UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2019

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 O**R 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-38381

EVOLUS, INC.

(Exact name of registrant as specified in its charter)

Delaware		**46-1385614**
(State or other jurisdiction of incorporation or organization)		**(I.R.S. Employer Identification Number)**

520 Newport Center Dr., Suite 1200
Newport Beach, California 92660
(949) 284-4555
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, $0.00001 par value per share	EOLS	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☒
		Emerging growth company	☒

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

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was approximately $238.7 million, based on the closing price of the registrant's common stock on the Nasdaq Global Market of $14.62 per share for such date.

As of February 21, 2020, 33,728,035 shares of the registrant's sole class of common stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for the 2020 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2019.

EVOLUS, INC.

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Special Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that involve risks and uncertainties, including statements based on our current expectations, assumptions, estimates and projections about future events, our business, financial condition, results of operations and prospects, our industry and the regulatory environment in which we operate. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "project," "should," "will," "would" or the negative of those terms, or other comparable terms intended to identify statements about the future. Forward-looking statements include, but are not limited to, statements about:

- our ability to successfully commercialize our sole product Jeuveau® including our ability to successfully market and sell Jeuveau® to our customers;
- our ability to maintain regulatory approval of Jeuveau® and comply with any related restrictions, limitations and warnings in the label of Jeuveau® and any relevant regulatory requirements;
- the potential market size, opportunity and growth potential for Jeuveau®;
- the attractiveness of the product characteristics of Jeuveau® (including the benefits of a 900 kilodalton, or kDa, botulinum toxin type A complex) and the rate and degree of physician and patient acceptance of Jeuveau®;
- the pricing of Jeuveau®, and the flexibility of our pricing and marketing strategy compared to our competitors;
- the performance of our third-party licensors, suppliers, manufacturers and distributors;
- our expectations regarding our future development of Jeuveau® for other indications and approval in other jurisdictions;
- the accuracy of our estimates regarding the amount and timing of expenses, revenue, capital requirements and needs for additional financing;
- regulatory and legislative developments in the United States, European Union, or EU, Canada and other countries;
- developments and projections relating to our competitors and our industry, including competing products and procedures;
- the loss of key management personnel;
- our future financial performance and our ability to continue as a going concern; and
- the results and impact of current and any future legal proceedings.

The forward-looking statements included herein are not guarantees of future performance or events and are based on current expectations of our management based on available information and involve a number of risks and uncertainties, all of which are difficult or impossible to predict accurately and many of which are beyond our control. As such, our actual results may differ materially from those expressed in any forward-looking statements. Factors that may cause or contribute to such differences include, but are not limited to, those discussed in more detail in Item 1. "Business" and Item 1A. "Risk Factors" of Part I and Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" of Part II of this Annual Report on Form 10-K. Readers should carefully review these risks, as well as the additional risks described in other documents we file from time to time with the Securities and Exchange Commission, or SEC. In light of the significant risks and uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by us or any other person that such results will be achieved, and readers are cautioned not to place undue reliance on such forward-looking statements. Except as required by law, we undertake no obligation to revise the forward-looking statements contained herein to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. You should read this Annual Report on Form 10-K and the documents we file with the SEC, with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

Unless the context indicates otherwise, as used in this Annual Report on Form 10-K, the terms “Evolus,” “company,” “we,” “us” and “our” refer to Evolus, Inc., a Delaware corporation, and our subsidiaries taken as a whole, unless otherwise noted.

EVOLUS™, Jeuveau®, Evolux™ are three of our trademarks that are used in this Annual Report on Form 10-K. Jeuveau® is the trade name in the United States for our approved product with non-proprietary name, prabotulinumtoxinA-xvfs. The product has different trade names outside of the United States, but is referred to throughout this Annual Report on Form 10-K as Jeuveau®. This Annual Report on Form 10-K also includes trademarks, trade names and service marks that are the property of other organizations, such as BOTOX® and BOTOX® Cosmetic, which we refer to throughout this Annual Report on Form 10-K as BOTOX. Solely for convenience, trademarks and trade names referred to in this Annual Report on Form 10-K may appear without the ® and ™ symbols, but those references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights, or that the applicable owner will not assert its rights, to these trademarks and trade names. We do not intend our use or display of other companies’ trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

Part I

Item 1. Business.

Overview

We are a performance beauty company with a customer-centric approach focused on delivering breakthrough products in the self-pay aesthetic market.

Our first product, Jeuveau®, is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. Our primary market is the self-pay aesthetic market, which includes medical products purchased by physician and other customers that are then sold to consumers or used in procedures for aesthetic indications that are not reimbursed by any third-party payor, such as Medicaid, Medicare or commercial insurance. We believe we offer customers and consumers a compelling value proposition with Jeuveau®. Currently, onabotulinumtoxinA (BOTOX) is the neurotoxin market leader, and prior to the approval of Jeuveau®, was the only known 900 kDa botulinum toxin type A complex approved in the United States. We believe aesthetic physicians generally prefer the performance characteristics of the complete 900 kDa neurotoxin complex and are accustomed to injecting this formulation.

United States

In February 2019, we received the approval of our first product Jeuveau® (prabotulinumtoxinA-xvfs) from the U.S. Food and Drug Administration, or FDA. In May 2019, we commercially launched Jeuveau® in the United States.

As part of our commercial launch in the United States, we introduced the Jeuveau® Experience Treatment, or J.E.T., an exclusive program for aesthetic providers and consumers to be the first to experience Jeuveau®. J.E.T. offered aesthetic providers the opportunity to receive multiple shipments of Jeuveau® through August 2019. The program was made available through our technology platform, "Evolus Practice", which allows providers to open a new account, order Jeuveau®, pay invoices and engage with our customer experience team and medical affairs representatives. We enrolled over 5,000 customer accounts in JET.

In addition to the J.E.T program, in 2019, we launched marketing programs designed to increase the adoption of Jeuveau® by customer accounts and to drive consumer demand for Jeuveau®. The next phase of our U.S. launch will be the release of our customer loyalty program, branded Evolux™, and our consumer loyalty program in 2020.

International

In August 2018, we received approval from Health Canada for the temporary improvement in the appearance of moderate to severe glabellar lines in adult patients under 65 years of age. We began marketing Jeuveau® in Canada in October 2019 through our distribution partner, Clarion Medical Technologies, Inc., or Clarion.

In September 2019, we received approval from the European Commission, to market the product in all 28 EU member states, Iceland, Norway and Liechtenstein. We plan to launch Jeuveau® in Europe in 2020.

Our Market

Our primary market is self-pay aesthetic healthcare, which includes medical products purchased by physicians that are then sold to consumers or used in procedures for aesthetic indications that are not reimbursed by any third-party payor, such as Medicaid, Medicare or commercial insurance. By focusing on the self-pay medical aesthetics market, we believe we are not exposed to reimbursement risk associated with a reliance on payments from such third-party payors, and we are subject to fewer regulations that place limits on the types of marketing and other interactions we have with physicians.

Within the self-pay aesthetic market, the global aesthetic neurotoxin market was estimated to generate approximately $2.7 billion of revenue in 2019 and is estimated to grow to approximately $3.9 billion in 2022. The U.S. aesthetic neurotoxin market was estimated to generate $1.4 billion in sales in 2019 and is expected to grow to approximately $2.0 billion in 2022.

We believe the growth in the medical aesthetics market is driven by a number of factors, including:

- increased use by millennials who are increasingly seeking medical aesthetic treatments and utilizing neurotoxins as an entry point for aesthetic procedures due to their minimally invasive nature;

- an aging population together with an increasing life expectancy, which is resulting in more consumers with a desire for improved appearance and well-being over a longer period of time;
- rising disposable income, with the U.S. Bureau of Economic Analysis reporting that real disposable income in the United States increased approximately 19% from December 2012 to December 2019;
- growing awareness, utilization and acceptance of elective or minimally invasive aesthetic procedures; and
- continued innovation and improved accessibility to these treatments due to an increase in the number of physicians who perform these procedures.

Within the multiple age groups that receive aesthetic neurotoxin treatments, we strategically focus our marketing efforts on the millennial segment which is the largest cohort in the U.S. population. In 2019 there are estimated to be approximately 73 million millennials, defined as individuals born between 1981 and 1996. We believe that approximately 1.7 million females between the age of 30 and 39, which includes many individuals we define as millennials, are considering neurotoxins in the next twelve months.

Our Competitive Strengths

We offer physicians and consumers a compelling value proposition because:

- *Jeuveau® offers the U.S. market the first known 900 kDa neurotoxin alternative to BOTOX.* The manufacture of both Jeuveau® and BOTOX starts with a 900 kDa complex, includes adding the excipients human serum albumin, or HSA, and sodium chloride, and finishes by vacuum drying. We believe Jeuveau® is the only known neurotoxin product in the United States with a 900 kDa neurotoxin complex other than BOTOX. We also believe an important component of competitiveness in the neurotoxin market relates to the characteristics associated with the 900 kDa complex and the potential of the accessory proteins to increase the effectiveness of the active toxin portion of the complex.
- *Results from our TRANSPARENCY global clinical program in more than 2,100 patients provides robust data to physicians evaluating the purchase of Jeuveau®.* We believe the comprehensive TRANSPARENCY clinical data set, including a head-to-head Phase III study comparing Jeuveau® and BOTOX, provides physicians with confidence in recommending Jeuveau® to their patients.
- *We offer a unique technology platform.* We provide a simple, personal and connected experience for physicians utilizing our proprietary technology platform. We have built and continue to improve our platform with the goal of limiting friction and enhancing the overall experience for physicians and ultimately consumers. We are modernizing the customer engagement with our proprietary “Evolus Practice” app. We not only leverage technology for operational efficiency, but more importantly, to enhance a customer’s experience. The combination of a highly specialized sales force and our technology platform is an effective and competitive model.
- *Enhanced level of physician-customer interaction through a self-pay, aesthetic-only marketing strategy.* We have elected to specifically target the self-pay aesthetic market. With a reduced regulatory burden compared to third-party payor reimbursed therapeutic products, there is a number of benefits that market participants in reimbursed markets are unable to achieve, such as an enhanced level of interaction with our physician-customers. Jeuveau® is the only U.S. neurotoxin without a therapeutic indication. We believe pursuing an aesthetic-only non-reimbursed product strategy creates meaningful strategic advantages in the United States, including pricing and marketing flexibility. We utilize this flexibility to drive market adoption through programs such as promotional events, experience product programs and pricing strategies.
- *We have strong relationships with aesthetic key opinion leaders, or KOLs.* We have established relationships with aesthetic KOLs as a result of our management team’s industry experience and engagement of our clinical trial investigators. KOLs are important information resources to the general physician-customer market due to their clinical expertise, academic reputations, active clinical practices and their status as medical innovators. The broader physician community often looks to KOLs for their experience with products and procedures as part of their new product and procedure adoption process.
- *Our management team has significant experience and expertise in medical aesthetics.* Our management team has extensive experience in self-pay healthcare markets, in the development, market launch and commercialization of major medical products, execution and integration of business development transactions, identification of and

partnerships with KOLs, and understanding of the regulatory environment of the healthcare markets. Key members of our leadership team have also served in relevant senior leadership positions with leading aesthetic companies.

Our Strategy

In May 2019, we launched Jeuveau® in the United States with our own specialty sales organization now consisting of over 150 positions between representatives, management and other sales employees and in Canada through our distribution partner, Clarion. We plan to expand our product offerings over time through in-licensing, partnerships and acquisitions. The key components of our strategy are:

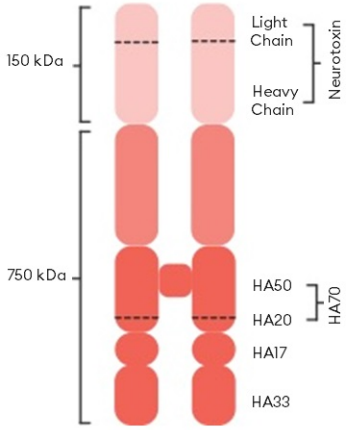
- Partner outside of the United States to reach and serve physicians and consumers in those territories.
- Pursue an aesthetic-only strategy to enhance marketing and pricing flexibility along with improving transparency for our customers.
- Leverage our strong KOL relationships to assist in scientific presentations, publications, and other methods to drive success of our commercial launch of Jeuveau®.
- Leverage our differentiated digital platform to efficiently open new accounts, personalize the purchasing process and efficiently deploy marketing programs at scale.
- Establish a leading medical aesthetics company by in-licensing technology, developing partnerships and potentially acquiring products.

Jeuveau® Overview

Jeuveau® is an injectable formulation of a 900 kDa botulinum toxin type A complex designed to address the needs of the large and growing facial aesthetics market. We completed the TRANSPARENCY global clinical program which enrolled over 2,100 adult subjects. The results of the TRANSPARENCY global clinical program were used to support our applications for regulatory approvals in the United States, EU and Canada.

As demonstrated in the figure below, Jeuveau® contains a 900 kDa botulinum toxin type A complex produced by the bacterium *Clostridium botulinum*. The active part of the neurotoxin is the 150 kDa component, and the remaining 750 kDA of the complex is made up of accessory proteins that we believe help with the function of the active portion of the toxin. Jeuveau® has the same mechanism of action as other type A botulinum toxins. When injected intramuscularly at therapeutic doses, botulinum toxin causes a chemical denervation of the muscle resulting in localized reduction of muscle activity. Botulinum toxin type A specifically blocks peripheral acetylcholine release at presynaptic cholinergic nerve terminals by cleaving SNAP-25, a protein integral to the successful docking and release of acetylcholine from vesicles situated within the nerve endings leading to denervation and relaxation of the muscle.

Diagram of Botulinum Toxin Type A



TRANSPARENCY: Evolus Clinical Development for Glabellar Lines

TRANSPARENCY was a comprehensive five-study clinical development program for Jeuveau® and was used to meet the regulatory requirements for a Biologics License Application, or BLA, in the United States, a Marketing Authorisation Application, or MAA, in the EU, and a New Drug Submission, or NDS, in Canada, for the treatment of moderate to severe glabellar lines. The TRANSPARENCY program, which was developed in consultation with the FDA, Canadian, and European regulatory bodies, included three multicenter, randomized, double-blinded, controlled, single dose Phase III studies titled EV-001, EV-002 and EVB-003. Each Phase III study lasted 150 days. The TRANSPARENCY program also included two open label, multiple dose, long-term Phase II studies titled EV-004 and EV-006, each lasting one year. Between September 2014 and August 2016, over 2,100 adult male and female subjects with moderate to severe glabellar lines at maximum frown participated in this program.

In our clinical trials, subjects received intramuscular injections in five target sites in muscles that contribute to the formation of glabellar lines: the midline of the procerus, the inferomedial aspect of each corrugator, and the superior middle aspect of each corrugator. Each of the five target sites was injected with 0.1 milliliters, or mL, for a total of 0.5mL. Subjects assigned (in the open label studies) or randomized (in the controlled studies) to Jeuveau® received a total of 20 units per treatment, administered as 4 units per 0.1mL and those subjects who were randomized to the placebo group received 0.5mL saline. In our EVB-003 Phase III trial, the only study of the five with both a placebo and active control arm, subjects randomized to the active control received a total of 20 units of BOTOX administered as 4 units per 0.1mL.

All five studies contributed data to the evaluation of efficacy and safety of Jeuveau®.

Phase III U.S. Based Clinical Trials. The two identical U.S. Phase III studies, EV-001 and EV-002, enrolled subjects who were selected from a population of healthy adults, at least 18 years of age, who had moderate to severe glabellar lines at maximum frown, as independently assessed by the investigator and subject using the 4-point photonumeric Glabellar Line Scale, or GLS, where 0=no lines, 1=mild lines, 2=moderate lines and 3=severe lines. On Day 0, eligible subjects were randomly assigned in a 3:1 ratio to receive a single treatment of either Jeuveau® or placebo. Subjects were followed for 150 days after treatment.

The primary efficacy endpoint was defined as the proportion of subjects classified as responders on Day 30. This was a composite endpoint in which a responder was a subject with a 2 point improvement or greater on the GLS from Day 0 to Day 30 at maximum frown, only if independently agreed by both investigator and subject assessment.

Both studies met the primary endpoint of superiority over placebo. The percentages of responders in the intent to treat population for the composite primary endpoint, a two point or greater score composite improvement, in each of the two controlled single dose studies were:

- EV-001: 1.2% placebo, 67.5% Jeuveau®, with an absolute difference between the groups of 66.3%, 95% CI (59.0, 72.4)

- EV-002: 1.3% placebo, 70.4% Jeuveau®, with an absolute difference between the groups of 69.1%, 95% CI (61.5, 75.1)

In the EV-002 study, the adverse event, or AE, rate was 26.9% in the placebo group and 28.5% in the Jeuveau® group. Placebo and Jeuveau® groups were similar in the overall incidence of subjects who experienced one or more AEs. Four Jeuveau® subjects (4/246, 1.6%) experienced a serious adverse event, or SAE, but none were assessed as study drug related. Placebo and Jeuveau® groups were also similar in the percentages of subjects who experienced an AE assessed by the investigator as study drug related: 7.7% of placebo subjects and 9.8% of Jeuveau® subjects. The drug related eyelid and eyebrow ptosis rates in the Jeuveau® arm were 1.2% and 0.4% respectively. Overall, AEs with an incidence of 1% or greater were headache at 9.3% in the Jeuveau® groups and 7.6% in the placebo groups and eyelid ptosis at 1% in the Jeuveau® groups and 0% in the placebo groups.

Phase III European and Canadian Clinical Trial for Glabellar Lines

The EVB-003 study was the third Phase III safety and efficacy study in the Jeuveau® clinical development program, and was conducted in Europe and Canada. 540 subjects with moderate to severe glabellar lines, or a GLS score of 2 or 3, as assessed by the investigator, were eligible to be enrolled provided that subjects also felt their glabellar lines had an important psychological impact, such as on their mood, anxiety or depressive symptoms. On Day 0, eligible subjects were randomly assigned in a 5:5:1 ratio to receive a single treatment of 20 units of Jeuveau®, 20 units of BOTOX or placebo.

The primary efficacy endpoint was defined as the proportion of subjects classified as responders on Day 30. A responder was a subject with a GLS score of 0 or 1, as assessed by the investigator at maximum frown. The primary analysis of the primary efficacy endpoint in the EVB-003 study showed the superiority of Jeuveau® over placebo, and established non-inferiority of Jeuveau® to BOTOX. The percentages of responders for the primary efficacy endpoint were:

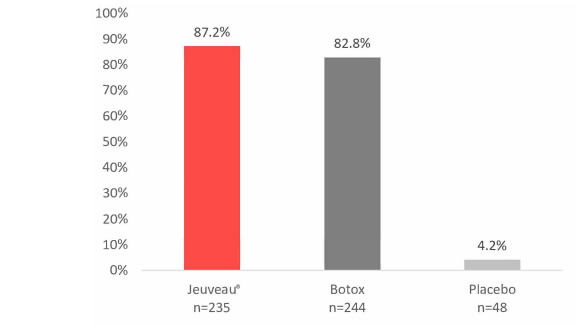
- 4.2% in the placebo group, 95% CI (0.0, 9.8);
- 82.8% in the BOTOX group, 95% CI (78.1, 87.5); and
- 87.2% in the Jeuveau® group, 95% CI (83.0, 91.5).

A confidence interval, or CI, is a range of values in which, statistically, there is a specified level of confidence where the result lies. As an example, in the results above for this Phase III study, the results indicate that there is a 95% level of confidence that the responder rate for placebo was between 0.0% and 9.8%, which we express as: 95% CI (0.0, 9.8).

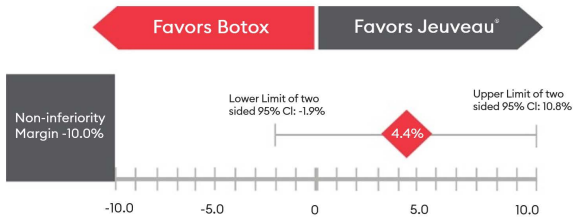
The absolute differences between the treatment groups were:

- 83.1% between Jeuveau® and placebo groups, 95% CI (70.3, 89.4), ($p<0.001$), indicating Jeuveau® was superior to placebo; and
- 4.4% between Jeuveau® and BOTOX groups, 95% CI (-1.9, 10.8), with non-inferiority of Jeuveau® versus BOTOX concluded based on the lower bound of the 95% CI for the absolute difference exceeding -10.0%.

EU Phase III Primary Endpoint - Responder Rates at Maximum Frown on Day 30 (GLS = 0 or 1) by Investigator Assessment



EU Phase III Primary Endpoint - Non-Inferiority, at Maximum Frown on Day 30 by Investigator Assessment



As presented in the table below, within each group, 32.7% of placebo subjects, 41.9% of BOTOX subjects and 37.6% of Jeuveau® subjects experienced AEs. One placebo subject (1/49, 2.0%), one BOTOX subject (1/246, 0.4%) and three Jeuveau® subjects (3/245, 1.2%) experienced a total of 11 SAEs and none were assessed as study drug related. The drug related eyelid ptosis rates were 1.6% in the Jeuveau® arm and 0% in the BOTOX arm and the eyebrow ptosis rates were 0% in the Jeuveau® arm and 0.4% in the BOTOX arm.

EU and Canadian Phase III Trial - Adverse Event Rate Summary

	Placebo	Botox	Jeuveau®
All Adverse Events (%)	32.7%	41.9%	37.6%
Any Study Drug-Related AE (%)	4.1%	14.6%	15.5%

As presented in the table below, in EVB-003, we also assessed as a secondary endpoint ≥ 1 point improvement GLS at maximum frown for both investigator and patient satisfaction. The investigator assessment at Day 2, the beginning of the study, and at Day 150, at the end of the study, Jeuveau® is statistically superior to placebo as measured by a one-point improvement on the GLS scale by investigator assessment. We also looked at subject satisfaction on Day 30, and Jeuveau® was superior to placebo at 91% versus 6% in the placebo arm.

EU and Canadian Phase III Trial - Select Secondary Endpoints

Measurement	Point in Time	Placebo	Onabot	Prabot
≥1 Improvement GLS at Maximum Frown	Day 2	12.20%	57.00%	54.2%*
≥1 Improvement GLS at Maximum Frown	Day 150	8.30%	34.40%	37.7%*
Subject Satisfaction	Day 30	6.30%	86.60%	91.3%*

*P-Value Placebo vs Jeuveau® <0.001

Manufacturing

Daewoong Pharmaceuticals Co. Ltd., or Daewoong, manufactures and supplies Jeuveau® to us. Daewoong has over 70 years of experience manufacturing pharmaceutical products and is one of the largest pharmaceutical companies in South Korea. Daewoong constructed a facility in South Korea where Jeuveau® is produced. We believe this facility will be sufficient to meet demand for Jeuveau® for the foreseeable future. The FDA conducted a current Good Manufacturing Practice, or cGMP, and pre-approval inspection of the facility in November 2017 in connection with our BLA for Jeuveau®. The UK Medicines and Healthcare Products Regulatory Agency, or MHRA, also completed an inspection of the manufacturing facility in February 2018 in connection with our MAA. The U.S. FDA approval of Jeuveau® in February 2019 included approval to manufacture Jeuveau® at Daewoong's facility.

Daewoong License and Supply Agreement

On September 30, 2013, we entered into the Daewoong Agreement with Daewoong, pursuant to which Daewoong agreed to manufacture and supply Jeuveau® and grant us an exclusive license to import, distribute, promote, market, develop, offer for sale and otherwise commercialize and exploit Jeuveau® for aesthetic indications in the United States, EU, Great Britain, Canada, Australia, Russia, Commonwealth of Independent States, or CIS, and South Africa, each, a covered territory. Daewoong also granted us a non-exclusive license to do the same in Japan. In connection with our entry into the Daewoong Agreement, we made an upfront payment to Daewoong of $2.5 million and agreed to make milestone payments upon certain confidential development and commercial milestones, including payment to Daewoong upon each of FDA and EMA approval of Jeuveau®. Under the Daewoong Agreement, the maximum aggregate amount of milestone payments that could be owed to Daewoong upon the satisfaction of all milestones is $13.5 million. Upon the FDA approval in February 2019 and EMA approval in September 2019, we paid $2.0 million and $1.0 million milestone payment, respectively. As of December 31, 2019, Daewoong is eligible to receive remaining contingent milestone payments of up to $10.5 million. Under the Daewoong Agreement, Daewoong is responsible for all costs related to the manufacturing of Jeuveau®, including costs related to the operation and upkeep of its manufacturing facility, and we are responsible for all costs related to obtaining regulatory approval, including clinical expenses, and commercialization of Jeuveau®.

Under the Daewoong Agreement, Daewoong has agreed to supply us with Jeuveau® at an agreed-upon, transfer price, and we have agreed to make milestone payments upon completion of certain confidential development and commercial milestones. Our exclusivity is subject to certain minimum annual purchases upon commercialization and if we fail to meet these targets, Daewoong may, at its option, convert the exclusive license to a non-exclusive license. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share in various jurisdictions. During the term of the Daewoong Agreement, we cannot purchase, sell or distribute any competing products in a covered territory or Japan or sell Jeuveau® outside a covered territory or Japan. We also have the option to negotiate first with Daewoong to secure a distribution license for any product that Daewoong directly or indirectly develops or commercializes that is classified as an injectable botulinum toxin (other than Jeuveau®) in a covered territory or Japan.

The initial term of the Daewoong Agreement is from September 30, 2013 to the later of (i) the fifth anniversary of approval from the relevant governmental authority necessary to market and sell Jeuveau® or (ii) September 30, 2023, and automatically renews for unlimited additional three-year terms if we meet certain performance requirements. The Daewoong Agreement will terminate (A) upon written notice by either us or Daewoong upon a continuing default that remains uncured within 90 days (or 30 days for a payment default) by the other party, or (B) without notice upon the bankruptcy or insolvency of our company.

We are the sole owner of any marketing authorization and clinical trial results we pursue in a covered territory. However, if we do not renew the Daewoong Agreement or upon termination of the Daewoong Agreement due to a breach by us, we are obligated to transfer our rights to Daewoong.

The Daewoong Agreement also provides that Daewoong will indemnify us for any losses arising out of (i) Daewoong's willful misconduct or gross negligence in performing its obligations under the agreement, (ii) Daewoong's breach of the agreement, or (iii) any allegation that Jeuveau® or Daewoong's trademark infringes or misappropriates the rights of a third party, except, in each case, as a result of our willful misconduct or gross negligence. We have agreed to indemnify Daewoong for any losses arising out of (A) our willful misconduct or gross negligence in performing our obligations under the agreement, or (B) our breach of the agreement, except, in each case, as a result of Daewoong's willful misconduct or gross negligence.

Competition

Our primary competitors in the pharmaceutical market are companies offering injectable dose forms of botulinum toxin. There are only four approved injectable botulinum toxin type A neurotoxins in the United States, including Jeuveau®. There are also other injectable botulinum toxin type A products being developed for the U.S. market. We believe the primary competing products in this market include BOTOX, Dysport and Xeomin:

- BOTOX, marketed by Allergan plc, or Allergan, received FDA approval in 2002 for glabellar lines. Allergan was the first company to market neurotoxins for aesthetic purposes.
- Dysport, marketed by Galderma S.A., or Galderma, received FDA approval in 2009 for glabellar lines.
- Xeomin, marketed by Merz Pharma GmbH & Co., or Merz, received FDA approval in 2011 for glabellar lines.

We are also aware that Revance Therapeutics, Inc. has submitted a BLA to the FDA for an injectable botulinum toxin type A neurotoxin and received a target date action date of November 25, 2020 under the Prescription Drug User Fee Act. If the BLA is approved, we expect the competition in the U.S. injectable botulinum toxin market to further increase.

In addition to the companies commercializing and developing neurotoxins, there are other products and treatments that may indirectly compete with Jeuveau®, such as dermal fillers, laser treatments, brow lifts, chemical peels, fat injections and cold therapy. We compete with various companies that have products in these medical aesthetic categories. Among these companies are Allergan, Sanofi, Sun Pharma, Valeant Pharmaceuticals International, Inc., or Valeant, Mentor Worldwide LLC, a division of Johnson & Johnson, Merz, Galderma, and Skinceuticals, a division of L'Oreal SA. In addition, we are aware of other companies also developing and/or marketing products in one or more of our target markets, including competing injectable botulinum toxin type A formulations that are in various phases of development in North America for the treatment of glabellar lines.

Seasonality

We launched Jeuveau® into the U.S. aesthetic neurotoxin market in May 2019. Given the early stage of our launch of Jeuveau®, we have not experienced seasonality in our net revenue to date. However, we are aware that historically the aesthetic neurotoxin market experiences higher revenue in the second and fourth calendar quarters as compared to the first and third calendar quarters.

Government Regulation in the United States

We operate in a highly regulated industry that is subject to significant federal, state, local and foreign regulation. Our business has been, and will continue to be, subject to a variety of laws including the Federal Food Drug and Cosmetic Act, or FFDCA, and the Public Health Service Act, or the PHS Act, among others. Biologics and medical devices are subject to regulation under the FFDCA and PHS Act.

In the United States, cosmetics, dietary supplements, biopharmaceutical products and medical devices are subject to extensive regulation by the FDA. The FFDCA, PHS Act, and other federal and state statutes and regulations, govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, regulatory approval, license or clearance, labeling, promotion and marketing, distribution, post-approval monitoring and reporting, sampling, and import and export of these products. Failure to comply with applicable U.S. requirements may subject a company to a variety of administrative or judicial sanctions, such as FDA refusal to approve pending license or marketing applications, warning letters and other enforcement actions, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties and criminal prosecution.

FDA Marketing Approval

The process required by the FDA before a biological product may be marketed in the United States generally involves the following:

- completion of nonclinical laboratory tests and animal studies according to good laboratory practices, or GLPs, and applicable requirements for the humane use of laboratory animals or other applicable regulations;
- submission to the FDA of an investigative new drug application, or IND, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed biological product for its intended use, according to the FDA's regulations, commonly referred to as good clinical practices, or GCPs, and any additional requirements including those for the protection of human research subjects and their health and other personal information;
- submission to the FDA of a BLA for marketing approval that includes substantive evidence of safety;
- purity and potency from results of nonclinical testing and clinical trials;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities where the biological product is produced to assess compliance with cGMP, to assure that the facilities, methods and controls are adequate to preserve the biological product's identity, strength, quality and purity and, if applicable, the FDA's current good tissue practices for the use of human cellular and tissue products;

- potential FDA audits of the nonclinical study and clinical trial sites that generated the data in support of the BLA; and
- FDA review and approval of the BLA.

Post-Approval Requirements

Once a BLA is approved, a product is subject to certain post-approval requirements. For instance, the FDA closely regulates the post-approval marketing and promotion of biologics, including standards and regulations, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the internet. Biologics may be marketed only for the approved indications and in accordance with the provisions of the approved labeling. Adverse event reporting and submission of periodic reports is required following FDA approval of a BLA. The FDA also may require post-marketing testing, known as Phase IV testing, Risk Evaluation and Mitigation Strategies, or REMS, and surveillance to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product. In addition, quality control as well as product manufacturing, packaging and labeling procedures must continue to conform to cGMP after approval. Manufacturers and certain of their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA during which the agency inspects manufacturing facilities to assess compliance with applicable regulations such as cGMP and the Quality System Regulation. Accordingly, manufacturers must continue to expend time, money and effort in the areas of production and quality control to maintain compliance with cGMP. Regulatory authorities may withdraw product approvals or request product recalls if a company fails to comply with regulatory standards, if it encounters problems following initial marketing, or if previously unrecognized problems are subsequently discovered.

Other Regulation of the Healthcare Industry

While we do not currently have plans for our neurotoxin product to be covered by insurance or government reimbursement programs, if we were to offer reimbursable products, we could be subject to federal laws and regulations covering reimbursable products, such as the Anti-Kickback Statute, Stark Law and Physician Payment Sunshine Act. These laws that may affect our ability to operate include, but are not limited to:

- The Anti-Kickback Statute, which prohibit persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual, or furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program;
- The Federal False Claims Act which imposes civil and criminal liability on individuals and entities who submit, or cause to be submitted, false or fraudulent claims for payment to the government;
- the Federal Civil Monetary Penalties Law, which prohibits, among other things, offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know is likely to influence the beneficiary's decision to order or receive items or services reimbursable by the government from a particular provider or supplier;
- The Foreign Corrupt Practices Act ("FCPA"), which prohibits certain payments made to foreign government officials;
- the Federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created new federal criminal statutes that prohibit knowingly and willfully executing, or attempting to execute, a scheme to defraud or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, including private third-party payors and knowingly and willfully falsifying, concealing or covering up by trick, scheme or device a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services relating to healthcare matters;
- the Federal Physician Payments Sunshine Act, and its implementing regulations, which require that certain manufacturers of drugs, medical devices, biologics, and medical supplies for which payment is available under Medicare, Medicaid, or the Children's Health Insurance Program (with certain exceptions) to report to the CMS information related to certain payments or other transfers of value made or distributed to physicians, which is defined broadly to include other healthcare providers, teaching hospitals, and ownership and investment interests held by physicians and their immediate family members; and

- State and foreign law equivalents of the foregoing and state laws regarding pharmaceutical company marketing compliance, reporting and disclosure obligations.

If our operations are found to be in violation of any of these laws, regulations, rules or policies or any other law or governmental regulation, or if interpretations of the foregoing change, we may be subject to civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations.

Government Regulation in Europe

In the European Economic Area, or EEA (which is composed of the 28 Member States of the EU plus Norway, Iceland and Liechtenstein), medicinal products can only be commercialized after obtaining a Marketing Authorization, or MA.

There are two types of MAs:

- The Community MA, which is issued by the European Commission through the Centralized Procedure, based on the opinion of the Committee for Medicinal Products for Human Use, or CHMP, of the EMA and which is valid throughout the entire territory of the EEA. The Centralized Procedure is mandatory for certain types of products, such as biotechnology medicinal products, orphan medicinal products, and medicinal products indicated for the treatment of AIDS, cancer, neurodegenerative disorders, diabetes, auto-immune and viral diseases. The Centralized Procedure is optional for products containing a new active substance not yet authorized in the EEA, or for products that constitute a significant therapeutic, scientific or technical innovation or which are in the interest of public health in the EU.

- National MAs, which are issued by the competent authorities of the Member States of the EEA and only cover their respective territory, are available for products not falling within the mandatory scope of the Centralized Procedure.

Because we are a biotechnology medicinal products company, we are eligible for a Community MA under the Centralized Procedure.

Under the above described procedures, before granting the MA, the EMA or the competent authorities of the Member States of the EEA make an assessment of the risk-benefit balance of the product on the basis of scientific criteria concerning its quality, safety and efficacy.

Product Approval Process Outside the United States and Europe

In addition to regulations in the United States and EU, we may be subject to a variety of regulations in other jurisdictions governing manufacturing, clinical trials, commercial sales and distribution of our future products. Whether or not we obtain FDA approval or MA approval for a product candidate, we must obtain approval of the product by the comparable regulatory authorities of foreign countries before commencing clinical trials or marketing in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval or MA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

Data Privacy and Security Laws and Regulations

We are also subject to data privacy and security regulation by the federal government, states and non-U.S. jurisdictions in which we conduct our business. For example, HIPAA, as amended by the Health Information Technology and Clinical Health Act, or HITECH, and its implementing regulations, imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to "business associates," those independent contractors or agents of covered entities that create, receive, maintain, transmit or obtain protected health information in connection with providing a service on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state and non-U.S. laws, including the General Data Protection Regulation adopted by the EU, govern the privacy and security of health and other personal information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Environmental Regulation

We are subject to numerous foreign, federal, state, and local environmental, health and safety laws and regulations relating to, among other matters, safe working conditions, manufacturing practices, fire hazard control, product stewardship and end-of-life handling or disposition of products, and environmental protection, including those governing the generation, storage, handling, use, transportation and disposal of hazardous or potentially hazardous substances and biological materials.

Our History

We were incorporated in November 2012 and are headquartered in Newport Beach, California. In a series of related transactions in 2013, Strathspey Crown Holdings Group, LLC (formerly known as Strathspey Crown Holdings, LLC), or SCH, acquired all of our outstanding equity in exchange for membership interests in SCH. In 2014, SCH contributed our equity that it had acquired in 2013 to its subsidiary operating entity, ALPHAEON Corporation, or Alphaeon. As a result of these transactions, prior to our initial public offering we were a wholly-owned subsidiary of Alphaeon. In 2019 Alphaeon changed its name to AEON Biopharma, Inc. We continue to refer to the renamed AEON Biopharma, Inc. as Alphaeon.

As of December 31, 2019, Alphaeon owned 25.8% of our outstanding shares of common stock. Subsequent to December 31, 2019, Alphaeon contributed all of the shares it held in us to Alphaeon 1, LLC.

Employees

As of December 31, 2019, we had 235 employees, all of whom constituted full-time employees. None of our employees are represented by a collective bargaining agreement, and we have never experienced any work stoppage. We believe we have good relations with our employees.

Corporate Information

We were incorporated in the State of Delaware in November 2012. Our principal executive offices are located at 520 Newport Center Drive, Suite 1200, Newport Beach, California 92660, and our telephone number is (949) 284-4555. Our website address is www.evolus.com. We do not incorporate the information on or accessible through our website into this Annual Report on Form 10-K, and you should not consider any information on, or that can be accessed through, our website a part of this Annual Report on Form 10-K or any other filing we make with the SEC. We are an emerging growth company under the Jumpstart Our Business Startups Act of 2012 and also a smaller reporting company, and therefore we are subject to reduced public company reporting requirements.

Available Information

We make available, free of charge, on our website at www.evolus.com our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to such reports, as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the SEC. All such reports are also available free of charge via EDGAR through the SEC website at www.sec.gov. We do not incorporate the information on or accessible through these websites into this Annual Report on Form 10-K, and you should not consider any information on, or that can be accessed through, these websites a part of this Annual Report on Form 10-K or any other filing we make with the SEC.

Item 1A. Risk Factors.

You should carefully consider the risks and uncertainties described below, together with all the other information in this Annual Report on Form 10-K, including Item 7"Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and the related notes included in Item 8 "Financial Statements and Supplementary Data." If any of the following risks actually occurs, our business, reputation, financial condition, results of operations, revenue, and future prospects could be seriously harmed. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. Unless otherwise indicated, references to our business being seriously harmed in these risk factors will include harm to our business, reputation, financial condition, results of operations, revenue, and future prospects. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.

Risks Related to Our Business and Strategy

We have a limited operating history and have incurred significant losses since our inception and anticipate that we will continue to incur losses for the foreseeable future. We have only one product and limited commercial sales, which, together with our limited operating history, make it difficult to assess our future viability.

We are a performance beauty company with a limited operating history. To date, we have invested substantially all of our efforts and financial resources in the clinical development, regulatory approval, and commercial launch of Jeuveau®, which is currently our only product. We began selling Jeuveau® in the United States in May 2019 and through a distribution partner in Canada in October 2019 and have a limited history of generating revenue. We are not profitable and have incurred losses in each year since our inception in 2012. We have a limited operating history upon which you can evaluate our business and prospects. Consequently, any predictions about our future success, performance or viability may not be as accurate as they could be if we had a longer operating history or greater experience commercializing a product. In addition, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in the medical aesthetics field. We continue to incur significant expenses related to the commercialization of Jeuveau®. We have recorded net losses of $90.0 million and $46.9 million for the years ended December 31, 2019 and 2018, respectively, and had an accumulated deficit as of December 31, 2019 of $213.1 million. We expect to continue to incur losses for the foreseeable future, and we anticipate these losses will continue as we commercialize Jeuveau®. Our ability to achieve revenue and profitability is dependent on our ability to successfully market and commercialize Jeuveau®. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our prior losses, combined with expected future losses, may adversely affect the market price of our common stock and our ability to raise capital and continue operations.

We currently depend entirely on the successful commercialization of our only product, Jeuveau®. If we are unable to successfully commercialize Jeuveau®, we may never generate sufficient revenue to continue our business.

We currently have only one product, Jeuveau®, and our business presently depends entirely on our ability to successfully commercialize it in a timely manner. While the product was commercially launched in the United States in May 2019 and through a distribution partner in Canada in October 2019, we have a limited history of generating revenue for Jeuveau®. Our near-term prospects, including our ability to generate revenue, as well as our future growth, depend entirely on the successful commercialization of Jeuveau®. The commercial success of Jeuveau® will depend on a number of factors, including the following:

- our success in educating physicians and consumers about the benefits, administration and use of Jeuveau®;
- the prevalence, duration and severity of potential side effects experienced with Jeuveau®;
- achieving and maintaining compliance with all regulatory requirements applicable to Jeuveau®;
- the ability to raise additional capital on acceptable terms, or at all, if needed, to support our operations and further commercialization of Jeuveau®;
- the acceptance by physicians and consumers of the safety and efficacy of Jeuveau®;
- our ability to successfully commercialize Jeuveau®, whether alone or in collaboration with others, including our ability to hire, retain and train sales representatives in the United States;

- the ability of our current manufacturer and any third parties with whom we may contract to remain in good standing with regulatory agencies and develop, validate and maintain commercially viable manufacturing processes that are compliant with current Good Manufacturing Practice, or cGMP, requirements;
- our ability to accurately forecast demand for our products, the ability of our third-party manufacturers to scale production to meet that demand and our ability to effectively manage our working capital requirements including the purchase of inventory and collection of receivables;
- our ability to resolve ongoing legal proceedings in a timely and cost-effective manner;
- the availability, perceived advantages, relative cost, relative safety and relative efficacy of competing products, the timing of new product introductions by our competitors, and the sales and marketing tactics of our competitors, including bundling of multiple products, in response to our launch of Jeuveau®.

If we do not achieve one or more of these factors, many of which are beyond our control, in a timely manner or at all, we could experience significant issues commercializing Jeuveau®. Further, we may never be able to successfully commercialize Jeuveau® or any future product candidates. In addition, our experience as a commercial company is limited. Accordingly, we may not be able to generate sufficient revenue through the sale of Jeuveau® or any future product candidates to continue our business.

Jeuveau® faces, and any of our future product candidates will face, significant competition and our failure to effectively compete may prevent us from achieving significant market penetration and expansion.

In May 2019, we commercially launched Jeuveau® into the highly competitive U.S. aesthetic neurotoxin market. In the long term, we expect to expand our focus to the broader self-pay healthcare market. Many of our potential competitors, including Allergan in particular who first launched BOTOX for cosmetic uses in 2002 and has since maintained the highest market share position in the aesthetic neurotoxin market with its BOTOX product, are large, experienced companies that enjoy significant competitive advantages, such as:

- substantially greater financial resources enabling them to, among other things, market and discount aggressively;
- large and established research and development, manufacturing, personnel and marketing resources;
- greater brand recognition for their products;
- larger sales forces;
- larger aesthetic product portfolios allowing the companies to bundle products to provide customers more choices and to further discount their products;
- greater existing market share in the aesthetic neurotoxin product market;
- long standing customer loyalty programs and sales contracts with large customers;
- established business and financial relationships with customers, aesthetic societies and universities.

These competitors may also try to compete with Jeuveau® on price both directly, through rebates and promotional programs to high volume physicians and coupons to consumers, and indirectly, through attractive product bundling with complimentary products, such as dermal fillers that offer convenience and an effectively lower price compared to the total price of purchasing each product separately. These companies may also seek to compete based on their longer operating history. Larger companies may be better capitalized than us and, accordingly, are able to offer greater customer loyalty benefits to encourage repeat use of their products and finance a sustained global advertising campaign to compete with our commercialization efforts at launch. A number of our larger competitors also have access to a significant amount of studies and publications that they could use to compete with us.

Competitors and other parties may also seek to impact regulatory approval of our future product applications through the filing of citizen petitions or other similar documents, which could require costly and time-consuming responses to the regulatory agencies. Larger competitors could seek to prevent or delay our commercialization efforts via costly litigation which can be lengthy and expensive and serve to distract our management team’s attention. We could face competition from other sources as well, including academic institutions, governmental agencies and public and private research institutions. In addition, we are aware of other companies also developing and/or marketing products in one or more of our target markets,

including competing injectable botulinum toxin type A formulations that are currently in Phase III clinical development in North America for the treatment of glabellar lines. For example, Revance Therapeutics, Inc. has submitted a BLA to the FDA for an injectable botulinum toxin type A neurotoxin and received a target date action date of November 25, 2020 under the Prescription Drug User Fee Act. If the BLA is approved, we expect the competition in the U.S. injectable botulinum toxin market to further increase. We would face similar risks with respect to any future product candidates that we may seek to develop or commercialize in the broader self-pay healthcare market. Successful competitors in that market have the ability to effectively discover, obtain patents, develop, test and obtain regulatory approvals for products, as well as the ability to effectively commercialize, market and promote approved products, including communicating the effectiveness, safety and value of products to actual and prospective customers and medical staff.

Our strategy of competing in the aesthetic neurotoxin market is dependent on the marketing and pricing flexibility that we believe is afforded to a company with a portfolio limited to self-pay healthcare, comprised of products and procedures that are not reimbursed by third-party payors. In the event that regulations applicable to reimbursed products are changed to apply to self-pay healthcare products, we would no longer have this flexibility and we may not be able to compete as effectively with our competitors which may have a material effect on our business, financial condition and results of operations.

The first use of Jeuveau® is in aesthetic medicine. The aesthetic product market, and the facial aesthetic market in particular, is highly competitive and dynamic and is characterized by rapid and substantial technological development and product innovations. We have received regulatory approval of Jeuveau® for the treatment of glabellar lines and launched commercially in the United States and through a distribution partner in Canada. We anticipate that Jeuveau® will face significant competition from other facial aesthetic products, such as other injectable and topical botulinum toxins and dermal fillers. Jeuveau® may also compete with unapproved and off-label treatments. In addition, competitors may develop new technologies within the aesthetic market that may be superior in safety and efficacy to Jeuveau® or offer alternatives to the use of toxins, including surgical and radio frequency techniques. To compete successfully in the aesthetic market, we will have to demonstrate that Jeuveau® is at least as safe and effective as current products sold by our competitors. Competition in the aesthetic market could result in price-cutting and reduced profit margins, any of which would harm our business, financial condition and results of operations.

Due to less stringent regulatory requirements, there are many more aesthetic products and procedures available for use in international markets than are approved for use in the United States. There are also fewer limitations on the claims that our competitors in international markets can make about the effectiveness of their products and the manner in which they can market them. As a result, we expect to face more competition in these markets than in the United States.

Our commercial opportunity could also be reduced or eliminated if our competitors develop and commercialize products that are safer, are more effective, have fewer or less severe side effects, are more convenient or are less expensive than Jeuveau® or any other product that we may develop. Our competitors also may obtain FDA or other regulatory approval for these products more rapidly than we may obtain approval for our products, which could result in our competitors establishing a strong market position before we are able to enter the market, which may create additional barriers to successfully commercializing Jeuveau® and any future product candidates and attracting physician and consumer demand.

We rely on the license and supply agreement, the Daewoong Agreement, with Daewoong to provide us exclusive rights to distribute Jeuveau® in certain territories. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect our development or commercialization of Jeuveau®.

Pursuant to the Daewoong Agreement, we have secured an exclusive license from Daewoong, a South Korean pharmaceutical manufacturer, to import, distribute, promote, market, develop, offer for sale and otherwise commercialize and exploit Jeuveau® for aesthetic indications in the United States, EU, Canada, Australia, Russia, C.I.S. and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. The Daewoong Agreement imposes on us obligations relating to exclusivity, territorial rights, development, commercialization, funding, payment, diligence, sublicensing, intellectual property protection and other matters. We are obligated to conduct development activities, obtain regulatory approval of Jeuveau®, obtain from Daewoong all of our product supply requirements for Jeuveau® and pay to Daewoong regulatory milestone payments and other cash payments in connection with the net sales of Jeuveau®. In addition, under the Daewoong Agreement, we are required to submit our commercialization plan to a joint steering committee, or JSC, comprised of an equal number of development and commercial representatives from Daewoong and us, for review and input. Although the Daewoong Agreement provides us with final decision-making power regarding the marketing, promotion, sale and/or distribution of Jeuveau®, any disagreement among the JSC would be referred to Daewoong's and our respective senior management for resolution if the JSC is unable to reach a decision within thirty days, which may result in a delay in our ability to implement our commercialization plan or harm our working relationship with Daewoong. If we fail to achieve minimum annual purchase targets of Jeuveau® under the Daewoong Agreement, Daewoong may, at its sole option, elect to convert the exclusive license to a non-exclusive license.

The initial term of the Daewoong Agreement will expire on the later of September 30, 2023 or the fifth anniversary of our receipt of marketing approval in any of the aforementioned territories. The Daewoong Agreement will renew for unlimited additional three-year terms after the expiration of the initial term, only if we meet certain performance requirements during the initial term or preceding renewal term, as applicable. We or Daewoong may terminate the Daewoong Agreement if the other party breaches any of its duties or obligations and such breach continues without cure for ninety days, or thirty days in the case of a payment breach, or if we declare bankruptcy or assign our business for the benefit of creditors.

If we breach any material obligations, or use the intellectual property licensed to us in an unauthorized manner, we may be required to pay damages to Daewoong and Daewoong may have the right to terminate our license. In addition, if any of the regulatory milestones or other cash payments become due under the terms of the Daewoong Agreement, we may not have sufficient funds available to meet our obligations, which would allow Daewoong to terminate the Daewoong Agreement. Any termination or loss of rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect our ability to commercialize Jeuveau®, which in turn would have a material adverse effect on our business, operating results and prospects. If we were to lose our rights under the Daewoong Agreement, we believe it would be difficult for us to find an alternative supplier of a botulinum toxin type A complex. In addition, to the extent the alternative supplier has not secured regulatory approvals in a jurisdiction, we would have to expend significant resources to obtain regulatory approvals that may never be obtained or require several years to obtain, which could significantly delay commercialization. We may be unable to raise additional capital to fund our operations during this extended time on terms acceptable to us or at all. Additionally, if we experience delays as a result of a dispute with Daewoong, the demand for Jeuveau® could be materially and adversely affected. Additionally, if the Daewoong Agreement is terminated, breached or has certain other adverse actions, it may constitute an event of default under our loan and security agreement, or credit facility, with Oxford Finance, LLC, or Oxford. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and Oxford, as collateral agent, could exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including cash. Any such action could materially and adversely affect our business and results of operations.

We currently rely solely on Daewoong to manufacture Jeuveau®, and as such, any production or other problems with Daewoong could adversely affect us.

We depend solely upon Daewoong for the manufacturing of Jeuveau®. Although alternative sources of supply may exist, the number of third-party suppliers with the necessary manufacturing and regulatory expertise and facilities is limited, and it could be expensive and take a significant amount of time to arrange for and qualify alternative suppliers, which could have a material adverse effect on our business. Suppliers of any new product candidate would be required to qualify under applicable regulatory requirements and would need to have sufficient rights under applicable intellectual property laws to the method of manufacturing the product candidate. Obtaining the necessary FDA approvals or other qualifications under applicable regulatory requirements and ensuring non-infringement of third-party intellectual property rights could result in a

significant interruption of supply and could require the new manufacturer to bear significant additional costs which may be passed on to us.

In addition, our reliance on Daewoong entails additional risks, including reliance on Daewoong for regulatory compliance and quality assurance, the possible breach of the Daewoong Agreement by Daewoong, and the possible termination or nonrenewal of the Daewoong Agreement at a time that is costly or inconvenient for us. Our failure, or the failure of Daewoong, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of Jeuveau®. Our dependence on Daewoong also subjects us to all of the risks related to Daewoong's business, which are all generally beyond our control. Daewoong's ability to perform its obligations under the Daewoong Agreement is dependent on Daewoong's operational and financial health, which could be negatively impacted by several factors, including changes in the economic, political and legislative conditions in South Korea and the broader region in general and the ability of Daewoong to continue to successfully attract customers and compete in its market. Furthermore, Daewoong's recently constructed manufacturing facility is Daewoong's only facility meeting FDA and European Medicines Agency, or EMA, cGMP requirements. Daewoong's lack of familiarity with, or inability to effectively operate, the facility and produce products of consistent quality, may harm our ability to compete in our market.

Additionally, although we are ultimately responsible for ensuring compliance with regulatory requirements such as cGMPs, we are dependent on Daewoong for day-to-day compliance with cGMP for production of drug substance and finished products. Facilities used by Daewoong to produce the drug substance and materials or finished products for commercial sale must pass inspection and be approved by the FDA and other relevant regulatory authorities. If the safety of Jeuveau® is compromised due to a failure to adhere to applicable laws or for other reasons, we may not be able to successfully commercialize our product and we may be held liable for injuries sustained as a result. In addition, the manufacturing facilities of certain of our suppliers are located outside of the United States. This may give rise to difficulties in importing our product into the United States or other countries as a result of, among other things, regulatory agency approval requirements, taxes, tariffs, local import requirements such as import duties or inspections, incomplete or inaccurate import documentation or defective packaging. Any of these factors could adversely impact our ability to effectively commercialize Jeuveau®.

Any failure or refusal by Daewoong or any other third party to supply Jeuveau® or any other product candidates or products that we may develop could delay, prevent or impair our clinical development or commercialization efforts.

Third-party claims of intellectual property infringement may prevent or delay our commercialization efforts and interrupt our supply of products.

Our commercial success depends in part on our avoiding infringement of the proprietary rights of third parties. Competitors in the field of dermatology, aesthetic medicine and neurotoxins have developed large portfolios of patents and patent applications in fields relating to our business. In particular, there are patents held by third parties that relate to the treatment with neurotoxin-based products for the indication we are currently developing. There may also be patent applications that have been filed but not published that, when issued as patents, could be asserted against us. There is a substantial amount of litigation, both within and outside the United States, involving patent and other intellectual property rights in the technology, medical device and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and inter-party reexamination proceedings before the U.S. Patent and Trademark Office, or USPTO. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing Jeuveau®. As the technology, medical device and pharmaceutical industries expand and more patents are issued, the risk increases that our product candidates may be subject to claims of infringement of the patent rights of third parties.

Third parties may assert that we or any of our current or future licensors, including Daewoong, are employing their proprietary technology without authorization. There may be third-party patents or patent applications with claims to materials, methods of manufacture or methods for treatment related to the use or manufacture of Jeuveau® or any future product candidates. Because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents that Jeuveau® or any future product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of Jeuveau® or any future product candidates, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtain a license under the applicable patents or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our methods of use, the holders of any such patent may be able

to block our ability to develop and commercialize the applicable product candidate unless we obtain a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all.

In addition to claims of patent infringement, third parties may bring claims against us asserting misappropriation of proprietary technology or other information in the development, manufacture and commercialization of Jeuveau® or any of our future product candidates. Defense of such a claim would require dedicated time and resources, which time and resources could otherwise be used by us toward the maintenance of our own intellectual property and the development and commercialization of Jeuveau® and any of our future product candidates or by any of our current or future licensors for operational upkeep and manufacturing of our products. Presently, we are a defendant in a lawsuit brought by Medytox, Inc., or Medytox, on June 7, 2017 in the Superior Court of the State of California, alleging, among other things, that Daewoong stole Medytox's botulinum toxin bacterial strain, or the BTX strain, that Daewoong misappropriated certain trade secrets of Medytox, including the process used to manufacture Jeuveau® (which Medytox claims is similar to its biopharmaceutical drug, Meditoxin) using the BTX strain, and that Daewoong thereby interfered with Medytox's plan to license Meditoxin to us, or the Medytox Litigation. Medytox claims that as a result of Daewoong's conduct, we entered into the Daewoong Agreement instead of an agreement with Medytox to license Meditoxin.

Daewoong filed a motion to dismiss or stay for forum non conveniens, claiming that the place where the complaint has been filed, in the Superior Court of the State of California, is not the proper place for the trial of the claims in the complaint because, among other reasons, the underlying facts that gave rise to the complaint occurred in South Korea. Daewoong's motion to dismiss was granted by the Superior Court of the State of California on October 12, 2017. As a result, the action filed with the Superior Court of the State of California is stayed pending resolution of the proceedings in South Korea. In October 2017, Medytox initiated a civil lawsuit against Daewoong and its parent company, Daewoong Co. Ltd., in the Seoul Central District Court in Seoul, South Korea, related to the same subject matter in the Medytox Litigation and is seeking, among other things, money damages, injunctive relief and destruction of related documents and products. None of us, Alphaeon or SCH are parties to the litigation in the Seoul Central District Court.

On April 27, 2018, pursuant to a motion to dismiss brought by Daewoong, the Superior Court of the State of California dismissed Medytox's suit against Daewoong, without prejudice, on the basis that Medytox had brought a substantially similar proceeding against Daewoong in South Korea. The proceedings against us, Alphaeon and SCH remain stayed in the Superior Court of the State of California pending resolution of the proceedings between Medytox and Daewoong in South Korea. While the proceedings between Medytox and Daewoong in South Korea are progressing, legal proceedings are inherently uncertain and we cannot predict what actions may be taken by the Seoul Central District Court in connection with such proceedings. Due to these factors and because we are not a direct party to the proceedings, we are unable to provide any assurances about when such proceedings may be resolved or whether such resolution may occur sooner or later than we otherwise anticipate.

With specific regard to us, Medytox alleges that (i) we have violated California Uniform Trade Secrets Act, Cal. Civ. Code Section 3426 because Daewoong's alleged knowledge of the misappropriation of certain trade secrets of Medytox is imputed to us as a result of our relationship with Daewoong, (ii) we have stolen the BTX strain through our possession of and refusal to return the BTX strain, (iii) we have engaged in unlawful, unfair and fraudulent business acts and practices in violation of California Bus. & Prof. Code Section 17200, including conversion of the BTX strain and misrepresentations to the public regarding the source of the botulinum toxin bacterial strain used to manufacture Jeuveau®, and (iv) the Daewoong Agreement is invalid and in violation of Medytox's rights.

Medytox seeks, among other things, (i) actual, consequential and punitive damages, (ii) a reasonable royalty, as appropriate, (iii) a declaration that the Daewoong Agreement is void and unenforceable and that Medytox is entitled to disgorgement of all property wrongfully and unjustly retained or acquired by the defendants, including unlawfully gained profits, (iv) injunctive relief prohibiting us from using the license under the Daewoong Agreement and distributing Jeuveau®, and (v) attorneys' fees and costs.

Given the early stage in the Medytox Litigation, we are unable to predict the likelihood of success of Medytox's claims against us, Alphaeon, SCH or Daewoong or to quantify any risk of loss. The Medytox Litigation and any other similar claims, suits, government investigations and proceedings are inherently uncertain and their results may not be favorable for us. For example, if the Medytox Litigation has a negative outcome for us, Alphaeon or Daewoong, it could result in us losing access to Jeuveau® and the manufacturing process and require us to negotiate a new license with Medytox for continued access to Jeuveau®. We may not be able to successfully negotiate such license on terms acceptable to us or at all. If we are unable to license Jeuveau®, we may not be able to find a replacement product, if at all, without expending significant resources and being required to seek additional regulatory approvals, which would be uncertain, time consuming and costly. Regardless of

the outcome, such proceedings can have an adverse impact on us because of legal costs, diversion of management resources and other factors. An adverse ruling against either us or one of the other defendants of any such proceedings could adversely affect our business, financial position, results of operations, or cash flows and could also result in reputational harm. Any of these consequences could adversely affect our business and results of operations.

On January 30, 2019, Allergan and Medytox filed a complaint against us and Daewoong in the U.S. International Trade Commission, or the ITC, containing substantially similar allegations to the Medytox Litigation, specifically that Jeuveau® is manufactured based on misappropriated trade secrets of Medytox and therefore the importation of Jeuveau® is an unfair act. The ITC matter is entitled *In the Matter of Certain Botulinum Toxin Products*, or the ITC Complaint. The ITC instituted an investigation as ITC Inv. No. 337-TA-1145. The ITC complaint calls for an investigation by the ITC under Section 337 of the Tariff Act of 1930. The ITC complaint seeks (i) an investigation pursuant to Section 337 of the Tariff Act of 1930, (ii) a hearing with the ITC on permanent relief, (iii) issuance of a limited exclusion order forbidding entry of Jeuveau® into the United States, (iv) a cease and desist order prohibiting Daewoong and us from engaging in the importations, sale for importation, marketing, distribution, offering for sale, the sale after the importation of, or otherwise transferring Jeuveau® within the United States, (v) a bond issued during the presidential review period, (vi) the return of Medytox's trade secrets and other confidential information including the alleged stolen BTX Strain, and (vii) exclusion and cease and desist orders. We intend to defend ourselves vigorously in the proceedings. The ITC has set a target date for the final determination of the matter for October 2020. An adverse ruling by the ITC against either us or Daewoong could result in the imposition of an exclusion order which would bar imports of Jeuveau® into the United States and a cease and desist order which would bar sales and marketing of our sole product Jeuveau® within the United Sates either of which would adversely affect our ability to carry our out our business and which would have an adverse effect on our business, financial position, results of operations, or cash flows and could also result in reputational harm. Any of these consequences could adversely affect our business and results of operations. Additionally, in certain cases if there is preliminary or permanent relief granted under the Medytox Litigation or the ITC matter, it may constitute an event of default under our credit facility. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and Oxford, as collateral agent, could exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including cash. Any such action could materially and adversely affect our business and results of operations.

Parties making claims against us or any of our current or future licensors may request and obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement, we or any of our current or future licensors may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties which may not be commercially or more available, pay royalties or redesign our infringing products or manufacturing processes, which may be impossible or require substantial time and monetary expenditure. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research, manufacture clinical trial supplies or allow commercialization of Jeuveau® or any future product candidates. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly. Similarly, third-party patents could exist that might be enforced against our products, resulting in either an injunction prohibiting our sales, or with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

Borrowings under our credit facility could adversely affect our financial condition and restrict our operating flexibility.

On March 15, 2019, or the closing date, we entered into a credit facility with Oxford, or the lender, pursuant to which the lender will make term loans available to us of up to $100.0 million, or the credit facility. The credit facility provides that the term loans will be funded in two advances. The first tranche of $75.0 million was funded on the closing date, and the second tranche of $25.0 million may be drawn, at our request, no later than September 30, 2020, upon achieving specified minimum net sales milestones with no event of default occurring. The credit facility bears an annual interest rate equal to the greater of 9.5%, or the 30-day U.S. Dollar LIBOR (London Inter-Bank Offered Rate) rate plus 7.0%. We have agreed to pay interest only on each tranche funded pursuant to the credit facility for the first 36 months until May 2022, which will be followed by a 23-month amortization period. Notwithstanding the foregoing, if we maintain compliance with the specified minimum net sales covenant and meet other conditions during the initial interest-only period, upon our request, the interest only period may be extended by an additional 12 months to a total of 48 months followed by an 11-month amortization period.

The credit facility is secured by substantially all of our assets. The credit facility contains customary affirmative and restrictive covenants and representations and warranties. We are bound by certain affirmative covenants setting forth actions that are required during the term of the credit facility including, without limitation, certain requirements to deliver financial and other required information to Oxford, obligations to maintain certain insurance, and certain notice requirements. Additionally, we are bound by certain restrictive covenants setting forth actions that are not permitted to be taken during the term of the credit facility without Oxford's prior written consent, including, without limitation, incurring certain additional indebtedness, consummating certain mergers, acquisitions or other business combination transactions, or incurring any non-permitted lien or other encumbrance on our assets.

Interest payments, fees, covenants and restrictions under the credit facility could have important consequences, including the following:

- limiting our ability to obtain additional financing on satisfactory terms to fund our working capital requirements, capital expenditures, potential acquisitions, debt obligations and other general corporate requirements, and making it more difficult for us to satisfy our obligations with respect to any such additional financing;
- increasing our vulnerability to general economic downturns, competition and industry conditions, which could place us at a competitive disadvantage compared to our competitors with no debt obligations or with debt obligations on more favorable terms; and
- limiting our ability to pursue acquisition opportunities and to license intellectual property outside specified exceptions.

The occurrence of any one of these events could have an adverse effect on our business, financial condition, operating results or cash flows and ability to satisfy our obligations under the credit facility and any other indebtedness. If new debt is incurred in addition to debt incurred under the credit facility, the related risks that we face would be increased. The terms of the credit facility may restrict our current and future operations, particularly our ability to respond to changes in our business or to take certain actions. The credit facility contains, and the terms of any future indebtedness of ours would likely contain, a number of restrictive covenants that impose significant operating restrictions, including restrictions on our ability to engage in acts that may be in our best long-term interests. The credit facility includes covenants that, among other things and subject to certain exceptions and limits, restrict or otherwise limit our ability to:

- dispose of assets;
- undergo certain business, management, ownership, business and other fundamental changes;
- engage in certain merger, acquisition and consolidation transactions;
- incur additional indebtedness and create liens and other encumbrances;
- make restricted payments, including dividends and other distributions; and
- engage in certain transactions with affiliates.

The credit facility also includes events of default including, among other things, any failure by us to pay principal or interest due under the credit facility, a breach of certain covenants under the credit facility, our insolvency, a material adverse change, the occurrence of any default under certain other indebtedness and one or more judgments against us, the institution of certain temporary or permanent relief in connection with pending litigation, or the breach, termination or other adverse events under the Daewoong Agreement. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and Oxford, as collateral agent, could exercise remedies against including the ability to declare any outstanding debt immediately due and payable. In addition, the credit facility is secured by certain of our existing and hereafter created or acquired assets, including our intellectual property, cash, accounts receivable, equipment, general intangibles, inventory and all of the proceeds and products of the foregoing. If we are unable to pay any amounts due and payable under the credit facility because we do not have sufficient cash on hand or are unable to obtain alternative financing on acceptable terms, the lenders could initiate a bankruptcy proceeding or proceed against any assets that serve as collateral to secure the credit facility. These restrictions could limit our ability to obtain future financings, make needed capital expenditures, withstand future downturns in the economy or otherwise conduct necessary corporate activities. We may also be prevented from taking advantage of business opportunities that arise because of limitations imposed on us by the restrictive covenants under the credit facility.

We may require additional financing to fund our future operations, and a failure to obtain additional capital when so needed on acceptable terms, or at all, could force us to delay, limit, reduce or terminate our operations.

We have utilized substantial amounts of cash since our inception in order to conduct clinical development to support regulatory approval of Jeuveau® in the United States, EU and Canada and in connection with the launch of Jeuveau® in the United States and Canada. We expect that we will continue to expend substantial resources for the foreseeable future in order to commercialize Jeuveau® and for the clinical development of any additional product candidates we may choose to pursue.

In the near term, these expenditures will include costs associated with the development and continuation of our marketing programs and commercialization infrastructure in connection with commercializing Jeuveau® within and outside of the United States. In the long term, these expenditures will include costs associated with the continued commercialization of Jeuveau® and any of our future product candidates, such as research and development, conducting preclinical studies and clinical trials and manufacturing and supplying as well as marketing and selling any products approved for sale. In addition, other unanticipated costs may arise. Because the regulatory approval process and commercialization expenditures needed to meet our sales objectives are highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully complete the development and commercialization of Jeuveau® or any future product candidates. We expect to incur additional costs as we continue to operate as a public company, hire additional personnel and expand our operations.

We anticipate that our existing cash, cash equivalents and investments will be sufficient to fund our current operating plan for the next twelve months. However, we may require additional funds earlier than we currently expect in the event that market acceptance of Jeuveau® is slower than expected. Our currently anticipated expenditures for the commercialization of Jeuveau® may exceed existing cash, cash equivalents and investments, and we may need to seek additional debt or equity financing. Additionally, under our credit facility, in order to draw the final $25.0 million of the facility, we must meet a number of conditions including maintaining compliance with covenants under the credit facility and the achievement of specified net sales targets based on a trailing six-month basis. In the event we are unable to reach this net sales milestone, we will not be able to draw the additional $25.0 million. As of December 31, 2019, we had not yet met the net sales milestone to draw the second tranche.

We may need to raise additional capital to fund our operations and continue to support both our near and long-term expenditures.

Our future capital requirements depend on many factors, including:

- the cost of commercialization activities for Jeuveau® or if any other future product candidates are approved for sale, including marketing, sales and distribution costs;
- the scope, progress, results and costs of researching and developing any future product candidates, and conducting preclinical and clinical trials;
- our ability to accurately forecast demand for our products, the ability of our third-party manufacturers to scale production to meet that demand and our ability to effectively manage our working capital requirements including the purchase of inventory and collection of receivables;
- costs under our third-party manufacturing and supply arrangements for our current and any future product candidates and any products we commercialize;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the terms of and timing of such arrangements;
- the timing of, and the costs involved in, obtaining and maintaining regulatory approvals for any future product candidates;
- the degree and rate of market acceptance of Jeuveau® or any future approved products;
- the emergence, approval, availability, perceived advantages, relative cost, relative safety and relative efficacy of alternative and competing products, the timing of new product introductions by competitors and other actions by competitors in the marketplace;
- costs of operating as a public company; and
- costs associated with any acquisition or in-license of products and product candidates, technologies or businesses.

If we raise additional capital through marketing and distribution arrangements or other collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish certain valuable rights to our product candidates, technologies, future revenue streams or research programs or grant licenses on terms that may not be favorable to us. If we raise additional capital through public or private equity offerings or offerings of securities convertible into our equity, the ownership interest of our existing stockholders will be diluted and the terms of any such securities may have a preference over our common stock. Debt financing, receivables financing and royalty financing may also be coupled with an equity component, such as warrants to purchase our capital stock, which could also result in dilution of our existing stockholders' ownership, and such dilution may be material. Additionally, if we raise additional capital through debt financing, we will have increased fixed payment obligations and may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt or making capital expenditures to meet specified financial ratios, and other operational restrictions, any of which could restrict our ability to commercialize Jeuveau® or any future product candidates or operate as a business and may result in liens being placed on our assets. If we were to default on any of our indebtedness, we could lose such assets.

In the event we are unable to raise sufficient capital to fund our commercialization efforts to achieve specified minimum sales targets under the Daewoong Agreement, we will lose exclusivity of the license that we have been granted under the Daewoong Agreement. In addition, if we are unable to raise additional capital when required or on acceptable terms, we may be required to significantly reduce operating expenses and delay, reduce the scope of or discontinue some of our development programs, commercialization efforts or other aspects of our business plan, out-license intellectual property rights to our product candidates and sell unsecured assets, or a combination of the above. As a result, our ability to achieve profitability or to respond to competitive pressures would be significantly limited and may have a material adverse effect on our business, results of operations, financial condition and/or our ability to fund our scheduled obligations on a timely basis or at all.

Jeuveau® may fail to achieve the broad degree of physician adoption and use necessary for commercial success.

Jeuveau® may fail to gain sufficient market acceptance by physicians, consumers and others in the medical aesthetics community. The commercial success of Jeuveau® and any future product candidates will depend significantly on the broad adoption and use of the resulting product by physicians for approved indications, including, in the case of Jeuveau®, the treatment of glabellar lines and other aesthetic indications that we may seek to pursue. We are aware that other companies are seeking to develop alternative products and treatments, any of which could impact the demand for Jeuveau®.

The degree and rate of physician adoption of Jeuveau® and any future product candidates depend on a number of factors, including:

- the effectiveness, ease of use and safety of Jeuveau® and any future product candidates as compared to existing products or treatments;
- physician and consumer willingness to adopt Jeuveau® to treat glabellar lines or other aesthetic indications we may pursue over products and brands with which consumers and physicians may have more familiarity or recognition or additional approved uses;
- overcoming any biases physicians or consumers may have toward the use, safety and efficacy of existing products or treatments and successful marketing of the benefits of a 900 kDa botulinum toxin type A complex;
- the cost of Jeuveau® and any future product candidates in relation to alternative products or treatments and willingness to pay for the product or treatment on the part of consumers;
- proper training and administration of Jeuveau® and any future product candidates by physicians and medical staff;
- consumer satisfaction with the results and administration of Jeuveau® and any future product candidates and overall treatment experience;
- negative selling efforts by our competitors against Jeuveau®;
- our competitors' long standing relationships with customers, including Allergan in particular, given their longstanding dominance of the market, which we may not be able to overcome in order to get customers to adopt Jeuveau®;

- changes in pricing, promotional, negative sales tactics, promotion of longer-term purchase agreements and bundling efforts by competitors;
- the filing of various lawsuits by competitors with the intent of preventing or delaying our product launches, to distract management's attention from operating our business and to devote significant financial resources to defend such litigation attempts;
- consumer demand for the treatment of glabellar lines or other aesthetic indications that may be approved in the future;
- the willingness of consumers to pay for Jeuveau® and any future product candidates relative to other discretionary items, especially during economically challenging times;
- the revenue and profitability that Jeuveau® and any future product candidates may offer a physician as compared to alternative products or treatments;
- the effectiveness of our sales, marketing and distribution efforts and our ability to develop our brand awareness;
- any adverse impact on our brand resulting from key opinion leader relationships with Alphaeon or SCH, whether or not related to us;
- a perception that Jeuveau® are unproven or experimental, or perceived differences in product performance, reliability, features and ease of use characteristics versus our competitors' products;
- our ability to compete with our competitors' product bundling offerings as we initially launch Jeuveau® as a stand-alone product; and
- adverse publicity about our product candidates, competitive products, or the industry as a whole, or favorable publicity about competitive products.

In addition, in its clinical trials, Jeuveau® was clinically tested with one Jeuveau® unit compared to one BOTOX unit. Jeuveau® is the only known neurotoxin product in the United States with a 900 kDa complex other than BOTOX. We believe that aesthetic physicians' familiarity with the 900 kDa complex's handling, preparation and dosing will more easily facilitate incorporation of Jeuveau® into their practices. However, the ease of integration of Jeuveau® into a physician's practice may not be as seamless as we anticipate.

If Jeuveau® or any future product candidates fail to achieve the broad degree of physician adoption necessary for commercial success, our operating results and financial condition will be adversely affected, which may delay, prevent or limit our ability to generate revenue and continue our business.

If there is not sufficient consumer demand for Jeuveau®, our financial results and future prospects will be harmed.

Treatment of glabellar lines with Jeuveau® is an elective procedure, the cost of which must be borne by the consumer, and we do not expect costs related to the treatment to be reimbursable through any third-party payor, such as Medicaid, Medicare or commercial insurance. The decision by a consumer to undergo treatment with Jeuveau® for the treatment of glabellar lines or other aesthetic indications that we may pursue may be influenced by a number of factors, including:

- the success of any sales and marketing programs that we, or any third parties we engage, undertake, and as to which we have limited experience;
- the extent to which physicians recommend Jeuveau® to their patients;
- the extent to which Jeuveau® satisfies consumer expectations and overcoming consumer loyalty with existing products and brands;
- our ability to properly train physicians in the use of Jeuveau® such that their consumers do not experience excessive discomfort during treatment or adverse side effects;
- the cost, safety and effectiveness of Jeuveau® versus other aesthetic treatments;

- the development and availability of alternative products and treatments that seek to address similar goals;
- consumer sentiment about the benefits and risks of aesthetic procedures generally and Jeuveau® in particular;
- the success of any direct-to-consumer marketing efforts that we may initiate;
- the ability and ease with which physicians are able to incorporate Jeuveau® into their practices;
- changes in demographic and social trends; and
- general consumer confidence, which may be impacted by economic and political conditions.

Jeuveau® is the only U.S. neurotoxin without a therapeutic indication, although other companies may seek to develop a similar product in the future. We believe pursuing an aesthetic-only non-reimbursed product strategy will allow for meaningful strategic advantages in the United States, including pricing and marketing flexibility. However, physicians may choose to not pass any cost benefits received by them due to such pricing flexibility to their patients. In addition, companies offering aesthetic products competitive to Jeuveau®, whether they pursue an aesthetic-only non-reimbursed product strategy or not, may nonetheless try to compete with Jeuveau® on price both directly through rebates, promotional programs and coupons and indirectly through attractive product bundling and customer loyalty programs. Our business, financial results and future prospects will be materially harmed if we cannot generate sufficient consumer demand for Jeuveau®.

In addition, we have not pursued regulatory approval of Jeuveau® for indications other than for the treatment of glabellar lines, which may limit adoption of Jeuveau®. Many of our competitors have received approval of multiple aesthetic and therapeutic indications for their neurotoxin product and may be able to market such product for use in a way we cannot. For example, we are aware that one of our competitors, Allergan plc, or Allergan, has obtained and plans to obtain additional indications for its neurotoxin product within medical aesthetics and therefore is able to market its product across a greater number of indications than Jeuveau®. If we are unable to obtain approval for indications in addition to glabellar lines, our marketing efforts for Jeuveau® will be severely limited. As a result, we may not generate physician and consumer demand or approval of Jeuveau®.

Jeuveau® or any other product candidate for which we seek approval as a biologic may face competition sooner than anticipated.

With the enactment of the Biologics Price Competition and Innovation Act of 2009, or the BPCI Act, as part of the Patient Protection and Affordable Care Act, an abbreviated pathway for the approval of biosimilar or interchangeable biological products was created. The abbreviated regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologics. Under the BPCI Act, an application for a biosimilar product cannot be approved by the FDA until twelve years after the original branded product was approved under a Biologics License Application, or BLA. The law is complex and is still being interpreted and implemented by the FDA. For example, one company has filed a Citizen Petition requesting that the FDA not apply the BPCI Act to pre-enactment BLAs. As a result, its ultimate impact, implementation and meaning are subject to uncertainty. While it is uncertain when such processes intended to implement the BPCI Act may be fully adopted by the FDA, any such processes could have a material adverse effect on the future commercial prospects for our biological products.

We believe that Jeuveau® should qualify for the twelve-year period of exclusivity. However, there is a risk that this exclusivity could be shortened due to congressional action or otherwise, or that the FDA will not consider any of our product candidates to be a reference product for competing products, potentially creating the opportunity for competition sooner than anticipated. Moreover, the extent to which a biosimilar product, once approved, will be substituted for any one of our reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear and will depend on a number of marketplace and regulatory factors that are still developing.

Jeuveau® is manufactured exclusively in one facility located in South Korea, and we plan to utilize this facility to support commercial production of Jeuveau®. If this facility were damaged or destroyed, or if there occurs a significant disruption in operations at this facility for any reason, our ability to continue to operate our business would be materially harmed.

Daewoong developed the manufacturing process for Jeuveau® and manufactures Jeuveau® in a recently constructed facility located in South Korea. If this facility were to be damaged, destroyed or otherwise unable to operate or comply with regulatory requirements, whether due to earthquakes, fire, floods, hurricanes, storms, tornadoes, other natural disasters, employee malfeasance, terrorist acts, power outages or otherwise, or if operations at the facility is disrupted for any other

reason, such an event could jeopardize Daewoong's ability to manufacture Jeuveau® as promptly as we or our customers expect or possibly at all. If we experience delays in achieving our development objectives, or if Daewoong is unable to manufacture Jeuveau® within a timeframe that meets our and our customers' expectations, our business, prospects, financial results and reputation could be materially harmed.

If these disruptions exceed coverage provided by Daewoong's insurance policies, Daewoong may be unable to satisfy its obligations to us.

We or the third parties upon whom we depend may be adversely affected by earthquakes or other natural disasters, public health crises, or political unrest and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster or political unrest.

Daewoong, the sole manufacturer of Jeuveau®, manufactures Jeuveau® in a facility located in South Korea. In addition, the underlying drug substance for Jeuveau® is also manufactured in a separate facility on the same campus. As a result of the concentration of the manufacturing and storage facilities for Jeuveau® on this single campus, we are subject to risks that manmade or natural events will impact our supply of Jeuveau®. For example, extreme weather events at or near Daewoong's facilities may impact the accessibility or viability of such facilities. As well, the earthquakes in the Pacific Rim region is high and the Daewoong facility is in close proximity to major earthquake fault lines. Additionally, public health crises may affect South Korea. For example, beginning in December 2019, a strain of coronavirus was reported to have surfaced in Wuhan, China which spread to other areas within Asia. If this or any other public health crisis effects operations at Daewoong, it would have an adverse effect on the ability for Daewoong to manufacture our product. There is also a level of political unrest and potential military conflict or uncertainty in South Korea and the broader region. For example, the operations of the South Korean manufacturing plant may experience unrest or security issues due to the threats posed by North Korea. Natural disasters or political unrest could severely disrupt Daewoong's operations, and have a material adverse effect on our business, results of operations, financial condition and prospects.

If a natural disaster, public health crisis or political unrest, power outage or other event occurred that prevented Daewoong from using all or a significant portion of its manufacturing facility, or prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. In particular, because Daewoong manufactures Jeuveau® in its facility, in the event of a natural disaster, public health crisis, political unrest, power outage or other event affecting this facility, we would be required to seek additional manufacturing facilities and capabilities that have obtained the necessary approvals required by state, federal or other applicable authorities in order to continue or resume manufacturing activities, which we may not be able to do on commercially reasonable terms if at all. Any disaster recovery and business continuity plans that we and Daewoong have in place or put in place may not be adequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of our or Daewoong's lack of disaster recovery and business continuity plans, or the adequacy thereof, which could have a material adverse effect on our business.

Our ability to market Jeuveau® is limited to use for the treatment of glabellar lines, and if we want to expand the indications for which we market Jeuveau®, we will need to obtain additional regulatory approvals, which will be expensive and may not be granted.

We have received regulatory approval for Jeuveau® in the United States for the treatment of moderate to severe glabellar lines. The terms of that approval restrict our ability to market or advertise Jeuveau® for other indications, which could limit physician and consumer adoption. Under the U.S. Federal Food Drug and Cosmetic Act, we may generally only market Jeuveau® for approved indications. Many of our competitors have received approval of multiple aesthetic and therapeutic indications for their neurotoxin products and may be able to market such products for use in a way we cannot. For example, we are aware that one of our competitors, Allergan, has obtained and plans to obtain additional indications for its neurotoxin product within medical aesthetics and, therefore, is able to market its product across a greater number of indications than Jeuveau®. If we are unable to obtain approval for indications in addition to our approval for glabellar lines, our marketing efforts for Jeuveau® will be severely limited. As a result, we may not generate physician and consumer demand or approval of Jeuveau®.

We have entered into an agreement with Alphaeon relating to certain rights to the therapeutic indications of Jeuveau® under the Daewoong Agreement and, as a result, we will not be able to pursue therapeutic indications for Jeuveau®.

On December 18, 2017, we entered into the therapeutic agreement with Alphaeon, or the therapeutic agreement, relating to certain rights to the therapeutic indications of botulinum toxin products under the Daewoong Agreement. Pursuant to the Daewoong Agreement, we received an option to expand the permitted uses of botulinum toxin products to cover all

therapeutic uses in the United States, EU, Canada, Australia, Russia, C.I.S. and South Africa, or the covered territories, and Japan, or the therapeutic option.

However, pursuant to the therapeutic agreement, we agreed not to sell, sub-license or otherwise dispose in whole or in part the therapeutic option or the rights underlying the therapeutic option and hold the therapeutic option and the underlying rights in trust for Alphaeon. In September 2018, Alphaeon exercised the right to obtain the therapeutic option to botulinum toxin products and remitted the option exercise price directly to Daewoong.

In December 2019, Alphaeon and Daewoong entered into a direct distribution agreement for botulinum toxin products for therapeutic uses that is separate and distinct from the Daewoong Agreement. Our entry into the therapeutic agreement and the entry by Alphaeon into an agreement directly with Daewoong eliminates our ability to expand the permitted uses of botulinum toxin products for therapeutic indications.

If we are found to have improperly promoted off-label uses, or if physicians misuse our products or use our products off-label, we may become subject to prohibitions on the sale or marketing of our products, significant fines, penalties, sanctions, or product liability claims, and our image and reputation within the industry and marketplace could be harmed.

The FDA and other regulatory agencies strictly regulate the marketing and promotional claims that are made about pharmaceutical products, such as Jeuveau®. In particular, a product may not be promoted for uses or indications that are not approved by the FDA or other similar regulatory authorities as reflected in the product's approved labeling. Physicians could use Jeuveau® on their patients in a manner that is inconsistent with the approved label of the treatment of moderate to severe glabellar lines, potentially including for the treatment of other aesthetic or therapeutic indications. If we are found to have promoted such off-label uses, we may receive warning letters from and be subject to other enforcement actions by the FDA, the EMA and other regulatory agencies, and become subject to significant liability, which would materially harm our business. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. If we become the target of such an investigation or prosecution based on our marketing and promotional practices, we could face similar sanctions, which would materially harm our business. In addition, management's attention could be diverted from our business operations, significant legal expenses could be incurred, and our reputation could be damaged. The FDA has also required that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed in order to resolve FDA enforcement actions. If we are deemed by the FDA to have engaged in the promotion of our products for off-label use, we could be subject to FDA prohibitions or other restrictions on the sale or marketing of our products and other operations or significant fines and penalties, and the imposition of these sanctions could also affect our reputation and position within the industry. In addition, regulatory authorities outside the United States may impose similar fines, penalties or sanctions.

Physicians may also misuse Jeuveau® or any future product candidates or use improper techniques, potentially leading to adverse results, side effects or injury, which may lead to product liability claims. If Jeuveau® or any future product candidates are misused or used with improper techniques or are determined to cause or contribute to consumer harm, we may become subject to costly litigation by our customers or their patients. Product liability claims could divert management's attention from our core business, be expensive to defend, result in sizable damage awards against us that may not be covered by insurance and subject us to negative publicity resulting in reduced sales of our products. Furthermore, the use of Jeuveau® or any future product candidates for indications other than those cleared by the FDA may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and consumers. Any of these events could harm our business and results of operations and cause our stock price to decline.

Jeuveau® or any of our future product candidates may cause serious or undesirable side effects or possess other unexpected properties that could delay or prevent their regulatory approval, limit the commercial profile of approved labeling or result in post-approval regulatory action.

Unforeseen side effects from Jeuveau® or our future product candidates could arise either during clinical development or after marketing such product. Undesirable side effects caused by product candidates could cause us or regulatory authorities to interrupt, modify, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA, the EMA or similar regulatory authorities. Results of clinical trials could reveal a high and unacceptable severity and prevalence of side effects. In such an event, trials could be suspended or terminated and the FDA, the EMA or similar regulatory authorities could order us to cease further development of or deny approval of product candidates for any or all targeted indications. The drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in product liability claims. Any of these occurrences may harm our business, financial condition, operating results and prospects.

Additionally, if we or others identify undesirable side effects, or other previously unknown problems, caused by Jeuveau®, or any of our future product candidates, after obtaining regulatory approval in the United States or other jurisdictions, a number of potentially negative consequences could result, including:

- regulatory authorities may withdraw their approval of the product;
- regulatory authorities may require a recall of the product or we may voluntarily recall a product;
- regulatory authorities may require the addition of warnings or contraindications in the product labeling, narrowing of the indication in the product label or issuance of field alerts to physicians and pharmacies;
- regulatory authorities may require us to create a medication guide outlining the risks of such side effects for distribution to patients or institute a Risk Evaluation and Mitigation Strategies, or REMS;
- we may be subject to limitations as to how we market or promote the product;
- we may be required to change the way the product is administered or modify the product in some other way;
- regulatory authorities may require additional clinical trials or costly post-marketing testing and surveillance to monitor the safety or efficacy of the product;
- sales of the product may decrease significantly;
- we could be sued and held liable for harm caused to patients; and
- our brand and reputation may suffer.

Any of the above events could prevent us from achieving or maintaining market acceptance of the affected product, negatively impact our revenues and could substantially increase the costs of commercializing our products. The demand for Jeuveau® could also be negatively impacted by any adverse effects of a competitor's product or treatment.

Our failure to successfully in-license, acquire, develop and market additional product candidates or approved products would impair our ability to grow our business.

Although most of our effort is focused on the commercialization of Jeuveau®, a key element of our long-term strategy is to in-license, acquire, develop, market and commercialize a portfolio of products to serve the self-pay aesthetic market. Because our internal research and development capabilities are limited, we may be dependent upon pharmaceutical and other companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify and select promising pharmaceutical product candidates and products, negotiate licensing or acquisition agreements with their current owners and finance these arrangements.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing, sales and other resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

Further, any product candidates that we acquire may require additional development efforts prior to commercial sale, including preclinical or clinical testing and approval by the FDA, the EMA and other similar regulatory authorities. All product candidates are prone to risks of failure during pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities. In addition, any approved products that we acquire may not be manufactured or sold profitably or achieve market acceptance.

If we are unable to establish sufficient sales and marketing capabilities on our own or through third parties, we will be unable to successfully commercialize Jeuveau® or any other future product candidates or generate significant product revenue.

In connection with the commercial launch of Jeuveau® in the United States, we built sales and marketing capabilities. We have no prior experience in the marketing, sale and distribution of aesthetic medicine products, and there are significant risks involved in building and managing a sales organization, including our ability to retain and incentivize qualified individuals, provide adequate training to sales and marketing personnel, generate sufficient sales leads, effectively manage a geographically dispersed sales and marketing team, adequately provide complementary products to be offered by sales personnel, which may otherwise put us at a competitive disadvantage relative to companies with more extensive product lines, and handle any unforeseen costs and expenses. Any failure or delay in the development of our internal sales, marketing and distribution capabilities would adversely impact the commercialization of these products. We may choose to collaborate with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize Jeuveau® or any future product candidates. To the extent we commercialize our product candidates by entering into agreements with third-party collaborators, we may have limited or no control over the sales, marketing and distribution activities of these third parties, in which case our future revenues would depend heavily on the success of the efforts of these third parties. If we are not successful in commercializing Jeuveau® or any future product candidates, either on our own or through collaborations with one or more third parties, our future product revenue will suffer, and we would incur significant additional losses.

To successfully commercialize Jeuveau® outside the United States or any other future product candidates in the United States, EU, Canada and other jurisdictions we may seek to enter, we will need to build our marketing, sales, distribution, managerial and other capabilities or make arrangements with third parties to perform these services, and we may not be successful in doing so.

We may need to increase the size of our organization, and we may experience difficulties in managing this growth.

As of December 31, 2019, we had 235 employees, all of whom constituted full-time employees. Our management and personnel, systems and facilities currently in place may not be adequate to support future growth. Our need to effectively execute our growth strategy requires that we:

- manage any of our future clinical trials effectively;
- identify, recruit, retain, incentivize and integrate any additional employees;
- manage our internal development efforts effectively while carrying out our contractual obligations to third parties; and
- continue to improve our operational, financial and management controls, reporting systems and procedures.

Due to our limited financial resources and our limited experience in managing a company with such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our development and strategic objectives or disrupt our operations.

Our employees, independent contractors, consultants, commercial collaborators, principal investigators, vendors and other agents may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.

We are exposed to the risk that our employees, independent contractors, consultants, commercial collaborators, principal investigators, vendors and other agents may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates applicable regulations, including those laws requiring the reporting of true, complete and accurate information to regulatory agencies, manufacturing standards and federal and state healthcare laws and regulations. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. Although our strategy to focus only on the self-pay market will reduce our risk under the Anti-Kickback Statute, we could face liability under similar state laws that are not limited to products

reimbursed by the government or if we obtain regulatory approval for products reimbursed by federal healthcare programs in the future. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, referrals, customer incentive programs and other business arrangements. Misconduct by these parties could also involve the improper use of individually identifiable information, including, without limitation, information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. The precautions we take to detect and prevent misconduct may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, including, without limitation, damages, fines, disgorgement, imprisonment and the curtailment or restructuring of our operations.

In the future, we may rely on third-parties and consultants to conduct all of our preclinical studies and clinical trials. If these third parties or consultants do not successfully carry out their contractual duties or meet expected deadlines, we may be unable to obtain regulatory approval for any future product candidates.

In the future, we may rely on medical institutions, clinical investigators, contract laboratories, collaborative partners and other third parties, such as contract research organizations, or CROs, to conduct clinical trials on our product candidates. The third parties with whom we may contract for execution of any of our future clinical trials may play a significant role in the conduct of these trials and the subsequent collection and analysis of data. However, any of these third parties may not be our employees, and except for contractual duties and obligations, we would have limited ability to control the amount or timing of resources that they devote to any of our future programs. Although we may rely on these third parties to conduct our preclinical studies and clinical trials, we would remain responsible for ensuring that each of our preclinical studies and clinical trials is conducted in accordance with the applicable investigational plan and protocol. Moreover, the FDA and other similar regulatory authorities require us to comply with, among other requirements, good clinical practices, or GCPs, for conducting, monitoring, recording and reporting the results of clinical trials to ensure that the data and results are scientifically credible and accurate, and that the trial subjects are adequately informed of the potential risks of participating in clinical trials. We may also rely on consultants to assist in the execution, including data collection and analysis, of any of our future clinical trials.

In addition, the execution of preclinical studies and clinical trials, and the subsequent compilation and analysis of the data produced, requires coordination among various parties. In order for these functions to be carried out effectively and efficiently, it is imperative that these parties communicate and coordinate with one another. Moreover, these third parties may also have relationships with other commercial entities, some of which may compete with us. If the third parties or consultants conducting our clinical trials do not perform their contractual duties or obligations, experience work stoppages, do not meet expected deadlines, terminate their agreements with us or need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical trial protocols or GCPs, or for any other reason, we may need to conduct additional clinical trials or enter into new arrangements with alternative third parties, which could be difficult, costly or impossible, and our clinical trials may be extended, delayed or terminated or may need to be repeated. If any of the foregoing were to occur, we may not be able to obtain, or may be delayed in obtaining, regulatory approval for and will not be able to, or may be delayed in our efforts to, successfully commercialize any future product candidates being tested in such trials.

We plan to rely on third-party distribution partners for the distribution of our products, product candidates and services outside of the United States, which could delay or limit our ability to generate revenue.

With respect to certain markets for our products, product candidates and services outside of the United States, we plan to retain third-party service providers to perform functions related to the marketing, distribution and sale of Jeuveau® and any future product candidates. Key aspects of those functions may be out of our direct control, including regulatory compliance, warehousing and inventory management, distribution, contract administration, accounts receivable management and call center management. Any future distribution partners may hold significant control over important aspects of the commercialization of our products, including market identification, regulatory compliance, marketing methods, pricing, composition of sales force and promotional activities.

We may not be able to control the amount and timing of resources that any current or future third-party distribution partners may devote to our products, or prevent any third-party distribution partners from pursuing the development of alternative technologies or products that compete with our products, except to the extent our contractual arrangements protect us against

such activities. Also, we may not be able to prevent any other third-party distribution partners from withdrawing its support of our products.

If third-party service providers fail to comply with applicable laws and regulations, fail to meet expected deadlines, encounter natural or other disasters at their facilities or otherwise fail to perform their services to us in a satisfactory or predicted manner, or at all, our ability to deliver product to meet commercial demand could be significantly impaired. In addition, we may use third parties to perform various other services for us relating to sample accountability and regulatory monitoring, including adverse event reporting, safety database management and other product maintenance services. If the quality or accuracy of the data maintained by these service providers is insufficient, our ability to continue to market our products could be jeopardized or we could be subject to regulatory sanctions, and any indemnity we may receive from such third-party service providers could be limited by such provider's ability to pay and otherwise might not be sufficient to cover all losses we may experience.

We forecast the demand for commercial quantities of our products, and if our forecasts are inaccurate, we may experience delays in shipments, increased inventory costs or inventory levels, and reduced cash flow.

We purchase Jeuveau® from Daewoong. Pursuant to the Daewoong Agreement, we submit forecasts of anticipated product orders to Daewoong and may, from time to time, submit purchase orders on the basis of these forecasting requirements. Our limited historical experience may not provide us with enough data to accurately predict future demand. In addition, we expect Daewoong to manufacture its own product, Nabota, a botulinum toxin formulation, from this facility for sale in the South Korean market and other markets in which we do not have exclusive rights. If our business significantly expands, our demand for commercial products would increase and Daewoong may be unable to meet our increased demand. In addition, our product will have fixed future expiration dates. If we overestimate our component and material requirements, we will have excess inventory, which may have to be disposed of if such inventory exceeds approved expiration dates, which would result in lost revenues and increase our expenses. If we underestimate our component and material requirements, we may have inadequate inventory, which could interrupt, delay or prevent delivery of our products to our customers. Any of these occurrences would negatively affect our financial performance.

Our international operations will expose us to risks, and failure to manage these risks may adversely affect our operating results and financial condition.

We currently have operations in the United States and may have operations in EU in the future. International operations are subject to a number of inherent risks, and our future results could be adversely affected by a number of factors, including:

- requirements or preferences for domestic products or solutions, which could reduce demand for our products;
- differing existing or future regulatory and certification requirements;
- management communication and integration problems resulting from cultural and geographic dispersion;
- greater difficulty in collecting accounts receivable and longer collection periods;
- difficulties in enforcing contracts;
- difficulties and costs of staffing and managing non-U.S. operations;
- the uncertainty of protection for intellectual property rights in some countries;
- tariffs and trade barriers, export regulations and other regulatory and contractual limitations on our ability to sell our products;
- multiple, conflicting and changing laws and regulations such as privacy regulations, including General Data Protection Regulation, or GDPR, tax laws, export and import restrictions, employment laws, immigration laws, labor laws, regulatory requirements and other governmental approvals, permits and licenses;
- more stringent data protection standards in some countries;
- greater risk of a failure of foreign employees to comply with both U.S. and foreign laws, including export and antitrust regulations, the U.S. Foreign Corrupt Practices Act, or FCPA, quality assurance and other healthcare regulatory requirements and any trade regulations ensuring fair trade practices;

- heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements;
- foreign currency exchange rates and the generally lower average sales prices available in most international markets compared to those in the United States;
- potentially adverse tax consequences, including multiple and possibly overlapping tax structures and difficulties relating to repatriation of cash;
- economic, legal and regulatory uncertainty associated with the United Kingdom leaving the EU, or Brexit; and
- political and economic instability, political unrest and terrorism.

These and other factors could harm our ability to gain future revenue and, consequently, materially impact our business, operating results and financial condition.

A perception of a conflict of interest of our indirect physician investors by other physicians or consumers could negatively impact our future product sales.

Prior to our initial public offering, we were indirectly funded through investments in our controlling stockholder, Alphaeon, and its majority stockholder, SCH, in part, by leading physicians in the self-pay healthcare market, or the indirect physician investors. As a result, through Alphaeon (and, subsequent to its transfer of shares, Alphaeon 1, LLC) and SCH, these indirect physician investors may have an indirect financial interest in our success (as our successes, if any, will in part be imputed to Alphaeon 1, LLC and ultimately SCH) and may be more inclined to use, promote or recommend Jeuveau® to their patients and other physicians. Other physicians may become aware of the indirect and potential financial interest and investments of these indirect physician investors, who realize additional incentives by recommending Jeuveau® and any of our future product candidates. If other physicians perceive this to be a significant conflict, they may be unwilling to purchase Jeuveau® or any of our future product candidates without obtaining additional third-party evidence of their benefits and efficacy. If consumers perceive these indirect physician investors have a conflict of interest in recommending Jeuveau® or any of our future product candidates, they may be unwilling to purchase Jeuveau® or any of our future product candidates and may have a negative view of our brand, which could harm our reputation in the market. If physicians do not recommend Jeuveau® or any of our future product candidates or consumers choose not to purchase any of our products as a result of these conflicts of interest, it could adversely affect our business.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of any future products we develop.

We face an inherent risk of product liability as a result of the commercialization of Jeuveau® and any of our future product candidates. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranties. Claims could also be asserted against us under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Even a successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for Jeuveau® or any future product candidates or products we develop;
- termination of clinical trial sites or entire trial programs;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial participants or cancellation of clinical trials;
- significant costs to defend the related litigation;
- a diversion of management’s time and our resources;
- substantial monetary awards to trial participants or patients;

- regulatory investigations, product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- the inability to commercialize any products we develop; and
- a decline in our share price.

Our inability to obtain and maintain sufficient product liability insurance at an acceptable cost and scope of coverage to protect against potential product liability claims could prevent or inhibit the commercialization of Jeuveau® or any future products that we develop. We currently carry product liability insurance covering our clinical trials. Although we maintain such insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. Our insurance policies also have various exclusions and deductibles, and we may be subject to a product liability claim for which we have no coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts. Moreover, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses.

If we fail to attract and keep senior management and key scientific personnel, we may be unable to commercialize Jeuveau® successfully, or any future products we develop.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management. We believe that our future success is highly dependent upon the contributions of our senior management, particularly David Moatazedi, our President, Chief Executive Officer and member of our board of directors, Lauren Silvernail, our Chief Financial Officer and Executive Vice President, Corporate Development, Rui Avelar, our Chief Medical Officer and Head of R&D, and Michael Jafar, our Chief Marketing Officer, as well as other members of our senior management team. The loss of services of any of these individuals could delay or prevent the successful development of our product pipeline, completion of our planned clinical trials or the commercialization of Jeuveau® or any future products we develop.

In addition, we could experience difficulties attracting and retaining qualified employees in the future. For example, competition for qualified personnel in the pharmaceuticals and aesthetic medicine field is intense due to the limited number of individuals who possess the skills and experience required by our industry. We may not be able to attract and retain quality personnel on acceptable terms, or at all. In addition, to the extent we hire personnel from competitors, we may be subject to allegations that they have been improperly solicited or that they have divulged proprietary or other confidential information or that their former employers own their research output.

Unfavorable global economic conditions could adversely affect our business, financial condition or results of operations.

Our results of operations could be adversely affected by general conditions in the global economy and in the global financial markets. Furthermore, the market for aesthetic medical procedures may be particularly vulnerable to unfavorable economic conditions. We do not expect Jeuveau® for the treatment of glabellar lines to be reimbursed by any government or third-party payor and, as a result, our product will be ultimately paid for by the consumer. Demand for Jeuveau® is tied to discretionary spending levels of our targeted consumer population. A severe or prolonged economic downturn could result in a variety of risks to our business, including a decline in the discretionary spending of our target consumer population, which could lead to a weakened demand for Jeuveau® or any future product candidates. A severe or prolonged economic down turn may also affect our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy could also strain our suppliers, possibly resulting in supply disruption, or cause our customers to delay making payments for our services. Any of the foregoing could harm our business.

In addition, our business strategy was developed based on a number of important assumptions about the self-pay healthcare market. For example, we believe that the number of self-pay healthcare procedures will increase in the future. However, these trends are uncertain and limited sources exist to obtain reliable market data. Therefore, sales of Jeuveau® or any of our future product candidates could differ materially from our projections if our assumptions are incorrect.

Our strategy of focusing exclusively on the self-pay healthcare market may limit our ability to increase sales or achieve profitability.

Our near-term strategy of focusing exclusively on the self-pay healthcare market may limit our ability to increase sales or achieve profitability. For example, to maintain our business model, we cannot offer products or services available in the broader healthcare market that are reimbursed by third-party payors such as Medicare, Medicaid or commercial insurance. This eliminates our ability to offer a substantial number of products and indications for Jeuveau®.

We incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to new compliance initiatives. We may fail to comply with the rules that apply to public companies, including Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, which could result in sanctions or other penalties that would harm our business.

We incur and expect to incur significant legal, accounting, information technology and other expenses as a public company, including costs resulting from public company reporting obligations under the Exchange Act and regulations regarding corporate governance practices. The listing requirements of the Nasdaq Global Market, or Nasdaq, and the rules of the SEC require that we satisfy certain corporate governance requirements. Our management and other personnel devote a substantial amount of time to ensure that we comply with all of these requirements. Moreover, the reporting requirements, rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costly. Any changes we make to comply with these obligations may not be sufficient to allow us to satisfy our obligations as a public company on a timely basis, or at all. These reporting requirements, rules and regulations, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms.

We are subject to Section 404 of the Sarbanes-Oxley Act, or Section 404, and the related rules of the SEC, which generally require our management and independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting. In order to maintain effective internal controls, we will need additional financial personnel, systems and resources. However, for so long as we remain an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b). Once we are no longer an emerging growth company or, if prior to such date, we opt to no longer take advantage of the applicable exemption, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting. We will remain an emerging growth company until the earliest of: (i) December 31, 2023; (ii) the first fiscal year after our gross annual revenues are $1.07 billion or more; (iii) the date on which we have, during the immediately preceding three-year period, issued more than $1.0 billion in non-convertible debt securities; or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates is $700 million or more as of the end of the second quarter of that fiscal year.

While we have conducted a review of our internal controls for the purpose of providing the reports required by these rules, during the course of our review and testing, we may identify deficiencies and be unable to remediate them before we must provide the required reports. Furthermore, if we have a material weakness in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We or our independent registered public accounting firm may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting, which could harm our operating results, cause investors to lose confidence in our reported financial information and cause the trading price of our stock to fall. In addition, as a public company we will be required to file accurate and timely quarterly and annual reports with the SEC under the Exchange Act. Any failure to report our financial results on an accurate and timely basis could result in sanctions, lawsuits, delisting of our shares from the Nasdaq Global Market or other adverse consequences that would materially harm our business and reputation.

Our business involves the use of hazardous materials, and we and our third-party manufacturer and supplier must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our research and development and manufacturing activities in the future may, and Daewoong's manufacturing and supplying activities presently do, involve the controlled storage, use and disposal of hazardous materials, including botulinum toxin type A, a key component of Jeuveau®, and other hazardous compounds. We and Daewoong are subject to laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. In some cases, these hazardous materials and various wastes resulting from their use are stored at Daewoong's facilities pending their use and

disposal. We and Daewoong cannot eliminate the risk of contamination, which could cause an interruption of Daewoong's manufacturing processes, our commercialization efforts, business operations and environmental damage resulting in costly clean-up and liabilities under applicable laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and specified waste products. Although we believe that the safety procedures utilized by Daewoong for handling and disposing of these materials generally comply with the standards prescribed by these laws and regulations, this may not eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources, and state or federal or other applicable authorities may curtail our use of certain materials and interrupt our business operations. Furthermore, environmental laws and regulations are complex, change frequently and have tended to become more stringent.

We may use third-party collaborators to help us develop, validate or commercialize any new products, and our ability to commercialize such products could be impaired or delayed if these collaborations are unsuccessful.

We may license or selectively pursue strategic collaborations for the development, validation and commercialization of Jeuveau® and any future product candidates. In any third-party collaboration, we would be dependent upon the success of the collaborators in performing their responsibilities and their continued cooperation. Our collaborators may not cooperate with us or perform their obligations under our agreements with them. Our collaborators may choose to pursue alternative technologies in preference to those being developed in collaboration with us. The development, validation and commercialization of our product candidates will be delayed if collaborators fail to conduct their responsibilities in a timely manner or in accordance with applicable regulatory requirements or if they breach or terminate their collaboration agreements with us. Disputes with our collaborators could also impair our reputation or result in development delays, decreased revenues and litigation expenses.

In addition, we may face significant competition in seeking appropriate collaborators. Whether we reach a definitive agreement for a collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of clinical trials, the likelihood of approval by the FDA or similar regulatory authorities outside the United States, the potential market for the subject product candidate, the costs and complexities of manufacturing and delivering such product candidate to consumers, the potential of competing products, the existence of uncertainty with respect to our ownership of technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge and industry and market conditions generally. The collaborator may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on and whether such a collaboration could be more attractive than the one with us for our product candidate. Collaborations are complex and time-consuming to negotiate and document.

We may not be able to negotiate collaborations on a timely basis, on acceptable terms, or at all. If we are unable to do so, we may have to curtail the development of such product candidate, reduce or delay its development program or one or more of our other development programs, delay its potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we may not be able to further develop our product candidates or bring them to market and generate revenue.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

We have incurred substantial losses during our history and do not expect to become profitable in the near future, and we may never achieve profitability. To the extent that we continue to generate taxable losses, unused losses will carry forward to offset future taxable income, if any, until such unused losses expire. Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards, or NOLs, and other pre-change tax attributes, such as research tax credits, to offset its post-change income may be limited. As of December 31, 2019, we had $179.6 million of federal NOLs and $94.1 million of state NOLs available to offset our future taxable income, if any. As of December 31, 2019, we had federal research and development credit carryforwards of $1.4 million. These federal and state NOLs and federal research and development tax credit carryforwards expire at various dates beginning in 2034. We may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we earn net taxable income, our ability to use our pre-change NOLs to offset U.S. federal taxable income may be subject to limitations, which could potentially result in increased future

tax liability to us. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

Increased regulatory oversight and uncertainty relating to the LIBOR calculation process and potential phasing out of LIBOR after 2021 may adversely affect the results of our operations.

As of December 31, 2019, we had $73.5 million of outstanding indebtedness that bears interest at a floating rate using LIBOR as the applicable reference rate and that have maturities beyond 2021. On July 27, 2017, the United Kingdom's Financial Conduct Authority, which regulates LIBOR, announced that it intends to stop persuading or compelling banks to submit rates for the calculation of LIBOR after 2021. The announcement indicates that the continuation of LIBOR on the current basis cannot and will not be guaranteed after 2021. It is impossible to predict whether and to what extent banks will continue to provide LIBOR submissions to the administrator of LIBOR, whether LIBOR rates will cease to be published or supported before or after 2021 or whether any additional reforms to LIBOR may be enacted in the United Kingdom or elsewhere. Efforts in the United States to identify a set of alternative U.S. dollar reference interest rates include proposals by the Alternative Reference Rates Committee of the Federal Reserve Board and the Federal Reserve Bank of New York. Uncertainty as to the nature of alternative reference rates and as to potential changes in other reforms to LIBOR may adversely affect LIBOR rates and may impact the availability and cost of borrowings, including the rates we pay on our credit facility with Oxford. If LIBOR rates are no longer available or do not remain an acceptable market benchmark, any successor or replacement interest rates may perform differently, which may adversely affect our interest expenses. We may incur significant costs to transition our borrowing arrangement with Oxford from LIBOR, which may have an adverse effect on our results of operations. The effect of a transition away from LIBOR on our company cannot yet be determined, and management continues to evaluate the LIBOR exposure risks.

Our business and operations would suffer in the event of computer system failures or breach by hackers.

Despite the implementation of security measures, our internal computer systems, and those of third parties on which we rely, are vulnerable to damage from computer viruses, malware, natural disasters, terrorism, war, telecommunication and electrical failures, cyberattacks or cyber intrusions over the internet, attachments to emails, persons inside our organization, or persons with access to systems inside our organization. The risk of a security breach or disruption, particularly through cyberattacks or cyber intrusions, including by computer hackers, foreign governments and cyberterrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our current or future product development programs. The costs to us to mitigate network security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant, and while we have implemented security measures to protect our data security and information technology systems, our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, cessation of service, government files or penalties and other harm to our business and our competitive position. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our product development programs. For example, the loss of clinical trial data from completed, ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data.

Moreover, if a computer security breach affects our systems or results in the unauthorized release of personally identifiable information, or PII, our reputation could be materially damaged. In addition, such a breach may require notification to governmental agencies, the media or individuals pursuant to various international, federal and state privacy and security laws, if applicable, including the GDPR, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Clinical Health Act of 2009, and its implementing rules and regulations, as well as regulations promulgated by the Federal Trade Commission and state breach notification laws. Additionally, the regulatory environment governing information, security and privacy laws is increasingly demanding and continues to evolve and a number of states have adopted laws and regulations that may affect our privacy and data security practices regarding the use, disclosure and protection of PII. For example, the California Consumer Privacy Act, among other things, has created new individual privacy rights and imposes increased obligations on companies handling PII. We would also be exposed to a risk of loss or litigation and potential liability, which could materially adversely affect our business, results of operations and financial condition. Our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyberattacks and other related breaches.

Risks Related to Intellectual Property

If we or any of our current or future licensors, including Daewoong, are unable to maintain, obtain or protect intellectual property rights related to Jeuveau® or any of our future product candidates, we may not be able to compete effectively in our market.

We and our current licensor, Daewoong, currently rely upon a combination of trademarks, trade secret protection, confidentiality agreements and proprietary know-how. Botulinum toxin cannot be patented, as it is produced by *Clostridium botulinum*, a gram-positive, rod-shaped, anaerobic, spore-forming, motile bacterium with the ability to produce the neurotoxin botulinum. Only the manufacturing process for botulinum toxin can be patented, for which Daewoong has obtained a U.S. patent. Our trade secrets and other confidential proprietary information and those of our licensors could be disclosed or competitors could otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we or any of our current or future licensors may encounter significant problems in protecting and defending our or their intellectual property both in the United States and internationally. If we or any of our current or future licensors are unable to prevent material disclosure of the non-patented intellectual property related to Jeuveau® to third parties, we may not be able to establish or maintain a competitive advantage in our market, which could adversely affect our business.

In addition to the protection afforded by trademarks, confidentiality agreements and proprietary know-how, we may in the future rely upon in-licensed patents for any future product offerings. The strength of patents we may in-license in the technology and healthcare fields involves complex legal and scientific questions and can be uncertain. The patent applications that we may in-license may fail to result in issued patents with claims that cover any of our future product candidates in the United States or in other foreign countries, and the issued patents that we may in-license may be declared invalid or unenforceable.

We are reliant on the ability of Daewoong, as the licensor of our only product, and will be reliant on future licensors of any future product candidates, to maintain their intellectual property and protect their intellectual property against misappropriation, infringement or other violation. We may not have primary control over our future licensors' patent prosecution activities. Furthermore, we may not be allowed to comment on prosecution strategies, and patent applications may be abandoned by the patent owner without our knowledge or consent. With respect to patents that are issued to our licensors, or patents that may be issued on patent applications, third parties may challenge their validity, enforceability or scope, which may result in such patents being narrowed or invalidated. As a licensee, we are reliant on Daewoong and our future licensors to defend any third-party claims, including Daewoong's defense in connection with the Medytox Litigation, which is defined below. Our licensors may not defend or prosecute such actions as vigorously or in the manner that we would have if entitled to do so, and we will be subject to any judgment or settlement resulting from such actions. Also, a third-party may challenge the validity of our in-licensing transactions. Furthermore, even if they are unchallenged, any of our future in-licensed patents and patent applications may not adequately protect the licensors or our intellectual property or prevent others from designing around their or our claims.

We may become involved in lawsuits to protect or enforce our intellectual property or the patents and other intellectual property of our licensors, which could be expensive and time-consuming.

Competitors may infringe our intellectual property, including any future patents we may acquire, or the patents and other intellectual property of our licensors, including Daewoong. As a result, we or any of our current or future licensors may be required to file infringement claims to stop third-party infringement or unauthorized use. This can be expensive, particularly for a company of our size, and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or any of our current or future licensors is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patent claims do not cover its technology or that the factors necessary to grant an injunction against an infringer are not satisfied.

An adverse determination of any litigation or other proceedings could put one or more of such patents at risk of being invalidated or interpreted narrowly. Interference, derivation or other proceedings brought at the USPTO may be necessary to determine the priority or patentability of inventions with respect to any of our future patent applications or those of our licensors or collaborators. Litigation or USPTO proceedings brought by us or any of our current or future licensors may fail or may be invoked against us or our licensors by third parties. Even if we are successful, domestic or foreign litigation or USPTO or foreign patent office proceedings may result in substantial costs and distraction to our management or the management of any of our current or future licensors, including Daewoong. We may not be able, alone or with any of our

current or future licensors or collaborators, to prevent misappropriation of our proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the United States.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation or other proceedings, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation or proceedings. In addition, during the course of this kind of litigation or proceedings, there could be public announcements of the results of hearings, motions or other interim proceedings or developments or public access to related documents. If investors perceive these results to be negative, the market price for our common stock could be significantly harmed.

Most of our competitors are larger than we are and have substantially greater resources. They are, therefore, likely to be able to sustain the costs of complex patent litigation longer than we could. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. In addition, the uncertainties associated with litigation could compromise our ability to raise the funds necessary to continue our clinical trials, continue our internal research programs, or in-license needed technology or other product candidates. There could also be public announcements of the results of the hearing, motions, or other interim proceedings or developments. If securities analysts or investors perceive those results to be negative, it could cause the price of shares of our common stock to decline.

We may not be able to protect our intellectual property rights throughout the world.

Filing, prosecuting and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States and in some cases may even force us to grant a compulsory license to competitors or other third parties. Consequently, we may not be able to prevent third parties from using our inventions in all countries outside the United States or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our products and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biopharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

In addition, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in domestic and foreign intellectual property laws.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patents for our product candidates, we also rely on trade secrets, including unpatented know-how, technology and other proprietary information, to maintain our competitive position.

We seek to protect our trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, collaborators, consultants, advisors and other third parties. We expect to enter into confidentiality and invention assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts within and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or

those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.

We employ individuals who were previously employed at other pharmaceutical or medical aesthetic companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed confidential information of our employees' former employers or other third parties. We may also be subject to claims that former employers or other third parties have an ownership interest in our patents. Litigation may be necessary to defend against these claims. We may not be successful in defending these claims, and even if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees. Any litigation or the threat thereof may adversely affect our ability to hire employees. A loss of key personnel or their work product could diminish or prevent our ability to commercialize product candidates, which could have an adverse effect on our business, results of operations and financial condition.

We may need to license intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.

A third party may hold intellectual property, including patent rights that are important or necessary to the development of our future product candidates. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our product candidates, in which case we would be required to obtain a license from these third parties on commercially reasonable terms, or our business could be harmed, possibly materially.

If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.

Our registered or unregistered trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition by potential partners or customers in our markets of interest. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected.

Third parties may assert that we are using trademarks or trade names that are confusingly similar to their marks. If any third party were able to establish that our trademarks or trade names were infringing their marks, that third party may be able to block our ability to use the infringing trademark or trade name. In addition, if a third party were to bring such a claim, we would be required to dedicate time and resources to fight the claim, which time and resources could otherwise be used toward the maintenance of our own intellectual property.

Parties making claims against us may request and obtain injunctive or other equitable relief, which could prevent our ability to use the subject trademarks or trade names. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement. We may be required to re-brand one or more of our products, product candidates, or services offered under the infringing trademark or trade name, which may require substantial time and monetary expenditure. Third parties could claim senior rights in marks which might be enforced against our use of trademarks or trade names, resulting in either an injunction prohibiting our sales under those trademarks or trade names.

Risks Related to Government Regulation

Our business and products are subject to extensive government regulation.

We are subject to extensive, complex, costly and evolving regulation by federal and state governmental authorities in the United States, the EU, Canada and other countries, principally by the FDA, the U.S. Drug Enforcement Administration, the Centers for Disease Control and Prevention, the EMA and other similar regulatory authorities. Daewoong is also subject to extensive regulation by the FDA and the South Korean regulatory authorities as well as other regulatory authorities. Our failure to comply with all applicable regulatory requirements, or Daewoong's failure to comply with applicable regulatory requirements, including those promulgated under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Controlled Substances Act, may subject us to operating restrictions and criminal prosecution, monetary penalties and

other enforcement or administrative actions, including, sanctions, warnings, product seizures, recalls, fines, injunctions, suspension, revocation of approvals, or exclusion from future participation in the Medicare and Medicaid programs.

Following regulatory approval, we, and our direct and indirect suppliers, including Daewoong, remain subject to the periodic inspection of our plants and facilities, review of production processes, and testing of our products to confirm that we are in compliance with all applicable regulations. Adverse findings during regulatory inspections may result in requirements that we implement REMS programs, requirements that we complete government mandated clinical trials, and government enforcement actions including those relating to labeling, advertising, marketing and promotion, as well as regulations governing manufacturing controls.

If we experience delays in obtaining approval or if we fail to obtain approval of our product candidates, the commercial prospects for our product candidates may be harmed and our ability to generate revenue will be materially impaired.

We may not obtain regulatory approval for the commercialization of any future product candidates.

The research, testing, manufacturing, labeling, approval, selling, import, export, marketing and distribution of drug and biologic products are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, with regulations differing from country to country. If we, our products or the manufacturing facilities for our products fail to comply with applicable regulatory requirements, a regulatory agency may:

- impose restrictions on the marketing or manufacturing of the product, suspend or withdraw product approvals or revoke necessary licenses;
- issue warning letters, show cause notices or untitled letters describing alleged violations, which may be publicly available;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- commence criminal investigations and prosecutions;
- impose injunctions;
- impose other civil or criminal penalties;
- suspend any ongoing clinical trials;
- delay or refuse to approve pending applications or supplements to approved applications filed by us;
- refuse to permit drugs or active ingredients to be imported or exported;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require us to initiate a product recall.

Prior to obtaining approval to commercialize a product candidate in the United States or abroad, we or our collaborators must demonstrate with substantial evidence from well-controlled clinical trials, and to the satisfaction of the FDA, the EMA or other similar foreign regulatory authorities, that such product candidates are safe and effective for their intended uses. Results from preclinical studies and clinical trials can be interpreted in different ways. Even if we and our collaborators believe the preclinical or clinical data for our product candidates are promising, such data may not be sufficient to support approval by the FDA, the EMA and other similar regulatory authorities. Administering product candidates to humans may produce undesirable side effects, which could interrupt, delay or halt clinical trials and result in the FDA, the EMA or other similar regulatory authorities delaying or denying approval of a product candidate for any or all targeted indications.

Regulatory approval of a BLA or BLA supplement, MAA, or other product approval is not guaranteed, and the approval process is expensive and may take several years. The FDA, the EMA and other regulatory authorities have substantial discretion in the approval process. Despite the time and expense expended, failure can occur at any stage, and we could

encounter problems that cause us to abandon, modify or repeat clinical trials, or perform additional preclinical studies and clinical trials. The number of preclinical studies and clinical trials that will be required for the FDA, the EMA or other regulatory approval varies depending on the product candidate, the disease or condition that the product candidate is designed to address and the regulations applicable to any particular product candidate. The FDA, the EMA and other regulatory authorities can delay, limit or deny approval of a product candidate for many reasons, including the following:

- a product candidate may not be deemed safe, effective, pure or potent;
- the data from preclinical studies and clinical trials may not be deemed sufficient;
- the FDA or other regulatory authorities might not approve our third-party manufacturers' processes or facilities;
- deficiencies in the formulation, quality control, labeling, or specifications of a product candidate or in response to citizen petitions or similar documents filed in connection with the product candidate;
- general requirements intended to address risks associated with a class of drugs, such as a new REMS requirement for neurotoxins;
- the enactment of new laws or promulgation of new regulations that change the approval requirements; or
- the FDA or other regulatory authorities may change their approval policies or adopt new regulations.

If any future product candidates fail to demonstrate safety and efficacy in clinical trials or do not gain approval, our business and results of operations will be materially and adversely harmed.

We are subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense, limit or delay regulatory approval and subject us to penalties if we fail to comply with applicable regulatory requirements.

Jeuveau® and any other approved products are subject to continual regulatory review by the FDA, the EMA and other similar regulatory authorities.

Any regulatory approvals that we or our collaborators receive for any future product candidates may also be subject to limitations on the approved indications for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase IV clinical trials, and surveillance to monitor the safety and efficacy of the product. In addition, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for Jeuveau® and any other future product candidates will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMP requirements and compliance with GCP requirements, for any clinical trials that we conduct post-approval. Later discovery of previously unknown problems with Jeuveau® or any future product candidates, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, or voluntary or mandatory product recalls;
- fines, warning letters or holds on clinical trials;
- refusal by the FDA, the EMA or other similar regulatory authorities to approve pending applications or supplements to approved applications filed by us or our strategic collaborators or suspension or revocation of product license approvals;
- product seizure or detention or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

Our ongoing regulatory requirements may also change from time to time, potentially harming or making costlier our commercialization efforts. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would adversely affect our business.

If we fail to obtain regulatory approvals in foreign jurisdictions for Jeuveau® or any future product candidates, we will be unable to market our products outside of the United States.

In addition to regulations in the United States, we are and will be subject to a variety of foreign regulations governing manufacturing, clinical trials, commercial sales and distribution of our future products. Whether or not we obtain FDA approval for a product candidate, we must obtain approval of the product by the comparable regulatory authorities of foreign countries before commencing clinical trials or marketing in those countries. The approval procedures vary among countries and can involve additional clinical testing, and the time required to obtain approval may differ from that required to obtain FDA approval. Clinical trials conducted in one country may not be accepted by regulatory authorities in other countries. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one or more foreign regulatory authorities does not ensure approval by regulatory authorities in other foreign countries or by the FDA. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. We may not be able to file for regulatory approvals or to do so on a timely basis, and even if we do file, we may not receive necessary approvals to commercialize our products in markets outside of the United States.

Jeuveau® or any future products may cause or contribute to adverse medical events that we are required to report to regulatory agencies and if we fail to do so, we could be subject to sanctions that would materially harm our business.

Some participants in our clinical trials have reported adverse events after being treated with Jeuveau®. If we are successful in commercializing Jeuveau® or any other product candidate, the FDA and other regulatory agency regulations require that we report certain information about adverse medical events if those products may have caused or contributed to those adverse events. The timing of our obligation to report would be triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events that we become aware of within the prescribed timeframe. We may also fail to appreciate that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the FDA, the EMA or other similar regulatory authorities could take action including criminal prosecution, the imposition of civil monetary penalties, seizure of our products, or delay in approval or clearance of future products.

We may in the future be subject to various U.S. federal and state laws pertaining to health care fraud and abuse, including anti-kickback, self-referral, false claims and fraud laws, and any violations by us of such laws could result in fines or other penalties.

While we do not expect that Jeuveau® will subject us to the various U.S. federal and most state laws intended to prevent health care fraud and abuse, we may in the future become subject to such laws. The Anti-Kickback Statute prohibits the offer, receipt, or payment of remuneration in exchange for or to induce the referral of patients or the use of products or services that would be paid for in whole or part by Medicare, Medicaid or other federal health care programs. Remuneration has been broadly defined to include anything of value, including cash, improper discounts, and free or reduced price items and services. Many states have similar laws that apply to their state health care programs as well as private payors. Violations of anti-kickback and other applicable laws can result in exclusion from federal health care programs and substantial civil and criminal penalties.

The federal False Claims Act, or FCA, imposes liability on persons who, among other things, present or cause to be presented false or fraudulent claims for payment by a federal health care program. The FCA has been used to prosecute persons submitting claims for payment that are inaccurate or fraudulent, that are for services not provided as claimed, or for services that are not medically necessary. The FCA includes a whistleblower provision that allows individuals to bring actions on behalf of the federal government and share a portion of the recovery of successful claims. Some state law equivalents of the above federal laws, such as the Anti-Kickback Statute and FCA, apply to items or services regardless of whether the good or service was reimbursed by a government program, so called all-payor laws. These all-payor laws could apply to our sales and marketing activities even if the Anti-Kickback Statute and FCA laws are inapplicable.

If our marketing or other arrangements were determined to violate anti-kickback or related laws, including the FCA or an all-payor law, then we could be subject to penalties, including administrative, civil and criminal penalties, damages, fines, disgorgement, the exclusion from participation in federal and state healthcare programs, individual imprisonment or the

curtailment or restructuring of our operations, any of which could materially and adversely affect our ability to operate our business and our financial results.

State and federal authorities have aggressively targeted pharmaceutical companies for alleged violations of these anti-fraud statutes, based on improper research or consulting contracts with doctors, certain marketing arrangements with pharmacies and other healthcare providers that rely on volume-based pricing, off-label marketing schemes, and other improper promotional practices. Companies targeted in such prosecutions have paid substantial fines, have been ordered to implement extensive corrective action plans, and have in many cases become subject to consent decrees severely restricting the manner in which they conduct their business, among other consequences. Additionally, federal and state regulators have brought criminal actions against individual employees responsible for alleged violations. If we become the target of such an investigation or prosecution based on our contractual relationships with providers or institutions, or our marketing and promotional practices, we could face similar sanctions, which would materially harm our business.

Also, the FCPA and similar worldwide anti-bribery laws generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. Our internal control policies and procedures may not protect us from reckless or negligent acts committed by our employees, future distributors, partners, collaborators or agents. Violations of these laws, or allegations of such violations, could result in fines, penalties or prosecution and have a negative impact on our business, results of operations and reputation.

Legislative or regulatory healthcare reforms in the United States and other countries may make it more difficult and costly for us to obtain regulatory clearance or approval of any future product candidates and to produce, market, and distribute our products after clearance or approval is obtained.

From time to time, legislation is drafted and introduced in the U.S. Congress or other countries that could significantly change the statutory provisions governing the regulatory clearance or approval, manufacture, and marketing of regulated products or the reimbursement thereof. In addition, regulations and guidance are often revised or reinterpreted by the FDA and other regulatory authorities in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future product candidates. Such changes could, among other things, require:

- changes to manufacturing or marketing methods;
- changes to product labeling or promotional materials;
- recall, replacement, or discontinuance of one or more of our products; and
- additional recordkeeping.

Each of these would likely entail substantial time and cost and could materially harm our business and our financial results. In addition, delays in receipt of or failure to receive regulatory clearances or approvals for any future products would harm our business, financial condition and results of operations.

Risks Related to Our Relationship with Alphaeon and Alphaeon 1, LLC

Alphaeon 1, LLC may exert significant influence over our business, and the concentrated ownership of our common stock and certain contractual rights of Alphaeon 1, LLC may prevent you and other stockholders from influencing significant decisions.

As of December 31, 2019, Alphaeon owned 25.8% of our outstanding shares of common stock. Subsequent to December 31, 2019, Alphaeon contributed all of those shares to Alphaeon 1, LLC. This concentrated ownership position may provide Alphaeon 1, LLC with significant influence in determining the outcome of corporate actions requiring stockholder approval, including the election and removal of directors. This significant stock ownership may also discourage transactions involving a change-of-control of our company, including transactions in which you as a holder of our common stock might otherwise receive a premium for your shares.

Certain of our directors may have actual or potential conflicts of interest because of their ownership of debt and equity securities in Alphaeon and Alphaeon 1, LLC and their positions with Alphaeon and Alphaeon 1, LLC.

Vikram Malik, Simone Blank, Kristine Romine, M.D., and Robert Hayman serve on our board of directors. Such directors or entities they are affiliated with currently own and may in the future own equity, debt or convertible debt of Alphaeon and

Alphaeon 1, LLC, which we refer to collectively as the Alphaeon entities. These individuals' or entities' holdings of debt or equity securities, options to purchase shares of Alphaeon entities or other equity awards in the Alphaeon entities may be significant for some of these persons or entities compared to these persons' or entities' total assets. Additionally, each of Mr. Malik, and Ms. Blank serve on the board of directors of Alphaeon and board of managers of Alphaeon 1, LLC. Their positions at the Alphaeon entities and the ownership of any Alphaeon entities equity, debt or equity awards may create, or may create the appearance of, conflicts of interest when these directors are faced with decisions that could have different implications for the Alphaeon entities than the decisions have for us.

These decisions include:

- corporate opportunities;
- the impact that operating decisions for our business may have on the Alphaeon entities consolidated financial statements;
- the impact that operating or capital decisions (including the incurrence of indebtedness) for our business may have on the Alphaeon entities' current or future indebtedness or the covenants under that indebtedness;
- the timing and amount of financing efforts, whether they are debt or equity, and the amount of resulting dilution to existing shareholders;
- business combinations involving us;
- our dividend policy;
- management stock ownership; and
- the related party services and agreements between Alphaeon and us.

Potential conflicts of interest could also arise if we decide to enter into any new commercial arrangements with the Alphaeon entities or SCH in the future or in connection with the Alphaeon entities desire to enter into new commercial arrangements with third parties.

Furthermore, disputes may arise between the Alphaeon entities and us relating to our past and ongoing relationship, and these potential conflicts of interest may make it more difficult for us to favorably resolve such disputes, including those related to:

- indemnification and other matters arising from our initial public offering;
- the nature, quality and pricing of services Alphaeon agrees to provide to us;
- sales or other disposal by Alphaeon 1, LLC of all or a portion of its ownership interest in us; and
- business combinations involving us.

We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable to us than if we were dealing with an unaffiliated party. While we are not controlled by the Alphaeon entities, we may not have the leverage to negotiate amendments to these agreements, if required, on terms as favorable to us as those we would negotiate with an unaffiliated third party.

Alphaeon and its directors and officers will have limited liability to us or you for breach of fiduciary duty.

Our certificate of incorporation provides that, subject to any contractual provision to the contrary, Alphaeon has no obligation to refrain from:

- engaging in the same or similar business activities or lines of business as we do;
- doing business with any of our clients or consumers; or
- employing or otherwise engaging any of our officers or employees.

Our certificate of incorporation provides for the allocation of certain corporate opportunities between us and Alphaeon. Under these provisions, neither Alphaeon nor its other affiliates, nor any of their officers, directors, agents, stockholders, members, partners and subsidiaries, will have any obligation to present to us certain corporate opportunities. For example, a director or officer of our company who also serves as a director, officer or employee of Alphaeon or any of its other affiliates may present to Alphaeon certain acquisitions, in-licenses, potential development programs or other opportunities that may be complementary to our business, if he or she was not offered such corporate opportunity in his or her capacity as our director or officer, and, as a result, such opportunities may not be available to us. To the extent attractive corporate opportunities are allocated to Alphaeon or its other affiliates instead of to us, we may not be able to benefit from these opportunities.

In addition, under our certificate of incorporation, neither Alphaeon nor any officer or director of Alphaeon, except as provided in our certificate of incorporation, will be liable to us or to our stockholders for breach of any fiduciary or other duty by reason of any of these activities.

Risks Related to Our Common Stock

The trading price of our common stock may be volatile, and purchasers of our common stock could incur substantial losses.

Our stock price is volatile. For example, the closing price of our common stock during the year ended December 31, 2019 has ranged from a low of $11.58 to a high of $28.91. The stock market in general and the market for earlier-stage pharmaceutical and medical aesthetic companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price for our common stock may be influenced by many factors, some of which are beyond our control, including:

- announcements of regulatory approval or disapproval of product candidates;
- adverse results from or delays in clinical trials of any of our future product candidates;
- unanticipated safety concerns related to the use of Jeuveau® or any of our future products;
- any termination or loss of rights under the Daewoong Agreement;
- the FDA or other U.S. or foreign regulatory or legal actions or changes affecting us or our industry;
- adverse developments concerning our manufacturer or any future strategic partnerships;
- adverse developments concerning litigation pending against us;
- introductions and announcements of new technologies and products by us, any commercialization partners or our competitors, and the timing of these introductions and announcements;
- variations in our financial results or those of companies that are perceived to be similar to us;
- success or failure of competitive products or medical aesthetic products generally;
- changes in the structure of healthcare payment systems;
- announcements by us or our competitors of significant acquisitions, licenses, strategic partnerships, new product approvals and introductions, joint ventures or capital commitments;
- overall financial market conditions for the pharmaceutical and biopharmaceutical sectors and issuance of securities analysts’ reports or recommendations;
- quarterly variations in our results of operations or those of our competitors;
- changes in financial estimates or guidance, including our ability to meet our future revenue and operating profit or loss estimates or guidance;
- the public’s reaction to our earnings releases, other public announcements and filings with the SEC;
- rumors and market speculation involving us or other companies in our industry;

- short selling of our common stock or the publication of opinions regarding our business prospects in a manner that is designed to create negative market momentum;
- sales of substantial amounts of our stock by Alphaeon or other significant stockholders or our insiders, or the expectation that such sales might occur;
- general economic, industry and market conditions, including the size and growth, if any, of the medical aesthetics market;
- news reports relating to trends, concerns and other issues in medical aesthetics market or the pharmaceutical or biopharmaceutical industry;
- operating and stock performance of other companies that investors deem comparable to us and overall performance of the equity markets;
- additions or departures of key personnel, including our Chief Executive Officer, Chief Financial Officer, Chief Medical Officer and Chief Marketing Officer;
- intellectual property, product liability or other litigation against us, our manufacturer or other parties on which we rely or litigation against our general industry;
- announcements or actions taken by Alphaeon as our controlling stockholder, including sales of substantial amounts of our common stock by Alphaeon;
- changes in our capital structure, such as future issuances of securities and the incurrence of additional debt;
- changes in accounting standards, policies, guidelines, interpretations or principles; and
- other factors described in this “Risk Factors” section.

In addition, the stock market in general, and the market for pharmaceutical, biotechnology and medical aesthetics companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may affect the market price of our common stock, regardless of our actual operating performance. In the past, following periods of volatility in the overall market and the market prices of a particular company’s securities, securities class action litigation has often been instituted against that company. We may become the target of this type of litigation in the future. Securities litigation, if instituted against us, could result in substantial costs and divert our management’s attention and resources from our business.

We are no longer a “controlled company” within the meaning of the Nasdaq Marketplace Rules. Prior to May 2019, we qualified for, and relied on, exemptions from certain corporate governance requirements and our stockholders were not afforded the same protections as the stockholders of companies that are subject to such requirements.

As a result of a sale of shares by Alphaeon in May 2019, we are no longer a “controlled company” within the meaning of the corporate governance standards of the Nasdaq Marketplace Rules. Under these rules, a listed company of which more than 50% of the voting power is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain corporate governance requirements, including:

- the requirement that a majority of our board of directors consist of independent directors;
- the requirement that our nominating and corporate governance committee be comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- the requirement that our compensation committee be comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- the requirement for an annual performance evaluation of our nominating and corporate governance and compensation committees;

Since we utilized certain of these exemptions, our nominating and corporate governance and compensation committees do not consist entirely of independent directors. As a result, we will be required to comply with the above-referenced

requirements within one year. We may have difficulty complying with the requirements listed above and while we intend to do so, we cannot assure you that we will be able to comply with such requirements before the end of the phase-in period for compliance. Accordingly, unless and until we comply with these requirements, you will not have the same protections afforded to stockholders of companies that are subject to and in compliance with all of the corporate governance requirements of Nasdaq.

Our business could be negatively affected as a result of actions of activist stockholders, and such activism could impact the trading value of our securities.

Stockholders may, from time to time, engage in proxy solicitations or advance stockholder proposals, or otherwise attempt to effect changes and assert influence on our board of directors and management. Activist campaigns that contest or conflict with our strategic direction or seek changes in the composition of our board of directors could have an adverse effect on our operating results and financial condition. A proxy contest would require us to incur significant legal and advisory fees, proxy solicitation expenses and administrative and associated costs and require significant time and attention by our board of directors and management, diverting their attention from the pursuit of our business strategy. Any perceived uncertainties as to our future direction and control, our ability to execute on our strategy, or changes to the composition of our board of directors or senior management team arising from a proxy contest could lead to the perception of a change in the direction of our business or instability which may result in the loss of potential business opportunities, make it more difficult to pursue our strategic initiatives, or limit our ability to attract and retain qualified personnel and business partners, any of which could adversely affect our business and operating results. If individuals are ultimately elected to our board of directors with a specific agenda, it may adversely affect our ability to effectively implement our business strategy and create additional value for our stockholders. We may choose to initiate, or may become subject to, litigation as a result of the proxy contest or matters arising from the proxy contest, which would serve as a further distraction to our board of directors and management and would require us to incur significant additional costs. In addition, actions such as those described above could cause significant fluctuations in our stock price based upon temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business.

We may be subject to securities litigation, which is expensive and could divert management attention.

The market price of our common stock may be volatile, and in the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management’s attention from other business concerns, which could have a material and adverse effect on our business, financial condition, and results of operations.

If securities or industry analysts publish unfavorable research about our business or decrease the frequency or cease to provide coverage of our company, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that equity research analysts publish about us and our business. If one or more of the equity research analysts who cover us downgrades our common stock or issues other unfavorable commentary or research the price of our common stock may decline. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our common stock could decrease, which in turn could cause the trading price or trading volume of our common stock to decline.

Certain of our historical financial data is not necessarily representative of the results that we would have achieved as a stand-alone company and may not be a reliable indicator of our future results.

Our historical financial data included in this Annual Report on Form 10-K does not reflect the financial condition, results of operations or cash flows that we would have achieved as a stand-alone company during the periods presented or those we will achieve in the future. This is primarily the result of the following factors:

- our historical financial data reflects expense allocations for certain support functions that are provided on a centralized basis within Alphaeon, such as expenses for business technology, facilities, legal, finance, human resources and business development, that may be higher or lower than the comparable expenses that we would have actually incurred, or will incur in the future, as a stand-alone company;

- significant increases have and will continue to occur in our cost structure as a result of our being a public company, including costs related to public company reporting, investor relations and compliance with the Sarbanes-Oxley Act; and

- our becoming a commercial company in 2019.

As a result, it may be difficult for investors to compare our future results to historical results or to evaluate our relative performance or trends in our business.

Future sales of our common stock by us, Alphaeon 1, LLC or others, or the perception that such sales may occur, could depress the market price of our common stock.

We have 33,728,035 shares of common stock issued and outstanding as of February 21, 2020. Sales by us of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could significantly reduce the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities.

As of December 31, 2019, Alphaeon owned 25.8% of our outstanding shares of common stock. Subsequent to December 31, 2019, Alphaeon contributed all of those shares to Alphaeon 1, LLC. Subject to the restrictions described in the paragraph below, future sales of these shares in the public market will be subject to the volume and other restrictions of Rule 144 under the Securities Act for so long as Alphaeon 1, LLC is deemed to be our affiliate, unless the shares to be sold are registered with the SEC. The sale by Alphaeon 1, LLC of a substantial number of shares of our common stock, or a perception that such sales could occur, could significantly reduce the market price of our common stock.

We have filed a registration statement with the SEC covering shares of our common stock available for future issuance under our 2017 Omnibus Incentive Plan and may file future registration statements covering shares of our common stock for future issuance under any future plans. Upon effectiveness of such registration statements, any shares subsequently issued under such plans will be eligible for sale in the public market, except to the extent that they are restricted by the lock-up agreements referred to above and subject to compliance with Rule 144 in the case of our affiliates. Sales of a large number of the shares issued under these plans in the public market, or a perception that such sales could occur, could significantly reduce the market price of our common stock.

Anti-takeover provisions in our certificate of incorporation and bylaws, as well as Delaware law, could discourage a takeover.

Our certificate of incorporation, bylaws and Delaware law contain provisions that might enable our management to resist a takeover and might make it more difficult for an investor to acquire a substantial block of our common stock. These include the following provisions:

- permit our board of directors to issue shares of preferred stock, with any rights, preferences and privileges as they may designate, without stockholder approval, which could be used to dilute the ownership of a hostile bidder significantly;
- provide that the authorized number of directors may be changed only by resolution of our board of directors and that a director may only be removed for cause by the affirmative vote of the holders of at least 66 2/3% of our voting stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes, with each class serving staggered three-year terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder’s notice, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror’s own slate of directors or otherwise attempting to obtain control of our company;
- prohibit cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates; and

- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, which may delay the ability of our stockholders to force consideration by our company of a take-over proposal or to take certain corporate actions, including the removal of directors.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, we are subject to Section 203 of the General Corporation Law of the State of Delaware, or the DGCL, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with an interested stockholder who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This provision could have the effect of delaying or preventing a change-of-control, whether or not it is desired by or beneficial to our stockholders. Further, other provisions of Delaware law may also discourage, delay or prevent someone from acquiring us or merging with us.

In addition, our certificate of incorporation specifies that the Court of Chancery of the State of Delaware is the sole and exclusive forum for most legal actions involving actions brought against us by stockholders. We believe this provision benefits us by providing increased consistency in the application of Delaware law by chancellors particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, the provision may have the effect of discouraging lawsuits against our directors and officers.

Our certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our certificate of incorporation provides that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for all "internal corporate claims." "Internal corporate claims" are claims that are based upon a violation of a duty by a current or former director, officer or stockholder in such capacity, or as to which Title 8 of the DGCL confers jurisdiction upon the Court of Chancery of the State of Delaware, or the Court of Chancery, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants and the claim not being one which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. For example, this choice of forum provision would not apply to claims brought pursuant to the Exchange Act or the Securities Act of 1933, as amended, or any other claim for which the federal courts have exclusive jurisdiction. Any person purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to this provision of our certificate of incorporation. The choice of forum provision in our certificate of incorporation will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

This choice of forum provision may limit our stockholders' ability to bring a claim in a judicial forum that they find favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees and agents even though an action, if successful, might benefit our stockholders. Stockholders who do bring a claim in the Court of Chancery could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. The Court of Chancery may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments or results may be more favorable to us than to our stockholders. Alternatively, if a court were to find this provision of our certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could have a material adverse effect on our business, financial condition or results of operations.

Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Our certificate of incorporation and bylaws provide that we can indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. Separate indemnity agreements have been issued with each director and executive officer.

In addition, as permitted by Section 145 of the DGCL, our bylaws and our indemnification agreements that we have entered into with our directors and officers, among other things provide that:

- We have indemnified our directors and officers for serving us in those capacities, or for serving as a director, officer, employee or agent of other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that we may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to our best interest and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We will be required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- The rights conferred in our bylaws will not be exclusive. We may not retroactively amend our bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

As a result, claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future, and the payment of dividends is also restricted under our credit facility. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

We are an "emerging growth company," and the reduced reporting requirements available to emerging growth companies could make our common stock less attractive to investors.

We qualify as an "emerging growth company," as defined in the JOBS Act. For as long as we remain an emerging growth company, we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies. These provisions include, but are not limited to:

- being permitted to have only two years of audited financial statements and only two years of related selected financial data and management's discussion and analysis of financial condition and results of operations disclosure;
- an exemption from compliance with the auditor attestation requirement in the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act;
- reduced disclosure about executive compensation arrangements in our periodic reports, registration statements and proxy statements; and
- exemptions from the requirements to seek non-binding advisory votes on executive compensation or golden parachute arrangements.

To the extent we take advantage of any of these exemptions, the information that we provide stockholders may be different than what is available with respect to other public companies. Investors may find our common stock less attractive because

we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

Even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company" which would allow us to take advantage of many of the same exemptions from disclosure requirements, including exemption from compliance with the auditor attestation requirements of Section 404(b) and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Investors could find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our trading price may be more volatile.

The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain executive management and qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Nasdaq Marketplace Rules and other applicable securities rules and regulations. Complying with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources, particularly after we are no longer an "emerging growth company," as defined in the JOBS Act. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could adversely affect our business and operating results. We may need to hire more employees in the future or engage outside consultants to assist us in complying with these requirements, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased selling, general and administrative expenses and a diversion of our management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties.

Our corporate headquarters is located at 520 Newport Center Drive, Suite 1200, Newport Beach, CA 92660, in a facility that we lease, encompassing approximately 17,758 square feet of space. The lease for this facility expires on January 31, 2025. We believe our facilities are sufficient for our current needs. When our lease expires, we may exercise our renewal option or look for additional or alternate space for our operations, and we believe that suitable additional or alternative space will be available in the future on commercially reasonable terms.

Item 3. Legal Proceedings.

Medytox Litigation

On June 7, 2017, Medytox Inc., or Medytox, filed an initial complaint in the Superior Court of the State of California, or the Medytox Litigation, against, us, Alphaeon, SCH, Daewoong, Byung Kook Lee, Jae Chun Yoon, Jae Seung Yoon and Chang Woo Suh, among others, or collectively, the defendants. On August 14, 2017, Medytox filed an amended complaint against the defendants, or the amended complaint. The amended complaint alleges, among other things, that Daewoong stole Medytox's botulinum toxin bacterial strain, or the BTX strain, that Daewoong misappropriated certain trade secrets of Medytox, including the process used to manufacture Jeuveau® (which Medytox claims is similar to its biopharmaceutical drug, Meditoxin) using the BTX strain, and that Daewoong thereby interfered with Medytox's plan to license Meditoxin to us. Medytox claims that as a result of Daewoong's conduct, we entered into the Daewoong Agreement instead of an agreement with Medytox to license Meditoxin.

Daewoong filed a motion to dismiss or stay for forum non conveniens, claiming that the place where the complaint has been filed, in the Superior Court of the State of California, is not the proper place for the trial of the claims in the complaint because, among other reasons, the underlying facts that gave rise to the complaint occurred in South Korea. Daewoong's motion to dismiss was granted by the Superior Court of the State of California on October 12, 2017. As a result, the action filed with the Superior Court of the State of California is stayed pending resolution of the proceedings in South Korea. In October 2017, Medytox initiated a civil lawsuit against Daewoong and its parent company, Daewoong Co. Ltd., in the Seoul Central District Court in Seoul, South Korea, related to the same subject matter in the Medytox Litigation and is seeking, among other things, money damages, injunctive relief and destruction of related documents and products. We are not a party to the litigation in the Seoul Central District Court.

On April 27, 2018, pursuant to a motion to dismiss brought by Daewoong, the Superior Court of the State of California dismissed Medytox's suit against Daewoong, without prejudice, on the basis that Medytox had brought a substantially similar proceeding against Daewoong in South Korea. The proceedings against us remain stayed in the Superior Court of the State of California pending resolution of the proceedings between Medytox and Daewoong in South Korea.

With specific regard to us, Medytox alleges that (i) we have violated California Uniform Trade Secrets Act, Cal. Civ. Code § 3426 because Daewoong's alleged knowledge of the misappropriation of certain trade secrets of Medytox is imputed to us as a result of our relationship with Daewoong, (ii) we have stolen the BTX strain through our possession of and refusal to return the BTX strain, (iii) we have engaged in unlawful, unfair and fraudulent business acts and practices in violation of California Bus. & Prof. Code § 17200, including conversion of the BTX strain and misrepresentations to the public regarding the source of the botulinum toxin bacterial strain used to manufacture Jeuveau®, and (iv) the Daewoong Agreement is invalid and in violation of Medytox's rights.

Medytox seeks, among other things, (i) actual, consequential and punitive damages, (ii) a reasonable royalty, as appropriate, (iii) a declaration that the Daewoong Agreement is void and unenforceable and that Medytox is entitled to disgorgement of all property wrongfully and unjustly retained or acquired by the defendants, including unlawfully gained profits, (iv) injunctive relief prohibiting us from using the license under the Daewoong Agreement and distributing Jeuveau®, and (v) attorneys' fees and costs.

We are vigorously defending Medytox's claims against us. Given the early stage in the Medytox Litigation, we are unable to predict the likelihood of success of Medytox's claims against us or Daewoong or to quantify any risk of loss. The litigation could go on for an extended period of time and require us to dedicate significant financial and management resources to those efforts. While we are entitled to indemnity under the Daewoong Agreement, the indemnity may not be sufficient. An adverse ruling against either us or one of the other defendants could materially and adversely affect our business, consolidated

financial position, results of operations, or cash flows and could also result in reputational harm. Even if we are successful, the litigation may result in delays in our product development, reputational damage or other collateral consequences.

ITC Complaint

On January 30, 2019, Allergan and Medytox filed a complaint against us and Daewoong in the U.S. International Trade Commission, or the ITC, containing substantially similar allegations to the Medytox Litigation, specifically that Jeuveau® is manufactured based on misappropriated trade secrets of Medytox and therefore the importation of Jeuveau® is an unfair act. The ITC matter is entitled *In the Matter of Certain Botulinum Toxin Products*, or the ITC Complaint. On March 6, 2019, the ITC instituted an investigation as ITC Inv. No. 337-TA-1145, or the ITC Action. The ITC complaint calls for an investigation by the ITC Office of Unfair Import Investigations, or OUII, under Section 337 of the Tariff Act of 1930. The ITC complaint seeks (i) an investigation pursuant to Section 337 of the Tariff Act of 1930, (ii) a hearing with the ITC on permanent relief, (iii) issuance of a limited exclusion order forbidding entry of Jeuveau® into the United States, (iv) a cease and desist order prohibiting Daewoong and us from engaging in the importations, sale for importation, marketing, distribution, offering for sale, the sale after the importation of, or otherwise transferring Jeuveau® within the United States, (v) a bond issued during the presidential review period, (vi) the return of Medytox's trade secrets and other confidential information including the alleged stolen BTX Strain, and (vii) exclusion and cease and desist orders. In January 2020, the three sets of parties to the ITC action, (i) the Complainants - Allergan and Medytox, (ii) the Respondents - us and Daewoong and (iii) the OUII, each submitted pre-hearing briefs to the Administrative Law Judge assigned to the ITC Action setting forth each parties positions on the substantive issues and preliminary conclusions prior to the evidentiary hearing. From February 4-7, 2020, the Administrative Law Judge held an evidentiary hearing on the ITC Action. An initial determination by the Administrative Law Judge is due by June 5, 2020 and the target date for the final determination by the ITC is October 6, 2020.

We intend to defend the claims contained in the ITC complaint and the related ITC Action vigorously. Given the current stage of the ITC Action, we are unable to predict the likelihood of success of Medytox's and Allergan's claims against us or Daewoong or to quantify the risk of the imposition of an exclusion order or cease and desist order. The ITC Action could require us to dedicate significant financial and management resources to those efforts. While we are entitled to indemnity under the Daewoong Agreement, the indemnity may not be sufficient. An adverse ruling by the ITC against either us or Daewoong could result in the imposition of an exclusion order which would bar imports of Jeuveau® within the United States and a cease and desist order which would bar sales and marketing of Jeuveau® within the United States, either of which would materially adversely affect the Company's ability to carry out its business and which would have a material adverse effect on the Company's business, financial position, results of operations, or cash flows and could also result in reputational harm. Even if we are successful, the ITC Action may result in reputational damage or other collateral consequences.

Other Matters

In January 2017, Medytox initiated a criminal investigation into the foregoing matter in South Korea, which appears to target one or more of the above defendants, but does not appear to target us.

In addition to the Medytox Litigation and the ITC Complaint, from time to time, we may be subject to other legal proceedings and claims in the ordinary course of business.

Item 4. Mine Safety Disclosures.

Not applicable.

Part II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock has been listed and traded on the Nasdaq under the symbol "EOLS" since February 12, 2018.

Holders of Record

As of February 21, 2020, we had approximately 38 holders of record of our common stock. This number does not include beneficial owners whose shares were held in street name. The actual number of holders of our common stock is greater than this number of record holders and includes stockholders who are beneficial owners, but whose shares are held in street name

by brokers or held by other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock and we do not currently intend to pay any cash dividends on our capital stock for the foreseeable future. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. Any future determination related to our dividend policy will be made at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements, tax considerations, legal or contractual restrictions, business prospects, the requirements of current or then-existing debt instruments, general economic conditions and other factors our board of directors may deem relevant. The payment of dividends is also restricted under our credit facility.

Recent Sales of Unregistered Securities

From January 1, 2018 to December 31, 2019, the period covered by this Annual Report on Form 10-K, we did not issue any unregistered securities.

Purchases of Equity Securities

We made no purchases of our equity securities during the fourth quarter of the year ended December 31, 2019.

Performance Graph

Not applicable.

Item 6. Selected Financial Data.

Not applicable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion contains management's discussion and analysis of our financial condition and results of operations and should be read together with the historical financial statements, the notes thereto included in Item 8 "Financial Statements and Supplementary Data" and included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that reflect our plans, estimates and beliefs and involve numerous risks and uncertainties, including but not limited to those described in the Item 1A "Risk Factors" section of this Annual Report on Form 10-K. Actual results may differ materially from those contained in any forward-looking statements. You should carefully read "Special Note Regarding Forward-Looking Statements" and Item 1A "Risk Factors."

Overview

We are a performance beauty company with a customer-centric approach focused on delivering breakthrough products in the self-pay aesthetic market. In February 2019, we received the approval of our first product Jeuveau® (prabotulinumtoxinA-xvfs) from the U.S. Food and Drug Administration, or FDA. In May 2019, we commercially launched Jeuveau® in the United States and through a distribution partner in Canada in October 2019.

Jeuveau® is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. Our primary market is the self-pay aesthetic market, which includes medical products purchased by physician and other customers that are then sold to consumers or used in procedures for aesthetic indications that are not reimbursed by any third-party payor, such as Medicaid, Medicare or commercial insurance. We believe we offer customers and consumers a compelling value proposition with Jeuveau®. Currently, onabotulinumtoxinA (BOTOX) is the neurotoxin market leader, and prior to the approval of Jeuveau®, was the only known 900 kDa botulinum toxin type A complex approved in the United States. We believe aesthetic physicians generally prefer the performance characteristics of the complete 900 kDa neurotoxin complex and are accustomed to injecting this formulation.

In May 2019, as part of our commercial launch, we introduced the Jeuveau® Experience Treatment, or J.E.T., an exclusive program for aesthetic providers and consumers to be the first to experience Jeuveau®. J.E.T. offered aesthetic providers the opportunity to receive multiple shipments of Jeuveau® and ended in August 2019. The program was made available through our technology platform, "Evolus Practice," which allows providers to open a new account, order Jeuveau®, pay invoices and engage with our customer experience team and medical affairs representatives. We did not recognize net revenues from shipments made through the J.E.T. program. We have generated revenue from aesthetic practices that purchased products directly from us after completion or outside of the J.E.T. program.

As a result of our J.E.T. program and customer and consumer marketing initiatives throughout 2019, we have established a broad base of over 3,500 customer accounts ordering Jeuveau® through December 31, 2019. Customer accounts that participated in J.E.T. drove greater than 80% of our U.S. Jeuveau® net revenue for the year ended December 31, 2019.

In August 2018, we received approval from Health Canada for the temporary improvement in the appearance of moderate to severe glabellar lines in adult patients under 65 years of age. We began marketing Jeuveau® in Canada in October 2019 through our distribution partner Clarion Medical Technologies, Inc., or Clarion. In September 2019, we also received approval from the European Commission, to market the product in all 28 EU member states, Iceland, Norway and Liechtenstein. We plan to launch Jeuveau® in Europe in 2020.

We have a limited history of generating revenue from Jeuveau® and have never been profitable. As of December 31, 2019, we had an accumulated deficit of $213.1 million. We incurred net losses of $90.0 million and $46.9 million in the years ended December 31, 2019 and 2018, respectively.

We expect to continue to incur significant expenses for the foreseeable future as we increase marketing efforts for Jeuveau® and maintain our regulatory approvals.

Daewoong License and Supply Agreement

In 2013, we and Daewoong Pharmaceuticals Co. Ltd., or Daewoong, entered into the Daewoong Agreement pursuant to which we have an exclusive distribution license to Jeuveau® from Daewoong for aesthetic indications in the United States, EU, Great Britain, Canada, Australia, Russia, C.I.S., and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Under the Daewoong Agreement, we are required to make certain minimum annual purchases in order to maintain the exclusivity of the license. These minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share in various jurisdictions. In connection with

our entry into the Daewoong Agreement, we made an upfront payment to Daewoong of $2.5 million. We further agreed to make milestone payments upon achievement of certain confidential development and commercial milestones, including a confidential payment to Daewoong upon each of the U.S. Food and Drug Administration, or FDA, and the European Medicines Agency, or the EMA, approval of Jeuveau®. Under the Daewoong Agreement, the maximum aggregate amount of milestone payments that could be owed to Daewoong upon the satisfaction of all milestones is $13.5 million. Upon FDA approval in February 2019 and EMA approval in September 2019, the Company paid $2.0 million and $1.0 million milestone payments, respectively. As of December 31, 2019, Daewoong is eligible to receive remaining contingent milestone payments of up to $10.5 million. Under the Daewoong Agreement, Daewoong is responsible for all costs related to the manufacturing of Jeuveau®, including costs related to the operation and upkeep of its manufacturing facility, and we are responsible for all costs related to obtaining regulatory approval, including clinical expenses, and commercialization of Jeuveau®. We had the option to expand the permitted use of the product beyond aesthetic indications and into therapeutic indications. This option was assigned to ALPHAEON Corporation, or Alphaeon who exercised the option by remitting payment directly to Daewoong in November 2018. For additional information about the Daewoong Agreement, see Item 1 “Business—Daewoong License and Supply Agreement.”

Royalties and Notes Payable to Evolus Founders

We are obligated to make the following future payments to the founders of Evolus (i) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau® and (ii) a $20.0 million promissory note that matures in November 2021. The obligations set forth in (i) above will terminate in the quarter following the 10-year anniversary of the first commercial sale of Jeuveau® in the United States. The fair value of the obligations set forth in items (i) and (ii) are valued quarterly and are referred to in our financial statements as the “contingent royalty obligation.”

Our Relationship with Alphaeon

For periods prior to the completion of our initial public offering on February 12, 2018, we funded our operations primarily through contributions and related party borrowings from Alphaeon. Accordingly, we derived our financial statements by allocating expenses associated with our operations from Alphaeon’s consolidated financial statements in accordance with applicable accounting standards and SEC regulations.

In January 2018, we entered into a services agreement with Alphaeon, or the services agreement, which became effective in connection with our initial public offering. The services agreement sets forth certain terms between Alphaeon and us that govern the respective responsibilities and obligations between Alphaeon and us, as it relates to the services to be performed between us. The services agreement has a one-year term and thereafter renews for successive one-year terms unless terminated by either party. We or Alphaeon may terminate the services agreement upon sixty days’ notice to the other party. In accordance with the services agreement, we paid Alphaeon $5.0 million to settle our historical related party borrowings from Alphaeon upon our initial public offering. There were no significant services provided under the services agreement since our initial public offering.

As of December 31, 2019, Alphaeon owned approximately 25.8% of our outstanding shares of common stock and had changed its name to AEON Biopharma, Inc. We continue to refer to the renamed AEON Biopharma, Inc. as Alphaeon. Subsequent to December 31, 2019, Alphaeon contributed all of the shares it held in us to Alphaeon 1, LLC.

Results of Operations

Comparison of the Years Ended December 31, 2019 and 2018

The following table summarizes our results of operations for the periods indicated:

	Year Ended December 31,		
(in millions)	2019	2018	Change
Product revenue, net	$ 34.2	$ —	$ 34.2
Service revenue	0.7	—	0.7
Total net revenues	34.9	—	34.9
Product cost of sales (excludes amortization of intangible assets)	8.0	—	8.0
Gross profit	26.9	—	26.9
As a percentage of net revenues	77.1%	—%	
Operating expenses:			
Selling, general and administrative	113.6	29.1	84.5
Research and development	4.0	6.5	(2.5)
Revaluation of contingent royalty obligation to Evolus Founders	4.2	10.5	(6.3)
Depreciation and amortization	4.1	0.0	4.1
Total operating expenses	125.9	46.1	79.8
Loss from operations	(99.0)	(46.1)	(52.9)
Non operating expense, net	(6.1)	(0.7)	(5.4)
Loss before income taxes	(105.1)	(46.8)	(58.3)
Income tax (benefit) expense	(15.0)	0.1	(15.1)
Net loss	$ (90.1)	$ (46.9)	$ (43.2)

Net Revenues

We currently operate in one reportable segment and all of our net revenues are derived from sales of Jeuveau®. Net revenues consist of revenues, net of customer rebates and coupons. Revenues are recognized when the control of the promised goods is transferred to the customer in an amount that reflects the consideration to which we expect to be entitled in exchange for those products or services. During the year ended December 31, 2019, we recorded net revenues of $34.9 million consisting of product revenue of $34.2 million from the sale of Jeuveau® in the United States and service revenue of $0.7 million from sale of Jeuveau® through a distribution partner in Canada. We commercially launched Jeuveau® and began shipping to customers in the United States in May 2019 and launched through a distribution partner in Canada in October 2019. We recorded the sale of Jeuveau® in Canada as service revenue on a net basis. We did not record any net revenue during the year ended December 31, 2018.

Cost of Sales

Our cost of sales was $8.0 million for the year ended December 31, 2019, which primarily consisted of the cost of inventory that was purchased from Daewoong for product sales in the United States. We did not record any cost of sales during the year ended December 31, 2018. Our gross profit as a percentage of net revenues was 77.1% for the year ended December 31, 2019 and benefited from one-time reduced, launch pricing from our manufacturing partner. Our gross profit may fluctuate in the future as we deplete inventory purchased at the one-time launch pricing and implement various marketing programs that may affect the average selling price of Jeuveau®. We anticipate that our cost of sales will increase as Jeuveau® sales increase.

Selling, General and Administrative

Selling, general and administrative expenses increased by $84.5 million to $113.6 million for the year ended December 31, 2019 from $29.1 million for the year ended December 31, 2018. The increase was primarily attributable to the U.S. launch of Jeuveau®. This included higher personnel-related expenses as a result of hiring a U.S. sales force, building out our corporate and commercial infrastructure and incurring marketing expenses including the J.E.T. program. Shipments under the J.E.T. program ended in August 2019. Personnel-related expenses, including stock-based compensation, increased by $39.4

million and marketing and selling expenses, including expenses related to the J.E.T. program, increased by $26.0 million from the year ended December 31, 2018. Selling, general and administrative expenses may fluctuate in the future primarily due to potential changes in marketing strategies, and performance-based personnel-related expenses, such as commissions and bonuses.

Research and Development

Research and development expenses decreased by $2.5 million to $4.0 million for the year ended December 31, 2019 from $6.5 million for the year ended December 31, 2018. The decrease was primarily attributable to the completion of the U.S. clinical trial activities related to Jeuveau® in 2018, partially offset by one-time bonuses of $1.6 million to certain current and former employees upon FDA approval of Jeuveau® in February 2019. We expect our overall research and development expense to increase if and when we seek to develop further product candidates and pursue regulatory approvals in other jurisdictions.

Revaluation of Contingent Royalty Obligation Payable to Evolus Founders

During the year ended December 31, 2019 and 2018, the revaluation charges of $4.2 million and $10.5 million, respectively, were primarily driven by changes in management assumptions related to revenue forecasts based on management's assessment of current and future markets of Jeuveau® and marketing and distribution strategies, discount rate and timing of cash flows.

Depreciation and Amortization

Depreciation and amortization increased to $4.1 million for the year ended December 31, 2019 from a de minimis amount for the year ended December 31, 2018. This was primarily attributable to amortization of the distribution right asset related to Jeuveau® over 20 years as well as amortization of the internal-use software costs over two years.

Non-Operating Expense, Net

Non-operating expenses, net, increased by $5.4 million to $6.1 million for the year ended December 31, 2019 from $0.7 million for the year ended December 31, 2018. Interest income increased by $1.6 million to $1.8 million for the year ended December 31, 2019 from $0.2 million for the year ended December 31, 2018, which was primarily attributable to interest earned from short-term investments. Interest expense increased by $7.1 million to $8.0 million for the year ended December 31, 2019 from $0.9 million for the year ended December 31, 2018, which was primarily attributable to interest incurred on our long-term debt to Oxford Finance, LLC and the contingent promissory note payable to the Evolus Founders.

Income Taxes (Benefit) Expense

Income tax benefit was $15.0 million for the year ended December 31, 2019 as compared to a de minimis provision for the year ended December 31, 2018. This was primarily attributable to a partial release of the deferred tax assets valuation allowance. Upon the reclassification of the indefinite-lived IPR&D intangible asset to a definite-lived distribution right intangible asset in the first quarter of 2019 upon FDA approval of Jeuveau®, the related deferred tax liability became a source of future taxable income in the assessment of the realization of deferred tax assets, and as a result, a portion of the previously existing valuation allowance was released.

Liquidity and Capital Resources

As of December 31, 2019, we had cash and cash equivalents of $109.9 million, short-term investments of $19.9 million, and stockholders' equity of $79.5 million.

We have a limited history of generating revenues and only began shipping Jeuveau® in May 2019. As of December 31, 2019, we had an accumulated deficit of $213.1 million and working capital of $127.8 million. We had net losses of $90.0 million and $46.9 million for the years ended December 31, 2019 and 2018, respectively, and we used net cash in operating activities of $93.4 million and $25.7 million for the years ended December 31, 2019 and 2018, respectively. Management expects operating losses and negative cash flows to continue for at least the next 12 months.

Initial Public Offering

In February 2018, we closed our initial public offering and sold 5,047,514 shares of our common stock at a price of $12.00 per share, inclusive of 47,514 shares of our common stock issued upon the exercise by the underwriters of their option to

purchase additional shares. The net proceeds were approximately $56.3 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

Follow-On Public Offerings

In July 2018, we closed a follow-on public offering and sold 3,600,000 shares of our common stock at a price of $20.00 per share, inclusive of 600,000 shares of common stock issued upon the exercise by the underwriters of their option to purchase additional shares. The net proceeds were approximately $67.7 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

In November 2019, we closed a follow-on public offering and sold 5,999,550 shares of our common stock at a price of $13.00 per share, inclusive of 782,550 shares of common stock issued upon the exercise by the underwriters of their option to purchase additional shares. The net proceeds were approximately $73.3 million after deducting underwriting discounts and commissions, excluding other offering expenses.

Loan and Security Agreement

On March 15, 2019, or the closing date, we entered into a loan and security agreement, or the credit facility, with Oxford Finance, LLC, as collateral agent, or Oxford, pursuant to which the lender made term loans available to us of up to $100.0 million, or the credit facility. The credit facility provides that the term loans will be funded in two advances. The first tranche of $75.0 million was funded on the closing date, and the second tranche of $25.0 million may be drawn, at our request, no later than September 30, 2020, upon achieving specified minimum net sales milestones and no event of default is occurring. As of December 31, 2019, the Company had not yet met the net sales milestone to draw the second tranche. The credit facility bears an annual interest rate equal to the greater of 9.5%, or the 30-day U.S. Dollar LIBOR rate plus 7.0%. We have agreed to pay interest only on each tranche funded pursuant to the credit facility for the first 36 months until May 2022, which will be followed by a 23-month amortization period. Notwithstanding the foregoing, if we maintain compliance with the specified minimum net sales covenant and meet other conditions during the initial interest-only period, upon our request, the interest only period may be extended by an additional 12 months to a total of 48 months followed by an 11-month amortization period.

Upon the earliest to occur of the maturity date, the acceleration of the term loans, or the prepayment of the term loans, we will be required to pay to Oxford a final payment of 5.5% of the full principal amount of the term loans funded, or the final payment. We may elect to prepay all amounts owed prior to the maturity date, provided that a prepayment fee is also paid, which shall be equal to 3.0% of the amount prepaid if the prepayment occurs on or prior to March 15, 2020, 2.0% of the amount prepaid if the prepayment occurs after March 15, 2020 and on or prior to March 15, 2021, or 1.0% of the amount prepaid if the prepayment occurs thereafter, or the Prepayment Fee. If the term loans are accelerated following the occurrence of an event of default, we will be required to immediately pay to Oxford an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, the final payment, the Prepayment Fee, and all other obligations that are due and payable, including payment of Oxford’s expenses and interest at the default rate with respect to any past due amounts.

The credit facility is secured by substantially all of our assets. The credit facility includes affirmative and negative covenants applicable to us, our current subsidiary and any subsidiaries we may create in the future. The affirmative covenants include, among others, covenants requiring us to maintain our legal corporate existence and governmental approvals, deliver certain financial reports, maintain insurance coverage and satisfy certain requirements regarding deposit accounts. The negative covenants include, among others, restrictions on us transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions.

The credit facility also includes events of default, the occurrence and continuation of which could cause interest to be charged at a default interest rate equal to the applicable rate plus 5.0% and Oxford, as collateral agent, with the right to exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including our cash. These events of default include, among other things, any failure by us to pay principal or interest due under the credit facility, a breach of certain covenants under the credit facility, our insolvency, a material adverse change, the occurrence of any default under certain other indebtedness and one or more judgments against us, the institution of certain temporary or permanent relief in connection with pending litigation, or the breach, termination or other adverse events under the Daewoong Agreement.

The credit facility also provides us with the ability, under certain conditions, to obtain up to a $25.0 million revolving line of credit secured by our inventory, accounts receivable and cash proceeds of both. Oxford has the right of first refusal, but not the obligation, to provide such a revolving line of credit. There is no guarantee that such a line would be available to us on terms favorable to us or at all. As of December 31, 2019, the Company had met the conditions to enter into a $25.0 million revolving line of credit.

Operating Leases

We lease office facilities under various operating lease agreements. Our corporate headquarters is located in Newport Beach, California, in a facility that we subleased until January 2020 under a non-cancelable operating lease for a fixed amount each month. On May 15, 2019, we entered into a non-cancelable operating lease for the same office facility with the original lessor. This non-cancelable operating lease commenced on February 1, 2020 and expires on January 31, 2025 with an option to extend the term for an additional 60 months. Lease payments increase based on an annual rent escalation clause that occurs on each February 1 anniversary. We may, under certain circumstances, terminate the lease on the 36 months anniversary of the lease commencement date by providing a written notice 12 months prior to such anniversary and paying a termination fee equal to six months basic rent plus certain other expenses. We have an option to extend the term of the lease for an additional 60 months.

Current and Future Capital Requirements

We believe that our current capital resources, which consist of cash, cash equivalents and short-term investments, will be sufficient to fund operations through at least the next twelve months based on our expected cash burn rate from the date of the issuance of this Annual Report on Form 10-K.

Until such time, if ever, as we can generate substantial product revenue to cover our costs of operations, we expect to finance our cash needs through additional draws against the Oxford term loan and revolving line of credit, entering into licensing or collaboration agreements with partners, other debt or equity financings, or other sources of financing. Sufficient funds may not be available to us at all or on attractive terms when needed from these sources. To the extent that we raise additional capital through the future sale of equity, the ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our existing common stockholders. If we raise additional funds through the issuance of debt securities, these securities could contain covenants that would restrict our operations. We may require additional capital beyond our currently anticipated amounts. If we are unable to obtain additional funding from these or other sources when needed, we may need to significantly reduce our controllable and variable expenditures and current rate of spending through reductions in staff and delaying, scaling back, or suspend certain research and development, sales and marketing programs and other operational goals.

We have based our projections of operating capital requirements on assumptions that may prove to be incorrect and we may use all our available capital resources, which consist of cash, cash equivalents and short-term investments, sooner than we expect. Because of the numerous risks and uncertainties associated with research, development and commercialization of our products, we are unable to estimate the exact amount of our operating capital requirements. Our future funding requirements will depend on many factors, including, but not limited to:

- the number and characteristics of any future product candidates we develop or acquire;
- the timing of any cash milestone payments to Daewoong if we successfully achieve certain predetermined milestones;
- our ability to forecast demand for our products, scale our supply to meet that demand and manage working capital effectively
- the cost of manufacturing our product or any future product candidates and any products we successfully commercialize, including costs associated with building our supply chain;
- the cost of commercialization activities for Jeuveau® or any future product candidates are approved or cleared for sale, including marketing, sales and distribution costs;
- the cost of maintaining a sales force, the productivity of that sales force, and the market acceptance of our products;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of any such agreements that we may enter into;

- any product liability or other lawsuits related to our products;
- the expenses needed to attract and retain skilled personnel;
- the costs associated with being a public company;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims, including ongoing litigation costs related to Jeuveau® and the outcome of this and any other future patent litigation we may be involved in; and
- the timing, receipt and amount of sales of any future approved or cleared products, if any.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Year Ended December 31,		
	2019	2018	Change
(in millions)			
Net cash (used in) provided by:			
Operating activities	$ (93.4)	$ (25.7)	$ (67.7)
Investing activities	(23.4)	—	(23.4)
Financing activities	133.5	118.8	14.7
Change in cash and cash equivalents	16.7	93.2	
Cash and cash equivalents, beginning of period	93.2	—	
Cash and cash equivalents, end of period	$ 109.9	$ 93.2	

Operating Activities

Cash used in operating activities increased by $67.7 million to $93.4 million for the year ended December 31, 2019 from $25.7 million for the year ended December 31, 2018. The increase in cash used in operating activities was primarily attributable to an increase in net loss of $43.2 million, as adjusted for certain non-cash items. In 2019, there was an increase in non-cash income tax benefit of $15.1 million resulting from partial release of the deferred tax assets valuation allowance. There were also increases in non-cash stock-based compensation expense of $2.5 million, provisions related to the rebate and coupon programs of $12.3 million, and depreciation and amortization of $4.1 million, which were partially offset by a $6.3 million decrease in revaluation of our contingent royalty obligation. Cash used in working capital increased by $23.6 million which was primarily driven by inventory purchases, timing of accounts receivable collections, timing of vendor billing and invoice payments, and increased expenditures associated with the hiring of our sales force and expansion of our commercialization infrastructure in connection with launching Jeuveau®.

Investing Activities

Cash used in investing activities increased to $23.4 million for the year ended December 31, 2019 from a de minimis amount for the year ended December 31, 2018. The increase in cash used in investing activities was primarily attributable to purchases of short-term investments net of maturities of $18.9 million and additions to capitalized software of $4.2 million.

Financing Activities

Cash provided by financing activities increased by $14.7 million to $133.5 million for the year ended December 31, 2019 from $118.8 million for the year ended December 31, 2018. We received proceeds of $71.7 million in March 2019 from the credit facility net of discounts and issuance costs and $73.3 million in November 2019 from the public offering of common stock after deducting underwriting discounts and commissions, and $2.5 million from issuance of common stock related to the incentive equity plan. This was offset by $9.7 million of milestone and contingent royalty payments to the Evolus Founders and $3.0 million in payments to Daewoong ($2.0 million in February 2019 and $1.0 million in December 2019 subsequent to the FDA's approval and EMA's approval, respectively, of Jeuveau®) during 2019. We received proceeds of $56.3 million and $67.7 million in the initial public offering in February 2018 and the follow-on public offering in July 2018, respectively.

Indebtedness

Currently, we have no indebtedness to Alphaeon. For periods prior to the completion of our initial public offering on February 12, 2018, Alphaeon provided us certain services that were not covered under a services agreement, including, without limitation, general and administrative support services and research and development support services. Alphaeon had allocated a certain percentage of personnel to perform the services that it provided to us based on its good faith estimate of the required services. These allocated costs have historically increased related-party borrowings. The costs reflect Alphaeon full-time equivalent, or FTE, rate for the applicable personnel, plus out-of-pocket expenses such as occupancy costs associated with the FTEs allocated to providing us these services. We historically have not recorded a mark-up on the external or internal expenses Alphaeon allocates to us. All Alphaeon-provided operating expenses shown in our financial statements were treated as related party borrowings from Alphaeon to us for the period between January 1, 2018 and February 11, 2018. Since the initial public offering, we have not relied on Alphaeon for funding and in connection with the closing of our initial public offering the related party borrowings were settled in full. As of the completion of our initial public offering on February 12, 2018, we assumed from Alphaeon the revised payment obligations under the Amended Purchase Agreement of $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note).

Upon our initial public offering on February 12, 2018, we were released of the $140.7 million note obligation for all guaranty and security obligations, and the related party receivable from Alphaeon of $73.7 million was settled, resulting in a capital contribution of $67.0 million. Alphaeon's security interest in Evolus' assets also was terminated. See Note 11, *Related Party Transactions* for more information.

Payment Obligations Related to the Acquisition by Alphaeon

Under the Amended Purchase Agreement, the revised payment obligations consist of (i) an approximately $9.2 million up-front payment upon obtaining FDA approval for Jeuveau® for the treatment of glabellar lines, which was paid in full in 2018, (ii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau® within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau® outside of the United States, and (iv) a $20.0 million promissory note that matures in November 2021. The revised payment obligations set forth in (ii) and (iii) above will terminate in the quarter following the 10-year anniversary of the first commercial sale of Jeuveau® in the United States in the second quarter of 2029. Neither Evolus nor Alphaeon has the right to terminate any future payments for a one-time lump sum payment. As of December 31, 2019 and 2018, we recorded an aggregate balance of $59.1 million and $67.1 million, respectively, on our balance sheet for the revised payment obligations and the promissory note owed to the Evolus Founders (comprised of $41.2 million and $50.2 million, respectively, for the contingent royalty obligation and $17.9 million and $16.9 million, respectively, for the contingent promissory note). We paid the Evolus Founders $9.2 million in February 2019 subsequent to the FDA's approval of Jeuveau®.

Under the Amended Purchase Agreement, in February 2019, Evolus paid one-time bonuses of $1.6 million to certain former and current employees upon FDA approval of Jeuveau®.

License and Supply Agreement with Daewoong

Pursuant to the Daewoong Agreement, $13.5 million in additional cash consideration was due to Daewoong based upon the Company's successful completion of certain technical and sales milestones. We paid Daewoong $2.0 million in February 2019 and $1.0 million in December 2019 subsequent to the FDA's approval and EMA's approval, respectively, of Jeuveau®. As of December 31, 2019, Daewoong is eligible to receive remaining contingent milestone payments of up to $10.5 million.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined in the rules and regulations of the SEC. We do 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 for any other contractually narrow or limited purpose.

Contractual Obligations and Commitments

Not applicable.

Critical Accounting Policies

Management's discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and related disclosure of contingent assets and liabilities, revenue and expenses at the date of the financial statements as well as the expenses incurred during the reporting period. Generally, we base our estimates on historical experience and on various other assumptions in accordance with GAAP that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates under different assumptions or conditions and such differences could be material to the financial position and results of operations. On an ongoing basis, we evaluate our judgments and estimates in light of changes in circumstances, facts and experience.

While our significant accounting policies are more fully described in the notes to our financial statements appearing elsewhere in this Annual Report on Form 10-K, we believe the following accounting policies to be most critical for fully understanding and evaluating our financial condition and results of operations, as these policies relate to the more significant areas involving management's judgments and estimates.

Revenue Recognition

We recognize revenue when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration to which we expect to be entitled in exchange for the goods or services. In order to achieve that core principle, a five-step approach is applied: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue allocated to each performance obligation when the Company satisfies the performance obligation. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer, and is the unit of account for revenue recognition.

We currently operate in one reportable segment and all of our net revenue is derived from sales of Jeuveau®. We generate product revenue from the sale of Jeuveau® in the United States and service revenue from the sale of Jeuveau® through a distribution partner in Canada. For product revenue, we recognize revenue when control of Jeuveau® is transferred to a customer upon receipt. We do not accept product returns except under limited circumstances such as damages in transit or ineffective product. Any amounts related to taxes assessed by governmental authorities are excluded from revenue measurement. Shipping and handling costs associated with outbound product freight are accounted for as fulfillment costs and are included in selling, general, and marketing expenses on the condensed statements of operations and comprehensive loss. Payment terms are short-term and customer contracts do not include significant financing components. For service revenue, we are determined to be the agent in the distribution of Jeuveau® in Canada and record the sale as service revenue on a net basis.

We provide customers with trade and volume discounts and prompt pay discounts that are directly reflected in the invoice price. Revenues are recorded net of sales-related adjustments, wherever applicable, for the volume rebates and coupon programs. Volume rebates are contractually offered to certain customers. Generally, the rebates payable to each customer are determined based on the contract and quarterly purchase volumes. Through the coupon program, customers receive coupons redeemable into gift cards funded by us for the benefit of consumers. The coupons are accounted for as variable consideration. The Company estimates the coupon redemption rates based on historical data and expectations of future redemptions prior to the coupon expiration date. The coupons are accrued based on estimated redemption rates and the volume of products purchased and recorded as a reduction to revenues on product delivery.

Accounts receivable are recorded at the invoiced amount and do not bear interest. We assess the probability that we will collect the entitled consideration in exchange for the goods sold, by considering the customer's ability and intention to pay when consideration is due. On a recurring basis, we estimate the amounts of receivables considered uncollectible to reflect an allowance for doubtful accounts.

Contingent Royalty Obligation and Promissory Note Payable to Evolus Founders

We determine the fair value of the contingent royalty obligation payable to the Evolus Founders under the Amended Purchase Agreement based on significant unobservable inputs using a discounted cash flows method. Changes in the fair value of this contingent royalty obligation are determined each period end and recorded in operating expenses in the statements of operations and comprehensive loss and in the current and non-current liabilities in the balance sheets. The significant

unobservable input assumptions that can significantly change the fair value includes (i) projected net revenues during the payment period, (ii) the discount rate and (iii) the timing of payments.

We also determined the fair value of the contingent promissory note payable at present value using a discount rate for similar rated debt securities and is based on an estimated date that we believe the contingent promissory note will mature. Accretion related to the contingent promissory note is recorded in interest expense of the statements of operations and comprehensive loss with a corresponding increase to the non-current liabilities section of the balance sheets.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired in a business combination. We review goodwill for impairment annually and whenever events or changes in circumstances indicate the carrying amount of goodwill may not be recoverable. We perform an annual qualitative assessment of goodwill in the fourth quarter each calendar year to determine if any events or circumstances exist, such as an adverse change in business climate or a decline in the overall industry demand, that would indicate that it would more likely than not reduce the fair value of a reporting unit below its carrying amount, including goodwill. If events or circumstances do not indicate that the fair value of a reporting unit is below its carrying amount, then goodwill is not considered to be impaired and no further testing is required. If further testing is required, we perform a two-step process. The first step involves comparing the fair value of our reporting unit to its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, the second step of the test is performed by comparing the carrying value of the goodwill in the reporting unit to its implied fair value. An impairment charge is recognized for the excess of the carrying value of goodwill over its implied fair value. For the purpose of impairment testing, we have determined that there is one reporting unit. There has been no impairment of goodwill for any of the periods presented.

Intangible Assets

Upon FDA approval of Jeuveau® in February 2019, in process research and development (“IPR&D”) related to Jeuveau® was evaluated as completed and reclassified to a definite-lived distribution right intangible asset, which is amortized over the period the asset is expected to contribute to the future cash flows of the Company. The Company determined the pattern of this intangible asset’s future cash flows could not be readily determined with a high level of precision. As a result, the distribution right intangible asset is being amortized on a straight-line basis over the estimated useful life of 20 years.

The Company capitalizes certain internal-use software costs associated with the development of its mobile and web-based customer platforms. These costs include personnel expenses and external costs that are directly associated with the software projects. These costs are included as intangible assets in the accompanying condensed balance sheets. The capitalized internal-use software costs are amortized on a straight-line basis over the estimated useful life of two years upon being placed in service.

The Company reviews long-term and identifiable definite-lived intangible assets or asset groups for impairment when events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable. If the sum of the expected future undiscounted cash flows is less than the carrying amount of the asset or an asset group, further impairment analysis is performed. An impairment loss is measured as the amount by which the carrying amount of the asset or asset groups exceeds the fair value for assets to be held and used or fair value less cost to sell for assets to be disposed of. The Company also reviews the useful lives of its assets periodically to determine whether events and circumstances warrant a revision to the remaining useful life. Changes in the useful life are adjusted prospectively by revising the remaining period over which the asset is amortized. There was no material impairment of long-lived assets for any periods presented.

Recently Issued and Adopted Accounting Pronouncements

We describe the recently issued accounting pronouncements that apply to us in Note 2, *Summary of Significant Accounting Policies-Recent Accounting Pronouncements.*

Item 7A. Quantitative and Qualitative Disclosure About Market Risk.

Not applicable.

Item 8. Financial Statements and Supplementary Data.

Evolus, Inc.

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Evolus, Inc.
Opinion on the Financial Statements

We have audited the accompanying balance sheets of Evolus, Inc. (the Company) as of December 31, 2019 and 2018, the related statements of operations and comprehensive loss, stockholders' equity and cash flows for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2017.

Irvine, California
February 25, 2020

Evolus, Inc.
Balance Sheets
(in thousands, except par value and share data)

	December 31,	
	2019	**2018**
ASSETS		
Current assets		
Cash and cash equivalents	$ 109,892	$ 93,162
Short-term investments	19,911	—
Accounts receivable, net	10,661	—
Inventories	6,407	—
Prepaid expenses and other current assets	5,326	1,177
Total current assets	152,197	94,339
Property and equipment, net	902	—
Operating lease right-of-use assets	4,068	—
Intangible assets, net	59,638	56,076
Goodwill	21,208	21,208
Other assets	2,429	221
Total assets	$ 240,442	$ 171,844
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Accounts payable	$ 5,796	$ 1,558
Accrued expenses	13,960	3,718
Operating lease liabilities	1,200	—
Contingent royalty obligation payable to Evolus Founders	3,483	—
Total current liabilities	24,439	5,276
Operating lease liabilities	3,893	—
Contingent royalty obligation payable to Evolus Founders	41,200	50,200
Contingent promissory note payable to Evolus Founders	17,945	16,904
Long-term debt, net of discounts and issuance costs	73,508	—
Deferred tax liability	—	15,055
Deferred rent	—	25
Total liabilities	160,985	87,460
Commitments and contingencies (Note 7)		
Stockholders' equity		
Preferred Stock, $0.00001 par value; 10,000,000 shares authorized; no shares issued and outstanding at December 31, 2019 and December 31, 2018, respectively	—	—
Common Stock, $0.00001 par value; 100,000,000 shares authorized; 33,562,665 and 27,274,991 shares issued and outstanding at December 31, 2019 and December 31, 2018, respectively	1	1
Additional paid-in capital	292,509	207,408
Accumulated other comprehensive gain	6	—
Accumulated deficit	(213,059)	(123,025)
Total stockholders' equity	79,457	84,384
Total liabilities and stockholders' equity	$ 240,442	$ 171,844

See accompanying notes to financial statements.

Evolus, Inc.
Statements of Operations and Comprehensive Loss
(in thousands, except share and per share data)

	Year Ended December 31,	
	2019	**2018**
Revenue:		
Product revenue, net	$ 34,237	$ —
Service revenue	688	—
Total net revenues	34,925	—
Product cost of sales (excludes amortization of intangible assets)	8,014	—
Gross profit	26,911	—
Operating expenses:		
Selling, general and administrative	113,593	29,146
Research and development	3,973	6,487
Revaluation of contingent royalty obligation to Evolus Founders	4,160	10,500
Depreciation and amortization	4,132	9
Total operating expenses	125,858	46,142
Loss from operations	(98,947)	(46,142)
Other income (expense):		
Interest income	1,839	203
Interest expense	(7,953)	(863)
Loss before income taxes	(105,061)	(46,802)
Income tax (benefit) expense	(15,027)	65
Net loss	$ (90,034)	$ (46,867)
Other comprehensive gain:		
Unrealized gain on available-for-sale securities, net of tax	6	—
Comprehensive loss	$ (90,028)	$ (46,867)
Net loss per share, basic and diluted	$ (3.19)	$ (1.92)
Weighted-average shares outstanding used to compute basic and diluted net loss per share	28,237,816	24,402,368

See accompanying notes to financial statements.

Evolus, Inc.

Statements of Stockholders' Equity (Deficit)

(in thousands, except share data)

	Series A Preferred Stock		Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Gain	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount				
Balance at December 31, 2017	1,250,000	$ —	16,527,000	$ —	$ —	$ —	$ (75,543)	$(75,543)
Deemed contribution from Parent, increase of related-party receivable	—	—	—	—	1,051	—	—	1,051
Deemed distribution to Parent, increase of convertible note obligation	—	—	—	—	(1,385)	—	(615)	(2,000)
Capital contribution from Parent, convertible note write-off	—	—	—	—	66,998	—	—	66,998
Capital contribution from Parent, forgiveness of related party borrowings	—	—	—	—	13,188	—	—	13,188
Preferred stock conversion upon initial public offering	(1,250,000)	—	2,065,875	—	—	—	—	—
Issuance of common stock upon initial public offering, net of issuance costs	—	—	5,047,514	1	53,445	—	—	53,446
Issuance of common stock upon follow-on offering, net of issuance costs	—	—	3,600,000	—	67,379	—	—	67,379
Issuance of common stock in connection with the incentive equity plan	—	—	34,602	—	(239)	—	—	(239)
Stock-based compensation	—	—	—	—	6,971	—	—	6,971
Net loss	—	—	—	—	—	—	(46,867)	(46,867)
Balance at December 31, 2018	—	$ —	27,274,991	$ 1	$ 207,408	$ —	$ (123,025)	$ 84,384
Issuance of common stock upon follow-on offering, net of issuance costs	—	—	5,999,550	—	73,022	—	—	73,022
Issuance of common stock in connection with the incentive equity plan	—	—	288,124	—	2,455	—	—	2,455
Stock-based compensation	—	—	—	—	9,624	—	—	9,624
Net loss	—	—	—	—	—	—	(90,034)	(90,034)
Other comprehensive gain	—	—	—	—	—	6	—	6
Balance at December 31, 2019	—	$ —	33,562,665	$ 1	$ 292,509	$ 6	$ (213,059)	$ 79,457

See accompanying notes to financial statements.

Evolus, Inc.
Statements of Cash Flows
(in thousands)

	Year Ended December 31,	
	2019	**2018**
Cash flows from operating activities		
Net loss	$ (90,034)	$ (46,867)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	4,132	9
Stock-based compensation	9,518	6,971
Provisions for rebate and coupon programs	12,325	—
Provision for bad debts	387	—
Amortization of discount on short-term investments	(1,038)	—
Amortization of operating lease right-of-use assets	873	—
Amortization of debt discount and issuance costs	2,156	863
Deferred income taxes	(15,055)	65
Revaluation of contingent royalty obligation to Evolus Founders	4,160	10,500
Changes in assets and liabilities:		
Inventories	(4,482)	—
Accounts receivable	(11,048)	—
Prepaid expenses and other current assets	(1,874)	(992)
Accounts payable	183	1,275
Accrued expenses	(2,742)	2,733
Operating lease liabilities	(654)	—
Deferred rent	—	(13)
Other assets	(190)	(211)
Net cash used in operating activities	(93,383)	(25,667)
Cash flows from investing activities		
Purchases of property and equipment	(345)	(9)
Additions to capitalized software	(4,222)	—
Purchases of short-term investments	(113,867)	—
Maturities of short-term investments	95,000	—
Net cash used in investing activities	(23,434)	(9)
Cash flows from financing activities		
Payment of contingent royalty obligation to Evolus Founders	(9,677)	—
Milestone payment for intangible assets	(3,000)	—
Proceeds from issuance of long-term debt, net of discounts	73,906	—
Payments for debt issuance costs	(2,205)	—
Payment for debt obligation	(1,044)	—
Proceeds from initial public offering, net of underwriting fees	—	56,330
Proceeds from follow-on offering, net of underwriting fees	73,315	67,680
Payments for offering costs	(203)	(1,060)
Related party borrowings	—	1,127
Payments on related party borrowings	—	(5,000)
Issuance of common stock in connection with incentive equity plan	2,455	(239)
Net cash provided by financing activities	133,547	118,838
Change in cash and cash equivalents	16,730	93,162
Cash and cash equivalents, beginning of period	93,162	—
Cash and cash equivalents, end of period	$ 109,892	$ 93,162

See accompanying notes to financial statements.

Evolus, Inc.
Statements of Cash Flows (Continued)
(in thousands)

	Year Ended December 31,	
	2019	**2018**
Supplemental disclosure of cash flow information		
Cash paid for interest	$ 5,166	$ —
Cash paid for operating leases	$ 923	$ —
Non-cash investing and financing information:		
Related party receivable	$ —	$ 73,690
Related party borrowings	$ —	$ (68,767)
Note obligation	$ —	$ (140,688)
Contingent royalty obligation payable to Evolus Founders	$ —	$ 39,700
Contingent promissory note payable to Evolus Founders	$ —	$ 16,042
Capital contribution from Parent, convertible note write-off	$ —	$ 66,998
Capital contribution from Parent, forgiveness of related party borrowings	$ —	$ 13,188
Deferred offering costs	$ —	$ (2,885)
Accounts payable, paid by Parent	$ —	$ (163)
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	$ 5,566	$ —
Landlord paid tenant improvements	$ 781	$ —
Financed D & O insurance payment	$ 1,561	$ —
Capitalized software recorded in accounts payable and accrued expenses	$ 87	$ —
Accrued offering costs, unpaid	$ (90)	$ —

See accompanying notes to financial statements.

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

Note 1. Organization

Organization and Description of Business

Evolus, Inc., ("Evolus" or the "Company") is a performance beauty company focused on delivering products in the self-pay aesthetic market. The Company received the approval of its first product Jeuveau® (prabotulinumtoxinA-xvfs) from the U.S. Food and Drug Administration (the "FDA") in February 2019. The product was also approved by Health Canada in August 2018 and the European Commission ("EC") in September 2019. The product is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. The Company commercially launched Jeuveau® in the United States in May 2019 and in Canada through a distributor in October 2019. The Company is headquartered in Newport Beach, California.

In January 2018, the Company's board of directors and its then-sole stockholder approved an amendment to the Company's amended and restated certificate of incorporation to effect a split of shares of the Company's common stock on a 1.6527-for-1 basis (the "Stock Split"). The Company's then-outstanding shares of convertible Series A preferred stock ("Series A preferred stock"), the par value of the common stock, and the authorized shares of the common stock were not adjusted as a result of the Stock Split. All issued and outstanding shares of common stock, stock options, restricted stock units and related per share amounts in the accompanying financial statements have been retroactively adjusted to reflect this Stock Split for all periods presented. The Stock Split was effected on January 26, 2018.

On February 12, 2018, the Company completed its initial public offering ("IPO") and issued 5,047,514 shares of common stock, which included the exercise by the underwriters of their option to purchase 47,514 additional shares of common stock, at an offering price to the public of $12.00 per share. The Company received net proceeds of approximately $56,330 after deducting underwriting discounts and commissions, excluding other offering costs. In connection with the IPO, the Company's then-outstanding shares of Series A preferred stock were automatically converted into 2,065,875 shares of common stock. In connection with the completion of its IPO, the Company's amended and restated certificate of incorporation was further amended and restated to provide for 100,000,000 authorized shares of common stock with a par value of $0.00001 per share and 10,000,000 authorized shares of preferred stock with a par value of $0.00001 per share.

In July 2018, the Company completed a follow-on public offering and issued 3,600,000 shares of its common stock, which included the exercise in full by the underwriters of their option to purchase an additional 600,000 shares of common stock, at a price to the public of $20.00 per share. The Company received net proceeds of approximately $67,680 from the offering, after deducting underwriting discounts and commissions, excluding other offering expenses.

In November 2019, the Company completed a follow-on public offering and issued 5,999,550 shares of its common stock, which included the exercise in full by the underwriters of their option to purchase an additional 782,550 shares of common stock, at a price to the public of $13.00 per share. The Company received net proceeds of approximately $73,315 from the offering, after deducting underwriting discounts and commissions, excluding other offering expenses.

As of December 31, 2019 and 2018, ALPHAEON Corporation ("Alphaeon"), which is majority-owned by Strathspey Crown Holdings Group, LLC, formerly known as SCH-AEON, LLC, ("SCH"), owned 25.8% and 56.0% of the Company's outstanding shares of common stock, respectively. See Note 11. *Related Party Transactions*, for more information. In 2019 Alphaeon changed its name to AEON Biopharma, Inc. and contributed all of the shares it held in the Company to Alphaeon 1, LLC. The Company continues to refer to the renamed AEON Biopharma, Inc. as "Alphaeon" and Alphaeon 1, LLC as "Alphaeon 1, LLC."

Liquidity and Financial Condition

The accompanying financial statements have been prepared on a basis that assumes that the Company will continue as a going concern, and do not include any adjustments that may result from the outcome of this uncertainty. This basis of accounting contemplates the recovery of the Company's assets and the satisfaction of the Company's liabilities and commitments in the normal course of business and does not include any adjustments to reflect the possible future effects of the recoverability and classification of recorded asset amounts or amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern. Since inception, the Company has incurred

recurring net operating losses, which include operating losses of $90,034 and $46,867 for the years ended December 31, 2019 and 2018, respectively. Additionally, the Company used $93,383 and $25,667 in cash for operations in the years ended December 31, 2019 and 2018, respectively. Management expects operating losses and negative cash flows to continue for at least the next 12 months. As of December 31, 2019, the Company had $109,892 in cash and cash equivalents plus $19,911 in short-term investments and an accumulated deficit of $213,059.

The Company's ability to execute on its business strategy, meet its future liquidity requirements, and achieve profitable operations, is dependent on a number of factors, including its ability to gain and expand market acceptance of its product and achieve a level of revenues adequate to support its cost structure and operate its business and sell products without infringing third party intellectual property rights.

The Company believes that its current capital resources, which consist of cash, cash equivalents and short-term investments, are sufficient to fund operations through at least the next twelve months from the date the accompanying financial statements are issued based on the expected cash burn rate. The Company may be required to raise additional capital to fund future operations through the incurrence of additional debt allowed under existing debt arrangements, the entry into licensing or collaboration agreements with partners, sale of its equity securities, grants or other sources of financing. Sufficient funds may not be available to the Company at all or on attractive terms when needed from equity or debt financings. If the Company is unable to obtain additional funding from these or other sources when needed, or to the extent needed, it may be necessary to significantly reduce its controllable and variable expenditures and current rate of spending through reductions in staff and delaying, scaling back, or suspending certain research and development, sales and marketing programs and other operational goals.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP").

Reclassification

Certain amounts in the prior period financial statements have been reclassified to conform to the presentation of the current period financial statements. These reclassifications had no effect on the previously reported net loss.

Use of Estimates

Management is required to make certain estimates and assumptions in order to prepare financial statements in conformity with GAAP. Such estimates and assumptions affect the reported financial statements. The Company's most significant estimates relate to net revenues, allowance for doubtful accounts, fair value measurements, goodwill and long-lived asset valuations and impairment assessments, inventory valuations, income tax valuations, stock-based compensation and royalty obligations, among others. Management bases estimates on historical experience and on assumptions that management believes are reasonable. The Company's actual results could differ materially from those estimates.

Risks and Uncertainties

In 2013, Evolus and Daewoong Pharmaceuticals Co. Ltd. ("Daewoong") entered into the Daewoong Agreement, pursuant to which, the Company has the exclusive distribution license to Jeuveau® from Daewoong for aesthetic indications in the United States, European Union, Great Britain, Canada, Australia, Russia, Commonwealth of Independent States, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Jeuveau® is manufactured by Daewoong in a facility in South Korea. The Company also has the option to negotiate first with Daewoong to secure a distribution license for any product that Daewoong directly or indirectly develops or commercializes that is classified as an injectable botulinum toxin (other than Jeuveau®) in a territory covered by the Daewoong Agreement. The Company relies on Daewoong, its exclusive and sole supplier, to manufacture Jeuveau®. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect the Company's commercialization of Jeuveau®. The Daewoong

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Agreement, and Daewoong's rights relating to Jeuveau®, are subject to litigation. See Note 7, *Commitments and Contingencies* for additional information regarding such litigation.

The Company commercially launched Jeuveau® in the United States in May 2019 and in Canada through its distribution partner in October 2019 and, as such, has a limited history of sales. If any previously granted approval is retracted or the Company is denied approval or approval is delayed by any other regulators, it may have a material adverse impact on the Company's business and its financial statements.

The Company is subject to risks common to early stage companies in the pharmaceutical industry including, but not limited to, dependency on the clinical and commercial success of Jeuveau® and any future product candidates, ability to obtain and maintain regulatory approval of Jeuveau® and any future product candidates in the jurisdictions where approval is sought, the need for additional financing to achieve its goals, uncertainty of broad adoption of its approved products, if any, by physicians and patients, significant competition and untested manufacturing capabilities.

Segment Reporting

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision-maker. The Company has determined that it operates in a single operating and reportable segment. The Company's chief operating decision maker is its Chief Executive Officer who manages operations and reviews the financial information as a single operating segment for purposes of allocating resources and evaluating its financial performance.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents, short-term investments and accounts receivable. Substantially all of the Company's cash is held by financial institutions that management believes are of high credit quality. Such deposits may, at times, exceed federally insured limits. To date, the Company has not experienced any losses associated with this credit risk and continues to believe that this exposure is not significant. The Company invests its excess cash, in line with its investment policy, primarily in money market funds and debt instruments of U.S. government agencies.

The Company's accounts receivable is derived from customers located principally in the United States. Concentrations of credit risk with respect to trade receivables are limited due to the Company's credit evaluation process. The Company does not typically require collateral from its customers. Credit losses historically have not been material. The Company continuously monitors customer payments and maintains an allowance for doubtful accounts based on its assessment of various factors including historical experience, age of the receivable balances, and other current economic conditions or other factors that may affect customers' ability to pay.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash and highly liquid investments with remaining maturities at purchase of three months or less that can be liquidated without prior notice or penalty. Cash and cash equivalents may include deposits, money market funds and debt securities. Amounts receivable from credit card issuers are typically converted to cash within two to four days of the original sales transaction and are considered to be cash equivalents.

Short-Term Investments

Short-term investments consist of available-for-sale U.S. Treasury securities with original maturities greater than three months and remaining maturities of less than twelve months. These investments are recorded at fair value based on quoted prices in active markets, with unrealized gains and losses reported in other comprehensive gain (loss) in the Company's statements of operations and comprehensive loss. Purchase premiums and discounts are recognized in interest expense using the effective interest method over the terms of the securities. Realized gains and losses and declines in fair value that are deemed to be other than temporary are reflected in the statements of operations and comprehensive loss using the specific-identification method.

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The Company periodically reviews all available-for-sale securities for other than temporary declines in fair value below the cost basis whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The Company also evaluates whether it has plans or is required to sell short-term investments before recovery of their amortized cost bases. To date, the Company has not identified any other than temporary declines in fair value of its short-term investments.

Inventories

Inventories consist of finished goods held for sale and distribution. Cost is determined using the first-in, first-out method with prioritization of the items with the earliest expiration dates. Inventory valuation reserves are established based on a number of factors including, but not limited to, finished goods not meeting product specifications, product excess and obsolescence, or application of the lower of cost or net realizable value concepts. The determination of events requiring the establishment of inventory valuation reserves, together with the calculation of the amount of such reserves may require judgment. No material inventory valuation reserves have been recorded for any periods presented. Adverse changes in assumptions utilized in the Company's inventory reserve calculations could result in an increase to its inventory valuation reserves.

Fair Value of Financial Instruments

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in an orderly transaction between market participants in a principal market on the measurement date.

The fair value hierarchy defines a three-tiered valuation hierarchy for disclosure of fair value measurement is classified and disclosed by the Company in one of the three categories as follows:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities in active markets; quoted prices in markets that are not active; or other inputs that are observable, either directly or indirectly, or can be corroborated by observable market data for substantially the full term of the asset or liability; and
- Level 3—Prices or valuation techniques that require inputs that are unobservable that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

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Goodwill

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired in a business combination. The Company reviews goodwill for impairment annually and whenever events or changes in circumstances indicate the carrying amount of goodwill may not be recoverable. The Company performs an annual qualitative assessment of its goodwill in the fourth quarter each calendar year to determine if any events or circumstances exist, such as an adverse change in business climate or a decline in the overall industry demand, that would indicate that it would more likely than not reduce the fair value of a reporting unit below its carrying amount, including goodwill. If events or circumstances do not indicate that the fair value of a reporting unit is below its carrying amount, then goodwill is not considered to be impaired and no further testing is required. If further testing is required, the Company performs a two-step process. The first step involves comparing the fair value of the Company's reporting unit to its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, the second step of the test is performed by comparing the carrying value of the goodwill in the reporting unit to its implied fair value. An impairment charge is recognized for the excess of the carrying value of goodwill over its implied fair value. For the purpose of impairment testing, the Company has determined that it has one reporting unit. There was no impairment of goodwill for any of the periods presented.

Intangible Assets

Upon FDA approval of Jeuveau® in February 2019, the in process research and development ("IPR&D") related to Jeuveau® was evaluated as completed and reclassified to a definite-lived distribution right intangible asset, which is amortized over the period the asset is expected to contribute to the future cash flows of the Company. The Company determined the pattern of this intangible asset's future cash flows could not be readily determined with a high level of precision. As a result, the distribution right intangible asset is being amortized on a straight-line basis over the estimated useful life of 20 years.

The Company capitalizes certain internal-use software costs associated with the development of its mobile and web-based customer platforms. These costs include personnel expenses and external costs that are directly associated with the software projects. These costs are included as intangible assets in the accompanying balance sheets. The capitalized internal-use software costs are amortized on a straight-line basis over the estimated useful life of two years upon being placed in service.

The Company reviews long-term and identifiable definite-lived intangible assets or asset groups for impairment when events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable. If the sum of the expected future undiscounted cash flows is less than the carrying amount of the asset or an asset group, further impairment analysis is performed. An impairment loss is measured as the amount by which the carrying amount of the asset or asset groups exceeds the fair value for assets to be held and used or fair value less cost to sell for assets to be disposed of. The Company also reviews the useful lives of its assets periodically to determine whether events and circumstances warrant a revision to the remaining useful life. Changes in the useful life are adjusted prospectively by revising the remaining period over which the asset is amortized. There was no impairment of long-lived assets for any periods presented.

Leases

In accordance with Accounting Standards Update ("ASU") No. 2016-02 as adopted on January 1, 2019, at the inception of a contractual arrangement, the Company determines whether the contract contains a lease by assessing whether there is an identified asset and whether the contract conveys the right to control the use of the identified asset in exchange for consideration over a period of time. If both criteria are met, upon lease commencement, the Company records a lease liability which represents the Company's obligation to make lease payments arising from the lease, and a corresponding right-of-use ("ROU") asset which represents the Company's right to use an underlying asset during the lease term. Operating lease assets and liabilities are included in ROU assets, current portion of operating lease liabilities and noncurrent operating lease liabilities in the accompanying balance sheets.

Operating lease ROU assets and lease liabilities are initially recognized based on the present value of the future minimum lease payments over the lease term at commencement date calculated using the Company's incremental borrowing rate applicable to the underlying asset unless the implicit rate is readily determinable. Operating lease ROU assets also include

any lease payments made at or before lease commencement and exclude any lease incentives received, if any. The Company determines the lease term as the noncancellable period of the lease and may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise such options. The Company's leases do not contain any residual value guarantees. Leases with a term of 12 months or less are not recognized on the balance sheets. For operating leases, the Company recognized rent expense on a straight-line basis over the lease term. There were no significant finance leases as of December 31, 2019.

Research and Development Expenses

Research and development costs are expensed as incurred. Research and development expenses include personnel-related costs, costs associated with pre-clinical and clinical development activities, costs associated with and costs for prototype products that are manufactured prior to market approval for that prototype product, internal and external costs associated with the Company's regulatory compliance and quality assurance functions, including the costs of outside consultants and contractors that assist in the process of submitting and maintaining regulatory filings, and overhead costs, including allocated facility related expenses.

Contingent Payment Obligation Payable to the Evolus Founders

On February 12, 2018, related to the acquisition of Evolus in 2013 by SCH and Alphaeon, the Company recognized a contingent royalty obligation payable to the Evolus Founders. See Note 11, *Related Party Transactions* for more information. The Company determines the fair value of the contingent royalty obligation payable at each reporting period end based on Level 3 inputs using a discounted cash flows method. Changes in the fair value of this contingent royalty obligation are determined at each reporting period end and recorded in operating expenses in the statements of operations and comprehensive loss and as a liability in the balance sheets.

Contingent Promissory Note Payable to Evolus Founders

On February 12, 2018, related to the acquisition of Evolus in 2013 by SCH and Alphaeon (See Note 11, *Related Party Transactions* for more information), the Company recognized a contingent promissory note payable at present value using a discount rate for similar rated debt securities based on an estimated date that the Company believed the contingent promissory note will mature. Discount amortization related to the contingent promissory note is recorded in interest expense in the statement of operations and comprehensive loss with a corresponding increase to the non-current liabilities in the balance sheets.

Long-term Debt

Long-term debt represents the debt balance with Oxford Finance ("Oxford"), net of debt issuance costs. See Note 6, *Oxford Term Loans* for more information. Debt issuance costs represent legal, lender and consulting costs or fees associated with debt financing. Debt discounts and issuance costs are allocated pro rata between the funded and unfunded portions of the debt and are amortized into interest expense over the term of the debt.

Revenue Recognition

The Company applies Accounting Standards Codification 606, *Revenue from Contracts with Customers* ("ASC 606"), to account for revenue generated since the commercial launch of Jeuveau® in May 2019.

The Company recognizes revenue when control of the promised goods or services is transferred to its customers, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for the goods or services. In order to achieve that core principle, a five-step approach is applied: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue allocated to each performance obligation when the Company satisfies the performance obligation. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer, and is the unit of account for revenue recognition.

General

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The Company currently generates product revenue from the sale of Jeuveau® in the United States and service revenue from the sale of Jeuveau® through a distribution partner in Canada.

For product revenue, the Company recognizes revenue when control of the promised goods under a contract is transferred to a customer, in an amount that reflects the consideration the Company expects to receive in exchange for those goods as specified in the customer contract. The transfer of control occurs upon receipt of the goods by the customer since that is when the customer has obtained control of the goods' economic benefits. The Company does not provide any service-type warranties and does not accept product returns except under limited circumstances such as damages in transit or ineffective product. The Company also excludes any amounts related to taxes assessed by governmental authorities from revenue measurement. Shipping and handling costs associated with outbound product freight are accounted for as fulfillment costs and are included in selling, general and marketing expenses in the accompanying statements of operations and comprehensive loss.

For service revenue, the Company evaluated the arrangement with the distribution partner in Canada and determined that it acts as an agent in the distribution of Jeuveau® in Canada as it does not control the product before control is transferred to a customer. The indicators of which party exercises control include primary responsibility over performance obligations, inventory risk before the good or service is transferred and discretion in establishing the price. Accordingly, the Company records the sale as service revenue on a net basis. Revenue from services is recognized in the period the service is performed for the amount of consideration expected to be received. For the year ended December 31, 2019, the Company recognized $688 of revenue related to Canada sales.

Disaggregation of Revenue

The Company's disaggregation of revenue is consistent with its operating segment as disclosed above.

Gross-to-Net Revenue Adjustments

The Company provides customers with trade and volume discounts and prompt pay discounts that are reflected in the invoice price. Revenues are recorded net of sales-related adjustments, wherever applicable, for rebates and coupon programs. Accrued rebate and coupon balances are recorded in accrued expenses on the accompanying balance sheets.

- *Volume-based Rebates* - Volume-based rebates are contractually offered to certain customers. The rebates payable to each customer are determined based on the contract and purchase volumes.
- *Coupons* - The Company issued customers coupons redeemable into gift cards funded by the Company for the benefit of patients. The coupons are accounted for as variable consideration. The Company estimates the coupon redemption rates based on historical data and future expectations. The coupons are accrued based on estimated redemption rates and the volume of products purchased and are recorded as a reduction to revenues on product delivery.

As of December 31, 2019, the accrued volume-based rebate and coupon liability was $1,709. For the year ended December 31, 2019, provisions for rebate and coupon programs were $12,325, which were offset by related payments of $10,616.

Contract balances

A contract with a customer states the terms of the sale, including the description, quantity and price of each product purchased. Amounts are recorded as accounts receivable when the Company's right to consideration becomes unconditional. As payment terms are short-term, the Company does not have any significant financing components in customer contracts given the expected time between transfer of the promised products and the payment of the associated consideration is less than one year. As of December 31, 2019, all amounts included in accounts receivable, net on the accompanying balance sheets are related to contracts with customers.

The Company did not have any contract assets nor unbilled receivables as of December 31, 2019. Sales commissions are included in selling, general and administrative expenses when incurred.

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Contract liabilities reflect estimated amounts that the Company is obligated to pay to customers or patients under the rebate and coupon programs. The Company's contract liabilities are included in accounts payable and accrued expenses in the accompanying balance sheets.

During the year ended December 31, 2019, the Company did not recognize any revenue related to changes in transaction prices regarding its contracts with customers and did not recognize any material changes in revenue related to amounts included in contract liabilities at the beginning of the period.

Collectability

Accounts receivable are recorded at the invoiced amount and do not bear interest. At the time of contract inception or new customer account set-up, the Company performs a collectability assessment of the customer's creditworthiness. The Company assesses the probability that the Company will collect the entitled consideration in exchange for the goods sold, by considering the customer's ability and intention to pay when consideration is due. On a recurring basis, the Company estimates the amount of receivables considered uncollectable to reflect an allowance for doubtful accounts. The Company writes off accounts receivable balances when it is determined that there is no possibility of collection. As of December 31, 2019, allowance for doubtful accounts was $387. For the year ended December 31, 2019, provision for bad debts was $387 and there were no write-offs.

Practical Expedients

The Company expenses sales commissions when incurred as the amortization period is one year or less. These costs are recorded within selling, general and administrative expenses in the accompanying statements of operations and comprehensive loss. The Company does not adjust the amount of promised consideration for the effects of the time value of money for contracts in which the anticipated period between when the Company transfers the goods or services to the customer and when the customer pays is within one year.

Stock-Based Compensation

The Company recognizes stock-based compensation expense for employees, consultants and members of the Board of Directors based on the fair value at the date of grant.

The Company uses the Black-Scholes option pricing model to value stock option grants. The Black-Scholes option pricing model requires the input of subjective assumptions, including the expected volatility of the Company's common stock, expected risk-free interest rate, and the option's expected life. The fair value of the Company's restricted stock units ("RSUs") is based on the fair value of the grant date of the Company's common stock. The Company also evaluates the impact of modifications made to the original terms of equity awards when they occur.

The fair value of equity awards that are expected to vest is amortized on a straight-line basis over the requisite service period. Stock-based compensation expense is recognized net of actual forfeitures when they occur, as an increase to additional paid-in capital in the balance sheets and in the selling, general and administrative or research and development expenses in the statements of operations and comprehensive loss.

Advertising Costs

Advertising costs are expensed as incurred and primarily include costs related to social media ads. For the years ended December 31, 2019 and 2018, the Company incurred advertising costs of $1,407 and $0, respectively.

Income Taxes

The Company accounts for income taxes under the asset and liability method. Under this method, deferred tax assets and liabilities are determined on the basis of differences between the financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Prior to the IPO, the Company calculated its income tax amounts using a separate return methodology and presented these amounts as if it were a separate taxpayer from Alphaeon in each jurisdiction. Subsequent to the IPO, the Company has prepared its stand-alone tax return.

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A valuation allowance is recorded against deferred tax assets, to reduce the net carrying value, when it is more likely than not that some portion or all of a deferred tax asset will not be realized. In making such a determination, management considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, and ongoing prudent and feasible tax planning strategies in assessing the amount of the valuation allowance. When the Company establishes or reduces the valuation allowance against its deferred tax assets, its provision for income taxes will increase or decrease, respectively, in the period such determination is made.

Additionally, the Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefit recognized in the financial statements for a particular tax position is based on the largest benefit that is more likely than not to be realized upon settlement. Accordingly, the Company establishes reserves for uncertain tax positions. The Company has not recognized interest or penalties in its statement of operations and comprehensive loss.

The Company is required to file federal and state income tax returns in the United States and various other state jurisdictions. The preparation of these income tax returns requires the Company to interpret the applicable tax laws and regulations in effect in such jurisdictions, which could affect the amount of tax paid by the Company. An amount is accrued for the estimate of additional tax liability, including interest and penalties, for any uncertain tax positions taken or expected to be taken in an income tax return. The Company reviews and updates the accrual for uncertain tax positions as more definitive information becomes available.

The Company’s income tax returns are based on calculations and assumptions that are subject to examination by the Internal Revenue Service and other tax authorities. In addition, the calculation of the Company’s tax liabilities involves dealing with uncertainties in the application of complex tax regulations. The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. While the Company believes it has appropriate support for the positions taken on its tax returns, the Company regularly assesses the potential outcomes of examinations by tax authorities in determining the adequacy of its provision for income taxes. The Company continually assesses the likelihood and amount of potential revisions and adjusts the income tax provision, income taxes payable and deferred taxes in the period in which the facts that give rise to a revision become known.

Net Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period including contingently issuable shares. Diluted earnings per share is based on the treasury stock method and includes the effect from potential issuance of ordinary shares, such as shares issuable pursuant to the exercise of stock options and the vesting of restricted stock units. Because the impact of the options and non-vested RSUs are anti-dilutive during periods of net loss, there was no difference between the weighted-average number of shares used to calculate basic and diluted net loss per common share for the periods presented. For the years ended December 31, 2019 and 2018, excluded from the dilutive net loss per share computation were stock options of 3,977,401 and 3,257,801, respectively, and non-vested RSUs of 179,758 and 221,292, respectively, because their inclusion would have been anti-dilutive. Although these securities were anti-dilutive for these periods, they could be dilutive in future periods.

Recent Accounting Pronouncements

Recently Adopted Pronouncements

In August 2018, the SEC adopted the final rule under SEC Release No. 33-10532, *Disclosure Update and Simplification*, amending certain disclosure requirements that were redundant, duplicative, overlapping, outdated or superseded. In addition, the amendments expanded the disclosure requirements on the analysis of stockholders’ equity for interim financial statements. Under the amendments, an analysis of changes in each caption of stockholders’ equity presented in the balance sheet must be provided in a note or separate statement. The analysis should present a reconciliation of the beginning balance to the ending balance of each period for which a statement of comprehensive income is required to be filed. This final rule

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was effective on November 5, 2018 and it did not have a material impact on the Company's financial statements upon adoption on January 1, 2019.

In July 2018, the Financial Accounting Standards Board (the "FASB") issued ASU No. 2018-09, *Codification Improvements*, which clarifies certain amendments to guidance that may have been incorrectly or inconsistently applied by certain entities and includes Amendments to Subtopic 718-740, Compensation - Stock Compensation - Income Taxes. The guidance in paragraph 718-740-35-2, as amended by the amendments in ASU 2016-09, Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, is unclear on whether an entity should recognize excess tax benefits (or tax deficiencies) for compensation expense that is taken on the entity's tax return. The amendment to paragraph 718-740-35-2 in this update clarified that an entity should recognize excess tax benefits in the period in which the amount of deduction is determined. The Company adopted the guidance on January 1, 2019, and such adoption did not have a material impact on its financial statements.

In February 2016, the FASB issued ASU No. 2016-02 and its related amendments which introduced *Leases (Topic 842, or* "ASC 842"*)*, a new comprehensive lease accounting model that superseded the lease guidance under *Leases (Topic 840)*. The new accounting standard required lessees to recognize ROU assets and corresponding lease liabilities for all leases with lease terms of greater than 12 months. It also changed the definition of a lease and expanded the disclosure requirements of lease arrangements. In July 2018, the FASB added a transition option for implementation that allowed companies to continue to use the legacy guidance in ASC 840, *Leases*, including its disclosure requirements, in the comparative periods presented in the year of adoption. The Company adopted the guidance effective January 1, 2019. The Company elected the transition package of three practical expedients and elected the optional transition method that allowed for a cumulative-effect adjustment in the period of adoption without a restatement of prior periods. Further, the Company elected a short-term lease exception policy, permitting the Company to not apply the recognition requirements of this standard to short-term leases (i.e. leases with terms of 12 months or less) and an accounting policy to account for lease and non-lease components as a single component for certain classes of assets. As a result of the adoption, the Company adjusted its beginning balance of 2019 by recording operating lease ROU assets and liabilities through a cumulative-effect adjustment. The adoption impacted the accompanying balance sheet, but did not have an impact on the statements of operations and comprehensive loss.

The impact of the adoption of ASC 842 on the accompanying balance sheet as of January 1, 2019 was as follows:

	December 31, 2018	Adjustments Due to the Adoption of ASC 842	January 1, 2019
Operating lease right-of-use assets	$ —	$ 1,029	$ 1,029
Current portion of operating lease liabilities	$ —	$ 916	$ 916
Operating lease liabilities	$ —	$ 138	$ 138
Deferred rent	$ 25	$ (25)	$ —

Recent Pronouncements Not Yet Adopted

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326)*: Measurement of Credit Losses on Financial Instruments, which modifies the measurement and recognition of credit losses for most financial assets and certain other instruments. The new standard requires the use of forward-looking expected credit loss models based on historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount, which may result in earlier recognition of credit losses under the new standard. The new guidance also modifies the impairment models for available-for-sale debt securities and for purchased financial assets with credit deterioration since their origination. Subsequent to the issuance of ASU 2016-13, the FASB issued ASU 2018-19, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses*. This ASU does not change the core principle of the guidance in ASU 2016-13, instead these amendments are intended to clarify and improve operability of certain topics included within the credit losses standard. The FASB also subsequently issued ASU No. 2019-04, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, which did not change the core principle of the guidance in ASU 2016-13 but clarified that expected recoveries of amounts previously written off and expected to be written off should be included in the valuation account and should not exceed amounts

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previously written off and expected to be written off. The guidance is effective for interim and annual reporting periods beginning after December 15, 2019 for public business entities, excluding entities eligible to be smaller reporting companies, and early adoption is permitted. As a smaller reporting company, the guidance will be effective for the Company during the first quarter of 2023. The Company is in the process of determining the effects adoption will have on its financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. The update simplifies the accounting for goodwill impairment by removing step two of the goodwill impairment test, which requires a hypothetical purchase price allocation. A goodwill impairment will be the amount by which a reporting unit's carrying amount, including goodwill, exceeds its fair value. The impairment charge will be limited to the amount of goodwill allocated to that reporting unit. The update is effective for the Company beginning January 1, 2023. The standard requires prospective application. Early adoption is permitted. The Company is evaluating the effect of this standard on its financial statements and related disclosures as well as whether to early adopt the new guidance.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement.* The update is part of the disclosure framework project and eliminates certain disclosure requirements for fair value measurements, requires entities to disclose new information, and modifies existing disclosure requirements. Under the new guidance, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, or valuation processes for Level 3 fair value measurements. However, public companies will be required to disclose the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and related changes in unrealized gains and losses included in other comprehensive income. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2020. Early adoption is permitted. The Company does not expect adoption of this guidance will have a material impact to its financial statements.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software: Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract*. ASU 2018-15 requires implementation costs incurred by customers in cloud computing arrangements (i.e., hosting arrangements) to be capitalized under the same premises of authoritative guidance for internal-use software, and deferred over the noncancellable term of the cloud computing arrangements plus any option renewal periods that are reasonably certain to be exercised by the customer or for which the exercise is controlled by the service provider. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2020. Early adoption is permitted. The Company does not expect adoption of this guidance will have a material impact to its financial statements.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. ASU 2019-12 eliminates certain exceptions for recognizing deferred taxes for investments, performing intraperiod allocation and calculating income taxes in interim periods. This ASU also includes guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. ASU 2019-12 is effective for annual and interim periods in fiscal years beginning after December 15, 2020. Early adoption is permitted. The Company is currently evaluating the impact this change will have on its financial statements.

Note 3. Fair Value Measurements and Short-Term Investments

Short-Term Investments

The Company did not have any short-term investments for the year ended December 31, 2018. As of December 31, 2019, all of the Company's investments had remaining maturities of less than 12 months. The following is a summary of the Company's short-term investments, considered available-for-sale, as of December 31, 2019:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Available-for-sale securities				
U.S treasury securities	$ 19,905	$ 6	$ —	$ 19,911

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As of December 31, 2019, no investments had been in a continuous unrealized loss position for more than 12 months, and the Company did not record any other-than-temporary impairments on these securities.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company measures and reports certain financial instruments as assets and liabilities at fair value on a recurring basis. The fair value of these instruments was as follows:

	As of December 31, 2019			
	Fair Value	Level 1	Level 2	Level 3
Available-for-sale debt securities				
U.S treasury securities	$ 19,911	$ 19,911	$ —	$ —
Liabilities				
Contingent royalty obligation payable to Evolus Founders	$ 44,683	$ —	$ —	$ 44,683

	As of December 31, 2018			
	Fair Value	Level 1	Level 2	Level 3
Liabilities				
Contingent royalty obligation payable to Evolus Founders	$ 50,200	$ —	$ —	$ 50,200

The Company did not transfer any assets or liabilities measured at fair value on a recurring basis between levels during the year ended December 31, 2019.

The Company determines the fair value of the contingent royalty obligation payable based on Level 3 inputs using a discounted cash flow method. The significant unobservable input assumptions that can significantly change the fair value include (i) timing of regulatory approvals of Jeuveau®, (ii) projected and timing of net revenues during the payment period, which terminates in the quarter following the 10-year anniversary of the first commercial sale of Jeuveau® in the United States, (iii) the discount rate and (iv) the timing of payments. During the years ended December 31, 2019 and 2018, the Company utilized discount rates between 16.0% and 25.0%, reflecting changes in the Company's risk profile. Net revenue projections were also updated to reflect changes in the timing of regulatory approval and expected sales. Significant increases (decreases) in discount rate would result in a significantly lower (higher) fair value measurement, which could impact materially the fair value reported on the balance sheet.

The following table shows a reconciliation of the beginning and ending fair value measurements of the contingent royalty obligation payable:

	Year Ended December 31,	
	2019	2018
Fair value, beginning of period	$ 50,200	$ —
Payments	(9,677)	—
Assumption of the royalty obligation payable to Evolus Founders	—	39,700
Change in fair value recorded in operating expenses	4,160	10,500
Fair value, end of period	$ 44,683	$ 50,200

Other Financial Assets and Liabilities

The Company's financial instruments consist primarily of cash and cash equivalents, short-term available-for-sale debt securities, accounts receivable, accounts payable, accrued expenses, lease liabilities, and long-term debt. The carrying amount of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximates their fair value because of the short-term maturity of such instruments.

The Company estimates the fair value of contingent promissory note payable to the Evolus Founders, long-term debt and operating lease liabilities using the discounted cash flow analysis based on the interest rates for similar rated debt securities

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(Level 2). As of December 31, 2019, the fair value of contingent promissory note and long-term debt was estimated to be $16,696 and $76,203, respectively. The fair value of operating lease liabilities at December 31, 2019 approximated their carrying value. As of December 31, 2018, the fair value of contingent promissory note was $17,181.

Note 4. Goodwill and Intangible Assets

The table below shows the weighted-average life, original cost, accumulated amortization and net book value by major intangible asset classification:

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
Definite-lived intangible assets				
Distribution right	20	$ 59,076	$ (2,679)	$ 56,397
Capitalized software	2	4,415	(1,174)	3,241
Intangible assets, net		63,491	(3,853)	59,638
Indefinite-lived intangible asset				
Goodwill	*	21,208	—	21,208
Total as of December 31, 2019		$ 84,699	$ (3,853)	$ 80,846

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
Indefinite-lived intangible assets				
IPR&D**	*	$ 56,076	$ —	$ 56,076
Goodwill	*	21,208	—	21,208
Total as of December 31, 2018		$ 77,284	$ —	$ 77,284

* Intangible assets with indefinite lives have an indeterminable average life.
** IPR&D is presented as “intangible assets, net” in the accompanying balance sheets.

The following table outlines the estimated future amortization expense related to intangible assets held as of December 31, 2019 that are subject to amortization:

Fiscal year	
2020	$ 5,423
2021	3,729
2022	2,955
2023	2,955
2024	2,955
Thereafter	41,621
	$ 59,638

In connection with the acquisition of the Company by SCH in 2013, the Company recorded goodwill of $21,208 and IPR&D of $56,076. The IPR&D recognized represents the license and associated distribution right to develop Jeuveau®, the initial term of which expires in September 2023 and is automatically extended for unlimited additional three-year terms provided that the Company meets certain performance requirements. Additionally, pursuant to the Daewoong Agreement, up to $13,500 in additional cash consideration was due to Daewoong based upon the Company’s successful completion of certain technical and sales milestones. Upon FDA approval of Jeuveau® on February 1, 2019, the Company paid Daewoong a $2,000 milestone payment which increased the cost basis of the IPR&D, and the IPR&D project was completed and reclassified as a definite-lived distribution right intangible asset, which is amortized on a straight-line basis over the estimated useful life of 20 years. In connection with EU approval of Jeuveau®, the Company paid a $1,000 milestone payment to Daewoong in the fourth quarter of fiscal year 2019, which also increased the cost basis of the distribution right.

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For the years ended December 31, 2019 and 2018, the Company capitalized $4,415 and $0, respectively, related to costs of computer software developed for internal use. The software is amortized over a two-year period using the straight-line method. For the years ended December 31, 2019 and 2018, total intangible assets amortization expense of $3,853 and $0 was recorded within depreciation and amortization on the accompanying statements of operations and comprehensive loss, respectively.

Note 5. Accrued Expenses

Accrued expenses consisted of the following:

	Year Ended December 31,	
	2019	**2018**
Accrued professional services	$ 5,794	$ 931
Accrued payroll and related benefits	5,229	2,577
Accrued volume-based rebate and coupon liability	1,709	—
Other accrued expenses	1,228	210
	$ 13,960	$ 3,718

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Note 6. Oxford Term Loans

On March 15, 2019, the Company entered into a credit facility of up to $100,000 with Oxford. Pursuant to the terms of the credit facility, the lender extended term loans (the "Term Loans"), available in two advances, to the Company. The first tranche of $75,000 was funded on the closing date. The second tranche of $25,000 may be drawn, at the request of the Company, no later than September 30, 2020, upon achieving specified minimum net sales milestones based on a trailing six-month basis and no event of default. As of December 31, 2019, the Company had not yet met the net sales milestone to draw the second tranche. The credit facility bears an annual interest rate equal to the greater of 9.5%, or the 30-day U.S. Dollar LIBOR rate plus 7.0%. The Company agreed to pay interest-only on each tranche funded for the first 36 months until May 2022, which is followed by a 23-month amortization period. Notwithstanding the foregoing, if the Company maintains compliance with the specified minimum net sales covenant and meets other conditions during the initial interest-only period, upon the Company's request, the interest-only period may be extended by an additional 12 months to a total of 48 months followed by an 11-month amortization period.

Upon the earliest to occur of the maturity date, the acceleration of the term loans, or the prepayment of the term loans, the Company is required to pay to Oxford a final payment of 5.5% of the full principal amount of the term loans funded ("Final Payment"). The Company may elect to prepay all amounts owed prior to the maturity date, provided that a prepayment fee is also paid, which shall be equal to 3.0% of the amount prepaid if the prepayment occurs on or prior to March 15, 2020, 2.0% of the amount prepaid if the prepayment occurs after March 15, 2020 and on or prior to March 15, 2021, or 1.0% of the amount prepaid if the prepayment occurs thereafter ("Prepayment Fee"). If the Term Loans are accelerated following the occurrence of an event of default, the Company is required to immediately pay to Oxford an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, the Final Payment, the Prepayment Fee and all other obligations that are due and payable, including payment of Oxford's expenses and interest at the default rate with respect to any past due amounts.

The credit facility is secured by substantially all of the Company's assets. The credit facility includes affirmative and negative covenants applicable to the Company and any subsidiaries it may create in the future. The affirmative covenants include, among others, covenants requiring the Company to maintain its legal corporate existence and governmental approvals, deliver certain financial reports, maintain insurance coverage and satisfy certain requirements regarding deposit accounts. The negative covenants include, among others, restrictions on us transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions.

The credit facility also includes events of default, the occurrence and continuation of which could cause interest to be charged at a default interest rate equal to the applicable rate plus 5.0% and Oxford, as collateral agent, with the right to exercise remedies against the Company and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including the Company's cash. These events of default include, among other things, any failure by the Company to pay principal or interest due under the credit facility, a breach of certain covenants under the credit facility, the Company's insolvency, a material adverse change, the occurrence of any default under certain other indebtedness and one or more judgments against the Company, the institution of certain temporary or permanent relief in connection with pending litigation, or the breach, termination or other adverse events under the Daewoong Agreement. As of December 31, 2019, the Company was in compliance with its debt covenants.

At the closing date, the Company incurred $1,094 and $2,205 in debt discounts and issuance costs related to the Term Loans, respectively. Debt discounts and issuance costs related to the entire Term Loans have been allocated pro rata between the funded and unfunded portions. Debt discounts and issuance costs allocated to the first tranche of $75,000 have been presented as a deduction to the debt balance and are amortized into interest expense using the effective interest method. The Final Payment on the first tranche of $75,000 is $4,125 and amortized into interest expense over the life of the term loan. As of December 31, 2019, the borrowings outstanding under the Term Loans were classified as long-term debt in the accompanying balance sheets. Debt discounts and issuance costs associated with the unfunded tranche are deferred as assets until the tranche is drawn and are amortized into interest expense using the straight-line method over the term of the debt. The overall effective interest rate was approximately 11.6% as of December 31, 2019.

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As of December 31, 2019, the principal amounts of long-term debt maturities during each of the next five fiscal years are as follows:

Fiscal year		
2022	$	26,087
2023		39,130
2024		9,783
Total principal payments		75,000
Unamortized debt discounts and issuance costs		(1,492)
Long term debt, net of discounts and issuance costs	$	73,508

Note 7. Commitments and Contingencies

Operating Leases

The Company leases office facilities under various operating lease agreements. The Company's corporate headquarters is located in Newport Beach, California, in a facility that it subleases under a non-cancelable operating lease for a fixed amount each month. The sublease for this facility expired on January 20, 2020. On May 15, 2019, the Company entered into a non-cancelable operating lease for the same office facility with the original lessor. This non-cancelable operating lease commenced on February 1, 2020 and expires on January 31, 2025. Lease payments increase based on an annual rent escalation clause that occurs each year on February 1. The Company may, under certain circumstances, terminate the lease on the 36-month anniversary of the lease commencement date by providing a written notice 12 months prior to such anniversary and paying a termination fee equal to six months basic rent plus certain other expenses. The Company has an option to extend the term of the lease for an additional 60 months, which is not recognized as part of its ROU assets and lease liabilities. The lease with the original lessor is a modification of the existing sublease that is not accounted for as a separate contract.

The Company also leases an office facility in Santa Barbara, California, under a non-cancelable operating lease, the payments of which include a three percent annual rent escalation clause that occurs on each June 1 anniversary. The lease for this facility expires on May 31, 2020 and the Company has an option to extend the term of the lease for an additional 60 months. In June 2019, the Company subleased the Santa Barbara, California facility to a third-party for a term starting on June 1, 2019 and expiring on May 31, 2020. The sublease income was not significant. Upon signing the sublease, the Company recorded an impairment charge of $80 to the right-of-use asset related to the original lease.

The Company's lease agreements do not contain any residual value guarantees or material restrictive covenants. The payments associated with the renewal will only be included in the measurement of the lease liability and ROU assets if the exercise of the renewal option is determined to be reasonably certain. The Company considers the timing of the renewal period and other economic factors such as the financial implications of a decision to extend or not to extend a lease in determining if the renewal option is reasonably certain to be exercised.

For the year ended December 31, 2019, the components of operating lease expense and other quantitative information were as follows:

	Year Ended December 31, 2019	
Fixed operating lease expense	$	1,080
Variable operating lease expense		110
Short-term operating lease expense		85
	$	1,275

	As of December 31, 2019
Weighted-average remaining lease term (years)	5.0
Weighted-average discount rate	9.4%

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Operating lease expenses were included in the selling, general and administration expenses in the accompanying statements of operations and comprehensive loss. Operating lease right-of-use assets and related current and noncurrent operating lease liabilities are presented in the accompanying balance sheets.

The following table presents the maturity of the Company's operating lease liabilities as of December 31, 2019, future minimum payments under the operating lease agreements with non-cancelable terms as follows:

Fiscal year		
2020	$	1,201
2021		1,205
2022		1,258
2023		1,312
2024		1,369
Thereafter		114
Total operating lease payments		6,459
Less: imputed interest		(1,366)
Present value of operating lease liabilities	$	5,093

As required by the new lease accounting standard, legacy disclosures are provided for periods prior to adoption.

Total rental expense for the year ended December 31, 2018 was $334. As of December 31, 2018, annual future minimum payments under the operating lease agreements with non-cancelable terms greater than one year are as follows:

Fiscal year		
2019	$	890
2020		139
2021		—
	$	1,029

Purchase Commitments

As of December 31, 2019, the Company has entered into commitments to purchase services and products for an aggregate amount of approximately $4,602. Certain minimum purchase commitments related to the purchase of Jeuveau® are described below.

License and Supply Agreement

Pursuant to the Daewoong Agreement, the Company has an exclusive distribution license to Jeuveau® from Daewoong for aesthetic indications in the United States, European Union, Canada, Australia, Russia, Commonwealth of Independent States, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. The Product is manufactured by Daewoong in a recently constructed facility in South Korea. The Company also has the option to negotiate first with Daewoong to secure a distribution license for any product that Daewoong directly or indirectly develops or commercializes that is classified as an injectable botulinum toxin (other than Jeuveau®) in a territory covered by the Daewoong Agreement.

The Company held an option to obtain the therapeutic rights to Jeuveau® in its licensed territories which was held in trust for Alphaeon during the fourth quarter of 2017 for a $2,500 reduction in related party borrowings. In September 2018, Alphaeon exercised the right to obtain the therapeutic option to Jeuveau® and remitted the option exercise price directly to Daewoong.

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In connection with the Daewoong Agreement, the Company was obligated to make milestone payments to Daewoong for certain confidential development and commercial milestones associated with Jeuveau®. As of December 31, 2019, Daewoong is eligible to receive remaining contingent milestone payments of up to $10,500.

The Daewoong Agreement also includes certain minimum annual purchases the Company is required to make in order to maintain the exclusivity of the license. The Company may, however, meet these minimum purchase obligations by achieving certain market share in its covered territories. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and the Company's future market share in various jurisdictions.

Legal Proceedings

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because they involve claims that may be made against the Company in the future, but have not yet been made. The Company accrues a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. No amounts were accrued as of December 31, 2019 and 2018.

Medytox Litigation

The Company, Daewoong and other individuals and entities are defendants to a lawsuit brought by Medytox, Inc. ("Medytox") originally instituted in the Superior Court of the State of California in June 2017. With specific regard to the Company, Medytox alleges that (i) the Company has violated California Uniform Trade Secrets Act, Cal. Civ. Code § 3426 because Daewoong's alleged knowledge of the misappropriation of certain trade secrets of Medytox is imputed to the Company as a result of the Company's relationship with Daewoong, (ii) the Company has stolen the botulinum toxin bacterial strain of Medytox through our possession of and refusal to return the botulinum toxin bacterial strain, (iii) the Company has engaged in unlawful, unfair and fraudulent business acts and practices in violation of California Bus. & Prof. Code § 17200, including conversion of the botulinum toxin bacterial strain and misrepresentations to the public regarding the source of the botulinum toxin bacterial strain used to manufacture Jeuveau®, and (iv) the Daewoong Agreement is invalid and in violation of Medytox's rights (the "Medytox Litigation"). Medytox seeks, among other things, (i) actual, consequential and punitive damages, (ii) a reasonable royalty, as appropriate, (iii) a declaration that the Daewoong Agreement is void and unenforceable and that Medytox is entitled to disgorgement of all property wrongfully and unjustly retained or acquired by the defendants, including unlawfully gained profits, (iv) injunctive relief prohibiting the Company from using the license under the Daewoong Agreement and distributing Jeuveau®, and (v) attorneys' fees and costs. The Company believes it has meritorious defenses and intends to vigorously defend Medytox's claims. The Company is unable to determine the likelihood of success of Medytox's claims against the Company, and an estimate of the possible loss or range of loss cannot be made. While the Company is entitled to indemnity under the Daewoong Agreement, the indemnity may not be sufficient. An adverse ruling by the Superior Court against either us or Daewoong could materially adversely affect the Company's ability to carry out its business and which would have a material adverse effect on the Company's business, financial position, results of operations, or cash flows and could also result in reputational harm.

ITC Case

On January 30, 2019, Allergan, plc and Allergan, Inc. (collectively, "Allergan") and Medytox filed a complaint against us and Daewoong in the U.S. International Trade Commission (the "ITC"), containing substantially similar allegations to the Medytox Litigation, specifically that Jeuveau® is manufactured based on misappropriated trade secrets of Medytox and therefore the importation of Jeuveau® is an unfair act. The ITC matter is entitled *In the Matter of Certain Botulinum Toxin Products* (the "ITC Complaint"). The ITC instituted an investigation as ITC Inv. No. 337-TA-1145 (the "ITC Action"). The ITC Complaint seeks (i) an investigation by the ITC pursuant to Section 337 of the Tariff Act of 1930, (ii) a hearing with the ITC on permanent relief, (iii) issuance of a limited exclusion order forbidding entry of Jeuveau® into the United States, (iv) a cease and desist order prohibiting Daewoong and us from engaging in the importations, sale for importation, marketing, distribution, offering for sale, the sale after the importation of, or otherwise transferring Jeuveau® within the United States, (v) a bond issued during the presidential review period, (vi) the return of Medytox's trade secrets and other confidential information including the alleged stolen botulinum toxin bacterial strain, and (vii) exclusion and cease and desist orders. The

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Company intends to defend itself vigorously in the proceedings. In January 2020, the three sets of parties to the ITC Action, (i) the Complainants - Allergan and Medytox, (ii) the Respondents - the Company and Daewoong and (iii) the OUII, each submitted pre-hearing briefs to the Administrative Law Judge assigned to the ITC Action setting forth each party's positions on the substantive issues prior to the evidentiary hearing. From February 4-7, 2020, the Administrative Law Judge held an evidentiary hearing on the ITC Action. An initial determination by the Administrative Law Judge is due by June 5, 2020 and the target date for the final determination by the ITC is October 6, 2020. An adverse ruling by the ITC against either the Company or Daewoong could result in the imposition of an exclusion order which would bar imports of Jeuveau® into the United States and a cease and desist order which would bar sales and marketing of Jeuveau® within the United Sates either of which would materially adversely affect the Company's ability to carry out its business and which would have a material adverse effect on the Company's business, financial position, results of operations, or cash flows and could also result in reputational harm. Even if the Company is successful, the ITC Action may result in reputation damage or other collateral consequences.

Other Legal Matters

The Company, from time to time, is involved in various litigation matters or regulatory encounters arising in the ordinary course of business that could result in unasserted or asserted claims or litigation. These other matters may raise difficult and complex legal issues and are subject to many uncertainties, including, but not limited to, the facts and circumstances of each particular case or claim, the jurisdiction in which each suit or regulatory encounter is brought, and differences in applicable laws and regulations. Except as set forth above, the Company does not believe that these other matters would have a material adverse effect on its accompanying financial position, results of operations or cash flows. However, the resolution of one or more of the other matters in any reporting period could have a material adverse impact on the Company's financial results for that period.

Note 8. Stockholders' Equity (Deficit)

Convertible Series A Preferred Stock

Prior to IPO, the Company had 2,500,000 shares of Series A preferred stock authorized, of which 1,250,000 were issued and outstanding to Alphaeon. The number of shares of common stock to which a preferred stockholder was entitled was the product obtained by multiplying the Series A preferred stock conversion rate by the number of shares of preferred stock being converted, subject to adjustments as provided in the amended and restated certificate of incorporation. In connection with the IPO, all shares of Series A preferred stock were converted into 2,065,875 shares of common stock. In addition, the Company also amended and restated its certificate of incorporation. As a result, shares of Series A convertible preferred stock were canceled, with none authorized, issued or outstanding as of December 31, 2019.

Preferred Stock

The Company has 10,000,000 authorized shares of preferred stock with a par value of $0.00001 per share. As of December 31, 2019, none were issued and outstanding.

Common Stock

The Company has 100,000,000 authorized shares of common stock with a par value of $0.00001 per share. As of December 31, 2019, 33,562,665 shares were issued and outstanding.

Equity Related Transactions

As of February 12, 2018, the Company assumed from Alphaeon the revised payment obligations under the Amended Purchase Agreement of $55,742 (comprised of $39,700 related to the contingent royalty obligation and $16,042 related to the contingent promissory note at that date). See Note 3, *Fair Value Measurements and Short-Term Investments* for more information. Pursuant to the Amended Purchase Agreement, Alphaeon agreed to offset and reduce the amount of related party borrowings by the estimated value of the revised payment obligations on a dollar-for-dollar basis and pursuant to the services agreement (see Note 11, *Related Party Transactions*). Additionally, the Company paid $5,000 to Alphaeon in satisfaction of a portion of the outstanding related party borrowings (see Note 11, *Related Party Transactions*). The remaining balance of

related party borrowings of $13,188 was recharacterized as a capital contribution from Alphaeon pursuant to the services agreement.

2017 Omnibus Incentive Plan and Stock-based Compensation Allocation

On November 21, 2017, the board of directors and the then-sole stockholder of the Company approved the Company's 2017 Omnibus Incentive Plan (the "Plan"). The Plan provides for the grant of incentive options to employees of the Company, and for the grant of nonstatutory options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of stock compensation to the Company's employees, including officers, directors, consultants and employees of the Company. The maximum number of shares of common stock that may be issued under the Plan is 4,361,291 shares, plus an annual increase on each anniversary of November 21, 2017 equal to 4% of the total issued and outstanding shares of the Company's common stock as of such anniversary (or such lesser number of shares as may be determined by the Company's board of directors). On November 21, 2018 and 2019, an additional 1,091,000 shares and 1,337,821 shares, respectively, were reserved under the evergreen provision of the Plan. As of December 31, 2019, the Company has available an aggregate of 2,249,380 shares of common stock for future issuance under the Plan.

Stock-Based Award Activity and Balances

Options are granted at exercise prices based on the Company's grant date common share price. The restricted stock units ("RSUs") and options generally vest over a one-to four-year period. There have been no awards granted with performance conditions or market conditions for the period presented. The options generally have a contractual term of ten years. The Black-Scholes option pricing model has various inputs, including the grant date common share price, exercise price, risk-free interest rate, volatility, expected life and dividend yield. The change of any of these inputs could significantly impact the determination of the fair value of the Company's options as well as significantly impact its results of operations. The fair value of RSU grants is determined at the grant date based on the common share price. The Company records stock-based compensation expense net of actual forfeitures when they occur.

The significant assumptions used in the Black-Scholes option-pricing are as follows:

- *Determining Fair Value of the Underlying Common Stock.* For options awards granted after the completion of the Company's IPO, the fair value for its underlying common stock was determined using the fair value of the grant date price as reported on the Nasdaq Global Select Market. Since the Company's common stock was not traded in a public stock market exchange prior to the Company's IPO, prior to such date the Board of Directors considered numerous factors including new business and economic developments affecting the Company and independent appraisals, when appropriate, to determine the fair value of the Company's common stock. Independent appraisal reports were prepared using conventional valuation techniques, such as discounted cash flow analyses, from which a discount factor for lack of marketability was applied. This determination of the fair value of the common stock was performed on a contemporaneous basis. Prior to the Company's initial public offering, the Board of Directors determined the Company's common stock fair market value on as needed basis.

- *Expected Volatility.* The Company has limited data regarding company-specific historical or implied volatility of its share price. Consequently, the Company estimates its volatility based on the average historical volatility of the stock price from a set of peer companies, since our shares do not have sufficient trading history. Management considers factors such as stage of life cycle, competitors, size, market capitalization and financial leverage in the selection of similar entities.

- *Expected Term.* The expected term represents the period of time in which the options granted are expected to be outstanding. The Company estimates the expected term of options with consideration of vesting date, contractual term, and historical experience. The expected term of "plain vanilla" options is estimated based on the midpoint between the vesting date and the end of the contractual term under the simplified method permitted by the SEC implementation guidance. The weighted-average expected term of the Company's options is approximately six years.

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

- *Risk-Free Rate*. The risk-free interest rate is selected based upon the implied yields in effect at the time of the option grant on U.S. Treasury zero-coupon issues with a term approximately equal to the expected life of the option being valued.
- *Dividends*. The Company does not anticipate paying cash dividends in the foreseeable future. Consequently, the Company uses an expected dividend yield rate of zero.

The weighted-averages for key assumptions used in determining the fair value of stock options granted were as follows:

	Year Ended December 31,	
	2019	**2018**
Volatility	59.32%	57.76%
Risk-free interest rate	2.42%	2.65%
Expected life (years)	6.17	6.24
Dividend yield rate	—%	—%

A summary of stock option activity under the Plan for the year ended December 31, 2019, is presented below:

	Stock Options	Weighted Average Exercise Per Share	Weighted Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value
Outstanding, December 31, 2018	3,257,801	$ 11.99	9.26	$ 7,119
Granted	1,321,451	$ 18.63		
Exercised	(273,734)	$ 9.98		
Cancelled/forfeited	(328,117)	$ 15.15		
Outstanding, December 31, 2019	3,977,401	$ 14.07	8.51	$ 7,198
Exercisable, December 31, 2019	800,595	$ 12.50	8.28	$ 1,880
Vested and expected to vest, December 31, 2019	3,977,401	$ 14.07	8.51	$ 7,198

The aggregate intrinsic value of outstanding and exercisable options represents the excess of the fair market value of our common stock over the exercise price of underlying options as of December 31, 2019 and 2018. The total intrinsic value of options exercised in the years ended December 31, 2019 and 2018 was $2,311 and $0, respectively.

During the years ended December 31, 2019 and 2018, the Company recorded expenses related to stock options of $8,302 and $4,099, respectively. As of December 31, 2019, there was $21,529 of total unrecognized compensation cost, net of actual forfeitures, related to stock option-based compensation arrangements granted under the Plan. The cost is expected to be recognized over a weighted-average period of 2.6 years.

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

A summary of RSUs activity under the Plan for the year ended December 31, 2019, is presented below:

	Restricted Stock Units	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2018	271,404	$ 16.53
Granted	3,000	$ 18.33
Vested	(25,125)	$ 24.81
Forfeited	(19,409)	$ 13.71
Outstanding, December 31, 2019	229,870	$ 15.89

During the years ended December 31, 2019 and 2018, the Company recorded expenses related to restricted stock units of $1,216 and $1,304, respectively. Total fair value of RSUs vested during the years ended December 31, 2019 and 2018 was $357 and $771, respectively. As of December 31, 2019, there was $1,377 of total unrecognized compensation cost, net of actual forfeitures, related to RSU-based compensation arrangements granted under the Plan. The cost is expected to be recognized over a weighted-average period of 0.7 years.

The following table summarizes stock-based compensation expense arising from the above Plan:

	Year Ended December 31,	
	2019	2018
Selling, general and administrative	$ 8,862	$ 5,570
Research and development	656	1,401
Total stock-based compensation expense	$ 9,518	$ 6,971

In addition, during the years ended December 31, 2019 and 2018, the Company capitalized $106 and $0, respectively, of stock-based compensation expense in capitalized software. Capitalized software is a component of intangible assets and is presented in the accompanying condensed balance sheets. See Note 4, *Goodwill and Intangible Assets* for capitalized software information.

Separation of Service with the Former President and Chief Executive Officer

In May 2018, the Company entered into a separation agreement (the “Separation Agreement”) with its then President and Chief Executive Officer. Pursuant to the Separation Agreement, the Company modified previously granted stock options resulting in an incremental vesting of 100,424 stock options and related stock-based compensation expense of $451. As part of the Separation Agreement, the Company issued 34,602 shares of common stock net of tax withholding for vested restricted stock units. An additional 50,112 shares of common stock were immediately vested and will be issued in February 2020. Stock-based compensation expense relating to the issuance of common stock and accelerated vesting was approximately $980 and reflected in selling, general and administrative on the statements of operations and comprehensive loss for the year ended December 31, 2018.

Note 9. Employee Benefit Plan

The Company maintains a defined contribution 401(k) plan covering substantially all employees. On July 1, 2019, the Company began providing matching contributions, which totaled $479 for the year ended December 31, 2019.

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

Note 10. Income Taxes

The Company's loss before income taxes was entirely generated from its U.S. operations. The current and deferred expense is as follows:

	Year Ended December 31,	
	2019	2018
Current provision:		
Federal	$ —	$ —
State	28	—
Total current provision	28	—
Deferred (benefit) provision:		
Federal	(10,299)	44
State	(4,756)	21
Total deferred (benefit) provision	(15,055)	65
Total (benefit) provision for income taxes	$ (15,027)	$ 65

As of December 31, 2019, the Company has federal net operating loss ("NOL") carryforwards of $179,589, which will begin to expire in 2034. The federal NOLs generated in 2018 and in the subsequent years do not expire. As of December 31, 2019, the Company has state NOL carryforwards of $94,118, which will begin to expire in 2038. As of December 31, 2019, the Company has federal research and development ("R&D") credit carryforwards of $1,377, which will begin to expire in 2034. The Company also has California R&D credit carryforwards of $1,383, which has an indefinite carryforward period.

The NOL and the R&D credit carryforwards generated by the Company in tax years ended February 11, 2018 and prior have been included in the consolidated and unitary income tax returns of Alphaeon. After the Company left the Alphaeon consolidated and unitary income tax group on February 11, 2018, the Company files its own standalone income tax returns. Deferred tax assets in the accompanying financial statements reflect the Company's standalone tax attributes that are reportable on its own income tax returns.

In general, if a company experiences a greater than 50 percentage point aggregate change in ownership of certain significant stockholders over a three-year period, utilization of its pre-change NOL carryforwards and R&D credit carryforwards is subject to an annual limitation under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, and similar state laws. The annual limitation generally is determined by multiplying the value of the Company's stock at the time of such ownership change, subject to certain adjustments, by the applicable long-term tax-exempt rate. The annual limitations may result in the expiration of NOL and R&D credit carryforwards before utilization and may be material. The Company has started but has not completed an analysis to determine whether its NOL and R&D credits generated through December 31, 2019 are likely to be limited by Section 382 and 383. The Company anticipates that an ownership change as defined under Section 382 may have occurred and that the resulting limitation would significantly reduce the Company's ability to utilize its NOL and R&D credit carryforwards before they expire. Additionally, future ownership changes under Section 382 and 383 may also limit the Company's ability to fully utilize any remaining tax benefits. The Company's net deferred income tax assets have been offset by a valuation allowance. Therefore, any resulting reduction to the Company's NOL and R&D credit carryforwards once the analysis is complete will be offset by a corresponding reduction of the valuation allowance and there would be no impact on the Company's balance sheet, statement of operations, or cash flows.

The components of deferred tax assets and liabilities were as follows:

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

	As of December 31,	
	2019	**2018**
Deferred income tax assets:		
Net operating losses	$ 42,756	$ 27,929
Stock compensation	2,430	1,455
Other deferred assets	2,470	2,176
Accrued compensation	1,962	608
Operating lease liabilities	1,274	—
Contingent obligation - imputed interest	199	101
Other, net	12	11
Valuation allowance	(36,972)	(32,280)
Total deferred income tax assets	14,131	—
Deferred income tax liabilities:		
Intangible amortization	(12,970)	(15,055)
Operating lease right-of-use assets	(1,017)	—
Fixed asset depreciation	(144)	—
Total deferred income tax liabilities	(14,131)	(15,055)
Net deferred income taxes	$ —	$ (15,055)

Upon FDA approval of Jeuveau® in February 2019, the Company's IPR&D intangible asset was reclassified to a definite-lived distribution right intangible asset. As a result, management determined that it was more likely than not that certain deferred tax assets became realizable due to the future reversals of the deferred tax liability associated with such intangible asset. Accordingly, the Company released $15,055 of its valuation allowance for the year ended December 31, 2019. The total valuation allowance balance did not significantly change in 2019 due to the increase related to the current year operating loss as offset by the release as discussed above.

A reconciliation of the difference between the provision (benefit) for income taxes and income taxes at the statutory U.S. federal income tax rate is as follows:

	As of December 31,	
	2019	**2018**
Income tax at statutory rate	$ (22,063)	$ (9,828)
State income taxes, net of Federal benefit	(3,905)	(3,148)
California NOL write-off	5,174	—
Revaluation of contingent royalty obligation	1,040	2,938
Meals and entertainment	1,002	17
Change in state tax rate	(1,371)	—
Stock compensation	521	474
Research and development tax credit	(294)	(294)
Promissory note - debt discount	128	105
Other, net	50	—
Valuation allowance	4,691	9,801
Income tax provision (benefit)	$ (15,027)	$ 65

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	As of December 31,	
	2019	**2018**
Beginning balance	$ 2,435	$ 2,109
Increases to current year tax positions	326	326
Ending balance	$ 2,761	$ 2,435

The Company has considered the amounts and probabilities of the outcomes that can be realized upon ultimate settlement with the tax authorities and determined unrecognized tax benefits primarily related to credits should be established as noted in the summary rollforward above. The Company's effective income tax rate would not be impacted if the unrecognized tax benefits are recognized. Additional amounts in the summary rollforward could impact the Company's effective tax rate if it did not maintain a full valuation allowance on its net deferred tax assets. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months.

The Company's policy is to recognize interest expense and penalties related to income tax matters as a component of income tax expense. There were no accrued interest and penalties associated with uncertain tax positions as of December 31, 2019 and 2018. The Company's tax returns for all years since inception are open for audit.

Note 11. Related Party Transactions

Services with Alphaeon

Prior to the Company's IPO in February 2018, the Company had funded its operations primarily through contributions and related party borrowings from Alphaeon. For 2018, selling, general and administrative expenses included $383 of expenses allocated by Alphaeon. After completion of the Company's IPO, Alphaeon did not incur any administrative or research and development expenses on the Company's behalf.

In January 2018, the Company entered into a services agreement with Alphaeon, or the services agreement, which became effective upon the Company's IPO. The services agreement sets forth certain agreements between Alphaeon and the Company that governs the respective responsibilities and obligations between Alphaeon and the Company as it relates to the services to be performed between them. The services agreement has a one-year term and thereafter will renew for successive one year terms unless sooner terminated by either party. The Company or Alphaeon may terminate the services agreement upon sixty days' notice to the other party. In accordance with the services agreement, the Company paid Alphaeon $5,000 during the first quarter of 2018, subsequent to the IPO. There were no significant services provided under the services agreement after the IPO.

As of December 31, 2019 and 2018, Evolus had no related party accounts receivable or payable with Alphaeon.

Note Obligation

Pursuant to certain debt transactions entered into by Alphaeon in 2016 and 2017 and guaranty provided by the Company, as a co-obligor to these debt obligations, the Company applied the accounting guidance provided in ASC 405-40, *Obligations Resulting from Joint and Several Liability Arrangements* and recorded a note obligation. During the first quarter of 2018, Alphaeon issued $800 additional convertible promissory notes, including $24 convertible promissory notes to the Company's former President and Chief Executive Officer and former member of the board of directors. As a result of this additional issuance, the total note obligations under all the notes increased to $140,688 (2.5 times the total outstanding principal amount of $56,275) immediately prior to the IPO. Approximately $615 in excess of the then balance of additional paid-in capital was recorded in accumulated deficit.

In January 2018 immediately prior to its IPO, the Company recorded an increase of $1,051 in the receivable from Alphaeon with a corresponding increase in additional paid-in capital. The related party receivable balance increased to $73,690 immediately prior to the IPO. As of February 12, 2018, the Company was released of the $140,688 note obligation

Evolus, Inc.
Notes to Financial Statements
(in thousands, except share and per share data)

for all guaranty and security obligations under the guaranty agreements, and its related party receivable from Alphaeon of $73,690 was settled, resulting in a capital contribution of $66,998. Alphaeon's security interest in Evolus' assets was also terminated.

Evolus Founders

Certain of the Evolus Founders from whom SCH purchased its equity interests included individuals who were previously employed by the Company in operational roles, including the Company's former Chief Operating Officer and consultant to the Company through December 31, 2018.

Payment Obligations Related to the Acquisition by Alphaeon

The Company was acquired by SCH in 2013 and subsequently by its subsidiary, Alphaeon Corporation, by means of a stock purchase agreement ("Stock Purchase Agreement") pursuant to which Alphaeon assumed certain payment obligations related to the acquisition. On December 14, 2017, the Stock Purchase Agreement was amended ("Amended Stock Purchase Agreement"), and, as a result, effective upon the closing of the Company's IPO, the Company assumed all of Alphaeon's payment obligations under the Amended Stock Purchase Agreement.

Under the Amended Stock Purchase Agreement, the payment obligations consisted of (i) a $9,200 up-front payment upon obtaining FDA approval for Jeuveau® for the treatment of glabellar lines which was paid in full in 2019, (ii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau®, and (iii) a $20,000 promissory note that matures in November 2021. The payment obligations set forth in (ii) above terminates in the quarter following the 10-year anniversary of the first commercial sale of Jeuveau® in the United States. Under the Amended Stock Purchase Agreement, the Company recorded the fair value of all revised payment obligations and the promissory note owed to the Evolus Founders of $55,742 (comprised of $39,700 related to the contingent royalty obligation payable and $16,042 related to the contingent promissory note) as of February 12, 2018. See Note 3, *Fair Value Measurements and Short-Term Investments* for more information about the Company's accounting thereof. In addition, the outstanding related party borrowings from Alphaeon as of February 12, 2018 were offset and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations the Company assumed from Alphaeon, the fair value of which, as of February 12, 2018, was $55,742.

Under the Amended Stock Purchase Agreement, Evolus paid one-time bonuses of $1,575 to certain current and former employees upon FDA approval of Jeuveau® in February 2019, including a one-time bonus of $700 paid to the Company's Chief Medical Officer and Head of Research & Development. The payment is included in research and development expenses in the accompanying statements of operations and comprehensive loss for the year ended December 31, 2019.

The Company has the right to prepay the promissory note, in whole or in part, at any time and from time to time without penalty. Upon an event of default under the promissory note, all unpaid principal becomes immediately due and payable at the option of the holder. An event of default occurs under the terms of the promissory note upon any of the following events: (i) Evolus fails to meet the obligations to make the required payments thereunder, (ii) Evolus makes an assignment for the benefit of creditors, (iii) Evolus commences any bankruptcy proceeding, or (iv) Evolus materially breaches the Amended Stock Purchase Agreement or Tax Indemnity Agreement (which is defined below) and such breach is not cured within 30 days.

In addition, upon a change-of-control of Evolus, all unpaid principal becomes immediately due and payable. Under the terms of the promissory note, a change-of-control is defined as (i) the sale of all or substantially all of Evolus' assets, (ii) the exclusive license of Jeuveau® or the business related to Jeuveau® to a third-party (other than a sublicense under the Daewoong Agreement), or (iii) any merger, consolidation, or acquisition of Evolus, except a merger, consolidation, or acquisition of Evolus in which the holders of capital stock of Evolus immediately prior to such merger, consolidation, or acquisition hold at least 50% of the voting power of the capital stock of Evolus or the surviving entity. Notwithstanding the foregoing, the promissory note expressly provides that neither the IPO or any merger with or acquisition by Alphaeon or any of its subsidiaries or affiliates constitutes a change-of-control.

In connection with the Amended Stock Purchase Agreement, the Company entered into a tax indemnity agreement with the Evolus Founders ("Tax Indemnity Agreement"). Pursuant to the Tax Indemnity Agreement, the Company is obligated to indemnify the Evolus Founders for any tax liability resulting from the Company's assumption of the revised payment

obligations under the Amended Stock Purchase Agreement from Alphaeon. Such assumption of the revised payment obligations occurred upon the completion of the IPO. Under the Amended Stock Purchase Agreement, the payment obligations are contingent and thus eligible for installment sale reporting under Section 453 of the Internal Revenue Code of 1986, as amended. Under the Tax Indemnity Agreement, the Company was obligated to indemnify the Evolus Founders for any taxes or penalties required to be paid by the Evolus Founders in the event the U.S. Internal Revenue Service or other taxing authority were to determine that Company's assumption of the revised payment obligations under the Amended Stock Purchase Agreement rendered continued installment sale reporting unavailable to the Evolus Founders. Any taxes or penalties paid by us on behalf of the Evolus Founders under the Tax Indemnity Agreement will be offset dollar-for-dollar against the promissory note and future royalties that will be payable to the Evolus Founders under the Amended Stock Purchase Agreement.

Exclusive Distribution and Supply Agreement with Clarion Medical Technologies Inc.

On November 30, 2017, the Company entered into an exclusive distribution and supply agreement ("Distribution Agreement"), with Clarion Medical Technologies Inc. ("Clarion"). The Distribution Agreement provides terms pursuant to which the Company will exclusively supply Jeuveau® to Clarion in Canada. Clarion was previously a wholly-owned subsidiary of Alphaeon. However, pursuant to previous agreements among Alphaeon, Clarion, and previous equity holders of Clarion, the previous equity holders of Clarion had the option, and have exercised such option, to unwind Alphaeon's acquisition of Clarion. As a result, Alphaeon owes the equity holders of Clarion an unwinding fee of $9,600 ("Unwinding Fee"). The Distribution Agreement sets forth that a portion of the proceeds received by the Company from each unit of Jeuveau® purchased by Clarion shall be paid directly to the previous equity holders of Clarion, and will reduce, on a dollar-for-dollar basis, the amount of the Unwinding Fee Alphaeon owes. In addition, Alphaeon and SCH have agreed with Clarion to pay the unpaid amount of the Unwinding Fee on December 31, 2022, if demanded by the previous equity holders of Clarion. The service revenue related to the sale of Jeuveau® through Clarion in 2019 was recorded based on terms that were not in the scope of the Distribution Agreement.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, under the supervision and with the participation of our Chief Executive Officer and our Chief Financial Officer, our principal executive and principal financial officers, respectively, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended, as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective (a) to ensure that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (b) to include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of senior management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on the evaluation under that framework and applicable SEC rules, our management concluded that our internal control over financial reporting was effective as of December 31, 2019.

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm on our internal control over financial reporting due to an exemption established pursuant to the JOBS Act for "emerging growth companies."

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management overriding of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Item 9B. Other Information.

None.

Part III

Evolus, Inc.

Notes to Financial Statements

(in thousands, except share and per share data)

Certain information required by Part III is omitted from this annual report on Form 10-K and is incorporated herein by reference to our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders ("Proxy Statement"), which we intend to file pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, within 120 days after December 31, 2019.

Item 10. Directors, Executive Officers and Corporate Governance.

Except as disclosed below with respect to our Code of Conduct, the information required by this item is incorporated herein by reference to information contained in the Proxy Statement for our 2020 Annual Meeting of Stockholders.

We have a Code of Conduct applicable to all directors, officers and employees of the Company. We have posted the Code of Business Conduct on our website at www.evolus.com. We will post any amendments to the Code of Conduct on our website. In accordance with the requirements of the SEC and Nasdaq, we will also post waivers applicable to any of our officers or directors from provisions of the Code of Conduct on our website.

Item 11. Executive Compensation.

The information required by this item is incorporated herein by reference to information contained in the Proxy Statement for our 2020 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain of Beneficial Owners and Management and Related Stockholder Matters.

The information required by this item is incorporated herein by reference to information contained in the Proxy Statement for our 2020 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item is incorporated herein by reference to information contained in the Proxy Statement for our 2020 Annual Meeting of Stockholders.

Item 14. Principal Accounting Fees and Services.

The information required by this item is incorporated herein by reference to information contained in the Proxy Statement for our 2020 Annual Meeting of Stockholders.

Part IV

Item 15. Exhibits, Financial Statement Schedules.

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements. See Item 8 “Financial Statements and Supplemental Information” elsewhere in this Annual Report on Form 10-K.

(2) Financial Statement Schedules. None. Financial statement schedules have been omitted because they are not applicable.

(3) Exhibits. The following exhibits are filed (or incorporated by reference herein) as part of this Annual Report on Form 10-K:

EXHIBIT INDEX

		Incorporated by Reference				
Exhibit Number	**Exhibit Title**	**Form**	**File No.**	**Exhibit**	**Filing Date**	**Filed Herewith (x)**
2.1†	Contribution Agreement, dated as of October 3, 2013, by and among Strathspey Crown Holdings, LLC, the Registrant, the Shareholders of the Registrant, and J. Christopher Marmo, as the Shareholders’ Representative, as amended on September 22, 2014, November 3, 2015, February 15, 2016 and April 14, 2016.	S-1	333-222478	2.1	1/9/18	
3.1	Amended and Restated Certificate of Incorporation.	8-K	001-38381	3.1	2/12/18	
3.2	Amended and Restated Bylaws.	8-K	001-38381	3.2	2/12/18	

4.1	Specimen certificate evidencing shares of common stock of the Registrant.	S-1/A	333-222478	4.1	1/25/18	
4.2	Stockholders' Agreement, dated as of December 14, 2017, by and among ALPHAEON Corporation, Dental Innovations BVBA, Longitude Venture Partners II, L.P. and the Registrant.	S-1	333-222478	4.2	1/9/18	
4.3	Description of Securities					X
10.1†	Stock Purchase Agreement, dated as of September 30, 2014, by and between Strathspey Crown Holdings, LLC and ALPHAEON Corporation.	S-1	333-222478	10.1	1/9/18	
10.2†	Amendment to Stock Purchase Agreement, dated as of September 30, 2014, by and between Strathspey Crown Holdings, LLC and ALPHAEON Corporation.	S-1	333-222478	10.2	1/9/18	
10.3†	License and Supply Agreement, dated as of September 30, 2013, by and between Daewoong Pharmaceutical Co., Ltd. and the Registrant.	S-1	333-222478	10.3	1/9/18	
10.4†	First Amendment to License and Supply Agreement, dated as of February 26, 2014, by and between Daewoong Pharmaceutical Co., Ltd. and the Registrant.	S-1	333-222478	10.4	1/9/18	
10.5†	Second Amendment to License and Supply Agreement, dated as of July 15, 2014, by and between Daewoong Pharmaceutical Co., Ltd. and the Registrant.	S-1	333-222478	10.5	1/9/18	
10.6+	2017 Omnibus Incentive Plan.	S-1	333-222478	10.6	1/9/18	
10.7+	Form of Option Award Agreement under 2017 Omnibus Incentive Plan.	S-1	333-222478	10.7	1/9/18	
10.8+	Form of Dueling Option Award Agreement under 2017 Omnibus Incentive Plan.	S-1	333-222478	10.8	1/9/18	
10.9+	Form of Restricted Shares Award Agreement under 2017 Omnibus Incentive Plan.	S-1	333-222478	10.9	1/9/18	
10.10+	Form of RSU Award Agreement under 2017 Omnibus Incentive Plan.	S-1	333-222478	10.10	1/9/18	
10.11+	Form of RSU Award Agreement under 2017 Omnibus Incentive Plan (Updated 2020)					X
10.12+	Form of Indemnification Agreement by and between the Registrant and its directors and officers.	S-1/A	333-222478	10.11	1/25/18	
10.13	Services Agreement, dated as of January 23, 2018, by and between ALPHAEON Corporation and the Registrant.	S-1/A	333-222478	10.12	1/25/18	
10.14†	Second Amendment to Stock Purchase Agreement, dated as of December 14, 2017, by and among SCH-AEON, LLC (f/k/a Strathspey Crown Holdings, LLC), ALPHAEON Corporation, the Registrant and J. Christopher Marmo, as Contributors' Representative, and acknowledged by the parties listed as Contributors on the signature pages thereto.	S-1	333-222478	10.20	1/9/18	
10.15	Tax Indemnity Agreement, dated as of December 14, 2017, by and among the Registrant, J. Christopher Marmo, as the Contributors' Representative and each of the individuals listed on the signature pages thereto.	S-1	333-222478	10.21	1/9/18	
10.16†	Exclusive Distribution and Supply Agreement, dated as of November 30, 2017, by and between Clarion Medical Technologies Inc. and the Registrant.	S-1	333-222478	10.22	1/9/18	
10.17†	Therapeutic Option Letter Agreement, dated December 18, 2017, by and between ALPHAEON Corporation and the Registrant.	S-1	333-222478	10.23	1/9/18	
10.18+	Employment Agreement, dated as of May 6, 2018, by and between David Moatazedi and the Registrant.	S-1	333-226186	10.29	7/16/18	
10.19+	Employment Agreement, dated as of May 29, 2018, by and between Lauren Silvernail and the Registrant.	S-1	333-226186	10.30	7/16/18	

10.20+	Employment Agreement, dated as of June 18, 2018, by and between Michael Jafar and the Registrant.	S-1	333-226186	10.31	7/16/18	
10.21+	Employment Agreement, dated August 15, 2018, by and between Rui Avelar and the Registrant.	10-K	001-38381	10.31	3/20/19	
10.22‡	Loan and Security Agreement, dated as of March 15, 2019, by and between the Company and Oxford Finance, LLC	10-Q	001-38381	10.1	5/1/19	
10.23	First Amendment to Loan and Security Agreement, dated as of July 18, 2019, by and between the Registrant and Oxford Finance, LLC	10-Q	001-38381	10.1	8/12/19	
10.24	Lease, dated as of May 15, 2019, between the Registrant and 520 Newport Center Drive LLC	8-K	001-38381	10.1	5/21/19	
21.1	List of Subsidiaries.	S-1	333-222478	21.1	1/9/18	
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm.					X
24.1	Power of Attorney (included on signature page).					X
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
32.1#	Certifications of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS*	XBRL Instance Document.					X
101.SCH*	XBRL Taxonomy Extension Schema Document.					X
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.					X

+ Indicates management contract or compensatory plan.

† The Registrant has omitted and filed separately with the Securities and Exchange Commission portions of the exhibit pursuant to a confidential treatment request under Rule 406 promulgated under the Securities Act of 1933, as amended, or the Securities Act.

‡ Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

The information in Exhibit 32.1 shall not be deemed “filed” for purposes of Section 18 of the Exchange Act of 1934, as amended, or the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act (including this Annual Report on Form 10-K), unless the Registrant specifically incorporates the foregoing information into those documents by reference.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 25, 2020.

EVOLUS, INC.

By: /s/ David Moatazedi
David Moatazedi
President and Chief Executive Officer

POWER OF ATTORNEY

The undersigned directors and officers of Evolus, Inc. constitute and appoint David Moatazedi and Lauren P. Silvernail, and each of them, as their true and lawful attorneys and agents with power of substitution, to do any and all acts and things in our name and behalf in our capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated below, which said attorneys and agents may deem necessary or advisable to enable said corporation to comply with the Securities Exchange Act of 1934, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this Annual Report on Form 10-K, including specifically but without limitation, power and authority to sign for us or any of us in our names in the capacities indicated below, any and all amendments hereto; and we do hereby ratify and confirm all that said attorneys and agents shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ David Moatazedi David Moatazedi	President, Chief Executive Officer and Member of the Board of Directors (Principal Executive Officer)	February 25, 2020
/s/ Lauren P. Silvernail Lauren P. Silvernail	Chief Financial Officer and Executive Vice President of Corporate Development (Principal Financial and Accounting Officer)	February 25, 2020
/s/ Vikram Malik Vikram Malik	Chairman of the Board of Directors	February 25, 2020
/s/ Simone Blank Simone Blank	Director	February 25, 2020
/s/ Bosun Hau Bosun Hau	Director	February 25, 2020
/s/ Kristine Romine, M.D. Kristine Romine, M.D.	Director	February 25, 2020
/s/ Robert Hayman Robert Hayman	Director	February 25, 2020

Signature	Title	Date
/s/ David Gill David Gill	Director	February 25, 2020
/s/ Peter C. Farrell, Ph.D., AM. Peter C. Farrell, Ph.D., AM.	Director	February 25, 2020
/s/ Karah Parschauer Karah Parschauer	Director	February 25, 2020

Exhibit 4.3

DESCRIPTION OF CAPITAL STOCK

The following is a summary of the rights of our common stock and preferred stock, certain provisions of our certificate of incorporation and our bylaws, and applicable law. This summary does not purport to be complete and is qualified in its entirety by the provisions of our certificate of incorporation and bylaws, copies of which are filed as exhibits to our Annual Report on Form 10-K for the year ended December 31, 2019.

General

Our authorized capital stock consists of:

- 100,000,000 shares of common stock, par value $0.00001 per share; and
- 10,000,000 shares of preferred stock, par value $0.00001 per share.

As of December 31, 2019, there were 33,562,665 outstanding shares of our common stock. As of that date, there were outstanding options to purchase 3,977,401 shares of our common stock and 229,870 shares of common stock issuable upon the vesting and settlement of restricted stock units.

Common Stock

The following summarizes the rights of holders of our common stock:

Voting

The holders of our common stock are entitled to one vote per share. The number of authorized shares of common stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of our capital stock entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law, or DGCL.

Dividends

Subject to preferences that may be applicable to the holders of outstanding shares of preferred stock, the holders of common stock are entitled to share equally, on a per share basis, in any dividends when, as and if declared by our board of directors out of assets legally available for dividends (except that in the event a dividend or distribution is paid in the form of common stock (or rights to acquire such stock), then holders of common stock shall receive common stock (or rights to acquire such stock, as the case may be).

As a Delaware corporation, we are subject to certain restrictions on dividends under the DGCL. Generally, a Delaware corporation may only pay dividends either out of “surplus” or out of the current or the immediately preceding year's net profits. Surplus is defined as the excess, if any, at any given time, of the total assets of a corporation over its total liabilities and statutory capital. The value of a corporation’s assets can be measured in a number of ways and may not necessarily equal their book value.

Liquidation Rights

Upon our liquidation, dissolution or winding up, after satisfaction of all our liabilities and the payment of any liquidation preference of any outstanding preferred stock, the holders of shares of common stock will be entitled to share equally, on a per share basis, in all of our assets legally remaining for distribution after payment of all debt and other liabilities.

Redemption Rights

There are no redemption or sinking fund provisions applicable to our common stock.

Preemptive Rights and Conversion Rights

There are no preemptive or conversion rights applicable to our common stock.

Preferred Stock

We have no shares of our preferred stock outstanding, but our board of directors is authorized, without further action by our stockholders, to create and issue one or more series of preferred stock and to fix the rights, powers, preferences and privileges thereof. Among other rights, our board of directors may determine, without further vote or action by our stockholders:

- the number of shares constituting the series and the distinctive designation of the series;
- the dividend rate on the shares of the series, whether dividends will be cumulative, and if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the series;
- whether the series will have voting rights in addition to the voting rights provided by law and, if so, the terms of the voting rights;
- whether the series will have conversion privileges and, if so, the terms and conditions of conversion;
- whether or not the shares of the series will be redeemable or exchangeable, and, if so, the dates, terms and conditions of redemption or exchange, as the case may be;
- whether the series will have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of the sinking fund; and
- the rights of the shares of the series in the event of our voluntary or involuntary liquidation, dissolution or winding up and the relative rights or priority, if any, of payment of shares of the series.

Any future issuance of shares of preferred stock, or the issuance of rights to purchase shares of preferred stock, could, among other things, decrease the amount of earnings and assets available for distribution to the holders of common stock or could adversely affect the rights and powers, including voting rights, of the holders of the common stock.

Registration Rights

On December 14, 2017, we entered into a stockholders' agreement with ALPHAEON Corporation, or Alphaeon, Dental Innovations BVBA, or DI, as collateral agent, and Longitude Venture Partners II, L.P., or Longitude, as a secured party, that provided Alphaeon (and upon an event of default by Alphaeon under certain convertible bridge note and convertible promissory notes then-outstanding, DI and Longitude) with registration rights relating to shares of our common stock held by Alphaeon (and then-pledged to DI and Longitude). Subsequent to December 31, 2019, Alphaeon changed its name to AEON-Biopharma, Inc. but we continue to refer to the renamed AEON-Biopharma, Inc. as Alphaeon.

Pursuant to the stockholders' agreement, certain stockholders party thereto may request that we register for resale all or a portion of their shares of common stock. Certain stockholders party thereto may also request that we file an automatic shelf registration statement on Form S-3 that covers the registrable securities requested to be registered, to the extent we are eligible to do so. Depending on certain conditions, and in addition to other exclusions, we may defer a demand registration for up to 90 days in any twelve-month period.

In the event that we propose to register any of our securities under the Securities Act of 1933, as amended (the "Securities Act"), either for our account or for the account of our other security holders, the stockholders party to the stockholders' agreement are entitled to certain piggyback registration rights allowing them to include their shares in the registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, the stockholders party to the stockholders' agreement are entitled to notice of the registration and the right to include their shares in such registration.

The stockholders' agreement provides that we must pay all registration expenses (other than the underwriting discounts and commissions) in connection with effecting any demand registration or shelf registration. The stockholders' agreement contains customary indemnification and contribution provisions by us for the benefit of the stockholders party thereto and their affiliates and, in limited situations, by the stockholders party thereto for the benefit of us and any underwriters with respect to written information furnished to us by such stockholders and stated by such stockholders to be specifically included in any registration statement, prospectus or related document.

The registration rights remain in effect with respect to any shares covered by the stockholders' agreement until (i) all such shares have been sold pursuant to an effective registration statement under the Securities Act, or (ii) such time as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of the shares without limitation during a three-month period without registration.

In November 2018, Alphaeon distributed a certain number of shares of our common stock that it held to certain of its noteholders in exchange for the extinguishment of outstanding debt obligations. As part of that distribution, such noteholders, including DI and Alpha International Investment Ltd., became parties to the stockholders' agreement.

In June 2019, Alphaeon transferred a certain number of shares of our common stock that it held to its majority stockholder, Strathspey Crown Holdings Group, LLC, or SCH. As part of that transaction, SCH became a party to the stockholders' agreement.

Subsequent to December 31, 2019, Alphaeon contributed all of the remaining shares of our common stock that it held in us to Alphaeon 1, LLC. As part of that contribution, Alphaeon 1, LLC became a party to the stockholders' agreement and succeeded to all of Alphaeon's rights thereunder.

Anti-Takeover Effects of Provisions of our Certificate of Incorporation, Bylaws and Delaware Law

Delaware Anti-Takeover Law

We are subject to Section 203 of the DGCL, or Section 203. Section 203 generally prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time that such stockholder became an interested stockholder, unless:

- prior to such time 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 voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) 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
- at or subsequent to such time 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.

In general, Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity (other than the corporation and any direct or indirect majority-owned subsidiary of the corporation) or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with, associated with or controlling or controlled by such entity or person.

Certificate of Incorporation and Bylaws

The following provisions of our certificate of incorporation and bylaws may make a change-of-control of our company more difficult and could delay, defer or prevent a tender offer or other takeover attempt that a stockholder might consider to be in its best interest, including takeover attempts that might result in the payment of a premium to stockholders over the market price for their shares. These provisions also may promote the continuity of our management by making it more difficult for a person to remove or change the incumbent members of our board of directors.

Authorized but Unissued Shares; Undesignated Preferred Stock. The authorized but unissued shares of our common stock will be available for future issuance without stockholder approval, subject to applicable law and the Nasdaq Marketplace Rules. These additional shares may be used for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans. In addition, our board of directors may authorize, without stockholder approval, the issuance of undesignated preferred stock with voting rights or other rights or preferences designated from time to time by our board of directors (including the right to approve an acquisition or other change in our control). The existence of authorized but unissued shares of common stock or preferred stock may enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise.

Election and Removal of Directors. Our board of directors will consist of not less than five nor more than nine directors. The exact number of directors will be fixed from time to time only by resolution of our board of directors. Our board of directors currently has seven members.

Our certificate of incorporation provides that directors may be removed only for cause and only by the affirmative vote of holders of at least 66 2/3% of our then outstanding voting stock.

Classified Board of Directors. Our certificate of incorporation provides that our board of directors is classified with approximately one-third of the directors elected each year. The authorized number of directors may be changed only by resolution of the board of directors. The directors are divided into three classes, designated class I, class II and class III. Each class consists, as nearly as may be possible, of one-third of the total number of directors constituting the entire board of directors. At each annual meeting of stockholders, successors to the class of directors whose term expires at that annual meeting will be elected until the third annual meeting of stockholders next succeeding the elections or until their successors are duly elected and qualified or until their earlier death, resignation or removal. In addition, if the number of directors is changed, any increase or decrease will be apportioned by our board of directors among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class or from the removal from office, death, disability, resignation or disqualification of a director or other cause will hold office for a term that will coincide with the remaining term of that class, but in no case will a decrease in the number of directors have the effect of removing or shortening the term of any incumbent director.

Director Vacancies. Our certificate of incorporation authorizes only our board of directors to fill vacant directorships.

No Cumulative Voting. Our certificate of incorporation provides that stockholders do not have the right to cumulate votes in the election of directors (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose).

Special Meetings of Stockholders. Our certificate of incorporation and bylaws provide that special meetings of our stockholders may only be called by the chairman of the board, our Chief Executive Officer or by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors.

Advance Notice Procedures for Director Nominations. Our bylaws establish advance notice procedures for stockholders seeking to nominate candidates for election as directors at an annual or special meeting of stockholders. Although our bylaws do not give the board of directors the power to approve or disapprove stockholder nominations of candidates to be elected at an annual meeting, our bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of us.

Action by Written Consent. Our certificate of incorporation provides that any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by any consent in writing in lieu of a meeting of such stockholders, subject to the rights of the holders of any series of preferred stock.

Amending Our Certificate of Incorporation and Bylaws. Our certificate of incorporation and bylaws may be amended by the affirmative vote of the holders of at least 66 2/3% of the voting power of our then-outstanding common stock.

Exclusive Jurisdiction. Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery shall be the sole and exclusive forum for all “internal corporate claims.” “Internal corporate claims” are claims, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which Title 8 of the DGCL confers jurisdiction upon the Court of Chancery, except for, as to each of (i) and (ii) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. This exclusive forum provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Securities Exchange Act of 1934, as amended, or the Securities Act, or any other claim for which the federal courts have exclusive jurisdiction. The exclusive forum provision in our certificate of incorporation will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

Conflicts of Interest

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors or stockholders. Our certificate of incorporation, to the maximum extent permitted from time to time by Delaware law, renounces any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to Alphaeon or any of its officers, directors, stockholders, agents, members, partners, subsidiaries (other than our company) and affiliates, other than those directors and officers of our company who are offered business opportunities in their capacity as directors and officers of our company, or the specified parties. Our certificate of incorporation provides that, to the fullest extent permitted by law, none of the specified parties will have any duty to refrain from engaging in a corporate opportunity that we might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so. In addition, to the fullest extent permitted by law, in the event that any of the specified parties acquire knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself or himself or its or his affiliates or for us, such person will have no duty to communicate or offer such transaction or business opportunity to us and they may take any such opportunity for themselves or offer it to another person or entity. Our certificate of incorporation does not renounce our interest in any business opportunity that is offered to a director or officer of our company in his or her capacity as a director or officer of our company. To the fullest extent permitted by law, no business opportunity will be deemed to be a potential corporate opportunity for us unless we would be permitted to undertake the opportunity under our certificate of incorporation, we have sufficient financial resources to undertake the opportunity and the opportunity would be in line with our business.

Nasdaq Global Market Listing

Our common stock is listed on the Nasdaq Global Market under the symbol “EOLS.”

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. The transfer agent and registrar’s address is 250 Royall Street, Canton, Massachusetts 02021.

RSU AWARD AGREEMENT

EVOLUS, INC. 2017 OMNIBUS INCENTIVE PLAN

Evolus, Inc. (the "**Company**") grants to the Grantee named below ("**you**") the number of restricted stock units ("**RSUs**") set forth below (the "**Award**").

Plan:	Evolus, Inc. 2017 Omnibus Incentive Plan
Defined Terms:	As set forth in the Plan, unless otherwise defined in this Agreement
Grantee:	[_____]
Grant Date:	[_____]
Number of RSUs Granted:	[_____]
Definition of RSU:	Each RSU will entitle you to receive one Share at such future date or dates and subject to such terms as set forth in this Agreement.
Vesting Schedule:	The RSUs will become vested and payable on the following schedule, as long as you do not have a Separation from Service before the applicable vesting date:
Acceleration of Vesting:	All of the RSUs that are then outstanding and unvested will become vested and payable immediately if you incur a Separation from Service by the Company without Cause on, immediately prior to, or within two years after a Change in Control.

By signing below, you agree that the Award is granted under and governed by the terms of the Plan and this RSU Award Agreement (including the attached RSU Terms) (this RSU Award Agreement, include the attached RSU Terms, is referred to as this "**Agreement**"), as of the Grant Date. [The "Detrimental Conduct" provisions of Section 3.3.3 of the Plan shall not apply to the Award. Section 3.3.2 of the Plan shall apply to the Award to the extent of a clawback policy adopted to comply with the Sarbanes-Oxley Act, the Dodd Frank Act, or applicable rules of the Securities and Exchange Commission (or applicable listing agency) adopted thereunder.]

GRANTEE

Sign Name: /s/_____

Print Name: _____

EVOLUS, INC.

Sign Name: /s/

Print Name: _____

Title: _____

RSU TERMS

1. Grant of RSUs.

(a) The Award is subject to the terms of the Plan. The terms of the Plan are incorporated into this Agreement by this reference.

(b) You must accept the terms of this Agreement by returning a signed copy to the Company within 60 days after the Agreement is presented to you for review (or timely completing such other procedures for accepting the terms of this Agreement as the Committee may establish from time to time). The Award is subject to cancellation in its entirety if you do not timely accept the terms of this Agreement.

2. Restrictions.

(a) You will have no rights or privileges of a Stockholder as to the RSUs before settlement under Section 5 below ("**Settlement**"), including no right to vote or receive dividends or other distributions; in addition, the following terms will apply:

(i) you will not be entitled to delivery of any Shares with respect to the RSUs until Settlement (if at all), and upon the satisfaction of all other terms;

(ii) you may not sell, transfer (other than by will or the laws of descent and distribution), assign, pledge, or otherwise encumber or dispose of the RSUs before Settlement; and

(iii) you will forfeit all of the RSUs and all of your rights under the RSUs will terminate in their entirety upon the occurrence of an event described in Section 4 below.

(b) Any attempt to dispose of the RSUs or any interest in the RSUs in a manner contrary to the terms of this Agreement will be void and of no effect.

3. Vesting Period. The "**Vesting Period**" is the period beginning on the Grant Date and ending on the date the RSUs, or such applicable portion of the RSUs, are deemed vested and payable under the terms set forth in table at the beginning of this Agreement.

4. Forfeiture. If, during the Vesting Period, (i) you incur a Separation from Service (for the avoidance of doubt, which does not otherwise result in the immediate vesting and payment of the RSUs in accordance with the terms hereof), or (ii) you materially breach this Agreement, all of your rights to the RSUs (to the extent not theretofore vested) will terminate immediately and be forfeited in their entirety.

5. Settlement of RSUs. Delivery of Shares or other amounts under this Agreement will be subject to the following:

(a) The Company will deliver to you one Share for each RSU that has become vested hereunder within 74 days after the vesting date of the RSU, subject to the tax withholding provisions of Section 6.

(b) Any issuance of Shares under the Award may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the applicable rules of any securities exchange or similar entity.

In addition, any Shares issued hereunder will be subject to any stop-transfer orders and other restrictions as the Company may deem advisable under the rules, regulations, and other requirements of the SEC, any

securities exchange or similar entity upon which the Shares are then listed, and any applicable federal or state securities law, and the Company may cause a legend or legends to be placed on any certificates to make appropriate reference to these restrictions.

6. Tax Withholding. You will be required to meet any applicable tax withholding obligation related to the Award in accordance with the tax withholding provisions of Section 17.3 of the Plan (or any successor provision). By signing this Agreement, you agree that any tax withholding obligation arising in connection with the vesting and payment of the RSUs subject to your Award will be satisfied as follows:

- The Company will determine the amount of any federal, state, local or other income, employment, or other taxes which the Company or any of its subsidiaries may be obligated to withhold with respect to the delivery of Shares in payment of your RSUs that become vested (such withholding obligations, the "**Withholding Obligation**").

- You hereby irrevocably instruct the Company (and any third-party broker designated by the Company) to sell in one or more transactions on the open market, for and on your behalf, from the Shares otherwise deliverable to you in payment of your vested RSUs, a number of such Shares (valued at the applicable sale prices applying the applicable broker's customary methodology) to satisfy the Withholding Obligation and any brokerage fees and commissions arising in connection with such sale (rounded up to the nearest whole share). Such sale shall occur in connection with the delivery of the Shares in payment of the vested RSUs subject to your Award. The proceeds of such sale, in an amount equal to the Withholding Obligation, shall be promptly remitted to the Company to satisfy the Withholding Obligation. Any brokerage fees and commissions arising in connection with such sale shall also be satisfied from the proceeds of such sale.

- Any such sale of Shares for and on your behalf will be conducted through a broker designated by the Company. You agree to execute any and all such other documents as may be requested by the Company or such broker, as applicable, in order to implement and consummate the transactions contemplated by this letter agreement. You agree to comply with any administrative rules and procedures established by the Company with respect to such transactions.

- For clarity, should any tax withholding event arise in connection with the Award other than in connection with the delivery of Shares in payment of vested RSUs subject to the Award, you remain obligated to satisfy such tax withholding obligations in accordance with the Plan.

7. Adjustment. Upon any event described in Section 15 of the Plan (or any successor provision) occurring after the Grant Date, the adjustment provisions of that section will apply to the Award.

8. Bound by Plan and Committee Decisions. By accepting the Award, you acknowledge that you have received a copy of the Plan, have had an opportunity to review the Plan, and agree to be bound by all of the terms of the Plan. If there is any conflict between this Agreement and the Plan, the Plan will control. The authority to manage and control the operation and administration of this Agreement and the Plan is vested in the Committee. The Committee has all powers under this Agreement that it has under the Plan. Any interpretation of this Agreement or the Plan by the Committee and any decision made by the Committee related to the Agreement or the Plan will be final and binding on all Persons.

9. Your Representations. You represent to the Company that you have read and fully understand this Agreement and the Plan and that your decision to participate in the Plan is completely voluntary. You also acknowledge that you are relying solely on your own advisors regarding the tax consequences of the Award.

You acknowledge and agree the Company (i) makes no representations or undertakings regarding the tax consequences of the Award and (ii) does not commit to structure the terms of the Award to reduce or eliminate your liability for taxes in respect of the Award.

10. Regulatory and Other Limitations. Notwithstanding anything else in this Agreement, the Committee may impose conditions, restrictions, and limitations on the issuance of Shares under the Award unless and until the Committee determines that the issuance complies with (a) all registration requirements under the Securities Act, (b) all listing requirements of any securities exchange or similar entity on which the Shares are listed, (c) all Company policies and administrative rules, and (d) all applicable laws.

11. Miscellaneous.

(a) Notices. Any notice that may be required or permitted under this Agreement must be in writing and may be delivered personally, by intraoffice mail, or by electronic mail or via a postal service (postage prepaid) to the electronic mail or postal address and directed to the person as the receiving party may designate in writing from time to time.

(b) Waiver. The waiver by any party to this Agreement of a breach of any provision of the Agreement will not operate or be construed as a waiver of any other or subsequent breach.

(c) Entire Agreement. This Agreement and the Plan constitute the entire agreement between you and the Company related to the Award. Any prior agreements, commitments, or negotiations concerning the Award are superseded.

(d) Binding Effect; Successors. The obligations and rights of the Company under this Agreement will be binding upon and inure to the benefit of the Company and any successor corporation or organization resulting from the merger, consolidation, sale, or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company. Your obligations and rights under this Agreement will be binding upon and inure to your benefit and the benefit of your beneficiaries, executors, administrators, heirs, and successors.

(e) Governing Law; Consent to Jurisdiction; Consent to Venue; Service of Process. This Agreement will be construed and interpreted in accordance with the internal laws of the State of California without regard to principles of conflicts of law thereof, or principles of conflicts of laws of any other jurisdiction that could cause the application of the laws of any jurisdiction other than the State of California. For purposes of resolving any dispute that arises directly or indirectly from the relationship of the parties evidenced by this Agreement, you hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that any related litigation must be conducted solely in the courts of Orange County, California or the federal courts for the United States for the Central District of California, where this Agreement is made and/or to be performed, and no other courts. You may be served with process in any manner permitted under State of California law, or by United States registered or certified mail, return receipt requested.

(f) Amendment. This Agreement may be amended at any time by the Committee, except that no amendment may, without your consent, materially impair your rights under the Award.

(g) Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of the Agreement, and each other provision will be severable and enforceable to the extent permitted by law.

(h) No Rights to Service. Nothing in this Agreement will be construed as giving you any right to be retained in any position with the Company or its Affiliates. Nothing in this Agreement will interfere with or restrict the rights of the Company or its Affiliates—which are expressly reserved—to remove, terminate, or discharge you at any time for any reason whatsoever or for no reason, subject to the Company's certificate of incorporation, bylaws, and other similar governing documents and applicable law.

(i) Section 409A. The RSUs are intended to be exempt from (or, to the extent not exempt, to comply with) Section 409A, and this Agreement will be administered and interpreted consistently with that intent. For purposes of Section 409A, each installment payment under this Agreement or the Plan, or otherwise payable to you, will be treated as a separate payment. This paragraph will not be construed as a guarantee of any particular tax effect for your benefits under this Agreement and the Company does not guarantee that any such benefits will satisfy the provisions of Section 409A or any other provision of the Code. Notwithstanding anything else in this Agreement, to the extent required to avoid accelerated taxation or tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided under this Agreement during the six-month period immediately following your Separation from Service will instead be paid on the first payroll date after the six-month anniversary of your Separation from Service (or your death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee will have any obligation to take any action to prevent the assessment of any additional tax or penalty on you under Section 409A and neither the Company nor the Committee will have any liability to you for such tax or penalty.

(j) Further Assurances. You must, upon request of the Company or the Committee, do all acts and execute, deliver, and perform all additional documents, instruments, and agreements that may be reasonably required by the Company or the Committee to implement the provisions and purposes of this Agreement.

(k) Clawback. All awards, amounts, or benefits received or outstanding under the Plan will be subject to clawback, cancellation, recoupment, rescission, payback, reduction, or other similar action in accordance with the terms of any Company clawback or similar policy or any applicable law related to such actions, as may be in effect from time to time. You acknowledge and consent to the Company's application, implementation, and enforcement of any applicable Company clawback or similar policy that may apply to you, whether adopted before or after the Grant Date (including the forfeiture, clawback, and detrimental conduct provisions contained in Section 3.3 of the Plan as of the Grant Date), and any provision of applicable law relating to clawback, cancellation, recoupment, rescission, payback, or reduction of compensation, and the Company may take such actions as may be necessary to effectuate any such policy or applicable law, without further consideration or action.

(l) Electronic Delivery and Acceptance. The Company may deliver any documents related to current or future participation in the Plan by electronic means. You consent to receive those documents by electronic delivery and to participate in the Plan through any on-line or electronic system established and maintained by the Company or a third party designated by the Company.

(m) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

* * *

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Forms S-8 No. 333-223068 and 333-229184), pertaining to the Evolus, Inc. 2017 Omnibus Incentive Plan of Evolus, Inc. of our report dated February 25, 2020, with respect to the financial statements of Evolus, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2019.

/s/ Ernst & Young LLP

Irvine, California
February 25, 2020

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Moatazedi, certify that:

1. I have reviewed this Annual Report on Form 10-K of Evolus, Inc.;

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

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

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

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

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

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

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: February 25, 2020

/s/ David Moatazedi

David Moatazedi

President, Chief Executive Officer and Director

(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Lauren Silvernail, certify that:

1. I have reviewed this Annual Report on Form 10-K of Evolus, Inc.;

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

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

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

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

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

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

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: February 25, 2020

/s/ Lauren Silvernail

Lauren Silvernail
Chief Financial Officer and Executive Vice President, Corporate Development
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. § 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Each of the undersigned hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in his or her capacity as an officer of Evolus, Inc., that, to his or her knowledge:

(1) the Annual Report on Form 10-K of Evolus, Inc. for the fiscal year ended December 31, 2019 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Evolus, Inc.

Date: February 25, 2020

By: /s/ David Moatazedi

David Moatazedi

President and Chief Executive Officer

(Principal Executive Officer)

Date: February 25, 2020

By: /s/ Lauren Silvernail

Lauren Silvernail

Chief Financial Officer and Executive Vice President, Corporate Development

(Principal Financial Officer)