ATHEROGENICS INC
Form 10-Q
June 12, 2009

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2009
Commission File No. 0-31261
ATHEROGENICS, INC.
(Exact name of registrant as specified in its charter)

Georgia	**58-2108232**
(State of incorporation)	(I.R.S. Employer Identification Number)

8995 Westside Parkway, Alpharetta, Georgia 30009
(Address of registrant s principal executive offices, including zip code)

(Registrant s telephone number, including area code)**: (678) 336-2500**

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 o No þ

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes o No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company (as defined in Rule 12b-2 of the Act).

Large accelerated filer o	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company þ

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

As of June 10, 2009 there were 39,518,492 shares of the registrant s common stock outstanding.

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EXPLANATORY NOTE

As previously disclosed, on September 2, 2008, AtheroGenics, Inc. (we, or us) announced that we would not repay the 4.5% Convertible Notes (the 2008 Notes) due September 2, 2008. The failure to repay the 2008 Notes on maturity resulted in an event of default under the indenture governing the 2008 Notes and created an event of default under the indentures governing our 4.5% Convertible Notes due 2011 and our 1.5% Convertible Notes due 2012. On September 15, 2008 an involuntary petition under Chapter 7 of the United States Bankruptcy Code (the Bankruptcy Code) was filed against us by certain holders of our 2008 Notes in the United States Bankruptcy Court for the Northern District of Georgia (the Bankruptcy Court). On October 6, 2008, we consented to the bankruptcy filing and moved the Bankruptcy Court to convert the Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code (the Chapter 11 Proceeding). On April 1, 2009, we sold substantially all of our non-cash assets to Crabtree Acquisition Co., LLC for $2 million as part of the Chapter 11 Proceeding (the Asset Sale).

On June 9, 2009 the Bankruptcy Court approved our plan of liquidation, under which we will distribute our remaining cash and cash equivalents to our creditors. The final amounts to be distributed to its creditors is estimated to be determined in the next 3 months. Once this distribution is completed, our corporate existence will be terminated and our shares of common stock will be cancelled. Under the priority scheme established by the Bankruptcy Code, our creditors are generally entitled to receive any distributions of our assets before our shareholders are entitled to receive any such proceeds. Since our cash and cash equivalents are significantly less than our prepetition liabilities, holders of our unsecured debt will receive substantially less than payment in full for their claims and our shareholders will receive no value for their shares of our common stock as part of the Chapter 11 Proceedings.

As a result of the Asset Sale, we are not currently conducting any business activities nor will we do so in the future. Even though we sold substantially all of our non-cash assets in the Asset Sale and have no operations, we are nonetheless required to make certain filings, including this Quarterly Report on Form 10-Q for the three months ended March 31, 2009 (the Form 10-Q), with the U.S. Securities and Exchange Commission (the SEC). Accordingly, we are filing this Form 10-Q solely to comply with SEC rules and nothing herein shall be construed to suggest or imply that the shares of our common stock have any value or that our shareholders will receive any value for their shares of our common stock as part of the Chapter 11 Proceedings.

ATHEROGENICS, INC.
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

ATHEROGENICS, INC.
(Debtor-in-Possession)
CONDENSED BALANCE SHEETS
(Unaudited)

	March 31, 2009	December 31, 2008
Assets		
Current assets:		
Cash and cash equivalents	$ 46,299,528	$ 49,966,104
Prepaid expense and other current assets	653,538	536,715
Total current assets	46,953,066	50,502,819
Equipment and leasehold improvements, net of accumulated depreciation and amortization		1,093,326
Assets held for sale	671,935	
Total assets	$ 47,625,001	51,596,145
Liabilities and Shareholders Deficit		
Current liabilities:		
Accounts payable	$ 126,895	$ 339,013
Accrued research and development		8,150
Accrued compensation	164,495	157,257
Accrued and other liabilities	211,665	195,626
Total current liabilities not subject to compromise	503,055	700,046
Liabilities subject to compromise	306,891,227	306,888,386
Shareholders deficit:		
Preferred stock, no par value: Authorized 5,000,000 shares		
Common stock, no par value:		
Authorized 100,000,000 shares; issued and outstanding 39,518,492 shares at March 31, 2009 and December 31, 2008	219,855,598	219,030,853
Warrants	598,173	598,173
Accumulated deficit	(480,223,052)	(475,621,313)
Total shareholders deficit	(259,769,281)	(255,992,287)
Total liabilities and shareholders deficit	$ 47,625,001	$ 51,596,145

The accompanying notes are an integral part of these condensed financial statements.

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ATHEROGENICS, INC.
(Debtor-in-Possession)
CONDENSED STATEMENTS OF OPERATIONS
(Unaudited)

	Three months ended March 31, 2009	Three months ended March 31, 2008
Revenue	$	$
Operating expenses:		
Research and development	2,214,287	9,250,062
General and administrative	1,868,990	3,135,159
Total operating expenses	4,083,277	12,385,221
Operating loss	(4,083,277)	(12,385,221)
Interest and other income		893,637
Interest expense		(3,400,310)
Net loss before reorganization items	(4,083,277)	(14,891,894)
Reorganization items, net	(518,462)	
Net loss	$ (4,601,739)	$ (14,891,894)
Net loss per share basic and diluted	$ (0.12)	$ (0.38)
Weighted average shares outstanding basic and diluted	39,518,492	39,518,492

The accompanying notes are an integral part of these condensed financial statements.

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ATHEROGENICS, INC.
(Debtor-in-Possession)
CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited)

	Three months ended March 31, 2009	2008
Operating activities		
Net loss	$ (4,601,739)	$ (14,891,894)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	824,745	1,331,709
Depreciation and amortization	421,391	197,309
Amortization on 4.5% convertible notes due 2011		1,167,702
Amortization of debt issuance costs		325,371
Changes in operating assets and liabilities:		
Accounts receivable		2,576,357
Prepaid expenses and other assets	(116,823)	582,726
Accounts payable	(209,276)	723,552
Accrued research and development	(8,150)	(792,355)
Accrued interest		(1,992,158)
Accrued compensation	7,238	(529,475)
Accrued and other liabilities	16,038	(148,000)
Net cash used in operating activities	(3,666,576)	(11,449,156)
Investing activities		
Sales and maturities of short-term investments		16,067,134
Net cash provided by investing activities		16,067,134
Financing activities		
Retirement of 4.5% convertible notes due 2008		(5,468,750)
Net cash used in financing activities		(5,468,750)
Decrease in cash and cash equivalents	(3,666,576)	(850,772)
Cash and cash equivalents at beginning of period	49,966,104	74,795,388
Cash and cash equivalents at end of period	$ 46,299,528	$ 73,944,616
Supplemental disclosures		
Interest paid	$	$ 3,899,396
Reorganization items paid	$ 520,817	$

The accompanying notes are an integral part of these condensed financial statements.

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ATHEROGENICS, INC.
(Debtor-in-Possession)
NOTES TO CONDENSED FINANCIAL STATEMENTS
(Unaudited)

1. Organization; Proceedings under Chapter 11 of the Bankruptcy Code

AtheroGenics, Inc. (AtheroGenics or the Company) was incorporated on November 23, 1993 (date of inception) in the State of Georgia to focus on the discovery, development and commercialization of novel therapeutics for the treatment of chronic inflammatory diseases, including diabetes and coronary heart disease.

On September 2, 2008, AtheroGenics announced that it would not repay the 4.5% Convertible Notes (the 2008 Notes) due September 2, 2008. The failure to repay the 2008 Notes on maturity resulted in an event of default under the indenture governing the 2008 Notes and created an event of default under the indentures governing the 4.5% Convertible Notes due 2011 (the 2011 Notes) and the 1.5% Convertible Notes due 2012 (the 2012 Notes). On September 15, 2008 an involuntary petition under Chapter 7 of the United States Bankruptcy Code (the Bankruptcy Code) was filed against AtheroGenics by certain holders of its 2008 Notes in the United States Bankruptcy Court for the Northern District of Georgia (the Bankruptcy Court). On October 6, 2008, AtheroGenics consented to the bankruptcy filing and moved the Bankruptcy Court to convert the Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code (the Chapter 11 Proceeding). On April 1, 2009, AtheroGenics sold substantially all of its non-cash assets to Crabtree Acquisition Co., LLC (the Purchaser) for $2 million as part of the Chapter 11 Proceeding (the Asset Sale).

On June 9, 2009 the Bankruptcy Court approved AtheroGenics plan of liquidation, under which the Company will distribute its remaining cash and cash equivalents to its creditors. The final amounts to be distributed to its creditors is estimated to be determined in the next 3 months. After this distribution is completed, AtheroGenics corporate existence will be terminated and its shares of common stock will be cancelled. Under the priority scheme established by the Bankruptcy Code, AtheroGenics creditors are generally entitled to receive any distributions of its assets before its shareholders are entitled to receive any such proceeds. Since AtheroGenics cash and cash equivalents are significantly less than its pre-petition liabilities, holders of AtheroGenics unsecured debt will receive substantially less than payment in full for their claims and AtheroGenics shareholders will receive no value for their shares of its common stock as part of the Chapter 11 Proceeding. The distribution and liquidation of AtheroGenics is expected to be completed in the third quarter of 2009. The accompanying financial statements do not reflect any adjustments related to the liquidation of the company that will be necessary if the company is unable to continue as a going concern.

As a result of the Asset Sale on April 1, 2009, AtheroGenics is not currently conducting any business activities, other than maintaining the Company s assets, nor will it do so in the future. Even though AtheroGenics sold substantially all of its non-cash assets in the Asset Sale and has no operations, it is nonetheless required to make certain filings, including this quarterly report on Form 10-Q for the three months ended March 31, 2009 (the Form 10-Q), with the U.S. Securities and Exchange Commission (the SEC). Accordingly, AtheroGenics is filing this Form 10-Q solely to comply with SEC rules and nothing herein shall be construed to suggest or imply that the shares of its common stock have any value or that its shareholders will receive any value for their shares of AtheroGenics common stock as part of the Chapter 11 Proceeding.

2. Basis of Presentation

The accompanying unaudited condensed financial statements reflect all adjustments (consisting solely of normal recurring adjustments) which management considers necessary for a fair presentation of the financial position, results of operations and cash flows of AtheroGenics for the interim periods presented. Certain footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP) have been condensed or omitted from the interim financial statements as permitted by the rules and regulations of the SEC.

The condensed financial statements have been prepared in accordance with Statement of Position (SOP) 90-7, *Financial Reporting by Entities under the Bankruptcy Code.* SOP 90-7 does not ordinarily affect or change

the application of GAAP; however, it does require AtheroGenics to distinguish transactions and events that are directly associated with the reorganization in connection with the Chapter 11 Proceedings from the ongoing operations of the business. The Condensed Balance Sheet at March 31, 2009 discloses the pre-petition current liabilities subject to compromise, which are liabilities incurred, but not paid prior to the bankruptcy filing on September 15, 2008. Expenses incurred due to the Chapter 11 Proceeding are reported separately as reorganization items on the Statements of Operations for the three months ended March 31, 2009. Reorganization items are included in the supplemental disclosures table as part of the Condensed Statements of Cash Flows.

The interim results should be read in conjunction with the financial statements and notes thereto included in AtheroGenics Annual Report on Form 10-K for the year ended December 31, 2008 (the Form 10-K). Copies of the Form 10-K and AtheroGenics other SEC filings are available on request.

3. Assets Held for Sale

In accordance with Statement of Financial Accounting Standard (SFAS) No. 144, *Accounting for the Disposal or Impairment of Long-Lived Assets*, long-lived assets to be disposed of by sale are recorded at the lower of their carrying value or fair value less costs to sell. During 2009, the Company began activities to market and attempt to sell its equipment. All relevant criteria of SFAS No. 144 allowing for the classification of assets held for sale were met and depreciation on these assets was discontinued in March 2009.

4. Liabilities Subject to Compromise and Reorganization Items

AtheroGenics has recognized certain charges for allowed claims or expected allowed claims in the Condensed Financial Statements as of and for the three months ended March 31, 2009. The Bankruptcy Court will ultimately determine liability amounts that will be allowed for claims. As claims are resolved, or when better information becomes available and is evaluated, adjustments will be made to the liabilities recorded on the Condensed Financial Statements as appropriate.

The amounts of liabilities subject to compromise as of March 31, 2009 consisted of the following:

Accounts payable	$ 79,627
Accrued interest	2,870,951
Accrued research and development	996,591
Accrued other	546,058
2008 Notes	30,500,000
2011 Notes	71,898,000
2012 Notes	200,000,000
Total liabilities subject to compromise	$ 306,891,227

The reorganization items recorded in the Statements of Operations for the three months ended March 31, 2009 consisted of the following:

Professional fees	$ (581,612)
Interest income	63,150
Total reorganization items, net	$ (518,462)

5. Income Tax

AtheroGenics files a U.S. federal and Georgia income tax return on an annual basis. AtheroGenics is no longer subject to U.S. federal income or state tax return examinations by tax authorities for years before 2002. Based on the Company s lack of historical earnings, deferred taxes are offset by full valuation allowance. The result of the Chapter 11 Proceeding would negatively impact the amount of tax attributes and the ability to use the attributes.

AtheroGenics adopted the provisions of the Financial Accounting Standards Board Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48) effective January 1, 2007. No cumulative adjustment was required or recorded as a result of the implementation of FIN 48. As of March 31, 2009, AtheroGenics had no unrecognized tax benefits. AtheroGenics will recognize accrued interest and penalties related to unrecognized tax benefits in income tax expense when and if incurred. Due to the distribution and ultimate cancellation of AtheroGenics common stock as part of the Chapter 11 Proceeding, AtheroGenics will not incur unrecognized benefits.

6. Net Loss per Share

SFAS No. 128, *Earnings per Share,* requires presentation of both basic and diluted earnings per share. Basic earnings per share is computed by dividing net income (loss) by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is computed in the same manner as basic earnings per share except that diluted earnings per share reflects the potential dilution that would occur if outstanding options, warrants and convertible notes were exercised. Because AtheroGenics reported a net loss for all periods presented, shares associated with stock options, warrants and convertible notes are not included because their effect would be antidilutive. Basic and diluted net loss per share amounts are the same for the periods presented.

7. Stock-Based Compensation

AtheroGenics recognizes stock-based compensation in accordance with SFAS No. 123(R), *Share-Based Payment.* Stock-based compensation of $825,000 and $1.3 million was recorded for the three months ended March 31, 2009 and 2008, respectively. AtheroGenics net loss per share was increased by $(0.02) and $(0.04) for stock-based compensation related to stock options for the three months ended March 31, 2009 and 2008, respectively. As of March 31, 2009 and 2008, AtheroGenics had a net operating loss carryforward and therefore no excess tax benefits for tax deductions related to the stock options were recognized.

For the three months ended March 31, 2009 and 2008, AtheroGenics calculated a forfeiture rate of 28.17% and 11.36%, respectively, based on historical data. Expected volatility is based on historical volatility of AtheroGenics common stock. The expected term of the stock options granted is also based on historical data and represents the period of time that stock options granted are expected to be outstanding. The risk free interest rate is based on the U.S. Treasury rates in effect at the time of the grant for periods corresponding with the expected term of the options. No stock options were granted during the three months ended March 31, 2009. In addition, since AtheroGenics cash and cash equivalents will be distributed to its creditors if the plan of liquidation is approved by the Bankruptcy Court and AtheroGenics cash and cash equivalents are significantly less than its pre-petition liabilities, AtheroGenics stock options have no value.

During the three months ended March 31, 2008, AtheroGenics granted 18,000 stock options from the 2004 AtheroGenics, Inc. Equity Ownership Plan (2004 Plan). For stock options granted during the three months ended March 31, 2008 the following weighted average assumptions were used:

	Three months ended March 31,	
	2009	**2008**
Expected volatility		84.88%
Expected term		5 years
Risk free interest rate		2.82%
Fair value of grants		$ 0.27

8. Convertible Notes Payable

In August 2003, AtheroGenics issued $100.0 million in aggregate principal amount of 2008 Notes with interest payable semi-annually in March and September. Net proceeds to AtheroGenics were approximately $96.7

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million, after deducting expenses and underwriters discounts and commissions. The issuance costs related to the notes were recorded as debt issuance costs and other assets and were being amortized to interest expense over the five-year life of the notes. The 2008 Notes could have been converted at the option of the holder into shares of AtheroGenics common stock prior to maturity at a conversion rate of 65.1890 shares per $1,000 principal amount of notes, representing a conversion price of approximately $15.34 per share.

In January 2006, AtheroGenics exchanged $14.0 million in aggregate principal amount of the 2008 Notes for approximately 1.1 million shares of AtheroGenics common stock. In accordance with SFAS No. 84, *Induced Conversion of Convertible Debt*, this transaction resulted in a non-cash charge of approximately $3.5 million related to the premium paid in excess of the conversion price in order to induce conversion of the notes.

In July 2007, AtheroGenics extinguished $38.0 million in aggregate principal amount of the 2008 Notes with certain holders and issued $60.4 million in aggregate principal amount of 2011 Notes. This exchange was accounted for as an extinguishment of the 2008 Notes in accordance with EITF 96-19, *Debtor s Accounting for a Modification or Exchange of Debt Instruments*(EITF 96-19). The 2011 Notes were initially recorded at their fair value of $38.0 million. The $22.4 million difference between the principal amount and the initial fair value of the 2011 Notes, the discount, was to be accreted up to the face amount of $60.4 million as additional interest expense using the effective interest method over the remaining life of the new convertible notes.

On September 2, 2008, AtheroGenics defaulted on the principal and interest due on the 2008 Notes. This default created an event of default under the indentures governing the 2011 Notes and the 2012 Notes, which in turn caused the 2011 Notes and the 2012 Notes to become immediately due and payable. In accordance with SFAS No. 78, *Classifications of Obligations That Are Callable by the Creditor* (SFAS 78), the 2008, 2011 Notes and the 2012 Notes, $30.5 million, $71.9 million and $200.0 million, respectively, were reclassified as liabilities subject to compromise. The remaining unamortized debt issuance costs of $3.1 million related to the 2012 Notes was expensed upon the event of default and recorded in reorganization items. In addition, in connection with the 2011 Notes, the remaining unamortized discount of $16.9 million was also recorded as an expense in reorganization items and the remaining unamortized premium of $435,000 was recorded as an offset to expense in reorganization items.

As of September 30, 2008, AtheroGenics recorded $2.3 million of accrued interest expense related to the 2008 and 2011 Notes, which was due, but not paid on September 1, 2008. An additional 15 days of interest, $192,000, has been accrued for the time period of September 1, 2008 through September 15, 2008 when the Chapter 7 petition was filed. In addition, AtheroGenics recorded $375,000 of accrued interest expense related to the 2012 Notes, which includes the time period of September 1 through September 15. Due to the Chapter 11 Proceeding, no interest expense was recorded on the 2008 Notes, the 2011 Notes or the 2012 Notes after September 15, 2008.

9. Commitments and Contingencies

In April 2008, AtheroGenics entered into a Manufacturing and Supply Agreement (the Agreement) with ISP Pharma Systems LLC (ISP) for the manufacture and supply of the active pharmaceutical ingredient and an intermediate product (the Product) of AtheroGenics product candidate, AGI-1067.

The initial term of the Agreement expires on April 1, 2013 and the Agreement is automatically extended for successive two year terms thereafter if neither AtheroGenics nor ISP gives notice of non-renewal 180 days prior to the expiration of the initial or renewal term.

Under the terms of the Agreement, ISP has agreed to accept certain equipment used in the manufacture of the Product from AtheroGenics, in exchange for specific manufacturing activities related to AGI-1067. Through March 2009, AtheroGenics has recognized $821,000 of work performed by ISP in research and development expense with an offsetting credit to restructuring and impairment costs. There was no activity under this arrangement during the first quarter of 2009.

On April 1, 2009, the Agreement was transferred to the Purchaser as part of the Asset Sale. A former member of AtheroGenics board of directors is affiliated with the Purchaser.

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Upon completion of the Asset Sale, the executive officers were involuntary separated from AtheroGenics employment. Pursuant to the plan approved by the Bankruptcy Court, each officer received a $125,000 severance payment in April. Severance paid to all employees in April 2009 totaled approximately $830,000.

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

The following contains forward-looking statements which are subject to certain risks and should be read in conjunction with the information contained herein as well as with the financial statements and related footnotes and Management s Discussion and Analysis of Financial Condition and Results of Operations included in AtheroGenics Annual Report on Form 10-K for the fiscal year ended December 31, 2008. In this report, AtheroGenics, we, us and our refer to AtheroGenics, Inc.

Overview

AtheroGenics is a research-based pharmaceutical company focused on the discovery, development and commercialization of novel drugs for the treatment of chronic inflammatory diseases, including diabetes and coronary heart disease. We currently have one late stage clinical drug development program.

As previously disclosed, on September 2, 2008, we announced that we would not repay the 4.5% Convertible Notes (the 2008 Notes) due September 2, 2008. The failure to repay the 2008 Notes on maturity resulted in an event of default under the indenture governing the 2008 Notes and created an event of default under the indentures governing our 4.5% Convertible Notes due 2011 (the 2011 Notes) and our 1.5% Convertible Notes due 2012 (the 2012 Notes). On September 15, 2008 an involuntary petition under Chapter 7 of the United States Bankruptcy Code (the Bankruptcy Code) was filed against us by certain holders of our 2008 Notes in the United States Bankruptcy Court for the Northern District of Georgia (the Bankruptcy Court). On October 6, 2008, we consented to the bankruptcy filing and moved the Bankruptcy Court to convert the Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code (the Chapter 11 Proceeding). On April 1, 2009, we sold substantially all of our non-cash assets to Crabtree Acquisition Co., LLC (the Purchaser) for $2 million as part of the Chapter 11 Proceeding (the Asset Sale).

On June 9, 2009 the Bankruptcy Court approved our plan of liquidation, under which we will distribute our cash and cash equivalents to our creditors. After this distribution is completed, our corporate existence will be terminated and our shares of common stock will be cancelled. Under the priority scheme established by the Bankruptcy Code, our creditors are generally entitled to receive any distributions of our assets before our shareholders are entitled to receive any such proceeds. Since our cash and cash equivalents are significantly less than our pre-petition liabilities, holders of our unsecured debt will receive substantially less than payment in full for their claims and our shareholders will receive no value for their shares of our common stock as part of the Chapter 11 Proceeding. The distribution and liquidation of AtheroGenics is expected to be completed in the third quarter of 2009.

As a result of the Asset Sale on April 1 2009, we are not currently conducting any business activities, nor will we do so in the future. Even though we sold substantially all of our non-cash assets in the Asset Sale and have no operations, we are nonetheless required to make certain filings, including this Quarterly Report on Form 10-Q for the three months ended March 31, 2009 (the Form 10-Q), with the U.S. Securities and Exchange Commission (the SEC). Accordingly, we are filing this Form 10-Q solely to comply with SEC rules and nothing herein shall be construed to suggest or imply that the shares of our common stock have any value or that our shareholders will receive any value for their shares of our common stock as part of the Chapter 11 Proceeding.

In 2003, we initiated a Phase III trial, referred to as ARISE (Aggressive Reduction of Inflammation Stops Events), which evaluated the impact of AGI-1067 on a composite measure of heart disease outcomes, including death due to coronary disease, myocardial infarction (heart attack), stroke, coronary re-vascularization and unstable angina. Important measures of glycemic control were included for patients with diabetes who also had coronary heart disease. The study assessed the incremental benefits of AGI-1067 versus the current standard of care therapies

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in this patient population. As such, all patients in the trial, including those on placebo, received other appropriate heart disease and diabetes medications, including statins and other cholesterol-lowering therapies, and glycemic control agents.

The ARISE trial results were reported in March 2007 and demonstrated that while AGI-1067 did not show a difference from placebo in the composite primary endpoint, the study did achieve a number of other important predefined endpoints. These endpoints included a reduction in the composite of hard atherosclerotic clinical endpoints, composed of cardiovascular death, resuscitated cardiac arrest, myocardial infarction and stroke. AGI-1067 achieved a significant reduction of 19% in the rate of these combined hard endpoints. There were also improvements in the key diabetes parameters of new-onset diabetes and glycemic control.

In August 2007, we commenced the first registration study for diabetes called ANDES (AGI-1067 as Novel Anti-Diabetic Agent Evaluation Study), a multi-center, double-blind study with 6-month dosing using two doses (150mg and 75mg), designed to compare the effects of AGI-1067 versus placebo on glycemic endpoints in subjects with confirmed Type 2 diabetes. In July 2008, we announced top-line results that showed both doses, 150mg and 75mg, of AGI-1067 met the primary efficacy endpoint of the reduction in glycosylated hemoglobin (A1c) versus placebo at the end of the study s six month dosing regimen. Although we expect that an additional positive registration study in patients with diabetes will be required to submit a New Drug Application for marketing approval, due to the constraints imposed on us by the Chapter 11 Proceeding, we were unable to pursue any clinical trials or other commercialization activities relating to AGI-1067 or our other products.

AGI-1096 was a novel antioxidant and selective anti-inflammatory agent to address the accelerated inflammation of grafted blood vessels, known as transplant arteritis, common in chronic organ transplant rejection. We worked with Astellas Pharma Inc. (Astellas) to further develop AGI-1096, with Astellas funding the costs for development activities under the agreement. Astellas informed us that they did not have further development plans and we subsequently ceased development activities on AGI-1096.

Both AGI-1067 and AGI-1096 were sold to the Purchaser as part of the Asset Sale. A former member of AtheroGenics board of directors is affiliated with the Purchaser.

Critical Accounting Policies and Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions and select accounting policies that affect the amounts reported in our financial statements and the accompanying notes. AtheroGenics considers certain accounting policies related to use of estimates, research and development accruals, revenue recognition and stock-based compensation to be critical policies. There have been no material changes in the critical accounting policies from what was previously disclosed in our Form 10-K.

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Results of Operations

Comparison of the Three Months Ended March 31, 2009 and 2008

Revenues

No revenues were recorded for the three months ended March 31, 2009 and 2008.

Expenses

Research and Development. Research and development expenses were $2.2 million and $9.3 million for the three months ended March 31, 2009 and 2008, respectively. The decrease in research and development expenses in the three months ended March 31, 2009 is primarily due to the termination of business activities due to the Chapter 11 Proceeding, other than maintenance of the Company s assets, which include costs associated FDA filings, drug stability and storage. Research and Devolpment expenses in 2009 also include, allocated facility costs, depreciation, and amortization of stock-based compensation.

General and Administrative. General and administrative expenses were $1.9 million and $3.1 million for the three months ended March 31, 2009 and 2008, respectively. The decrease is primarily due to lower personnel related costs, stock-based compensation expense and professional fees.

Interest and Other Income

Interest and other income is primarily comprised of income earned on our cash and cash equivalents. There was no interest and other income for the three months ended March 31, 2009 and $894,000 for the comparable period in 2008. The decrease for the three months ended March 31, 2009 was caused by the interest income being classified as a reorganization item, net due to the Chapter 11 Proceeding.

Interest Expense

There was no interest expense recorded for the three months ended March 31, 2009 as we suspended the recognition of interest expense at the time of filing for bankruptcy in accordance with SOP 90-7. Interest expense was $3.4 million for the comparable period in 2008. The unamortized balance of debt issuance cost and the discount related to the 2011 Notes and the 2012 Notes was charged to reorganization items, net in the third quarter of 2008.

Reorganization Items, net

In connection with the Chapter 11 Proceeding, we incurred $518,000 of reorganization items which primarily consists of professional fees, offset by interest income that would not have been earned but for the Chapter 11 Proceeding.

Liquidity and Capital Resources

On June 9, 2009 the Bankruptcy Court approved our plan of liquidation, under which we will distribute our cash and cash equivalents to our creditors and our corporate existence will be terminated once this distribution is complete. Since our cash and cash equivalents are significantly less than our prepetition liabilities, holders of our unsecured debt will receive substantially less than payment in full for their claims. In addition, our shareholders will receive no value for their shares of our common stock as our creditors have priority in the Chapter 11 Proceeding. Moreover, since all of our existing cash and cash equivalents will be paid to our creditors and since we are not conducting any operations and will not do so in the future, we do not anticipate having any long-term capital-resources needs.

Since inception, we financed our operations primarily through sales of equity securities and convertible notes. On September 15, 2008, certain holders of our 2008 Notes filed an involuntary petition under Chapter 7 of the Bankruptcy Code against AtheroGenics. On October 6, 2008, AtheroGenics consented to the bankruptcy filing and moved the Bankruptcy Court to convert the Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code.

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On April 1, 2009, AtheroGenics sold substantially all of its non-cash assets for $2 million to the Purchaser as part of the Chapter 11 Proceeding.

Net cash used in operating activities was $3.7 million for the three months ended March 31, 2009 compared to $11.4 million for the comparable period in 2008. The net cash used in operating activities in 2009 was primarily attributable to funding a net loss of $4.6 million. The net cash used in operating activities for the three months ended March 31, 2008 was principally for expenditures related to the ANDES clinical trial.

Net cash provided by investing activities was $16.1 million for the three months ended March 31, 2008 and consisted primarily of the net sales of short-term investments.

Net cash used in financing activities was $5.5 million for the three months ended March 31, 2008 and was due to the retirement of $5.5 million of the 2008 Notes.

In August 2003, we issued $100 million in aggregate principal amount of 2008 Notes through a Rule 144A private placement to qualified institutional buyers. These notes were convertible into our common stock at a conversion rate of 65.1890 shares per $1,000 principal amount of notes, or approximately $15.34 per share. Net proceeds were approximately $96.7 million. Interest of 4.5% on the 2008 Notes was payable semi-annually in arrears on March 1 and September 1. In January 2006, we exchanged $14.0 million in aggregate principal amount of the 2008 Notes for 1,085,000 shares of our common stock. In July 2007, we extinguished $38.0 million of the 2008 Notes and in exchange, issued $60.4 million of 2011 Notes. The 2011 Notes were initially recorded at their fair value of $38.0 million. The $22.4 million difference between the principal amount and the initial fair value of the debt, the discount, was being accreted up to the face amount as additional interest expense over the remaining life of the 2011 Notes. In January 2008, we redeemed $17.5 million in aggregate principal amount of our 2008 Notes, and in exchange issued $11.5 million of 2011 Notes and repaid $5.5 million in cash. We recorded the new 2011 Notes at their carrying value of $12.0 million. This resulted in a premium of approximately $500,000 that was being amortized as an offset to interest expense over the life of these 2011 Notes.

On September 2, 2008, we defaulted on the principal and interest due on the 2008 Notes. This default created an event of default under the indentures governing the 2011 Notes and the 2012 Notes, which in turn caused the 2011 Notes and the 2012 Notes to become immediately due and payable. Due to the default, the remaining unamortized balance of the discount on the 2011 Notes, $16.9 million, was recorded as an expense in reorganization items and the remaining unamortized balance of the premium on the 2011 Notes, $435,000, was recorded as an offset to expense in reorganization items. As of March 31, 2009, we have recorded $2.3 million of accrued interest expense related to the 2008 and 2011 Notes, which was due, but not paid on September 1, 2008. An additional 15 days of interest, $192,000, has been accrued for the time period of September 1, 2008 through September 15 2008 when the Chapter 7 petition was filed. The accrued interest expense is included in liabilities subject to compromise.

In January 2005, we issued $200 million in aggregate principal amount of 2012 Notes through a Rule 144A private placement to qualified institutional buyers. These notes are convertible into shares of our common stock at a conversion rate of 38.5802 shares per $1,000 principal amount of notes, or approximately $25.92 per share. Interest of 1.5% on the 2012 Notes is payable semi-annually in arrears on February 1 and August 1. Net proceeds were approximately $193.6 million. Due to the default on the 2012 Notes, the remaining unamortized balance of the debt issuance costs, $3.1 million, was recorded as an expense in reorganization items. As of March 31, 2009, we have recorded $375,000 of accrued interest expense related to the 2012 Notes, which includes the time period of September 1, 2008 through September 15, 2008 when the Chapter 7 petition was filed. The accrued interest expense is included in liabilities subject to compromise.

FORWARD-LOOKING STATEMENTS

The Private Securities Litigation Reform Act of 1995 (the Reform Act) provides a safe harbor for forward-looking statements made by or on behalf of AtheroGenics. AtheroGenics and its representatives may from time to time make written or oral forward-looking statements, including statements contained in this report and our other filings with the Securities and Exchange Commission and in our reports to our shareholders. All statements which address operating performance, events or developments that we expect or anticipate will occur in the future, such as developments regarding the Chapter 11 Proceeding and the amount of the expected proceeds from the sale

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of our non-cash assets are forward-looking statements within the meaning of the Reform Act. The forward-looking statements are and will be based on management s then current views and assumptions regarding future events and operating performance, and speak only as of their dates. AtheroGenics undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, which consists of one person that acts as our principal executive and financial officer, is responsible for establishing and maintaining our disclosure controls and procedures (as defined in the Securities Exchange Act of 1934, as amended (the Exchange Act) Rules 13a-15(e) and 15d-15(e)). Our management, evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this quarterly report and concluded that our disclosure controls and procedures were not effective as a result of the material weaknesses identified below.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

Management identified the following material weaknesses as of March 31, 2009:

The Chapter 11 Proceeding has required substantial effort from our limited finance, accounting and management personnel which resulted in our inability to file this Form 10-Q on a timely basis based on reduction of our finance and executive management resources, which has also impacted our supervision and review, management oversight, as well as segregation of duties processes; and

The Chapter 11 Proceeding, the cessation of our operations and our substantial workforce reductions resulted in our inability to maintain an Audit Committee in compliance with Nasdaq listing standards and SEC regulations.

Notwithstanding the above material weaknesses, management has concluded that the condensed financial statements were prepared in accordance with U.S. generally accepted accounting principles. Accordingly, the financial statements included in this Quarterly Report on Form 10-Q fairly present in all material respects our financial condition, results of operations and cash flows for the periods presented in accordance with U.S. generally accepted accounting principles.

We do not intend to remediate these material weaknesses, in light of the Chapter 11 Proceeding, and our intention to liquidate in the near term.

Changes in Internal Control over Financial Reporting

As discussed above, we have been involved in the Chapter 11 Proceeding since our third fiscal quarter of 2008, which has significantly impacted our internal control over financial reporting to, among other things, prepare our financial statements reflecting the changes brought about as a result of the Chapter 11 Proceeding. In addition, as previously disclosed, on April 1, 2009 we announced the involuntary separation of Russell M. Medford, Mark P. Colonnese, Joseph M. Gaynor, Jr. and W. Charles Montgomery from their positions as officers of AtheroGenics. These officers were important to our financial reporting and control process, and their departure has resulted in material changes in our internal control over financial reporting that significantly impacted our ability to prepare our condensed financial statements, including our inability to maintain an Audit Committee in compliance with Nasdaq listing standards and SEC regulations.

Other than as described above, there were no other changes in our internal control over financial reporting during the most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II OTHER INFORMATION

Item 1. Legal Proceedings

On September 15, 2008, certain holders of our 2008 Notes filed an involuntary petition against us under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court. On October 6, 2008, we consented to the bankruptcy filing and moved the Bankruptcy Court to convert the Chapter 7 case to a case under Chapter 11 of the Bankruptcy Code. On April 1, 2009, we sold substantially all of our non-cash assets for $2 million to the Purchaser as part of the Chapter 11 Proceeding. On June 9, 2009 the Bankruptcy Court approved our plan of liquidation, under which we will distribute our cash and cash equivalents to our creditors.

Item 1A. Risk Factors

Because the proceeds from the sale of substantially all of our non-cash assets did not exceed the amounts we owe to our creditors, our shareholders will receive no value for their common stock and our creditors will receive substantially less than payment in full for their claims.

As further described above, we sold substantially all of our non-cash assets to the Purchaser on April 1, 2009 as part of the Chapter 11 Proceeding. Under the priority scheme established by the Bankruptcy Code, our creditors are generally entitled to receive any distributions of our assets before our shareholders are entitled to receive any such proceeds. **Since our cash and cash equivalents, including the proceeds from the sale of our non-cash assets, are significantly less than our prepetition liabilities, holders of our unsecured debt will receive substantially less than payment in full for their claims and our shareholders will receive no value for their shares of our common stock as part of the Chapter 11 Proceedings.**

Our common stock continues to be quoted on the Pink Sheets even though our shareholders will not receive any value for their shares of our common stock as part of the Chapter 11 Proceeding and our corporate existence will be terminated once we have completed the distribution of our cash and cash equivalents to our creditors.

Our common stock was delisted from the Nasdaq Global Market and is currently quoted on the Pink Sheets under the symbol AGIXQ.PK . As discussed above, under the priority scheme established under the Bankruptcy Code, our shareholders will receive no value for their shares of our common stock as part of the Chapter 11 Proceedings and our corporate existence will be terminated once we have distributed our cash and cash equivalents to our creditors. **Accordingly, even though our common stock continues to be quoted on the Pink Sheets, our common stock has no value and our shareholders should not view the trading activity of our common stock on the Pink Sheets or any other market or trading platform as being indicative of the value our shareholders will receive as part of the Chapter 11 Proceeding.**

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Item 6. Exhibits

Exhibits

Exhibit 31	Certifications of Chief Executive Officer and Chief Financial Officer under Rule 13a-14(a).
Exhibit 32	Certifications of Chief Executive Officer and Chief Financial Officer under Section 1350.

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SIGNATURES

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

ATHEROGENICS, INC.

Date: June 12, 2009

/s/ Charles A. Deignan
Charles A. Deignan
President, Chief Financial Officer and
Secretary

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