paul Young Enterprises, LLC until December 2003. Prior thereto, from January 1997 to January 1998, he served as the Vice President of Safety Health and Environment for Unilever North American Foods, and from August 1990 to January 1997, he was Vice President of Manufacturing & Engineering at Unilever/Lipton. Mr. Young received his B.S. degree from the University of Nebraska.

*John L. Sullivan* has served as our Vice President of Sales since March 2000. He has more than 35 years of sales management experience directing sales efforts in supermarkets, convenience stores, drug stores and mass merchandisers. For 32 years, he held various sales and marketing positions with Unilever/Lipton, including from September 1996 to September 1998, as Vice President of Sales Food Service Division at Unilever/Lipton. Upon his retirement from Unilever/Lipton in September 1998 until he joined NuVim in March 2000, Mr. Sullivan worked as an independent consultant through his firm, John L. Sullivan and Partners, Haworth, New Jersey. He received his B.S. degree in Marketing from Fairleigh Dickenson University.

*Michael Vesey* has served as our Chief Financial Officer since November 2004. Prior to joining NuVim, from May 2003 to October 2004, Mr. Vesey served as an independent consultant advising companies on financial management issues. From September 2000 to May 2003, Mr. Vesey was the Chief Financial Officer of Dynamic Mobile Data Systems, Inc., an early stage company developing wireless communications software solutions for the transportation and field service industries. From September 1999 to September 2000, he served as the Director of Financial Management for

Cingular Interactive, a national provider of wireless data and Internet-based communications systems. Mr. Vesey is a Certified Public Accountant, and he earned his B.B.A. degree from Pace University.

*Donald F. Farley* has been a director of NuVim since November 1999. Since June 1998, he has served as Chief Executive Officer of Spencer Trask Specialty Group, LLC, a firm principally engaged in the business investing in securities, and as Chairman of the Board of Directors of Stolle Milk Biologics, Inc., a company that provides wellness-enhancing products derived from milk-based technology, of which Spencer Trask is the controlling stockholder. Since November 2000, he also has served as Chairman of the Board of Vysteris, Inc., a private drug delivery technology company. He has more than 30 years of experience with Pfizer, Inc., where he was a senior executive in various technical and business assignments. He received his B.S. degree from The University of Rhode Island and his MBA from the University of Hartford.

*William C. Franke, Ph.D.* was elected to our Board of Directors in September 2003. Since May 2001, he has been the Associate Director of the Center for Advanced Food Technology at Rutgers University. Before he assumed that position, he was Vice President Scientific and Regulator Affairs at Unilever North America, a position he held from March 1999 to April 2001. He received his B.S., M.S. and Ph.D. degrees in Food Science from Rutgers University.

*Stanley H. Moger* was elected to our Board of Directors in March 2004. Since January 1998, he has served as President of SFM Entertainment, LLC, a provider of media services to major corporations. He received his B.A. degree from Colby College.

*Frederick S. Pierce* was elected to our Board of Directors in September 2004. Since its founding in 1989, he has served as President of The Frederick Pierce Company, Inc., which produces programming for television, cable and motion picture theaters. Mr. Pierce served as President of the American Broadcasting Companies, Inc. (ABC) from January 1983 until January 1986, during which time he had overall responsibility for all operating divisions plus the financial, legal and corporate staff of ABC, while also serving on the Executive Committee of the Board of Directors. He received his B.A. degree from City College of New York. Mr. Pierce is a member of the Board of Trustees of The American Film Institute (AFI) and previously served as AFI's Chairman of the Board for four years.

*Peter V. DeCrescenzo* was elected to our Board of Directors in January 2005. He has been the President and Chief Executive Officer of Dialog Group, Inc. since March 2003. Dialog Group is a provider of relationship marketing communications services, business and consumer targeting databases for the healthcare, financial and other direct-to-consumer, direct-to-professional business markets. From November 2000 to March 2003, he served as President and Chief Executive Officer of HealthCare Dialog, a direct marketing company specializing in healthcare. In March 2000, HealthCare Dialog was acquired by Dialog Group, Inc. From October 1993 until November 2000, Mr. DeCrescenzo was the founding partner of PVD and Partners, a full-service healthcare marketing and communications agency. He has been the Chairman of the Board of Dialog Group, Inc. since April 2003. He received a BBA degree from Pace University.

*Calvin L. Hodock* was elected to our Board of Directors in April 2005. For more than five years, Mr. Hodock has been the President and Managing Partner of The Hodock Group, a marketing consulting and research company, located in Skillman, New Jersey. Since June 2002, he also has served as Professor of Marketing, Berkeley College and from June 2002 to December 2003, he served as Adjunct Professor, Stern School of Business, New York University. He received his B.B.A degree from the University of Cincinnati and his M.S. degree in Marketing from the University of Illinois.

Directors are elected annually at the annual meeting of stockholders to hold office for one year, and until their successors are duly elected and qualified. NuVim has not set the date for its first annual meeting following this offering, but expects to schedule a meeting during 2005. Board vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director. The executive officers are appointed by the Board and serve at their discretion. There are no family relationships among the directors or executive officers of NuVim.

#### **Special Advisor to the Chairman of the Board**

Peter B. Hutt, who previously served on our Board of Directors, has been appointed to serve as a special advisor to the Chairman of the Board, specifically to consult on Food and Drug Administration matters. Since 1965, Mr. Hutt has been a partner at the law firm of Covington & Burling, where he specializes in food and drug law. Mr. Hutt served as Chief Counsel for the Food and Drug Administration from 1971 to 1975 and has taught courses on food and drug law at Harvard Law School and Stanford Law School.

## Promoter

Spencer Trask Specialty Group was instrumental in forming our company. Kevin Kimberlin is the principal owner and non-member manager of Spencer Trask and has been involved with Spencer Trask since the formation of NuVim. Mr. Kimberlin also controls other Spencer Trask entities that own our securities. In addition, he exercises voting and investment control over the NuVim securities held by the Spencer Trask entities. As such, Mr. Kimberlin may be deemed to be a promoter of NuVim.

## Board Committees

The Board of Directors currently has three standing committees: an Audit Committee, a Compensation Committee and a Corporate Governance and Nominating Committee.

*Audit Committee.* Our Audit Committee oversees our accounting and financial reporting processes, internal systems of accounting and financial controls, relationships with independent auditors, and audits of financial statements. Specific responsibilities include the following:

- selecting, hiring and terminating our independent auditors;
- evaluating the qualifications, independence and performance of our independent auditors;
- approving the audit and non-audit services to be performed by the independent auditors;
- reviewing the design, implementation, adequacy and effectiveness of our internal controls and critical accounting policies;
- overseeing and monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to financial statements or accounting matters;
- with management and our independent auditors, reviewing any earnings announcements and other public announcements regarding our results of operations; and
- preparing the report that the Securities and Exchange Commission requires in our annual proxy statement.

Our Audit Committee is comprised Messrs. Pierce, Franke and DeCrescenzo. Mr. Pierce serves as Chairman. The Board has determined all members of the Audit Committee are independent under the rules of the Securities and Exchange Commission and the Pacific Exchange. The Board has determined that Mr. Pierce qualifies as an audit committee financial expert, as defined by the rules of the Securities and Exchange Commission.

*Compensation Committee.* Our Compensation Committee assists our Board of Directors in determining the development plans and compensation of our officers, directors and employees. Specific responsibilities include the following:

- approving the compensation and benefits of our executive officers;
- reviewing the performance objectives and actual performance of our officers; and
- administering our stock option and other equity compensation plans.

Our Compensation Committee is comprised of Messrs. Hodock and Franke. Mr. Hodock serves as Chairman. The Board has determined that all members of the Compensation Committee are independent under the rules of the Pacific Exchange.

*Corporate Governance and Nominating Committee.* Our Corporate Governance and Nominating Committee assists the Board by identifying and recommending individuals qualified to become members of our Board of Directors, reviewing correspondence from our stockholders, and establishing, evaluating and overseeing our corporate governance guidelines. Specific responsibilities include the following:

- evaluating the composition, size and governance of our Board of Directors and its committees and make recommendations regarding future planning and the appointment of directors to our committees;
- establishing a policy for considering stockholder nominees for election to our Board of Directors;
- evaluating and recommending candidates for election to our Board of Directors;

reviewing our corporate governance principles and providing recommendations to the Board regarding possible changes; and

reviewing and monitoring compliance with our Code of Ethics and our insider trading policy.

Our Corporate Governance and Nominating Committee is comprised of Messrs. Franke, DeCrescenzo and Hodock. Mr. Franke serves as Chairman. The Board has determined that all members of the Corporate Governance and Nominating Committee are independent.

### Director Compensation

We have never paid cash compensation to our directors, but directors have, from time to time, received shares of common stock and option grants. Under the 2005 Directors Stock Option Plan, which becomes effective upon the closing of this offering, upon joining the Board, each director will receive an option to purchase 10,000 shares of common stock, which vests and becomes exercisable over three years in equal installments. Thereafter, in each year of service on the Board, the director is eligible to receive an option to purchase 7,500 shares. Each director also receives an option to purchase an additional 500 shares for each committee on which that director serves, except that each year the chairman of the Audit Committee receive an option to purchase 4,000 shares and the chairmen of the Compensation Committee and the Corporate Governance and Nominating Committee each receive an annual option to purchase 2,000 shares as compensation for their services as chairman of the committees. The annual options will be immediately vested and exercisable. See 2005 Directors Stock Option Plan.

Non-employee directors are reimbursed for their reasonable out-of-pocket expenses incurred in attending meetings of the Board of Directors.

### Executive Compensation

The following table sets forth certain information concerning total compensation received by our Chief Executive Officer and our two other most highly compensated executive officers during the last year (the Named Officers) for services rendered to NuVim in all capacities for the three years ended December 31, 2004. No other executive officer received more than \$100,000 in total compensation during the last fiscal year.

Summary Compensation Table

Name and Principal Position	Year	Annual Compensation		Long-Term Compensation Awards
		Salary (\$)	Bonus (\$)	Securities Underlying Options (#)
Richard P. Kundrat <i>Chairman of the Board and CEO</i>	2004	\$ 175,000	0	0
	2003	\$ 175,000	110,000	1,450(1)
	2002	\$ 189,515	0	0
Paul J. Young <i>Vice President of Operations</i>	2004	\$ 150,000	0	0
	2003	\$ 150,000	0	1,250(1)
	2002	\$ 154,000	0	1,128(1)
John L. Sullivan <i>Vice President of Sales</i>	2004	\$ 150,000	0	0
	2003	\$ 150,000	0	1,250(1)
	2002	\$ 160,000	0	1,128(1)

(1) Securities issued were warrants, exercisable at \$11.00 per share for seven years. These warrants were voluntarily cancelled in 2004.

In 2001, we issued 1,819 shares of common stock as a signing bonus to each of Messrs. Sullivan and Young. The shares were not subject to vesting or performance conditions. The board of directors determined that the fair market value of these shares was \$55 per share for an aggregate signing bonus of \$100,000. In 2002, Mr. Young received 1,310 shares in lieu of a cash payment of \$72,000 of 2001 salary, and Mr. Sullivan received 546 shares in lieu of a cash payment of \$30,000 of 2001 salary. The salaries and bonus reflected in the above table have been accrued for the period August 2002 through November 2004. In 2003, the Named Officers accepted shares of common stock at \$11 per share in payment of one-half of the salary owed to them for the months of February through July 2003 as follows: Mr. Kundrat was issued 3,955 shares for \$43,750 of

salary, Mr. Young was issued 3,410 shares for \$37,500 of salary and Mr. Sullivan was issued 3,410 shares for \$37,500 of salary. In November 2004, we issued shares of our common stock to each of the Named Officers in payment of the remaining deferred salaries and bonus through December 31, 2003. Mr. Kundrat was issued 77,271 shares for \$298,500 of accrued salaries and bonus, Mr. Young was issued 30,949 shares for \$162,500 of accrued salary and Mr. Sullivan was issued 39,646 shares for \$162,500 of accrued salary. Because no public market existed for our common stock during at the time of the issuances of these shares, all of the shares issued to the Named Officers in lieu of cash salaries or bonuses were valued based upon the good faith determination of the Board of Directors of the then fair market value of our common stock, taking into account such factors as the price at which unrelated third parties had purchased our securities, our revenues and net losses and the relative strength of our balance sheet.

In April 2005, the Named Officers agreed to take additional shares of common stock in payment of additional accrued salary owed to them through February 2005. These shares, which are part of a restructuring plan in which our executive officers, the bridge lenders and certain creditors participated, will be issued concurrently with the closing of the offering, at a price of \$3.00 per share. The shares to be issued to the Named Officers are as follows: 63,195 shares for \$189,584 of accrued salary to Mr. Kundrat and 54,167 shares for \$162,500 of accrued salary owed to each of Messrs. Sullivan and Young.

See Related Party Transactions Accrued Executive Salaries.

### **Option Grants in Last Year**

No options were granted to the Named Officers during the year ended December 31, 2004.

### **Option Exercises and Holdings**

None of the Named Officers acquired any shares of common stock upon exercise of options during the year ended December 31, 2004. In addition, Mr. Young and Mr. Sullivan, who previously had been granted options, agreed to cancel them as part of the overall restructuring plan prior to this offering. As a result, no Named Officers held any options, whether exercisable or unexercisable, as of December 31, 2004.

### **Employment Agreements**

Each of our officers serves at the discretion of our Board of Directors. In September 2004, we entered into employment agreements with Richard P. Kundrat, our Chairman of the Board and Chief Executive Officer, John L. Sullivan, our Vice President of Sales and Paul Young, our Vice President of Operations. These agreements expire in 2007. Mr. Kundrat's base salary is \$225,000 per year; Messrs. Sullivan and Young are entitled to receive \$175,000 in base salary annually. These base salaries are subject to increase at the discretion of the Board. Under each employment agreement, the executive is entitled to participate in an annual bonus program, if and when such program is adopted by the Board. Each executive's receipt of bonus compensation is within the sole discretion of the Board of Directors, and the Board has the right to alter, amend or eliminate all or any part of any bonus at any time, without compensation. Each executive also is entitled to participate in all of our employee benefit plans, including any stock plan adopted by the Board that permits participation by executive officers. The executive officers currently do not receive company-provided health insurance or any similar benefits under their respective agreements. The Board may terminate each agreement at any time for cause or in the event of the executive's disability or death. If the agreement is terminated without cause, the executive is entitled to one year's base salary, in addition to any other accrued benefits which have been earned or become payable as of the date of the termination. In the event that the agreement is terminated because of death or disability, we will continue to pay the executive's full salary through the end of the month in which his period of employment ends, together with any benefits which have been earned or become payable as of the termination date. As part of each agreement, the executive has signed a nondisclosure, developments and nonsolicitation agreement, in which he agrees, among other things, to protect our confidential information, not to solicit our employees, and not to breach any agreements with third parties.

In December 2004, we entered into an employment agreement with Michael Vesey, our Chief Financial Officer. The agreement provides for an initial \$150,000 annual base salary, subject to periodic increases as may be determined by the Compensation Committee, the possibility of bonuses and stock option grants, in the discretion of the Compensation Committee, reimbursement of expenses and health insurance. The agreement has no specific termination date. The Board may terminate the agreement at any time for cause or in the event of disability or death. If the agreement is terminated without cause, Mr. Vesey is entitled to one year's base salary, in addition to any other accrued benefits which have been earned or become payable as of the date of the termination. As part of the agreement, Mr. Vesey signed a nondisclosure and nonsolicitation agreement, in which he agreed, among other things, to protect our confidential information, not to solicit our employees and not to breach any agreements with third parties.

## 2005 Incentive Stock Option Plan

Our Board of Directors recently adopted, and stockholders approved, the 2005 NuVim Incentive Stock Option Plan, which will become effective upon the closing of this offering and expire ten years later. The plan authorizes us to issue options to purchase, in the aggregate, up to 1,500,000 shares of our common stock to employees, officers and consultants.

The plan is administered by the Compensation Committee of the Board of Directors. Subject to the provisions of this plan, the committee determines who will receive the options, the number of options granted, the manner of exercise and the exercise price of the options. The term of incentive stock options granted under the plan may not exceed ten years, or five years for options granted to an optionee owning more than 10% of our voting stock. The exercise price of an incentive stock option granted under this plan must be equal to or greater than the fair market value of the shares of our common stock on the date the option is granted. The exercise price of a non-qualified option granted under this plan must be equal to or greater than 85% of the fair market value of the shares of our common stock on the date the option is granted. An incentive stock option granted to an optionee owning more than 10% of our voting stock must have an exercise price equal to or greater than 110% of the fair market value of our common stock on the date the option is granted.

It is expected that the following grants will be made on the effective date of the plan to our executive officers at the per share IPO price:

Richard P. Kundrat	300,000 options, immediately vested and exercisable; 102,500 options, vested and exercisable in 1/3 annual increments, commencing one year from the date of grant;
John L. Sullivan	125,000 options, immediately vested and exercisable; 102,500 options, vested and exercisable in 1/3 annual increments, commencing one year from the date of grant;
Paul J. Young	125,000 options, immediately vested and exercisable; 102,500 options, vested and exercisable in 1/3 annual increments, commencing one year from the date of grant;
Michael Vesey	125,000 options, vested and exercisable in 1/3 annual increments, commencing one year from the date of grant.

## 2005 Directors Stock Option Plan

Our Board of Directors recently adopted, and the stockholders approved, the 2005 NuVim Directors Stock Option Plan, under which we have established in advance the option grants we will make to our directors when they join the Board, annual option grants thereafter and compensation for serving on our Board committees. The plan, which will become effective upon the closing of this offering and expires ten years later, provides for the grant of 200,000 incentive and non-qualified stock options, although only employee directors are eligible to receive grants of incentive stock options.

Under the plan, each director, including any director who is an employee, is awarded 10,000 options upon the effective date of the plan, or upon joining the Board, whichever is later. These options, which will have an exercise price equal to the fair market value of our common stock on the date of grant, will vest and become exercisable in equal installments over three years. Thereafter, in each year of service on the Board, the plan provides that each director is eligible to receive an option to purchase 7,500 shares, with an exercise price equal to the fair market value of our common stock on the date of grant. The plan further provides that directors will also annually receive an option to purchase an additional 500 shares for each committee on which that director serves, except that each year the chairman of the Audit Committee receive an option to purchase 4,000 shares and the chairmen of the Compensation Committee and the Corporate Governance and Nominating Committees each receive an annual option to purchase 2,000 shares. These annual options will immediately vest and be exercisable. The initial 10,000 option grants per director and the 2005 annual option grants for board and committee memberships and chairmanships will automatically be made on the effective date of the plan.

The term of incentive stock options granted under the plan may not exceed ten years, or five years for options granted to an optionee owning more than 10% of our voting stock. The exercise price of an incentive stock option granted under this

plan must be equal to or greater than the fair market value of the shares of our common stock on the date the option is granted. The exercise price of options under the plan is equal to the fair market value of our stock on the date of grant, except if the option is an incentive stock option granted to an employee director owning more than 10% of our voting stock. In that case, the option must have an exercise price equal to or greater than 110% of the fair market value of our common stock on the date the option is granted.

### **Historical Incentive Stock Plans**

#### *Stock Option Plans*

We established stock option plans in 2000, 2001 and 2002, pursuant to which our officers, directors, other key executives, consultants, employees, service providers and independent contractors were granted options to purchase shares of our common stock at a per share exercise price equal to or greater than the fair market price of the common stock at the time the option was granted. In each instance, the fair market value was determined by the board of directors, taking into consideration the factors they deemed important in setting the value, including, among other factors, the price at which securities had been sold to unaffiliated third parties as well as results of operations and the relative strength of the balance sheet. We currently have an aggregate of 15,316 outstanding options under these past plans.

#### *Equity Incentive Plans*

We established equity incentive plans for the years 2000 and 2001, pursuant to which our officers, directors, other key executives, consultants, employees, service providers and independent contractors were granted restricted shares of our common stock. We awarded 11,660 restricted shares under the 2000 plan and 3,075 under the 2001 plan, of which 2,784 shares were issued in lieu of accrued salaries. As of December 31, 2004, there are 14,735 restricted shares outstanding under these plans. The plans do not provide for any additional grants in subsequent years so there will be no further awards made under any of these plans. The plans provide that to the extent a restricted stock award that has not vested at the time of termination of employment for any reason other than death, permanent disability or retirement after age 65, such unvested portion shall be forfeited. If employment terminates as a result of death, permanent disability or retirement after the age of 65, the unvested award vests on the vesting date set forth in the equity grant agreement.

### **Limitation of Liability and Indemnification Matters**

Our Certificate of Incorporation and By-laws provide for indemnification against liabilities of our directors, officers, employees and agents, and any person who serves at our request as a director, officer, employee, member or agent of another corporation, partnership, or other enterprise as provided by Delaware law. Our obligation to indemnify the individuals described above is limited to those instances in which the individual either: (i) is successful in the lawsuit; or (ii) acted in good faith in the transaction which is the subject of the lawsuit, and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company. In the case of a suit brought by or in the right of the Company against any of the above-described individuals, such individuals will not be indemnified to the extent that they have been found liable for gross negligence or willful misconduct, unless the court involved determines that the individual is entitled to indemnification. Our indemnity obligations require us to indemnify these individuals or entities against certain liabilities, including attorneys' fees, which may arise by reason of their status with or service for the Company. In connection with our indemnification obligation, we may advance expenses to these individuals as they are incurred, provided that they undertake to repay the amount advanced unless it is determined that they are entitled to indemnification. We maintain insurance covering our directors and officers.

Our Certificate of Incorporation and By-laws make provisions for the indemnification of officers, directors and other corporate agents in terms sufficiently broad to indemnify such persons, under certain circumstances, for liabilities (including reimbursement of expenses incurred) arising under the Securities Act. Insofar as we may permit indemnification for liabilities arising under the Securities Act to directors, officers, and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy, as expressed in the Securities Act and is, therefore, unenforceable.

## RELATED PARTY TRANSACTIONS

### **Our Relationship with Spencer Trask Specialty Group, LLC ( Spencer Trask ) and Stolle Milk Biologics, Inc. ( SMBI )**

Prior to this offering and assuming conversion of all outstanding shares of Series A and Series C preferred stock, Spencer Trask and its controlled subsidiary, SMBI, collectively own 579,426 shares of our common stock, which represents approximately 32% of our outstanding capital stock. After the offering, Spencer Trask and SMBI will own approximately 13% of our common stock. Donald F. Farley, the Chief Executive Officer of Spencer Trask and the Chairman of the Board of SMBI, is also a member of our Board of Directors. Our interests may not always be aligned with the interests of Spencer Trask and SMBI. Any future dealings with Spencer Trask or SMBI will require approval by the Board of Directors and a separate review and approval of the transaction by the Audit Committee.

Following is a description of our current relationships with SMBI and Spencer Trask or those transactions or series of transactions with them that have occurred during the past two years where the amount involved was at least \$60,000. There were other transactions with affiliates of Spencer Trask more than two years ago.

#### *Transactions with SMBI*

In 2000, we entered into a License Agreement with SMBI. In May 2004, we amended and restated the License Agreement. Under the amended agreement, we have the exclusive worldwide license (except in New Zealand, Australia and Asia) to use all of SMBI's issued and pending patents covering SMBI milk-derived products, the intellectual property for the manufacture of such products, trade secrets, formulae, processes, know-how and methods (collectively, SMBI Intellectual Property) for the development, manufacture and sale of carbonated and non-carbonated beverages (and powders based on such beverages designed for reconstitution). Our license does not include fluid milk, milk concentrates or powders, milk blend beverages, yogurt or yogurt blend beverages and nutritional meal replacement products. We have the right to sublicense the SMBI Intellectual Property to other beverage companies or suppliers in the licensed territory solely for uses consistent with the uses contemplated by the License Agreement, subject to SMBI's consent, which cannot be unreasonably withheld.

In the event either SMBI alone or SMBI, in collaboration with us, develops any improvements, including all improvements, developments, formulae, ingredients, trademarks, trade names, copyrights, variations and innovations relating in any way to the License Agreement or SMBI's intellectual property as that term would apply to products supplied by SMBI, the License Agreement provides that such improvements will be the sole property of SMBI. However, the License Agreement does grant us the exclusive right to use and/or sell any improvement resulting from the License Agreement that is consistent with the uses that are the subject of, and permitted by, the License Agreement.

For the licensed right, we have agreed to pay SMBI annual royalty payments on a sliding scale as follows: (i) 2% on the first \$75 million of net annual sales, (ii) 1.5% royalty for the next \$75 million; and (iii) a 1% royalty thereafter. We also have agreed to share royalties equally on sales by sublicensees. During 2003 and 2004, we accrued royalties of \$36,000 and \$21,000, respectively, to SMBI under the License Agreement.

The License Agreement expires in May 2014 and will be automatically renewed for two two-year terms, unless terminated sooner in accordance with the License Agreement. The License Agreement may be terminated by mutual agreement, if a party breaches or defaults in the performance or observance of such party's material obligations under the License Agreement that is not cured within 60 days after receipt of written notice by the other party or in the event of bankruptcy, upon 15 days written notice. In addition, SMBI has the right to terminate the License Agreement if the Supply Agreement with SMBI is terminated by its terms.

In connection with the bridge loan we received in 2004 (see Bridge Financing, below), SMBI consented to an amendment to the License Agreement under which SMBI would assign to us the NuVim trademark upon our written request following payment of at least \$200,000 of the amount we currently owe SMBI. We paid \$140,000 of the \$200,000 required for the assignment out of the proceeds of the bridge loan and anticipate making the final \$60,000 payment for the assignment of the trademark as part of the \$250,000 payment we are making to SMBI out of the net proceeds of this offering. However, pursuant to an amendment to the Modification and Extension Agreement with SMBI, if we fail to pay SMBI \$200,000 owed on account by January 16, 2006, the NuVim trademark will revert to SMBI, and we will be in default under our license and supply agreements.



SMBI whey protein concentrate ( WPC ), which contains SMBI s patented micronutrients, LactoMune and LactoActin, is the key ingredient in our products. In January 2000, we had entered into the Supply Agreement with SMBI, which also was amended and restated in May 2004. Under the Supply Agreement, SMBI agrees to use commercially reasonable efforts to supply us with our full requirement of WPC upon which our product depends. The current agreement expires in 2014, with automatic renewals for two two-year terms unless either party gives notice, six months prior to the end of any term, of intent not to renew. Under the Supply Agreement, SMBI will not give such notice if we demonstrate, to its satisfaction, that we have used our best reasonable commercial efforts to meet the established minimum purchase requirements.

The minimum purchase requirements will be negotiated each year by the parties, with provision in the Supply Agreement to establish the minimum purchase requirements of WPC if an agreement cannot be reached in a particular year. We began using WPC as a replacement for milk protein concentrate from SMBI in the fourth quarter of 2003. During 2003, we purchased 2.4 metric tons of WPC and used approximately 1.4 metric tons, leaving a 1 metric ton surplus at the end of 2003. However, during the fourth quarter of 2003, the SMBI ingredient used by us was reformulated, and we shifted from purchasing milk protein concentrate, which requires a significantly greater amount for NuVim s purposes, to WPC, and this had an impact on the amount of WPC we used in that year. In 2004, we purchased 1.4 metric tons and used approximately 2.4 metric tons. For 2005 the minimum purchase quantity under the Supply Agreement will be three metric tons. If the parties are unable to agree upon a minimum quantity for 2006, the agreement provides that the minimum will be 115% of the 2005 quantity, or 3.45 metric tons. Thereafter, in any year in which the parties cannot agree on the amount, it shall be 115% of the prior year s minimum. For each calendar year in which we fail to purchase the minimum purchase requirement, we are required to pay SMBI a sum equal to the contract price for the shortfall of the amount of product we did not purchase. If we fail to purchase the minimum purchase requirement for two consecutive years, regardless of whether we make the required shortfall payment, then SMBI agrees to negotiate in a good faith a non-exclusive supply agreement with us on terms similar to those offered to other SMBI customers.

The Supply Agreement may be terminated by mutual agreement, if a party breaches or defaults in the performance or observance of its material obligations under the License Agreement that is not cured within 60 days (10 days for a monetary breach) after receipt of written notice by the other party, in the event of bankruptcy, upon 15 days written notice, or upon six months written notice by either party if any statute, rule or regulation is enacted or deemed applicable to the products covered by the Supply Agreement that would impose a substantial economic burden if the supply arrangement is continued. In addition, SMBI has the right to terminate the Supply Agreement if the License Agreement with SMBI is terminated by its terms.

SMBI measures and tests every batch of WPC ingredient for the micronutrients, LactoActin and LactoMune, to ensure that quality specifications for biological activity are met. SMBI has agreed to keep in inventory in the United States, an amount of product equal to our average one-month order for the most recent calendar quarter for such product. Costs for any special product development or improvement projects are shared equally between SMBI and us following both parties agreement to the costs.

In 2002 and 2003, we purchased \$810,000 and \$245,000, respectively, of product under the Supply Agreement. As of May 31, 2005, we are indebted to SMBI under the License and Supply Agreements in the amount of \$453,000. In May 2005, we agreed to pay an amount aggregating \$250,000 out of the proceeds of this offering, plus an additional payment of \$200,000 in January 2006, in full settlement of outstanding accounts payable, royalties and interest through the date of payment, and in consideration for assignment to us the NuVim trademark.

#### *Transactions with Spencer Trask*

Spencer Trask has guaranteed our obligations under a \$2,500,000 line of credit from Bank of Wachovia pursuant to which we have borrowed the full amount. In consideration for the guarantee, we issued five-year warrants to purchase 54,546 shares of our common stock at an exercise price of \$55.00 per share.

We have borrowed money from Spencer Trask, Spencer Trask Private Equity Fund I LP and Spencer Trask Private Equity Fund II LP, all of which are stockholders of our company, from time to time since September 2002. All of the loans were

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at 8% interest through December 31, 2002 and 14% thereafter. The proceeds were used for working capital and general corporate purposes. These loans are summarized below:

Date	Principal	Maturity Date	Balance as of April 30, 2005, Including Interest (1)
September 13, 2002(2)	\$ 200,000	December 31, 2002	\$ 270,089
September 13, 2002(3)	100,000	December 31, 2002	135,045
September 13, 2002(4)	1,700,000	December 31, 2002	2,393,020
February 10, 2003(4)	200,000	August 10, 2003	254,889
February 27, 2003(4)	100,000	August 27, 2003	127,384
March 3, 2003(4)	50,000	September 3, 2003	63,608
March 18, 2003(4)	130,000	September 3, 2003	164,949
			\$ 3,408,984

- (1) Includes accrued interest from predecessor notes, where applicable.  
(2) Loaned by Spencer Trask Private Equity Fund I LP.  
(3) Loaned by Spencer Trask Private Equity Fund II LP.  
(4) Loaned by Spencer Trask Specialty Group, LLC.

In connection with these loans, we also issued to Spencer Trask an aggregate of 2,000,000 Series C preferred stock warrants in September 2002 and 2,500,000 Series C preferred stock warrants for the 2003 loans.

In December 2004 and as later reconfirmed in May 2005, Spencer Trask agreed to accept a total of 461,700 shares of our common stock as payment in full for the approximately \$6.1 million of indebtedness we owed to Spencer Trask, including loans Spencer Trask entities made directly to us or through the indemnity provisions of the Bank of Wachovia line of credit transaction. Spencer Trask has also agreed to cancel all of the warrants mentioned above in connection with the issuance of the 461,700 shares of common stock. The number of shares was negotiated between the parties and does not necessarily bear any relationship to any recognized criterion of value. This agreement is conditioned upon the closing of this offering.

### Loans from Officers and Directors

From time to time beginning in June 2001, we borrowed funds for working capital from certain of our officers and directors. In September 2002, the then-existing loan obligations were replaced by 8% subordinated convertible promissory notes. The loans were originally due on December 31, 2002 but were not paid at that date, and under the terms of the subordinated convertible promissory notes, the interest rate increased at the maturity date from 8% to 14%. Under the terms of the subordinated convertible promissory notes, the debt may be converted into Series C Preferred Stock at the option of the noteholder at a conversion price of \$0.20. The Series C Preferred Stock is thereafter convertible into common stock at \$11.00 per share. In connection with these loans, we issued five-year warrants to purchase one share of common stock for every \$1.00 of principal loaned at an exercise price of \$55.00 per share. In November 2004, Messrs. Kundrat, Sullivan and Young agreed to accept shares of common stock as payment in full for the outstanding obligations and cancellation of their warrants. The loans we have received from our current officers and directors since June 2001 are as follows:

Name	Principal	Balance as of the Date of Issuance	Shares of Common Stock Issued
Richard P. Kundrat	\$ 100,000	\$ 138,017	34,229
John L. Sullivan	\$ 50,000	\$ 69,009	16,104
Paul Young	\$ 100,000	\$ 138,017	24,801
Donald F. Farley	\$ 100,000	\$ 143,851	47,951*

\*

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Mr. Farley has agreed to accept these shares in lieu of a cash repayment in connection with the restructuring events that will be consummated concurrently with the closing of this offering.

**Accrued Executive Salaries**

Richard P. Kundrat, Paul Young and John L. Sullivan, our executive officers, have deferred their salaries and any bonuses earned from August 2002, through November 2004. In 2003, the officers accepted a total of 10,775 shares of our common stock, valued at \$11.00 per share in payment of an aggregate of \$118,750 of their salaries for the period from February 1, 2003 through July 31, 2003 as follows:

Name	February through July 2003 Salary Paid in Stock	Shares of Common Stock Issued to Extinguish Cash Compensation Obligation
Richard P. Kundrat	\$ 43,750	3,955
John L. Sullivan	\$ 37,500	3,410
Paul Young	\$ 37,500	3,410

In November 2004, we agreed to issue a total of 147,866 shares of our common stock to Messrs. Kundrat, Young and Sullivan in full satisfaction of the outstanding accrued cash compensation owed to each of them through December 31, 2003 totalling \$623,500. We continued to accrue their unpaid salaries for 2004 through November 2004. The following table sets forth the cash compensation for each executive officer that was extinguished through the issuance of common stock in November 2004:

Name	2002 and 2003 Accrued Salary	2002 and 2003 Bonuses	Shares of Common Stock Issued to Extinguish Cash Compensation Obligation
Richard P. Kundrat	\$ 188,500	\$ 110,000	77,271
John L. Sullivan	\$ 162,500		39,646
Paul Young	\$ 162,500		30,949

In connection with this offering and the restructuring events agreed to by our executive officers, bridge lenders and certain other creditors, three of our executive officers agreed to convert additional deferred salaries through February 2005 to shares of common stock at \$3.00 per share, rather than being paid the amounts due to them out of the net proceeds of the offering. The issuance of shares, which will occur concurrently with the closing of this offering, are as follows:

Name	Accrued Salary to be Converted to Stock	Shares of Common Stock to be Issued to Extinguish Cash Compensation Obligation
Richard P. Kundrat	\$ 189,584	63,195
John L. Sullivan	\$ 162,500	54,167
Paul Young	\$ 162,500	54,167

These executive officers further agreed to convert additional deferred salaries for April and May 2005 into common stock at \$1.00 per share, which will also occur concurrently with the closing of this offering, as follows:

Name	Accrued Salary Converted to Stock	Shares of Common Stock Issued to Extinguish Cash Compensation Obligation
Richard P. Kundrat	\$ 29,167	29,167
John L. Sullivan	25,000	25,000
Paul J. Young	25,000	25,000

Mr. Kundrat also agreed to convert an aggregate of \$69,000 of funds owed to him for advances he has made to cover manufacturing costs. He has agreed to accept 23,000 shares of common stock at \$3.00 per share, which will also occur concurrently with the closing of this offering.

**Bridge Financing**

In July 2004, we entered into a series of agreements with Dick Clark, a stockholder of our company and our spokesperson, and Stanley H. Moger, one of our directors. Under the terms of a loan agreement, Messrs. Clark and Moger agreed to loan us up to \$1,000,000 in four tranches, each of which is conditioned upon completion of specified actions or

events (the Bridge Loan ). As of December 31, 2004, we have received the full \$1,000,000. The loan accrues interest at 10% per annum, unless it is in default, in which case the interest increases to 15%. The principal and accrued interest are due and payable on the earlier of the consummation of this offering or January 1, 2005. Because the loan was not repaid by January 1, 2005, the interest rate increased to 15% as of that date. The loan is secured by all of the assets of NuVim, and certain company creditors were required to execute subordination agreements in favor of Messrs. Clark and Moger. The proceeds from this loan were used for advertising, partial payment of amounts owed to SMBI, which payment is required to obtain the assignment of the NuVim trademark, partial payment of legal fees and for general corporate purposes. In connection with the restructuring events referred to above, the bridge lenders have agreed to convert \$500,000 of the principal in to 250,000 shares of common stock at \$2.00 per share, concurrently with the closing of this offering. The remaining principal and accrued interest will be due and payable 18 months after the closing of this offering and will accrue interest at 8% per annum.

Among the conditions of the Bridge Loan was an amendment to the Services Agreement with Olive Enterprises, Inc. (the Services Agreement ), which is Dick Clark s production company. Prior to the July 2004 transactions, we owed Mr. Clark \$175,000 under the Services Agreement. Pursuant to an amendment to Services Agreement, we acknowledged that indebtedness and agreed to issue a convertible promissory note in the principal amount of \$175,000. In consideration for Mr. Clark s forbearance until the earlier of January 1, 2005 or the consummation of an initial public offering (the Maturity Date ), the note is convertible as though it carried a face amount of \$245,000. The convertible note is automatically convertible into unregistered units, each consisting of one share of common stock, one \$1.50 warrant and one \$2.00 warrant, at \$1.00 per unit provided the offering is consummated on or before June 30, 2005. Assuming a \$1.00 IPO unit price, the note will convert into 245,000 units. In addition, the initial interest rate of 10% increased to 15% on January 1, 2005 because the note had not been repaid by the Maturity Date.

A second amendment to the Services Agreement, executed in September 2004, provides for the payment to Mr. Clark of services fees through January 2006 with a value of \$650,000, plus the issuance of 30,000 shares of common stock. In connection with the \$650,000 services fees obligation, we issued a 10-year warrant, which Mr. Clark has accepted as payment in full for this obligation. The exercise price of this warrant is determined by the timing and the nature of a maturity event, which alternatively could be an initial public offering, a merger, acquisition or other business combination, or a sale of assets. Assuming the maturity event is this offering and it closes on or before June 1, 2005, the exercise price will equal the initial public offering price, and the number of shares issuable upon exercise will be calculated by dividing \$650,000 by that price. If the maturity event is a sale of assets or a merger or acquisition, the share calculation price is determined depending on the nature of the maturity event. The foregoing notwithstanding, if the maturity event is after June 30, 2005, the share calculation price will be the lesser of \$1.00 or 80% of the purchase price per share in any subsequent financing, including this offering.

Also in connection with the Bridge Loan, we issued a 10-year warrant to Mr. Clark that entitles him to acquire up to 9.9% of the total fully-diluted issued and outstanding capital stock of our company following the consummation of this offering. However, based on our post-offering, fully-diluted capitalization and Mr. Clark s ownership interest, this warrant will not entitle him to purchase any additional shares.

Finally, the Bridge Loan required the formation of NuVim Powder LLC, of which Mr. Clark was given a 25% ownership interest. See Business Distribution.

Mr. Clark and Mr. Moger participated in the Bridge Loan equally, and the ancillary agreements and benefits provided to Mr. Clark are being shared with Mr. Moger. Therefore, Mr. Moger has been given a 12.5% interest in the powder company and a 50% interest in both of the warrants.

#### **Approval by Independent Directors**

Each of the aforementioned transactions with related parties was approved or ratified by a majority of our independent directors, and at the time each transaction was approved or ratified, there were at least two independent directors on our Board.

#### **Future Transactions**

Future transactions with our officers, directors or greater than five percent stockholders will be on terms no less favorable to NuVim than could be obtained from independent third parties.

### PRINCIPAL STOCKHOLDERS

Set forth below is information regarding the pro forma beneficial ownership of our common stock, as of May 31, 2005 and as adjusted to reflect the sale of 2,700,000 units in this offering, by (i) each person whom we knew owned, beneficially, more than 5% of the outstanding shares of our common stock, (ii) each of our directors, (iii) each of our Named Officers, and (iv) all of the current directors and executive officers as a group. Pro forma beneficial ownership takes into account all of the restructuring events referred to a page 5 of this prospectus. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and includes voting and investment power with respect to the securities. We believe that, except as otherwise noted below, each named beneficial owner has sole voting and investment power with respect to the shares listed. Unless otherwise indicated herein, beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission, and includes voting or investment power with respect to shares beneficially owned. Shares of common stock subject to options or warrants currently exercisable or exercisable on or before July 30, 2005 are deemed outstanding for computing the percentage ownership of the person holding such options or warrants, but are not deemed outstanding for computing the percentage ownership of any other person.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of the Class Beneficially Owned	
		Before This Offering	After This Offering
Entities affiliated with Spencer Trask Specialty Group, LLC 535 Madison Avenue New York, NY 10022	579,429(1)	30.0%	12.5%
Kevin Kimberlin 535 Madison Avenue New York, NY 10022	579,429(1)(2)	30.0%	12.5%
Dick Clark c/o Dick Clark Productions 3003 West Olive Avenue Burbank, CA 91505	1,218,636(3)	44.4%	22.4%
Stanley H. Moger 1180 6th Avenue, Suite 2010 New York, NY 10036	454,137(4)	20.1%	9.2%
Stolle Milk Biologics, Inc. 6954 Cornell Road, Suite 400 Cincinnati, OH 45242	99,546(5)	5.2%	2.2%
Richard P. Kundrat	248,998(6)	12.9%	5.4%
Paul J. Young	141,838(7)	7.4%	3.1%
John L. Sullivan	142,365(8)	7.4%	3.1%
Donald F. Farley	52,954(9)	2.7%	1.1%
Calvin L. Hodock	182(10)(11)	*	*
William C. Franke	0(11)		
Frederick S. Pierce	0(12)		
Peter V. DeCrescenzo	0(13)		
All directors and executive officers as a group (10 persons)	1,040,474(14)	46.1%	21.0%

\* Less than 1%.

- (1) Reflects the issuance of 461,700 shares of common stock in the Spencer Trask debt extinguishment transaction and 18,183 shares of common stock upon the conversion of the preferred stock owned by Spencer Trask, which will take place concurrently with the closing of this offering. Includes 21,700 shares owned by Spencer Trask Private Equity Fund I LP ( Fund I ), 10,619 shares owned by Spencer Trask Private Equity Fund II, LP ( Fund II ), 212,382 shares owned by Kevin Kimberlin Partners, L.P. ( KK Partners ) and 235,182 shares owned by Spencer Trask Specialty Group, LLC ( STSG ). Fund I, Fund II and KK Partners are affiliates of STSG. Also includes 99,546 shares of common stock owned by Stolle Milk Biologics, Inc., of which STSG is the controlling stockholder. Does not include an aggregate of

90,910 warrants owned by Spencer Trask and an affiliate, which warrants will be cancelled as part of the Spencer Trask debt extinguishment transaction. Kevin Kimberlin is the principal owner and non-member manager of STSG. The general partner of each of Fund I and Fund II is Trask Partners LLC, which is owned by Spencer Trask & Co., which is also controlled by Mr. Kimberlin. As such Mr. Kimberlin has voting and investment control over the securities owned by STSG, Fund I, Fund II, KK Partners and SMBI. Mr. Kimberlin may be considered a promoter of NuVim.

- (2) Because of Mr. Kimberlin's voting and investment control over the securities owned by STSG, Fund I, Fund II, KK Partners and SMBI, he may be deemed to be the beneficial owner of the shares owned by each such entity. He personally owns no NuVim securities and disclaims beneficial ownership of all the securities owned by STSG, Fund I, Fund II, KK Partners and SMBI, except to the extent of his pecuniary interest in each such entity, if any.
- (3) Reflects the issuance of 245,000 shares of common stock issuable in the Clark note conversion transaction, 125,000 shares of common stock issuable upon conversion of the bridge loan concurrently with the closing of this offering, and an additional 490,000 shares of common stock issuable upon exercise of the underlying warrants issuable in the Clark note conversion transaction. Includes 815,000 shares of common stock issuable upon exercise of currently exercisable warrants. Mr. Clark has been granted two warrants, one of which entitles him to purchase \$650,000 worth of our common stock at the per share initial public offering price (\$1.00) if bridge financing notes are repaid before June 30, 2005 and one of which entitles him to purchase that number of shares of our common stock that will bring his total ownership to 9.9% following completion of this offering on a fully-diluted basis. Mr. Clark has entered into an agreement with Stanley H. Moger under which he has agreed to share a 50% interest in these two warrants with Mr. Moger. The share total in the table reflects Mr. Clark's 50% interest and assumes exercise and conversion at \$1.00 for the two warrants and the Clark note conversion transaction. Based on the current ownership interest, the 9.9% warrant has no value because Mr. Clark already exceeds the 9.9% threshold.
- (4) Reflects the issuance of 2,955 shares of common stock issuable upon conversion of the preferred stock and 125,000 shares of common stock issuable upon conversion of the bridge loan concurrently with the closing of this offering. Includes (i) 1,182 shares of common stock issuable upon exercise of currently exercisable options; and (ii) 325,000 shares of common stock issuable upon exercise of currently exercisable warrants. See Note (3) regarding the details of the two warrants Mr. Moger is sharing with Mr. Clark. The share total in the table reflects Mr. Moger's 50% interest and assumes an exercise price of \$1.00 for the two warrants. Does not include 7,500 shares of common stock that will be issuable upon exercise of options that will be automatically granted upon the effective date of the 2005 Directors Stock Option Plan, which options will be immediately exercisable. Other options that will automatically be granted at the same time will become exercisable commencing one year after the date of grant.
- (5) Does not include any securities owned by Spencer Trask. See Note (1). Does not include the shares owned by Mr. Kundrat that are subject to a voting proxy in favor of Stolle Milk Biologics because this proxy will terminate upon completion of this offering. Patrick O'Brien, the chief executive officer of SMBI, has voting and dispositive authority over these securities, but he acts at the direction of his board of directors. Mr. O'Brien disclaims beneficial ownership of these shares. Spencer Trask is the controlling stockholder of SMBI.
- (6) Mr. Kundrat has given a voting proxy to Stolle Milk Biologics, Inc. that expires upon completion of this offering. Includes 115,362 shares of common stock that will be issued concurrently with the closing of this offering to pay past due salary and advances to cover manufacturing costs owed to Mr. Kundrat. Does not include 300,000 shares of common stock that will be issuable upon exercise of options that are expected to be granted upon the effective date of the 2005 Incentive Stock Option Plan and 7,500 shares of common stock that will be issuable upon exercise of options that will be automatically granted upon the effective date of the 2005 Directors Stock Option Plan, all of which options will be immediately exercisable. Other options that are expected to be granted under the 2005 Incentive Stock Option Plan or will automatically be granted under the 2005 Directors Stock Option Plan at the same time will become exercisable commencing one year after the date of grant.
- (7) Reflects the issuance of (i) 910 shares of common stock issuable upon conversion of the preferred stock and (ii) 79,167 shares of common stock that will be issued to pay past due salary owed to Mr. Young, which issuances will be consummated concurrently with the closing of this offering. Does not include 125,000 shares of common stock that will be issuable upon exercise of options that are expected to be granted upon the effective date of the 2005 Incentive Stock Option Plan, which options will be immediately exercisable. Other options that are expected to be granted under this plan will become exercisable commencing one year after the date of grant.

- (8) Reflects the issuance of (i) 1,509 shares of common stock issuable upon conversion of the preferred stock and (ii) 79,167 shares of common stock that will be issued to pay past due salary owed to Mr. Sullivan, which issuances will be consummated concurrently with the closing of this offering. Does not include 125,000 shares of common stock that will be issuable upon exercise of options that are expected to be granted upon the effective date of the 2005 Incentive Stock Option Plan, which options will be immediately exercisable. Other options that are expected to be granted under this plan will become exercisable commencing one year after the date of grant.
- 9) Reflects the issuance of (i) 2,729 shares of common stock issuable upon conversion of the preferred stock and (ii) 52,954 shares of common stock that will be issued to pay the principal and accrued interest on a loan, which issuances will be consummated concurrently with the closing of this offering and includes 1,819 shares of common stock issuable upon exercise of outstanding warrants. Includes 910 shares held by an inter vivos family trust. Mr. Farley is the Chief Executive Officer of Spencer Trask and the Chairman of the Board of Stolle Milk Biologics, Inc., but his share total does not include any securities owned by Spencer Trask or Stolle Milk Biologics, Inc. Mr. Farley disclaims beneficial ownership of all such securities except to the extent of his pecuniary interest in those entities. Does not include 7,500 shares of common stock that will be issuable upon exercise of options that will automatically be granted upon the effective date of the 2005 Directors Stock Option Plan, which options will be immediately exercisable. Other options that will automatically be granted at the same time will become exercisable commencing one year after the date of grant.
- (10) Reflects the issuance of 182 shares of common stock issuable upon conversion of the preferred stock concurrently with the closing of this offering.
- (11) Does not include 10,000 shares of common stock that will be issuable upon exercise of options that will automatically be granted upon the effective date of the 2005 Directors Stock Option Plan, which options will be immediately exercisable. Other options that will automatically be granted at the same time will become exercisable commencing one year after the date of grant.
- (12) Does not include 11,500 shares of common stock that will be issuable upon exercise of options that will automatically be granted upon the effective date of the 2005 Directors Stock Option Plan, which options will be immediately exercisable. Other options that will automatically be granted at the same time will become exercisable commencing one year after the date of grant.
- (13) Does not include 8,500 shares of common stock that will be issuable upon exercise of options that will automatically be granted upon the effective date of the 2005 Directors Stock Option Plan, which options will be immediately exercisable. Other options that will automatically be granted at the same time will become exercisable commencing one year after the date of grant.
- (14) Reflects the issuance of (i) 7,922 shares of common stock issuable upon conversion of the preferred stock and (ii) 446,647 shares of common stock that will be issued to executive officers or directors in connection with the extinguishment of loans and/or past due salary obligations concurrently with the closing of this offering. Includes (i) 326,819 shares of common stock issuable upon exercise of outstanding warrants and (ii) 1,182 shares of common stock issuable upon exercise of outstanding options. See Note (4). Does not include 500,000 shares of common stock that will be issuable upon exercise of options that are expected to be granted upon the effective date of the 2005 Incentive Stock Option Plan and 80,500 shares of common stock that will be issuable upon exercise of options that will automatically be granted upon the effective date of the 2005 Directors Stock Option Plan, all of which options will be immediately exercisable. Other options that are expected to be granted under the 2005 Incentive Stock Option Plan or that will automatically be granted under the 2005 Directors Stock Option Plan upon the effectiveness of these plans will become exercisable commencing one year after the date of grant.



## DESCRIPTION OF SECURITIES

Our authorized capital stock consists of 120,000,000 shares of common stock and 65,000,000 shares of preferred stock, all with a par value of \$0.00001 per share. Following this offering, we will have 4,473,060 shares of common stock and no shares of preferred stock outstanding.

### Units

Each unit consists of (i) one share of common stock; (ii) one Class A redeemable public warrant to purchase one share of common stock; and (iii) one Class B non-redeemable public warrant to purchase one share of common stock. The common stock and public warrants will trade as units for 30 days following this offering, after which the common stock, the Class A public warrants and the Class B public warrants will trade separately.

At the closing of the offering, we will deliver only certificates representing the units to the representative of the underwriters through the facilities of the Depository Trust Company. Thereafter, investors may request physical delivery of unit certificates at any time before the Class A warrants and Class B warrants begin trading separately from the common stock included in the units. An investor may also request delivery of separate physical certificates for the Class A warrants, Class B warrants and the common stock comprising the units, but we will not be obligated to make delivery of the separate certificates until after the Class A warrants and Class B warrants begin trading separately from the common stock. Until the Class A warrants, Class B warrants and common stock begin trading separately, investors will be unable to make separate delivery of certificates for these securities and will be unable to settle trades in those securities.

### Common Stock

As of May 31, 2005, we have 414,073 shares of common stock outstanding held by 21 stockholders of record. Concurrently with the closing of this offering, we will issue an additional 461,700 shares of common stock in extinguishment of outstanding indebtedness we owe to Spencer Trask-related entities, 245,000 shares of common stock upon the automatic conversion of a convertible note held by Dick Clark, 654,911 shares of common stock upon conversion of the bridge loan, past due salaries, notes payable and accounts payable and 154,613 shares of common stock upon the automatic conversion of 4,875,850 shares of Series A preferred stock and 3,623,000 shares of Series C preferred stock outstanding. Taking into account these issuances, we will have 1,930,297 shares of Common Stock immediately before the offering held of record by 176 stockholders. We also have reserved for issuance an aggregate of (i) 15,316 shares of common stock upon exercise of outstanding options and 1,700,000 shares of common stock issuable upon exercise of options that may be granted under our 2005 Incentive Stock Option Plan and 2005 Directors' Stock Option Plan; and (ii) 670,979 shares upon exercise of outstanding warrants, including the warrants issued in connection with the bridge financing. See Related Party Transactions Bridge Financing.

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. Subject to the preference in dividend rights of any series of preferred stock which we may issue in the future, the holders of common stock are entitled to receive such cash dividends, if any, as may be declared by our Board of Directors out of legally available funds. Upon liquidation, dissolution or winding up, after payment of all debts and liabilities and after payment of the liquidation preferences of any shares of preferred stock then outstanding, the holders of the common stock will be entitled to participate *pro rata* in all assets that are legally available for distribution.

Other than the rights described above, the holders of common stock have no preemptive subscription, redemption, sinking fund or conversion rights and are not subject to further calls or assessments. The rights and preferences of holders of common stock will be subject to the rights of any series of preferred stock which we may issue in the future.

### Class A Public Warrants

#### General

Each Class A public warrant entitles the holder to purchase one share of our common stock at an exercise price per share of \$1.50. The exercise price is subject to adjustment upon the occurrence of certain events as provided in the Class A public warrant certificate and summarized below. Subject to our redemption rights, our Class A public warrants may be

exercised at any time during the period commencing 30 days after the effective date of this offering and ending on the fifth anniversary of the effective date of this offering, which is the expiration date. Those of our Class A public warrants which have not previously been exercised or redeemed will expire on the expiration date. A Class A public warrant holder will not be deemed to be a holder of the underlying common stock for any purpose until the Class A public warrant has been properly exercised.

*Separate transferability*

Our common stock, Class A public warrants, and Class B public warrants will trade as a unit for 30 days following this offering, after which the common stock, the Class A public warrants, and the Class B public warrants each will trade separately. Upon separation, unit holders will receive certificates for the common stock, Class A public warrants, and Class B public warrants in exchange for their unit certificates.

*Redemption*

After the units separate, we have the right to redeem the Class A public warrants issued in this offering at a redemption price of \$0.25 per public warrant (subject to adjustment for stock splits, reverse stock splits and other recapitalization events) under the following circumstances: The redemption right arises if the last reported sale price per share of our common stock as reported by the principal exchange or trading facility on which our common stock trades equals or exceeds \$2.00 for five consecutive trading days ending prior to the date of the notice of redemption. We are required to provide 30 days prior written notice to the Class A public warrant holders of our intention to redeem the warrants. We will send the written notice of redemption by first class mail to Class A public warrant holders at their last known addresses appearing on the registration records maintained by the transfer agent for our Class A public warrants. No other form of notice or publication will be required. If we call the Class A public warrants for redemption, they will be exercisable until the close of business on the last business day before the specified redemption date.

*Exercise*

A Class A public warrant holder may exercise the Class A public warrants only if an appropriate registration statement is then in effect with the Securities and Exchange Commission and if the shares of common stock underlying our Class A public warrants are qualified for sale under the securities laws of the state in which the holder resides.

Our Class A public warrants may be exercised by delivering to our transfer agent the applicable Class A public warrant certificate on or prior to the expiration date or prior to the redemption date, as applicable, with the form on the reverse side of the certificate executed as indicated, accompanied by payment of the full exercise price for the number of Class A public warrants being exercised. Class A public warrants may only be exercised to purchase whole shares. Fractional shares will not be issued upon exercise of our Class A public warrants. Class A public warrant holders will receive cash equal to the current market value of any fractional interest, which will be the value of one whole interest multiplied by the fraction thereof, in the place of fractional Class A public warrants that remain after exercise if they would then hold Class A public warrants to purchase less than one whole share.

*Adjustments of exercise price*

The exercise price of our Class A public warrants is subject to adjustment if we declare any stock dividend to stockholders or effect any split or reverse split with respect to our common stock. Therefore, if we effect any stock split or reverse split with respect to our common stock, the exercise price in effect immediately prior to such stock split or reverse split will be proportionately reduced or increased, respectively. Any adjustment of the exercise price also will result in an adjustment of the number of shares purchasable upon exercise of a Class A public warrant.

The exercise price is also subject to adjustment in the event of a capital reorganization or reclassification of the common stock, or in the event we consolidate with, or merge into, or sell our property to another corporation (other than a consolidation or merger that does not result in any reclassification or change of the outstanding common stock). Therefore, if we effect any capital reorganization or reclassification, consolidation, merger, or sale, the exercise price in effect immediately prior to that event will be proportionately reduced or increased, respectively. Any adjustment of the exercise price will also result in an adjustment of the number or kind of securities or property purchasable upon exercise of a Class A public warrant.

## **Class B Public Warrants**

### *General*

Each Class B public warrant entitles the holder to purchase one share of our common stock at an exercise price per share of \$2.00. The exercise price is subject to adjustment upon the occurrence of certain events as provided in the Class B public warrant certificate and summarized below. Our Class B public warrants may be exercised at any time during the period commencing 30 days after the effective date of this offering and ending on the fifth anniversary of the effective date of this offering, which is the expiration date. Those of our Class B public warrants which have not previously been exercised will expire on the expiration date. A Class B public warrant holder will not be deemed to be a holder of the underlying common stock for any purpose until the Class B public warrant has been properly exercised.

### *Separate transferability*

Our common stock, Class A public warrants, and Class B public warrants will trade as a unit for 30 days following this offering, after which the common stock, the Class A public warrants, and the Class B public warrants each will trade separately. Upon separation, unit holders will receive certificates for the common stock, Class A public warrants, and Class B public warrants in exchange for their unit certificates.

### *Redemption*

We have no right to redeem the Class B public warrants issued in this offering.

### *Exercise*

A Class B public warrant holder may exercise our Class B public warrants only if an appropriate registration statement is then in effect with the Securities and Exchange Commission and if the shares of common stock underlying our Class B public warrants are qualified for sale under the securities laws of the state in which the holder resides.

Our Class B public warrants may be exercised by delivering to our transfer agent the applicable Class B public warrant certificate on or prior to the expiration date or the redemption date, as applicable, with the form on the reverse side of the certificate executed as indicated, accompanied by payment of the full exercise price for the number of Class B public warrants being exercised. Class B public warrants may only be exercised to purchase whole shares. Fractional shares will not be issued upon exercise of our Class B public warrants. Class B public warrant holders will receive cash equal to the current market value of any fractional interest, which will be the value of one whole interest multiplied by the fraction thereof, in the place of fractional Class B public warrants that remain after exercise if they would then hold Class B public warrants to purchase less than one whole share.

### *Adjustments of exercise price*

The exercise price of our Class B public warrants is subject to adjustment if we declare any stock dividend to stockholders or effect any split or reverse split with respect to our common stock. Therefore, if we effect any stock split or reverse split with respect to our common stock, the exercise price in effect immediately prior to such stock split or reverse split will be proportionately reduced or increased, respectively. Any adjustment of the exercise price will also result in an adjustment of the number of shares purchasable upon exercise of a Class B public warrant or, if we elect, an adjustment of the number of Class B public warrants outstanding.

The exercise price is also subject to adjustment in the event of a capital reorganization or reclassification of the common stock, or in the event we consolidate with, or merge into, or sell our property to another corporation (other than a consolidation or merger that does not result in any reclassification or change of the outstanding common stock). Therefore, if we effect any capital reorganization or reclassification, consolidation, merger, or sale, the exercise price in effect immediately prior to that event will be proportionately reduced or increased, respectively. Any adjustment of the exercise price also will result in an adjustment of the number or kind of securities or property purchasable upon exercise of a Class B public warrant.

## **Preferred Stock**

Our Certificate of Incorporation provides for the issuance of up to 65,000,000 shares of preferred stock. As of the date of the offering, there will be no shares of preferred stock outstanding because the 4,875,850 shares of Series A preferred stock and 3,623,000 shares of Series C preferred stock will automatically convert to common stock concurrently with this offering. As a result of the 1-for-55 reverse stock split effected in November 2004, the outstanding preferred shares will convert into an aggregate of 154,613 shares of common stock.



The Board of Directors has the authority, without further action by the stockholders, to issue up to an additional 56,501,150 shares of preferred stock in one or more series, and to fix the rights, preferences and privileges thereof, including voting rights, terms of redemption, redemption prices, liquidation preference and number of shares constituting any series or the designation of such series. The purpose of the provisions of our certificate of incorporation authorizing the issuance of preferred stock is to provide us with the flexibility to take advantage of opportunities to raise additional capital through the issuance of shares that address competitive conditions in the securities markets. The rights of the holders of our common stock are subject to, and may be adversely affected by, the rights of holders of any preferred stock that we may issue in the future. Although we have no present plans to do so, the Board of Directors, without stockholder approval, may issue preferred stock with voting or conversion rights which could adversely affect the voting power of the holders of our common stock. This provision may be deemed to have a potential anti-takeover effect, because the issuance of such preferred stock may delay or prevent a change of control of the Company. Furthermore, shares of preferred stock, if any are issued, may have other rights, including economic rights, senior to our common stock, and, as a result, the issuance of preferred shares could depress the market prices of our shares of common stock.

#### **Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws**

We are subject to the provisions of Section 203 of the Delaware General Corporation Law, an anti-takeover law. Subject to certain exceptions, the statute prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder; unless:

prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned (i) by persons who are directors and also officers and (ii) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock which is not owned by the interested stockholder.

For purposes of Section 203, a business combination includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an interested stockholder is a person who, together with affiliates and associates, owns, or within three years prior to the date of determination whether the person is an Interested Stockholder, did own, 15% or more of the corporation's voting stock.

In addition, our authorized but unissued shares of common stock and preferred stock are available for our Board to issue without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of our authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or other transaction. Our authorized but unissued shares may be used to delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. The Board of Directors is also authorized to adopt, amend or repeal our bylaws which could delay, defer or prevent a change in control.

#### **Transfer Agent, Warrant Agent and Registrar**

Our transfer agent and registrar for our common stock and the warrant agent for our Class A public warrants and Class B public warrants is American Stock Transfer & Trust Company, New York, New York.

**SHARES ELIGIBLE FOR FUTURE SALE****This Offering**

Upon completion of the offering, we expect to have 4,630,297 shares of common stock outstanding. This number assumes no exercise of the underwriters' over-allotment option, the Class A public warrants, the Class B public warrants, the representative's warrants or any other outstanding options and warrants. We expect to have 5,035,297 shares of common stock outstanding if the underwriters' over-allotment is exercised in full. Of these shares, the 2,700,000 shares of common stock issued as part of the units sold in this offering (3,105,000 shares if the underwriters' over-allotment is exercised in full) will be freely tradeable without restrictions or further registration under the Securities Act of 1933, except that any shares purchased by our affiliates, as that term is defined under the Securities Act, may generally only be sold in compliance with the limitations of Rule 144 under the Securities Act. The 2,700,000 shares of common stock underlying the Class A public warrants and the 2,700,000 shares of common stock underlying the Class B public warrants issued as part of the units sold in this offering (3,105,000 shares of common stock in the case of the Class A public warrants and 3,105,000 shares of common stock in the case of the Class B public warrants if the underwriters' over-allotment is exercised in full) will also be freely tradeable after exercise of the warrants, except for shares held by our affiliates.

**Outstanding Restricted Stock**

The remaining 1,930,297 outstanding shares of common stock will be restricted securities within the meaning of Rule 144 and may not be sold in the absence of registration under the Securities Act unless an exemption from registration is available, including the exemption from registration offered by Rule 144. We have registered 654,911 of those shares for resale by the holders, subject to their agreement to not sell for six months from the effective date of this offering leaving 1,275,386 restricted shares that will be eligible for sale under Rule 144 from time to time following this offering, of which 795,100 shares are owned by affiliates.

The holders of the remaining shares have agreed not to sell or otherwise dispose of any of their shares of common stock for a period of one year after completion of this offering, without the prior written consent of Paulson Investment Company, Inc., the representative of the underwriters, subject to certain limited exceptions. After the expiration of the one year lock-up period, all of the outstanding restricted shares subject to the lock-up may be sold in the public market pursuant to Rule 144.

In general, under Rule 144, as currently in effect, beginning 90 days after the date of this prospectus, a person who has beneficially owned restricted shares for at least one year, including a person who may be deemed to be our affiliate, may sell within any three-month period a number of shares of common stock that does not exceed a specified maximum number of shares. This maximum is equal to the greater of 1% of the then outstanding shares of our common stock or the average weekly trading volume in the common stock during the four calendar weeks immediately preceding the sale. Sales under Rule 144 are also subject to restrictions relating to manner of sale, notice and availability of current public information about us. In addition, under Rule 144(k) of the Securities Act, a person who is not our affiliate, has not been an affiliate of ours within three months prior to the sale and has beneficially owned shares for at least two years would be entitled to sell such shares immediately without regard to volume limitations, manner of sale provisions, notice or other requirements of Rule 144.

Without taking into account the lockup agreements, the following is a summary of the availability of Rule 144 and Rule 144(k) following the offering:

	<u>Shares</u>
Affiliate shares available for sale 90 days following this offering	61,009
Non-affiliate shares available for sale 90 days following this offering (also 144(k) available)	278,678
Affiliate shares available for sale beginning December 1, 2005	223,000
Non-affiliate shares available for sale beginning December 1, 2005	5,999
Affiliate shares available for sale beginning one year after the closing of this offering	461,700
Non-affiliate shares available for sale beginning one year after the closing of this offering	245,000

## Options and Warrants

### *Stock Options*

As of May 31, 2005, we had granted and have outstanding a total of 15,316 options to purchase shares of common stock under our several options plans, all of which are held by affiliates. We have 1,500,000 options available for grant under our 2005 Incentive Stock Option Plan and an additional 200,000 options available for grant under our 2005 Directors Stock Option Plan.

We intend to file a registration statement under the Securities Act to register all shares of common stock issued, issuable or reserved for issuance under our stock option plans. This registration statement is expected to be filed as soon as practicable after the date of this prospectus and will automatically become effective upon filing. Following this filing, shares exercisable pursuant to vested options that are registered under this registration statement will, subject to the lock-up agreements and market standoff provisions described above and Rule 144 volume limitations applicable to our affiliates, be available for sale in the open market.

### *Warrants*

Immediately prior to the closing of this offering, we will have an aggregate of 670,979 warrants outstanding. Of these warrants, 373,317 are owned by our affiliates. None of these warrants carry registration rights and accordingly, in the event any warrants are exercised, the holders will be required to hold the underlying shares for at least one year, unless they are subsequently registered.

## Representative s Warrants

In connection with this offering, we have agreed to issue to the representative of the underwriters warrants to purchase 270,000 units. The representative s warrants will be exercisable for units at any time beginning 180 days after the effective date of this offering until the fifth anniversary of the effective date. However, neither the representative s warrants nor the underlying securities may be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the offering, except to any member participating in the offering and the officers or partners thereof, and only if all securities so transferred remain subject to the 180-day lock-up restriction for the remainder of the lock-up period. We will cause the registration statement of which this prospectus is a part to remain effective until the earlier of the time that all of the representative s warrants have been exercised and the date which is five years after the effective date of the offering or will file a new registration statement covering the exercise and resale of those securities. The common stock and Class A and Class B public warrants issued to the representative upon exercise of these representative s warrants will be freely tradeable.

## Registration Rights

In August 2004, the holders of the outstanding Series A and Series C preferred shares amended and restated the registration rights agreement pertaining to the common stock underlying those shares (the registrable securities ). There are currently 4,875,850 shares of Series A preferred stock and 3,623,000 shares of Series C preferred stock, which, collectively, will automatically convert into an aggregate of 154,613 shares of common stock upon the closing of this offering. The 154,613 shares are subject to this agreement. Under the Second Amended and Restated Registration Rights Agreement, we have granted demand and piggyback registration rights to the holders. The demand rights may be exercised no more than two times by a majority of the then-outstanding holders of the registrable securities; however, they may not exercise that right during the one-year lock-up period required by the representative. The holders also have piggyback registration rights that remain in effect until April 2009. The foregoing notwithstanding, all of these shares will be eligible for public sale under Rule 144 upon expiration of the lock-up agreement with the representative.

## UNDERWRITING

The underwriters named below have entered into an underwriting agreement with respect to the units being offered in connection with this offering. In connection with this offering and subject to certain conditions, the underwriters named below has agreed to purchase, and we have agreed to sell, 2,700,000 units at the price set forth on the cover page of this prospectus, each unit consisting of one share of common stock, one Class A public warrant to purchase one share of common stock and one Class B public warrant to purchase one share of common stock, in accordance with the following table:

Underwriter	Number of Units
Paulson Investment Company, Inc.	2,700,000

Information regarding the aforementioned underwriters (including that relating to licensing, registration and disciplinary actions, if any) may be retrieved from state securities regulators who use the Central Registration Depository (CRD) system.

### Nature of the Underwriting Commitment

The underwriting agreement between the underwriters and us provides that the underwriters are committed to purchase the 2,700,000 units offered by this prospectus if any units are purchased. This commitment does not apply to 405,000 units subject to the over-allotment option granted by us to the underwriters to purchase additional units in this offering. The underwriting agreement also provides that the obligations of the several underwriters to pay for and accept delivery of the units are subject to the approval of certain legal matters by counsel and certain other conditions. These conditions include, among other things, the requirements that no stop order suspending the effectiveness of the registration statement shall be in effect and that no proceedings for such purpose have been instituted or threatened by the Securities and Exchange Commission.

### Conduct of the Offering

We have been advised by Paulson Investment Company, Inc. that the underwriters propose to offer the units to be sold in this offering directly to the public at the public offering price set forth on the cover page of this prospectus, and to certain securities dealers at that price less a concession of not more than \$0.06 per unit. The underwriters may allow, and those dealers may reallow, a concession not in excess of \$0.01 per unit to certain other dealers. After the units are released for sale to the public, the underwriters may change the offering price and other selling terms from time to time. No change in those terms will change the amount of proceeds to be received by us as set forth on the cover page of this prospectus. The initial public offering price of the units will be determined by negotiations between us and Paulson Investment Company, Inc., the representative of the underwriters.

The underwriters have informed us that they will not confirm sales of units offered by this prospectus to accounts over which they exercise discretionary authority without obtaining the specific approval of the account holder.

### Over-allotment Option

Pursuant to the underwriting agreement, we have granted to the underwriters an option, exercisable once during a period of 30 days from the date of this prospectus, to purchase up to an additional 405,000 units on the same terms as the other units being purchased by the underwriters from us. The underwriters may exercise the option solely to cover over-allotments, if any, in the sale of the units that the underwriters have agreed to purchase. If the over-allotment option is exercised in full, the total public offering price, underwriting discount and proceeds to us before offering expenses will be \$3,105,000, \$279,450 and \$2,825,550, respectively.



### Offerings Discounts

The following table shows the per unit and total underwriting discounts to be paid by us to the underwriters. These amounts are shown assuming no exercise and full exercise, respectively, of the underwriters' over-allotment option described above:

	Per Unit	Total without Over-Allotment Option	Total with Over-Allotment Option
Total underwriting discount to be paid by us .	\$ 0.09	\$ 243,000	\$ 279,450
<b>Expense Allowance</b>			

We have agreed to pay to Paulson Investment Company, Inc. a non-accountable expense allowance equal to 3% of the aggregate public offering price of the units sold by us in this offering, excluding units sold on exercise of the underwriters' over-allotment option.

### Loans from Paulson Investment Company, Inc.

Paulson Investment Company, Inc. loaned \$20,000 to us on July 9, 2004. Interest accrues at a rate of 10% per annum. In May 2004, Paulson loaned us an additional \$200,000, interest-free. We intend to repay both loans from the proceeds of this offering.

### Representative's Warrants

On completion of this offering, we will issue to the representative of the underwriters warrants to purchase up to 270,000 units, for a price of per unit equal to \$1.20. The representative's warrants will be exercisable for units at any time beginning 180 days after the effective date of this offering, and will expire on the fifth anniversary of the effective date. However, neither the representative's warrants nor the underlying securities may be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the offering, except to any member participating in the offering and the officers or partners thereof, and only if all securities so transferred remain subject to the 180-day lock-up restriction for the remainder of the lock-up period.

The holder of these warrants will have, in that capacity, no voting, dividend or other stockholder rights. Any profit realized on the sale of the units issuable upon exercise of these warrants may be deemed to be additional underwriting compensation. The securities underlying these warrants are being registered pursuant to the registration statement of which this prospectus is a part. During the term of these warrants, the holder thereof is given the opportunity to profit from a rise in the market price of our common stock. We may find it more difficult to raise additional equity capital while these warrants are outstanding. At any time at which these warrants are likely to be exercised, we may be able to obtain additional equity capital on more favorable terms.

### Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that the underwriters may be required to make in respect thereof. We have been advised that, in the opinion of the Securities and Exchange Commission, indemnification for liabilities under the Securities Act is against public policy as expressed in the Securities Act and is therefore unenforceable.

### Lock-up Agreements

Subject to the limited exception described below, our officers, directors and substantially all of our stockholders have agreed that for a period of one year from the date of this prospectus that they will not offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock, or any securities of that are substantially similar to our common stock, or any securities convertible into or exercisable or exchangeable for common stock, without the prior consent of Paulson Investment Company, Inc., as the representative of the underwriters. Paulson Investment Company, Inc. may consent to an early release from the one-year lock-up period. Currently, there are no agreements by Paulson to release any of the securities from the lock-up agreements.

Paulson has agreed to a modification of the above one-year lockup agreement with respect to the 661,007 shares that have been registered for resale by certain selling stockholders. Those selling stockholders may sell the shares that have been registered on their behalf following the expiration of a six-month lockup commencing on the date of this prospectus.

### **Stabilization and Other Transactions**

The rules of the SEC generally prohibit the underwriters from trading in our securities on the open market during this offering. However, the underwriters are allowed to engage in some open market transactions and other activities during this offering that may cause the market price of our securities to be above or below that which would otherwise prevail in the open market. These activities may include stabilization, short sales and over-allotments, syndicate covering transactions and penalty bids.

stabilizing transactions consist of bids or purchases made by the managing underwriter for the purpose of preventing or slowing a decline in the market price of our securities while this offering is in progress;

short sales and over-allotments occur when the managing underwriter, on behalf of the underwriting syndicate, sells more of our units than it purchases from us in this offering. In order to cover the resulting short position, the managing underwriter may exercise the over-allotment option described above or may engage in syndicate covering transaction; there is no contractual limit on the size of any syndicate covering transaction; the underwriters will deliver a prospectus in connection with any such short sales; purchasers of units sold short by the underwriters are entitled to the same remedies under the federal securities laws as any other purchaser of units covered by the registration statement;

syndicate covering transactions are bids for or purchases of our securities on the open market by the managing underwriter on behalf of the underwriters in order to reduce a short position incurred by the managing underwriter on behalf of the underwriters; and

a penalty bid is an arrangement permitting the managing underwriter to reclaim the selling concession that would otherwise accrue to an underwriter if the common stock originally sold by the underwriter was later repurchased by the managing underwriter and therefore was not effectively sold to the public by such underwriter.

If the underwriters commence these activities, they may discontinue them at any time without notice. The underwriters may carry out these transactions on the Pacific Exchange or otherwise.

### **Determination of Offering Price**

Before this offering, there has been no public market for our units, the common stock or public warrants. Accordingly, the initial public offering price of the units offered by this prospectus and the exercise price of the public warrants were determined by negotiation between us and the underwriters. Among the factors considered in determining the initial public offering price of the units and the exercise price of the public warrants were:

our history and our prospects;

the industry in which we operate;

the status and development prospects for our proposed products;

our past and present operating results;

the previous experience of our executive officers; and

the general condition of the securities markets at the time of this offering.

The offering price stated on the cover page of this prospectus should not be considered an indication of the actual value of the units. That price is subject to change as a result of market conditions and other factors, and we cannot assure you that the units, or the common stock and public warrants contained in the units, can be resold at or above the initial public offering price.

#### **NASD's Conflict of Interest Rule**

Affiliates of Spencer Trask Specialty Group, LLC will participate as members of the selling group of this offering. Because Spencer Trask Specialty Group, LLC and its affiliates beneficially own more than 50% of the Company's common stock, they are deemed to have a conflict of interest under Rule 2720 of the Conduct Rules of the National Association of Securities Dealers, Inc. (NASD). Accordingly, the offering is being made in compliance with the applicable provisions of Rule 2720 of the Conduct Rules. That rule requires that the initial public offering price be no higher than that recommended by a qualified independent underwriter, as defined in Rule 2720. Paulson Investment Company, Inc., an underwriter of this offering, has assumed the responsibilities of acting as qualified independent underwriter, has performed due diligence investigations and has reviewed and participated in the preparation of the registration statement and the prospectus related to the offering.

#### **LEGAL MATTERS**

The validity of the issuance of the securities offered by this prospectus will be passed upon for the Company by Wickersham & Murphy, a Professional Corporation, Palo Alto, California. Certain legal matters in connection with this offering will be passed upon for the underwriters by Holland & Knight LLP, Portland, Oregon.

#### **EXPERTS**

The financial statements included in this prospectus and elsewhere in the registration statement have been audited by WithumSmith+Brown, P.C., independent auditors, as indicated in their report with respect thereto, and are included herein in reliance upon the authority of said firm as experts in accounting and auditing.

#### **WHERE YOU CAN FIND MORE INFORMATION**

In connection with the units offered by this prospectus, we have filed a registration statement on Form SB-2 under the Securities Act of 1933 with the SEC. This prospectus, filed as part of the registration statement, does not contain all of the information included in the registration statement and the accompanying exhibits and schedules. For further information with respect to our units, shares and warrants, and us, you should refer to the registration statement and the accompanying exhibits. Statements contained in this prospectus regarding the contents of any contract or any other document are not necessarily complete, and you should refer to the copy of the contract or other document filed as an exhibit to the registration statement, each statement being qualified in all respects by the actual contents of the contract or other document referred to. You may inspect a copy of the registration statement and the accompanying exhibits without charge at the Securities and Exchange Commission's public reference facilities, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and you may obtain copies of all or any part of the registration statement from those offices for a fee. You may obtain information on the operation of the public reference facilities by calling the Securities and Exchange Commission at 1-800-SEC-0330. The SEC maintains a web site that contains reports, proxy and information statements and other information regarding registrants that file electronically. The address of the site is <http://www.sec.gov>.

We intend to furnish our stockholders with annual reports containing financial statements audited by our independent auditors.

NUVIM, INC.

INDEX TO FINANCIAL STATEMENTS

	<u>Page</u>
<u>Report of Independent Registered Public Accounting Firm</u>	F-2
<u>Balance Sheets December 31, 2003 and 2004; and March 31, 2005 (unaudited)</u>	F-3
<u>Statements of Operations Years ended December 31, 2003 and December 31, 2004; and Three Months Ended March 31, 2004 and March 31, 2005 (unaudited)</u>	F-4
<u>Statements of Cash Flows Years ended December 31, 2003 and December 31, 2004; and Three Months Ended March 31, 2004 and March 31, 2005 (unaudited)</u>	F-5
<u>Statements of Stockholders Deficit Years ended December 31, 2003 and December 31, 2004; and Three Months Ended March 31, 2005 (unaudited)</u>	F-6
<u>Notes to Financial Statements</u>	F-7

F-1

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Audit Committee of  
NuVim, Inc.:

We have audited the accompanying balance sheets of NuVim, Inc. (the Company) as of December 31, 2003 and 2004, and the related statements of operations, stockholders' deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2003 and 2004, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations and has a net working capital deficiency that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ WithumSmith+Brown, P.C.  
February 22, 2005  
(Except for Note 19B as to which  
the date is May 3, 2005)  
Flemington, New Jersey

**NUVIM, INC.**  
**BALANCE SHEETS**  
**DECEMBER 31, 2003 AND 2004**  
**MARCH 31, 2005 (UNAUDITED)**

	December 31,		
	2003	2004	March 31, 2005
<b>ASSETS</b>			
Current Assets:			
Cash and cash equivalents	\$ 54,609	\$ 277,649	\$
Accounts receivable, net	53,718	6,981	48,262
Inventory	160,664	84,484	108,420
Prepaid expenses and other current assets	40,192	61,766	21,381
<b>Total Current Assets</b>	<b>309,183</b>	<b>430,880</b>	<b>178,063</b>
Equipment and furniture, net	60,873	21,020	16,774
Deferred offering costs		441,243	654,880
Deposits and other assets	8,147	8,547	8,547
<b>TOTAL ASSETS</b>	<b>\$ 378,203</b>	<b>\$ 901,690</b>	<b>\$ 858,264</b>
<b>LIABILITIES AND STOCKHOLDERS DEFICIT</b>			
Current Liabilities:			
Senior notes payable related parties	\$	\$ 1,000,000	\$ 1,000,000
Accrued interest senior notes payable related party		21,646	59,146
Demand note payable bank	2,500,000	2,500,000	2,500,000
Accrued interest demand note payable bank	59,519	129,940	154,620
Senior convertible promissory notes payable related party	2,480,000	2,480,000	2,480,000
Accrued interest senior convertible promissory notes related party	473,194	813,251	900,051
Convertible promissory note related party		175,000	175,000
Stockholder loans subordinated convertible promissory notes	635,000	385,000	385,000
Accrued interest stockholder loans	156,853	147,793	162,860
Accounts payable	877,998	1,098,014	1,314,326
Accounts payable and accrued expenses to related parties	773,000	659,000	625,300
Accrued expenses	55,000	137,671	274,953
Accrued compensation	714,443	551,305	707,390
Rescinded series B offering payable	42,000	42,000	42,000
Related party advances	27,000	82,000	113,000
Other note payable		150,000	150,000
<b>Total Current Liabilities</b>	<b>8,794,007</b>	<b>10,372,620</b>	<b>11,043,646</b>
Commitments and Contingencies			
Stockholders Deficit:			
Preferred Stock 65,000,000 shares authorized:			
Preferred Stock Series A, convertible, non cumulative, participating, par value \$ .00001 per share; 4,875,850 shares designated, issued and outstanding (liquidation preference of \$4,875,850)	49	49	49
Preferred Stock Series C, convertible, non cumulative, participating, par value \$ .00001 per share; designated 50,000,000 shares, 3,623,000 issued and outstanding (liquidation preference of \$724,600)	36	36	36
Common Stock, 120,000,000 shares authorized, \$.00001 par value, issued and outstanding, 155,073 at December 31, 2003 and 414,073 at December 31, 2004 and 155,073 at March 31, 2004 and 414,073 at March 31, 2005	2	4	4
Additional paid-in capital	7,300,687	8,377,140	8,377,140

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Accumulated deficit	(15,716,578)	(17,848,159)	(18,562,611)
Total Stockholders Deficit	(8,415,804)	(9,470,930)	(10,185,382)
<b>TOTAL LIABILITIES AND STOCKHOLDERS DEFICIT</b>	<b>\$ 378,203</b>	<b>\$ 901,690</b>	<b>\$ 858,264</b>

The Notes to Financial Statements are an integral part of these statements.

F-3

**NUVIM, INC.**  
**STATEMENTS OF OPERATIONS**  
**FOR THE YEARS ENDED DECEMBER 31, 2003 AND 2004**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2004 AND 2005 (UNAUDITED)**

	December 31,		March 31,	
	2003	2004	2004	2005
Gross Sales	\$ 2,335,676	\$ 1,411,355	\$ 421,555	\$ 375,719
Less: Discounts, Allowances and Promotional Payments	624,747	452,570	103,651	166,843
Net Sales	1,710,929	958,785	317,904	208,876
Cost of Sales	1,270,656	737,642	221,076	207,835
Write down of obsolete inventory	213,407			
Gross Profit	226,866	221,143	96,828	1,041
Selling, General and Administrative Expenses	1,967,795	2,092,898	352,470	536,691
Loss from Operations	(1,740,929)	(1,871,755)	(255,642)	(535,650)
Other Income (Expense):				
Interest Expense	(709,210)	(578,560)	(141,004)	(178,802)
Interest Income	407			
Miscellaneous Income (Expense)	(839)			
Gain on Forgiveness of Accounts Payable		60,258		
Total Other Income (Expense) Net	(709,642)	(518,302)	(141,004)	(178,802)
Net Loss Before Income Tax Benefit	(2,450,571)	(2,390,057)	(396,646)	(714,452)
Income Tax Benefit	211,131	258,476		
Net Loss	\$ (2,239,440)	\$ (2,131,581)	\$ (396,646)	\$ (714,452)
Basic and Diluted Loss Per Share	\$ (15.25)	\$ (10.26)	\$ (2.56)	\$ (1.73)
Weighted Average Number of Common Shares Outstanding Basic and Diluted	146,866	207,740	155,073	414,073

The Notes to Financial Statements are an integral part of these statements.



**NUVIM, INC.**  
**STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31, 2003 AND 2004**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2004 AND 2005 (UNAUDITED)**

	December 31,		March 31,	
	2003	2004	2004	2005
<b>Cash Flow From Operating Activities:</b>				
Net Loss	\$ (2,239,440)	\$ (2,131,581)	\$ (396,646)	\$ (714,452)
Adjustment to reconcile net loss to net cash used in operating activities:				
Depreciation	42,120	42,120	10,531	4,688
Stock-based compensation	231,647			
Non-cash interest expense warrants	178,000			
Inventory obsolescence	213,407			
Gain on forgiveness of accounts payable		(60,258)		
Provision for sales returns and allowances	624,747	452,570	57,079	62,078
Changes in Operating Assets and Liabilities:				
Accounts receivable	(539,493)	(405,833)	(53,029)	(103,359)
Inventory	(45,091)	76,180	7,190	(23,936)
Prepaid expenses and other current assets	(34,618)	(21,574)	2,769	40,385
Deposits and other assets		(400)		
Cash restricted for letter of credit	100,000			
Accounts payable	141,296	504,186	(2,960)	216,312
Accrued compensation	513,500	484,362	128,250	156,085
Accrued expenses	35,000	104,317	39,121	137,282
Accrued interest	467,036	496,461	117,052	164,047
Accounts payable to related parties	(75,000)	71,000	24,700	(33,700)
<b>Net Cash Used in Operating Activities</b>	<b>(386,889)</b>	<b>(388,450)</b>	<b>(65,943)</b>	<b>(94,570)</b>
<b>Cash Flow From Investing Activities:</b>				
Purchase of equipment and furniture		(2,267)		(442)
<b>Net Cash Used in Investing Activities</b>		<b>(2,267)</b>		<b>(442)</b>
<b>Cash Flow From Financing Activities:</b>				
Repayment of shareholder loans	(22,544)			
Repayment of rescinded series B offering payable	(36,500)			
Proceeds from issuance of series C preferred stock	20,000			
Proceeds from senior convertible promissory notes related party	480,000			
Proceeds from senior note payable related party		1,000,000		
Proceeds from related party advances		55,000	15,000	31,000
Deferred offering costs		(441,243)		(213,637)
<b>Net Cash Provided By (Used in) Financing Activities</b>	<b>440,956</b>	<b>613,757</b>	<b>15,000</b>	<b>(182,637)</b>
<b>Increase in Cash and Cash Equivalents</b>	<b>54,067</b>	<b>223,040</b>	<b>(50,943)</b>	<b>(277,649)</b>
Cash and Cash Equivalents at Beginning of Period	542	54,609	54,609	277,649
<b>Cash and Cash Equivalents at End of Period</b>	<b>\$ 54,609</b>	<b>\$ 277,649</b>	<b>\$ 3,666</b>	<b>\$</b>
<b>Supplemental Disclosure of Cash Flow Information:</b>				
Cash paid for interest	\$ 38,808	\$	\$	\$

The Notes to Financial Statements are an integral part of these statements.



**NUVIM, INC.**  
**STATEMENTS OF CHANGES IN STOCKHOLDERS DEFICIT**  
**FOR THE YEARS ENDED DECEMBER 31, 2003 AND 2004**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2005 (UNAUDITED)**

	Preferred Stock Series A		Preferred Stock Series C		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders Deficit
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2002	4,875,850	\$ 49	3,523,000	\$ 35	134,000	\$ 1	\$ 6,771,042	\$ (13,477,138)	\$ (6,706,011)
Proceeds from sale of preferred stock series C			100,000	1			19,999		20,000
Issuance of common stock for compensation					21,073	1	231,646		231,647
Warrants issued in connection with notes payable							178,000		178,000
Related party debt extinguishment							100,000		100,000
Net loss for the year ended December 31, 2003								(2,239,440)	(2,239,440)
Balance at December 31, 2003	4,875,850	49	3,623,000	36	155,073	2	7,300,687	(15,716,578)	(8,415,804)
Shares issued in connection with related party debt extinguishment							71,912		71,912
Common stock issued in connection with service agreement					30,000				
Common stock issued in connection with payment of accounts payable					6,000		36,000		36,000
Common stock issued in connection with accrued compensation					147,866	1	623,499		623,500
Common stock issued in connection with stockholder loans					75,134	1	345,042		345,043
Net loss for the year ended December 31, 2004								(2,131,581)	(2,131,581)
Balance at December 31, 2004	4,875,850	49	3,623,000	36	414,073	4	8,377,140	(17,848,159)	(9,470,930)
Net loss for the three months ended March 31, 2005								(714,452)	(714,452)
Balance at March 31, 2005	4,875,850	\$ 49	3,623,000	\$ 36	414,073	\$ 4	\$ 8,377,140	\$ (18,562,611)	\$ (10,185,382)

The Notes to Financial Statements are an integral part of these statements.

NUVIM, INC.

NOTES TO FINANCIAL STATEMENTS

(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)

**NOTE 1 BUSINESS AND BASIS OF PRESENTATION**

**A. Business**

NuVim, Inc. (the Company) markets and distributes dietary supplement beverages, which enhance the immune system, promote sturdy joints and muscle flexibility. The Company distributes its products through supermarkets in approximately 13 states, predominantly on the East Coast, and the District of Columbia. The Company's beverage products contain certain micronutrients which Stolle Milk Biologics, Inc. (SMBI) has patented. Spencer Trask Specialty Group, LLC (ST) is the controlling stockholder of SMBI. SMBI and ST collectively are significant stockholders of the company. The Company has entered into supply and licensing agreements with SMBI for these patented micronutrients, which can be terminated by SMBI under certain conditions (See Note 17).

**B. Going Concern**

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. As shown in the accompanying financial statements, the Company incurred net losses of \$2,239,440 and \$2,131,581 for the years ended December 31, 2003 and 2004, and \$396,646 and \$714,452 for the three months ended March 31, 2004 and 2005, respectively, and is in default as of March 31, 2005, on approximately \$7,800,000 of notes payable, stockholder loans, and accrued interest. Management also expects operating losses to continue in 2005 and 2006. The Company's continued existence is dependent upon its ability to secure adequate financing to fund future operations and commence profitable operations. To date, the Company has supported its activities through equity investments, the sale of preferred stock, a demand note payable to a bank and cash advances from related parties and stockholders. It is the Company's intention to raise additional capital through additional borrowings and a public offering of its common stock. No assurance can be given that these funding strategies will be successful in providing the necessary funding to finance the operations of the Company. Additionally, there can be no assurance, even if successful in obtaining financing, the Company will be able to generate sufficient cash flows to fund future operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or amounts and classification of liabilities that might be necessary related to this uncertainty.

**C. Unaudited Information**

The financial statements as of March 31, 2005 and for the three months ended March 31, 2004 and 2005 are unaudited. However, the Company has recorded all necessary adjustments to provide a fair presentation. Results of operations and cash flows for the three months ended March 31, 2005 are not necessarily indicative of results for the year ending December 31, 2005.

**NOTE 2 SIGNIFICANT ACCOUNTING POLICIES**

**A. Cash Equivalents**

Cash equivalents consist of highly-liquid investments with an original maturity of three months or less when purchased.

**B. Accounts Receivable**

Accounts receivable are unsecured, non-interest bearing obligations that are typically due from customers within 30 days of the invoice date. Management applies collections in accordance with customer remittance advices or to the oldest outstanding invoice if no remittance advice is presented with payment.

Accounts receivable are recorded at their net realizable value. The Company estimates an allowance for doubtful accounts, sales returns and allowances based on historical trends and other criteria. At December 31, 2003 and 2004, these allowances approximated \$84,000 and \$53,400, and at March 31, 2004 and 2005 approximated \$82,000 and \$114,000, respectively. No amounts were recorded as bad debt expense for the years ended December 31, 2003 or 2004 as all allowances represented sales returns or promotional allowances.

NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

**C. Inventories**

Inventories, which are predominantly raw materials, are stated at the lower of cost (first-in, first-out method) or market. A provision for excess or obsolete inventory is recorded at the time the determination is made. For finished goods, inventory that is within 30 days of its expiration date is charged to cost of sales. Raw materials related to discontinued flavors are also charged to cost of sales at the time the flavor is discontinued.

**D. Deferred Offering Costs**

The Company is deferring costs incurred in connection with a proposed initial public offering of its common stock. Amounts deferred will be offset against the gross proceeds (recorded as additional paid in capital) upon consummation of the offering. If the offering does not take place, all deferred costs will be expensed.

**E. Revenue Recognition**

The Company records revenue at the time the related products are received by the customer from the public warehouse used by the Company and the risk of ownership has passed to the customer. A provision for estimated product returns, promotional allowances and cash discounts based on the Company's historical experience is recorded during the period of sale.

**F. Placement Allowances**

As an inducement to its customers to display the Company's products in preferred locations of their stores, the Company provides placement and promotional allowances to certain customers. The Company also provides credits for product which has not been sold by its expiration date. These allowances and credits are reflected as a reduction of gross sales in accordance with Emerging Issues Task Force ( EITF ) No. 01-09 Accounting for consideration given by a vendor to a customer .

**G. Freight Costs**

In accordance with EITF No. 00-10, Accounting for Shipping and Handling Fees and Costs, reimbursement of freight charges are recorded in net sales. For the years ended December 31, 2003 and 2004, and for the three months ended March 31, 2004 and 2005 freight-out costs approximated \$241,000 and \$172,000, \$43,000 and \$57,000, respectively, and have been recorded in selling, general and administrative expenses.

**H. Equipment and Furniture**

Equipment and furniture is stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets (5 years).

**I. Stock-Based Compensation**

The Company accounts for employee stock-based compensation in accordance with Accounting Principles Board ( APB ) Opinion No. 25, Accounting for Stock Issued to Employees , using an intrinsic value approach to measure compensation expense, if any. Under this method, compensation expense is recorded on the grant date only if the current market price of the underlying stock exceeds the exercise price. Options and warrants issued to non-employees are accounted for in accordance with SFAS No. 123, Accounting for Stock-Based Compensation , and EITF Issue No. 96-18, Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods and Services using a fair value approach. See notes 14 F. and G. for a discussion of time and valuation assumptions used to value options and warrants.

## NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

SFAS No. 123 established accounting and disclosure requirements using a fair value-basis method of accounting for stock-based employee compensation plans. As allowed by SFAS No. 123, the Company has elected to continue to apply the intrinsic value-based method of accounting described above, and has adopted the disclosure requirements of SFAS No. 123. Had the Company elected to recognize compensation cost based on fair value of the stock options at the date of grant under SFAS No.123, such costs would have been recognized ratably over the vesting period of the underlying instruments and the Company's net loss and net loss per common share would have increased to the pro forma amounts indicated in the table below.

	Year Ended December 31,		Three Months Ended March 31,	
	2003	2004	2004	2005
Net loss, as reported	\$ 2,239,440	\$ 2,131,581	\$ 396,646	\$ 714,452
Net loss, pro forma	\$ 2,266,699	\$ 2,143,042	\$ 403,461	\$ 719,317
Net loss per share, as reported	\$ (15.25)	\$ (10.26)	\$ (2.56)	\$ (1.73)
Net loss per share, pro forma	\$ (15.43)	\$ (10.32)	\$ (2.60)	\$ (1.74)

The pro forma results above are not intended to be indicative of or a projection of future results.

**J. Advertising and Promotion Costs**

Advertising and promotion costs are expensed as incurred. Advertising expenses, including media advertising, in store sampling programs, and advertisements in customer printed circulars were included in selling, general and administrative expenses, with the exception of coupon expenses which were included as a reduction of net sales. During the years ended December 31, 2003 and 2004, advertising and promotion expense was approximately \$472,000 and \$687,000, respectively. During the three months ended March 31, 2004 and 2005, advertising expense was \$49,509 and \$169,000, respectively.

**K. Income Taxes**

Deferred tax assets and liabilities are determined based on differences between financial reporting and income tax basis of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. Differences that give rise to significant portions of the Company's deferred tax assets are net operating losses and deferred stock compensation. A valuation allowance is recorded against deferred tax assets in instances where the realization of the deferred tax asset is not considered to be more likely than not.

**L. 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 financial statements and accompanying notes. These estimates include, but are not necessarily limited to, accounts receivable allowances, depreciation and coupon liability estimates. Actual results could differ from those estimates.

**M. Net Loss Per Share**

Basic loss per share has been calculated using the weighted average number of common shares outstanding in accordance with FASB 128 Earnings Per Share. All potentially dilutive securities, including options, convertible notes, convertible preferred stock and warrants have been excluded as common stock equivalents and diluted loss per share has not been presented as such securities are antidilutive due to the Company's net loss for all periods presented.

**N. Impairment of Long Lived Assets**

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The Company reviews long-lived assets for impairment whenever circumstances and situations change such that there is an indication that the carrying amounts may not be recovered. At December 31, 2003 and December 31, 2004 and March 31, 2005, the Company has not recognized any impairment charges for its long-lived assets.

F-9

NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

**O. Concentration of Risk**

The Company maintains its cash balances in financial institutions located in New Jersey, and periodically has cash balances in excess of Federal Deposit Insurance Corporation limits. The Company distributes its products and grants credit to its customers who are food distributors and retailers located primarily in the eastern portion of the United States. The Company generally does not require collateral or other security with regard to balances due from customers. The Company extends credit to its customers in the normal course of business and performs periodic credit evaluations of its customers, maintaining allowances for potential credit losses.

Sales to two customers during the year ended December 31, 2003 approximated 17% and 12% of sales. Sales to two customers during the year ended December 31, 2004 approximated 14% and 13% of sales. Sales to two customers accounted for 16.4% and 16.2% of sales during the three months ended March 31, 2004. Sales to four customers accounted for 27%, 12.2%, 11.3% and 10.1% of sales during the three months ended March 31, 2005.

Accounts receivable from one customer at December 31, 2003 approximated 21% and two customers at December 31, 2004 approximated 21% and 16% of accounts receivable, respectively. Accounts receivable from three customers at March 31, 2004 approximated 10.9%, 10.3% and 10.3% of accounts receivable. Accounts receivable from two customers at March 31, 2005 approximated 31.2% and 19.7% of accounts receivable.

One outside vendor manufactures all of the Company's finished goods. During the years ended December 31, 2003 and 2004, manufacturing costs of approximately \$383,000 and \$217,500 were incurred at this vendor. There was no amount due to this vendor at December 31, 2003 and 2004 or at March 31, 2004 or 2005. During the three months ended March 31, 2004 and 2005, manufacturing costs approximated \$61,605 and \$48,133.

**P. Value of Financial Instruments**

The Company's financial instruments consist mainly of cash and cash equivalents, accounts receivable and accounts payable. The carrying amounts of these financial instruments approximate fair value due to their short-term nature. The carrying amount due to related party, notes payable and stockholder loans are estimated to approximate their fair values as their stated interest rates approximate current interest rates.

**Q. Recent Accounting Pronouncements**

In January 2003, the FASB issued interpretation No. 46 (FIN 46), Consolidation of Variable Interest Entities. The primary objectives of this interpretation are to provide guidance on the identification of entities for which control is achieved through means other than through voting rights (variable interest entities) and how to determine when and which business enterprise (the primary beneficiary) should consolidate the variable interest entity. This new model for consolidation applies to an entity in which either (i) the equity investors (if any) do not have a controlling financial interest; or (ii) the equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support from other parties. In addition, FIN 46 requires that the primary beneficiary, as well as all other enterprises with a significant variable interest entity, make additional disclosures. Certain disclosure requirements of FIN 46 were effective for financial statements issued after January 31, 2003. In December 2003, the FASB issued FIN 46 (revised December 2003), Consolidation of Variable Interest Entities (FIN 46-R) to address certain FIN 46 implementation issues. The effective dates and impact of FIN 46 and FIN 46-R are as follows: (i) Special-purpose entities (SPEs) created prior to February 1, 2003: The Company must apply either the provisions of FIN 46 or early adopt the provisions of FIN 46-R at the end of the first interim or annual reporting period ended after December 15, 2003. (ii) Non-SPEs created prior to February 1, 2003: The Company was required to adopt FIN 46-R at the end of the first interim or annual reporting period ending after March 15, 2004. (iii) All entities, regardless of whether SPE, that were created subsequent to December 31, 2003: The interpretation applies immediately. The Company does not have any arrangements with variable interest entities that will require consolidation of their financial information in the Company's financial statements.



## NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

In December 2004, the FASB revised FASB Statement No. 123, *Accounting for Stock-Based Compensation*. This Statement supersedes APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and its related implementation guidance. This Statement establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services. It also addresses transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments. This Statement focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. This Statement does not change the accounting guidance for share-based payment transactions with parties other than employees provided in Statement 123 as originally issued and EITF Issue No. 96-18, *Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in conjunction with Selling, Goods or Services*. It applies in the first reporting period ending after December 15, 2005. The adoption of Statement No. 123 (revised 2004) is not expected to have a material impact on the Company's financial position, liquidity, or results of operations.

**R. Reclassifications**

Certain reclassifications were made to the 2003 financial statements in order to conform to the 2004 financial statements.

**NOTE 3 INVENTORY**

Inventory consists of the following:

	Years Ended December 31,		Three Months Ended March 31, 2005
	2003	2004	
Raw materials	\$ 138,346	\$ 62,358	\$ 27,876
Finished goods	22,318	22,126	80,544
<b>Total</b>	<b>\$ 160,664</b>	<b>\$ 84,484</b>	<b>\$ 108,420</b>

**NOTE 4 EQUIPMENT AND FURNITURE**

Equipment and furniture consists of the following:

	December 31,		Three Months Ended March 31, 2005
	2003	2004	
Equipment	\$ 155,431	\$ 155,431	\$ 155,431
Furniture and fixtures	52,255	54,522	54,964
	207,686	209,953	210,395
Less: accumulated depreciation	(146,813)	(188,933)	(193,621)
<b>Equipment and furniture, net</b>	<b>\$ 60,873</b>	<b>\$ 21,020</b>	<b>\$ 16,744</b>

Depreciation expense for years ended December 31, 2003 and 2004 was \$42,120 per year. Depreciation expense for the three months ended March 31, 2004 and 2005 was \$10,531 and \$4,688, respectively.

**NOTE 5 SENIOR NOTES PAYABLE RELATED PARTIES**

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On July 26, 2004, the Company entered into a loan agreement with a stockholder of the Company who is also a Company spokesperson, and one of the Company's directors. The loan agreement provided for borrowings up to \$1,000,000 in the form of Senior Notes Payable issued in four tranches, each of which is conditioned upon completion of specified actions or events. As of December 31, 2004, the Company has received the full amount of \$1,000,000 under the agreement. The loan

F-11

NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

accrues interest at 10% per annum, unless it is in default, in which case the interest increases to 15%. The principal and accrued interest were due and payable on the earlier of the consummation of an initial public offering or January 1, 2005. Payment was not made as of January 1, 2005, which constitutes an event of default under the agreement. Under an event of default, the lenders have the right to, but have not made, a demand for payment of the notes. The loan is secured by all of the assets of the Company, and certain Company creditors were required to execute subordination agreements in favor of the lenders. See Note 19B for a revision to this agreement.

The Company has recorded \$21,646 as interest expense on the notes in 2004, all of which is included in accrued expenses at December 31, 2004. The Company has recorded \$37,500 of interest expense for the three months ended March 31, 2005 and \$59,146 is accrued and payable at March 31, 2005.

As a condition of the loan agreement the Company issued a warrant to the spokesperson that entitles him to acquire up to 9.9% of the total fully-diluted issued and outstanding common stock of the Company (see note 14 F.) after the consummation of an initial public offering of its common stock, at the initial public offering price. The warrant allows the holder, to acquire an additional number of shares of Common Stock, to bring his total holdings to 9.9%, after deducting any existing equity holdings at that date.

As an additional condition of the loan agreement, the Company entered into a second amended services agreement with the spokesperson (see note 18 F.). In connection with the second amended services agreement, the Company issued 30,000 shares of common stock, a warrant to purchase \$650,000 of common stock, and a \$175,000 convertible note (see note 8). The price and number of shares to be acquired under the warrant and the convertible note, are based on contingencies that have yet to be resolved, including whether the Company completes an initial public offering of its common stock, and the price of such an offering. The common stock issued, and stock underlying the warrants and the convertible note are forfeited by the spokesperson if obligations under the service agreement are not met. Therefore, no performance commitment has been met, and no value has been recorded for the shares, warrants, or beneficial conversion feature of the convertible note. Accordingly, no value has been recorded for the 9.9% warrant, since its value is based on the number of shares issued in connection with the service agreement, and the initial public offering contingency, that has yet to be resolved. Once resolved, the Company will recognize a non-cash charge to operations and such charge could be material.

The loan agreement also required the formation of NuVim Powder LLC, of which the Company spokesperson was given a 25% ownership interest. During 2004 Nuvim Powder LLC was an inactive company.

The spokesperson and one of the Company's directors participated in the loans under the agreement equally. In 2004, the spokesperson and Company Director entered into an agreement providing for an equal share in the warrants and ancillary agreements issued in connection with the loan agreement. Therefore, the Company Director has been given a 12.5% interest in the powder company and a 50% interest in both of the warrants issued in connection with the loan agreement and second amended services agreement.

**NOTE 6 DEMAND NOTE PAYABLE BANK**

The note payable to a bank is due on demand with interest due monthly at the LIBOR Index plus 1.25% (3.53% at December 31, 2004), is secured by all of the assets of the Company and is guaranteed by a stockholder. In consideration for providing the guarantee, the stockholder was granted warrants to purchase 54,546 shares of common stock at an exercise price of \$55.00 per share, of which warrants to purchase 36,364 shares expire in May 2006 and warrants to purchase 18,182 shares expire in December 2006. Since the note is due on demand, the Company included \$650,000, representing the fair value of the warrants, in interest expense in the year of issue, which was 2001. The Company has not paid interest due on the note since March 31, 2003 and is in default of the loan terms. Interest expense on the demand note was \$71,858 and \$70,421 for the years ended December 31, 2003 and 2004, respectively, and accrued interest payable on the note was \$59,519 and \$129,940 at December 31, 2003 and 2004, respectively. Interest expense on the demand note was \$15,487 and \$24,680 for the three months ended March 31, 2004 and 2005, respectively, and accrued interest payable on the note was \$75,006 and \$154,620 at March 31, 2004 and 2005, respectively.

NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

**NOTE 7 SENIOR CONVERTIBLE PROMISSORY NOTES PAYABLE RELATED PARTY**

Senior notes payable related party consists of a series of notes issued to a group of related investors in the Company's common and preferred stock.

On November 18, 1999, the Company issued a promissory demand note in the amount of \$300,000 to a preferred stockholder with interest at 8%. The principal and interest portions of this obligation were originally due November 2001 and were subsequently extended through November 2002.

On May 31, 2002 and July 5, 2002, the Company issued a series of senior convertible promissory notes with principal amounts of \$700,000, \$300,000, \$200,000, \$100,000 and \$400,000 with maturity dates through January 6, 2003, to investors in its preferred stock. The notes bore interest at 8% and were convertible into equity securities of the Company if certain conditions were met in a proposed preferred stock sale.

On September 13, 2002, these investors agreed to cancel these notes which aggregated \$2,000,000 in exchange for three 8% senior secured convertible promissory notes in the amount of \$2,000,000, along with seven-year warrants to purchase 2,000,000 shares of Series C preferred stock at an exercise price of \$.20 per share. As of December 31, 2002, the notes were in default on certain provisions of the notes, and the Company has accrued interest at the default rate of 14%. The Company has amortized a debt discount of \$168,000 related to the value of the warrants and the conversion feature to interest expense as of December 31, 2002, the maturity date of the notes. The notes are collateralized by all the assets of the Company. Each note holder has the option to convert the principal and accrued interest due, in whole or in part, into a number of shares of Series C preferred stock calculated by dividing the amount of debt and accrued interest by \$.20 per share. Interest expense related to the notes was \$280,000 for each of the years ended December 31, 2003 and 2004, and \$70,000 for the three months ended March 31, 2004 and 2005, respectively. Accrued interest on the notes was \$431,965 and \$711,965 at December 31, 2003 and 2004, and \$501,965 and \$781,965 at March 31, 2004 and 2005 respectively.

On February 10, 2003, the Company entered into an agreement with a preferred stockholder to borrow up to \$500,000. During 2003, the Company borrowed \$480,000 under this agreement and executed 8% senior secured convertible promissory notes, convertible into the Company's Series C preferred stock at \$.20 per share, due through September 18, 2003 and collateralized by all assets of the Company. In connection with these notes, the Company issued warrants to the holder to purchase up to 2,500,000 shares of Series C preferred stock at an exercise price of \$.20 per share. These convertible notes were in default in September 2003 and became subject to a default interest rate of 14%. The Company has amortized a debt discount of \$178,000 related to the value of the warrants and the conversion feature, to interest expense as of the maturity date of the notes. Interest expense related to the notes, including amortization of the debt discount, was \$209,002 and \$60,057 for the years ended December 31, 2003 and 2004, respectively. Accrued interest on these notes were \$41,229 and \$101,286 at December 31, 2003 and 2004, respectively. Interest expense on the senior convertible promissory notes related party was \$16,800 for the three months ended March 31, 2004 and 2005, respectively. Accrued interest expense was \$58,029 and \$118,086 at March 31, 2004 and 2005, respectively.

**NOTE 8 CONVERTIBLE PROMISSORY NOTE RELATED PARTY**

On July 26, 2004, The Company issued a convertible promissory note in the amount of \$175,000 in payment of accounts payable owed to the Company spokesperson and in consideration for his forbearance until a maturity date, as defined in the note. The note accrues interest at the rate of 10% per annum until its original maturity date of January 1, 2005, and 15% thereafter. The convertible note is automatically convertible into \$245,000 of common stock or unregistered units identical to the units sold at the initial public offering price, provided the offering is consummated on or before May 31, 2005 (original date of December 31, 2004 was previously extended by agreement to March 31, 2005 and subsequently to April 30, 2005). If the offering does not occur by May 31, 2005, the convertible note is convertible into \$245,000 of common stock, at the option of the holder, at the conversion price of \$1.00 per share, subject to certain contingencies defined in the Services Agreement. In accordance with EITF 98-5, Accounting for Convertible Securities with Beneficial Conversion Features on Contingently Adjustable Conversion Ratios, the Company has not recorded the beneficial conversion feature because its terms change based on the occurrence of future events outside the control of the holder of the convertible note. This convertible debt has a beneficial conversion feature that will result in a non-cash expense adjustment to the Company at the date of conversion and that expense adjustment could be material.

NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

The Company recorded \$7,486 as interest expense on the convertible note in 2004. The amount is included in accrued expenses at December 31, 2004. Interest expense on the convertible promissory note related party was \$6,563 for the three months ended March 31, 2005. Accrued interest payable was \$14,049 at March 31, 2005.

**NOTE 9 STOCKHOLDER LOANS SUBORDINATED CONVERTIBLE PROMISSORY NOTES**

On September 13, 2002, the Company issued subordinated convertible promissory notes to eleven stockholders with an aggregate principal balance of \$735,000, in replacement of outstanding demand notes, issued in June 2001, of the same principal amount. The notes had a maturity date of December 31, 2002, based on certain factors and bear interest at a rate of 8% and default interest at 14%. The notes are subordinated to all the senior debt of the Company. The notes were in default as of December 31, 2002.

The holder of these notes may convert the notes (or a portion thereof) into a number of shares of Company's Series C preferred stock, calculated by dividing the amount of the debt being converted by \$.20 per share rounded to the nearest whole share.

At the holder's election, unless converted, the accrued interest on the notes shall be paid to the holder in cash on the conversion date.

The Company repaid principal on the notes totaling \$22,544 in 2003.

See Note 19B for revisions to these agreements.

On November 30, 2004 three stockholders who are also executive officers agreed to accept 75,143 shares of common stock in satisfaction of \$250,000 of notes payable, \$95,043 of accrued and default interest thereon, and cancellation of 4,548 of warrants issued in connection with the subordinated convertible promissory notes. The Company has recorded the \$345,043 value of the consideration received for the stock as additional paid in capital. The Company believes the value of the stock issued approximates the value of the notes and accrued interest thereon.

Interest expense on stockholder loans was \$88,900 and \$85,983 for the years ended December 31, 2003 and 2004, respectively. Accrued interest payable was \$156,853 and \$147,793 as of December 31, 2003 and 2004, respectively. Interest expense on the subordinated convertible promissory notes was \$22,225 and \$15,067 for the three months ended March 31, 2004 and 2005, respectively. Accrued interest expense was \$179,078 and \$162,860 at March 31, 2004 and 2005, respectively.

**NOTE 10 ACCRUED COMPENSATION**

Accrued compensation consists of salary and bonuses earned and not paid to certain officers and employees of the Company and related payroll taxes thereon. Compensation expense related to accrued and unpaid salary and taxes approximated \$513,500 and \$476,000 for the years ended December 31, 2003 and 2004, respectively. On November 30, 2004 three executive officers agreed to accept 147,866 shares of common stock in satisfaction of \$623,500 of accrued salary due to them through December 31, 2003. The Company has recorded the \$623,500 value of the consideration received for the stock, which approximates its fair market value, as additional paid in capital. See Note 19B for revised payment terms.

**NOTE 11 RESCINDED SERIES B OFFERING PAYABLE**

Pursuant to a private placement memorandum, dated October 5, 2001, the Company offered to sell shares of Series B convertible preferred stock. The Company, however, did not have a sufficient amount of preferred stock authorized to issue and sell the Series B convertible preferred stock and had not taken certain legal steps to designate the terms of the Series B convertible preferred stock. Accordingly, the Series B convertible preferred stock was invalidly issued and holders thereof did not own an equity interest in the Company as a result of their purported investment therein. As a result, the Company was legally obligated to offer to rescind, or return, the payment made by such holders for such shares, plus any interest required by applicable state law. Proceeds of \$647,100 were collected in the Series B offering and accounted for as offering payable from the Company.

NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

In November 2002, the Company consummated its offer to rescind the Series B offering and refund the original purchase price, or issue replacement shares of the Company's Series C convertible preferred stock at the proposed offering price of \$.20 per share, at the investors' option. Investors representing \$568,600 elected to receive, and were issued, 2,843,000 replacement shares of the Series C convertible preferred stock, and investors representing \$78,500 elected a cash refund. The Company paid \$36,500 of the refunded proceeds due during 2003 and has recorded a liability of \$42,000 at December 31, 2003 and 2004.

**NOTE 12 RELATED PARTY ADVANCES**

Related party advances consist of short term advances that are due to the lender on demand. At December 31, 2004, the balance consists of \$20,000 due to the Company's underwriter and \$62,000 due to an executive officer of the Company. The amount due to the underwriter accrues interest at 10% per annum. The amount due to the executive officer does not accrue interest. During 2005, an additional \$31,000 was advanced to the Company by the officers of the Company.

**NOTE 13 OTHER NOTES PAYABLE**

Other notes payable consists of two notes payable issued to a law firm in payment of past due legal fees. On August 20, 2004, the Company agreed to pay \$30,000 and issue two promissory notes for \$120,000 and \$30,000, respectively, payable the earlier of the consummation of the proposed public offering or February 5, 2005, in payment of past due accounts payable of \$240,000. The notes bear interest at 5% and default interest at 7%. The Company recognized a gain on the extinguishment of this debt in the amount of approximately \$60,000 during the year ended December 31, 2004. The notes have not been paid as of their respective maturity dates. Therefore, on February 3, 2005 the Company agreed to issue a replacement demand note, payable upon the earlier of a demand by the lender or an initial public offering of the Company's common stock. The note will bear interest at 5% and default interest at 10%.

**NOTE 14 STOCKHOLDERS DEFICIT**

**A. Reverse Stock Split**

A one-for-fifty five reverse stock split was effected November 30, 2004. The Company retained the current par value of \$.00001 per share for all shares of common stock. All references in the financial statements to the number of shares outstanding, per share amounts, and stock option and warrant data pertaining to the Company's common stock have been restated to reflect the effect of the reverse stock split for all years presented. Stockholders' deficit reflects the reverse stock split by reclassifying from common stock to additional paid in capital an amount equal to the par value of the reduced shares arising from the reverse split.

**B. Capital Stock**

The Company is authorized to issue 185,000,000 shares of all classes of capital stock, including 120,000,000 as common. The Company has authorized 65,000,000 shares of all classes preferred stock, of which 4,875,850 shares are designated as Series A and 50,000,000 as Series C.

**C. Preferred Stock Series A**

In November 2000, the Company completed a private offering for the sale of 4,875,850 shares of Series A convertible preferred stock for \$4,875,850. The gross proceeds of this offering were reduced by \$527,975 of placement agent fees, legal fees and expenses incurred in connection with the private offering, paid to a preferred stockholder. In connection with the private offering of Series A convertible preferred stock, the Company issued to the placement agent, who is a preferred stockholder and its representatives, warrants to purchase 17,730 shares of common stock.

Each 55 shares of Series A convertible preferred stock is convertible into one share of common stock, at any time by the holder or automatically in the event of a merger or firmly underwritten public offering of common stock and is subject to anti-dilution provisions as defined in the instrument. Series A convertible preferred stock votes on an as converted basis with common stock,

## NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

except as required by law. Holders of the Series A convertible preferred stock are entitled to preferential non-cumulative dividends payable at the discretion of the Board of Directors and have preference in liquidation of \$1.00 per share.

**D. Preferred Stock Series C**

In November 2002 and January 2003, the Company completed a private offering for the sale of 3,523,000 and 100,000 shares, respectively, of Series C convertible preferred stock for a total of \$724,600, including \$568,600 of advances from the rescinded offering of Series B convertible preferred stock. The gross proceeds of this offering were reduced by approximately \$240,000 of placement agent fees, legal fees and expenses incurred in connection with the private offering, paid to a preferred stockholder.

Each 55 shares of Series C convertible preferred stock is convertible into one share of common stock, at any time by the holder, or automatically in the event of a merger or public offering of common stock and is subject to anti-dilution provisions as defined in the instrument. Series C convertible preferred stock votes on an as converted basis with common stock. Holders of the Series C convertible preferred stock are entitled to preferential non-cumulative dividends payable at the discretion of the Board of Directors and have preference in liquidation of \$.20 per share. No dividends were declared during any periods presented in these financial statements.

The Series C preferred stock, with respect to dividend rights, rights on liquidation, winding up and dissolution, ranked *pari passu* with the Company's Series A preferred stock to the extent set forth in the amended and restated Certificate of Incorporation.

**E. Stock Issued As Compensation**

The Company issued 21,073 shares of common stock to employees, board members and consultants in exchange for services or in lieu of salary for services provided in the year ended December 31, 2003. The Company recorded compensation expense of approximately \$232,000 for the year ended December 31, 2003 in connection with the stock-based compensation.

Additionally, in November 2004, the Company issued 147,866 shares of common stock in payment of past due salaries (see Note 10).

**F. Warrants**

The following is a summary of warrants issued:

Date Issued	Basis for Warrant Issuance	Number of Shares of Common Stock Pertaining to Warrant	Number of Shares of Preferred Stock Pertaining to Warrant	Approximate Fair Value Assigned To Warrant (n)
November 2000	Placement agent fees for series A preferred stock (a) (b)	17,732		\$ (c)
June 2001	Stockholder guarantee for bank demand note payable (d)	54,546		\$ 630,000(e)
June 2001	Stockholder demand notes payable (f) (o)	8,823		\$ 154,000
September 2002	Senior convertible promissory notes payable (b)(g) (h)		2,000,000	\$ 84,000(i)
November 2002	Placement agent fees for series C preferred stock (b) (g) (j)	1,273		\$ (c)
March 2003	Accrued compensation	2,577		\$
September 2003	Senior convertible promissory notes (b) (g)		2,500,000	\$ 89,000(m)
July 2004	Amended services agreement (k)			
July 2004	Amended services agreement (l)			\$

(a) Exercise price \$55.00 per share and expires November 2007.

## NUVIM, INC.

## NOTES TO FINANCIAL STATEMENTS

(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)

- (b) Includes anti-dilution agreement and cashless exercise right.
- (c) As these warrants were issued as cost of the preferred stock issuance, such costs are netted with the proceeds of preferred stock as a component of additional paid-in-capital.
- (d) Exercise price \$55.00 per share and expires May through December 2006.
- (e) Charged to interest expense in 2001.
- (f) Exercise price \$55.00 per share and expires September 2006.
- (g) Exercise price \$0.20 per share.
- (h) Expires the earlier of September 2009 or within three years of an initial public offering.
- (i) Charged to interest expense due to maturity of debt in December 2002.
- (j) Expires the earlier of November 2009 or within three years of an initial public offering.
- (k) Warrant to purchase \$650,000 of common stock, at a price to be determined by future events. See Note 5.
- (l) Warrant to purchase an amount of common stock to bring spokesperson's total holdings to 9.9% of outstanding common shares of the Company, shares and value to be determined by future events.
- (m) Recognized as interest expense as of December 31, 2003, the maturity date of the note.
- (n) See Note 14 G. for assumptions used to determine fair value of the above issued warrants.
- (o) On November 30, 2004, three executive officers agreed to cancel 4,958 warrants issued in connection with management loans and 3,950 warrants issued in connection with accrued compensation as part of the agreement to pay notes payable and accrued salary due to them. See Notes 9 and 10.

**G. Stock Options**

The Company adopted three Stock Option Plans (the "Plans") in 2000, 2001 and 2002 under which incentive stock options ("ISOs") and non-qualified stock options ("NQSOs") to acquire shares of common stock that may be granted to employees, officers, directors and consultants of the Company.

Each Plan expires ten years from the date of adoption. The Company is authorized to grant options for up to 35,273 common shares. Under each Plan, the option price of an ISO may not be less than the fair market value of a share of common stock on the date of grant. An ISO may not be granted to a ten percent stockholder (as such term is defined in Section 422A of the Internal Revenue Code) unless the exercise price is at least 110% of the fair market value of the common stock and the term of the option may not exceed five years from the date of grant. The maximum term of each stock option granted to persons other than ten percent stockholders is ten years from the date of the grant.

A summary of the activity in the Plans is as follows:

	Number of Shares	Weighted- Average Exercise Price
	<u>          </u>	<u>          </u>
Outstanding December 31, 2002	33,428	\$ 19.38
Cancelled		
Issued		
	<u>          </u>	<u>          </u>
Outstanding December 31, 2003	33,428	\$ 19.38
Cancelled	(18,112)	\$ 24.25
Issued		
	<u>          </u>	<u>          </u>
Outstanding December 31, 2004	15,316	\$ 19.38
	<u>          </u>	<u>          </u>
Exercisable at December 31, 2003	21,916	\$ 26.96
	<u>          </u>	<u>          </u>
Exercisable at December 31, 2004	13,116	\$ 14.04
	<u>          </u>	<u>          </u>



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The options generally expire 10 years from the date of grant. However, in the event a participant's employment is terminated for any reason other than the result of death, disability or retirement, as defined, the options expire 90 days after termination.

F-17

## NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

If a participant's employment is terminated as a result of death, permanent disability or retirement, the options expire one year from the date of termination.

The weighted-average remaining contractual life of options outstanding was 7 and 6 years as of December 31, 2003 and December 31, 2004, respectively.

The weighted-average remaining contractual life of options exercisable at December 31, 2004 was 6.5 years.

Pro-forma information regarding net loss is required by SFAS No. 123 and has been determined as if the Company had accounted for its employee stock options under the fair value method of SFAS No. 123. Since there is no trading history for the Company's stock, the fair value of the Company's issued options and warrants were estimated at the date of grant using the fair value method with the following assumptions:

Assumptions:	
Risk free rate	3.5%-4.85%
Dividend yield	0
Volatility factor of the expected market	0.10%
Price of the Company's common stock	11.00
Average life	7 years

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions, including the expected stock price volatility. Because the Company's employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of its employee stock options.

**H. Stock Issued in Payment of Accounts Payable**

In November 2004, several vendors also agreed accept 6,000 shares of common stock at its estimated fair value of \$6.00 per share in payment of \$36,000 of accounts payable. The amount has been recorded as additional paid in capital as of December 31, 2004. See Note 19B for revised terms.

**I. Stock Reserved**

At December 31, 2004, the Company had reserved shares of its common and preferred stock as follows:

	<u>Common</u>	<u>Preferred</u>
Conversion of series A preferred stock	88,732	
Conversion of series C preferred stock	65,881	
Exercise of preferred stock warrants	81,819	4,500,000
Exercise of common stock warrants	93,449	
Exercise of stock options	35,273	
Conversion of senior convertible promissory notes	309,097	17,000,000
Conversion of subordinated convertible promissory notes	63,636	3,500,000
Exercise of spokesperson warrants	*	*
<b>Total</b>	<b>737,887</b>	<b>25,000,000</b>

\* Amount to be determined based on future events. See Notes 5 and 18 F.

**J. Nuvim Powder LLC**

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On August 23, 2004, NuVim Powder LLC was formed. NuVim Powder LLC is owned 51% by the Company, 12.5% by a spokesperson, 12.5% by a director and 24% by a related vendor providing advertising services to the Company. The Company

F-18

## NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

will distribute a powered supplement based on the Company's proprietary whey protein concentrate. As of December 31, 2004, NuVim Powder LLC is an inactive shell company.

**NOTE 15 INCOME TAXES**

Based on the Company's operating losses, no provision for income taxes have been provided for the years ended December 31, 2003 and 2004 and for the three months ended March 31, 2004 and 2005. At December 31, 2004, the Company had a net operating loss carry forward of approximately \$14,082,000, which expires through the year 2024.

At December 31, 2003 and 2004, the Company had deferred tax assets of approximately \$4,100,000 and \$4,800,000, respectively. A valuation allowance for the full amount of the deferred tax assets was established since it is more likely than not all of the deferred tax assets will not be realized. Deferred tax assets principally consist of net operating losses and accrued compensation expense.

In December 2003 and 2004, the Company received proceeds from the sale of the rights to approximately \$2,852,000 and \$3,340,000 of New Jersey state income tax losses, respectively. Based on an agreement with the State of New Jersey, the Company was allowed to allocate and sell their net operating loss representing \$256,664 and \$300,564 in 2003 and 2004, respectively, in potential tax benefits under the Technology Business Tax Certificate Program administered by the New Jersey Economic Development Authority. The Company received net proceeds of \$211,131 and \$258,476 in 2003 and 2004, respectively, related to the sale and accordingly recorded them as a tax benefit in the year received.

**NOTE 16 SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES**

	December 31,		March 31,	
	2003	2004	2004	2005
Prepaid royalty off-set against accounts payable	\$ 312,806			
Adjustment for related party debt extinguishments through equity	\$ 100,000	\$ 71,912		
Issuance of note payable in payment of accounts payable - related party				
Issuance of common stock in payment of accounts payable		\$ 36,000		
Issuance of common stock in payment of accrued compensation		\$ 623,500		
Issuance of common stock in payment of stockholder loans and accrued interest		\$ 345,043		
Issuance of note payable for accounts payable-related party		\$ 175,000		
Issuance of note payable for accounts payable		\$ 150,000		

**NOTE 17 COMMITMENTS****A. Royalty, License and Supply Agreement Related Party**

In March 2000 and amended in May 2004, the Company entered into an agreement for the exclusive licensing rights, in specific territories, to produce and market certain beverage products, patented and trademarked by SMBI. The agreement is for a term of 10 years commencing on the date of the amendment, May 2004, and provides for royalties of between 1% and 2% of net sales for the duration of the agreement. The exclusive licensing agreement can be cancelled by SMBI if the Company does not meet its annual purchasing commitment under the supply agreement (see below), in which case, SMBI agrees to negotiate in good faith for a non-exclusive supply agreement. The original agreement also provided for an upfront royalty payment of \$500,000, which was used to offset 50% of royalties due to SMBI under the agreement.

At December 31, 2003, as agreed by all parties, prepaid royalties were used to offset royalties payable and accounts payable due SMBI. In connection with this agreement, the Company recorded an increase to additional paid in capital of

NUVIM, INC.

NOTES TO FINANCIAL STATEMENTS

(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)

\$100,000, representing the utilization of prepaid royalties, which were subject to an impairment write down during 2001. This increase in additional paid in capital has been recorded pursuant to Accounting Principle Board Opinion No. 28. Royalty expense of approximately \$36,000 and \$21,000 was recorded in the years ended December 31, 2003 and 2004, respectively, of which \$0 and \$21,000 are payable to SMBI at December 31, 2003 and 2004, respectively. Royalty expense of approximately \$6,516 and \$5,622 was recorded for the three months ended March 31, 2004 and 2005, respectively. Accrued royalty expense was \$6,516 and \$26,622 at March 31, 2004 and 2005, respectively.

In January 2000 and amended in May 2004, the Company entered into a supply agreement with SMBI for the purchase of SMBI's proprietary immune whey protein concentrate. The agreement is for a term of 10 years, commencing on the date of amendment, May 2004. During the years ended December 31, 2003 and 2004, and the three months ended March 31, 2004 and 2005 the Company purchased approximately \$245,000, \$47,000, \$16,773 and \$19,200, respectively, of the milk and whey protein concentrates from SMBI.

SMBI is the Company's sole source of this whey protein concentrate. If the Company is unable to obtain this product from SMBI, the Company's manufacturing and distribution processes could be severely disrupted and operations could be adversely affected.

The license and supply agreements are subject to the Company maintaining minimum purchases of SMBI's proprietary immune whey protein concentrate. The agreement requires the Company to purchase minimum amounts of whey protein which are determined annually by mutual agreement. The minimum purchase agreement will equal the volume forecast of three metric tons (\$102,000) in 2005 and four metric tons (\$136,000) in 2006, which are forecasted in the Company's prospectus for the public offering of its common stock. If the Company does not complete the public offering of its stock by March 31, 2005, subsequently extended to May 31, 2005, the purchasing commitment increases to 12 metric tons (\$408,000) for 2005. In each subsequent year the minimum purchase commitment is the greater of the prior year's actual purchases or 115% of the prior year's minimum purchase commitment. For each calendar year in which the Company fails to purchase its minimum purchase requirements, the Company shall pay to SMBI a sum equal to the contract price for the shortfall of product not purchased.

**B. Lease**

The Company leases office space under an agreement expiring in December 2006, with annual payments approximating \$58,000. During the years ended December 31, 2003 and 2004, rent expense was approximately \$58,000 and \$58,000, respectively.

**C. Employment Agreements**

In September 2004, the Company entered into employment agreements with three of its executive officers that will become effective upon the closing of the proposed public offering of its common stock. The employment agreements have a term of three years with an aggregate annual salary of \$575,000.

The Company has entered into an employment agreement with another executive officer that has no specific termination date, with an initial \$150,000 annual base salary.

**NOTE 18 RELATED PARTY TRANSACTIONS**

**A. Consulting Fees**

Included in selling, general and administrative expenses are consulting fees to a stockholder and convertible note holder to act as general counsel and secretary of the Company of approximately \$18,000 for the year ended December 31, 2004.

Included in selling, general and administrative expenses are consulting fees to an immediate family member of an executive officer of the Company of approximately \$24,000 and \$27,000 for the years ended December 31, 2003 and December 31, 2004, and \$2,450 for the three months ended March 31, 2004, respectively.

**B. Legal Fees**

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The Company incurred approximately \$1,100 and \$1,400 of legal fees for the years ended December 31, 2003 and 2004, respectively, to a law firm that is controlled by an advisor and former board member of the Company.

F-20

## NUVIM, INC.

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

**C. Advertising and Legal Fees**

The Company incurred approximately \$92,000 of marketing and legal expenses for the year ended December 31, 2004 to an advertising agency and law firm, controlled by a board member, a member of his immediate family and an investor in NuVim Powder LLC.

**D. Spokesperson Fees**

The Company incurred approximately \$50,000 of spokesperson fees for the year ended December 31, 2003, to a holder of warrants and convertible notes in the Company.

**E. Accounts Payable and Accrued Expenses Related Parties**

Accounts payable and accrued expenses related parties consists of the following:

	December 31,		
	2003	2004	March 31, 2005
Royalty license and supply agreement (a)	\$ 525,000	\$ 487,000	\$ 458,000
Consulting fees (b)	64,000	98,600	98,900
Legal fees (b)	9,000	1,400	1,400
Advertising and Legal fees (b)(d)		72,000	72,000
Spokesperson fees payable (c)	175,000		
	\$ 773,000	\$ 659,000	\$ 625,300
<b>Total</b>	<b>\$ 773,000</b>	<b>\$ 659,000</b>	<b>\$ 625,300</b>

(a) Payable to SMBI, an approximate 41% stockholder of the Company.

(b) See description of same caption above.

(c) See Note 18C for amended services agreement and Note 8, convertible promissory note.

(d) See Note 19B for repayment terms.

**F. Amended Service Agreement Spokesperson**

On July 26, 2004, the Company entered into an amended services agreement with its spokesperson. Under the agreement, the Company agreed to issue a convertible promissory note (see Note 8) in payment of unpaid past services and enter into an amended agreement for services for the three year period ending in January, 2006.

On September 14, 2004, the Company entered into a second amendment to the Services Agreement, providing for the issuance of 30,000 shares of common stock and a warrant to purchase \$650,000 of common stock at a fair market price to be determined based on a maturity event, as defined in the agreement, in consideration for services to be provided under the amended services agreement during the years 2004, 2005 and 2006. The warrant expires 10 years after issuance. The number of shares and exercise price of the warrant are set according to the sooner of a maturity event, as defined in the amended service agreement and the warrant agreement, or March 31, 2005, subsequently extended to May 31, 2005. In the event of a public stock offering of the Company's common stock on or prior to May 31, 2005, the warrant will be exercisable at the IPO price into the number of shares of common stock calculated by dividing \$650,000 by the initial public offering price. If the maturity event is a sale of assets or a merger or acquisition, the share calculation price is determined depending on the nature of the maturity event. If a maturity event does not occur on or prior to May 31, 2005, the share calculation price will be the lesser of \$1 or 80% of the purchase price per share in any subsequent financing, including this offering, depending on the outcome of certain future events defined in the agreement.

The stock issued and underlying the warrants are subject to 100% forfeiture if the spokesperson does not complete all services during the entire period under the Services Agreement. Therefore, no value will be ascribed to the stock and warrants until performance is complete in accordance

with EITF 96-18.

F-21



NUVIM, INC.

NOTES TO FINANCIAL STATEMENTS  
(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)

NOTE 19 SUBSEQUENT EVENTS

A. Stock Option Plan

In January 2005, the Board of Directors approved the 2005 Incentive Stock Option Plan for the benefit of its officers, employees and consultants. The Board also approved the 2005 Directors' Stock Option Plan for the Company's board members. These plans will become effective concurrently with the closing of the proposed IPO (see Note 19 B.), will expire ten years later and will have various terms and conditions as described in the respective plans.

B. Initial Public Offering

The Company entered into a letter of intent with an investment bank to consummate a firmly underwritten public offering of its common stock (the proposed IPO) as of May 10, 2004. In connection with the proposed IPO, a group of related investors in the Company's preferred stock, concurrently with the closing of the proposed offering, agreed to pay unpaid principal and interest on the Company's \$2,500,000 demand note payable to a bank, cancel \$2,480,000 in senior convertible notes and accrued interest thereon and cancel warrants to purchase 63,563 of Series C preferred stock in exchange for 461,700 shares of common stock.

Also, the holders of the Company's Series A and Series C preferred stock voted to automatically convert their shares into common stock upon the closing of the proposed IPO.

In May 2005, the holders of the Company's senior notes payable related parties agreed to convert outstanding principal of \$500,000, into 250,000 shares of common stock, if an initial public offering of its common stock is completed by June 30, 2005. The holders of the notes agreed not to sell shares of stock received in the transaction for a period of six months after the initial public offering. The noteholders also agreed to extend the maturity of their notes to November 2006, bearing interest at 10%.

In April 2005, two holders of the Company's subordinated convertible promissory notes agreed to convert outstanding principal and accrued interest at April 30, 2005, aggregating \$179,813, into 59,939 shares of common stock (\$178,355 and 59,453 shares of common stock at March 31, 2005), if the Company completes an initial public offering of its common stock. The holders of the notes agreed not to sell shares of stock received in the transaction for a period of six months after the initial public offering.

In May 2005, three holders of the Company's subordinated convertible promissory notes agreed to convert outstanding accrued interest at April 30, 2005, aggregating \$86,826, into 28,943 shares of common stock (\$82,741 and 27,581 shares of common stock at March 31, 2005), and to extend the maturity date of notes with an aggregate principal balance of \$235,000 to the earlier of a public offering of the Company's common stock subsequent to the initial public offering or the Company generating an annual profit of \$1,000,000. The holders of the notes agreed not to sell the shares of stock received in the transaction for a period of six months after the initial public offering.

In April 2005, one holder of the Company's subordinated convertible promissory notes agreed to forgive \$10,671 of interest accrued on his note, if the Company pays the \$25,000 outstanding principal balance of the note out of the proceeds of a public offering of its common stock subsequent to this initial public offering. The holder has agreed not to sell the shares received in the transaction for a period of six months after the initial public offering.

In April 2005, two vendors agreed to accept 36,334 shares of common stock in settlement of \$109,000 of accounts payable owed to them. One of the vendors was a related party, representing \$72,000 of the settlement. Additionally, the Company plans to issue 5,999 shares of common stock to three vendors as additional consideration for \$36,000 of accounts payable converted to common stock in 2004 (see Note 14H) in order to settle these accounts payable on similar terms to other negotiated debt extinguishment transactions. The vendors have agreed not to sell the shares received in these transactions for a period of six months after the initial public offering.

In April 2005, three executive officers of the Company agreed to convert accrued salaries owed to them through February 28, 2005, aggregating \$514,584, into 171,529 shares of common stock if the Company completes a public offering of its common stock. The executive officers agreed not to sell the shares of stock received in the transaction for a period of six months after the initial public offering.

**NUVIM, INC.**

**NOTES TO FINANCIAL STATEMENTS**  
**(Information for the Three Months Ended March 31, 2004 and 2005 is Unaudited.)**

In May 2005, three executive officers of the Company agreed to convert salaries accrued for April and May 2005, aggregating \$79,167 into 79,167 shares of common stock and agreed not to sell the shares for six months.

In May 2005, the supplier of the exclusive whey protein ingredient used in the Company's products agreed to accept \$250,000 from the proceeds of the proposed offering and \$200,000 by January 16, 2006 in payment of past due accounts payable, royalties and accrued interest due to it.

In May 2005, the Company borrowed \$200,000 from the investment bank that is managing the proposed offering of its common stock. The note was payable upon the closing of the stock offering if closed by May 31, 2005, or on demand thereafter. The note does not bear any interest.

In June 2005, the holder of a \$150,000 demand note agreed not to demand payment on the note until additional funding is secured if the Company makes a \$5,000 payment upon an initial public offering of common stock and pays \$2,000 each month thereafter. The note will bear interest at 10% per annum from January 1, 2006 if it is not paid in full by December 31, 2005.

**C. Legal Proceeding**

On March 22, 2005, The Post Confirmation Trust for a bankrupt former customer of the Company filed a complaint in the United States Bankruptcy Court for the District of Delaware seeking recovery of approximately \$12,000 in preferential transfers to the Company in payment of purchased product. The Company plans to dispute the claim. The resolution of this claim is not expected to have a material impact on the results of operations, financial position or cash flows of the Company and no expenses related to the claim have been recorded in the financial statements as of December 31, 2004.

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**2,700,000 Units**

**NUVIM, INC.**

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**PROSPECTUS**

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**PAULSON INVESTMENT COMPANY, INC.**

**June 20, 2005**

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