

AmpliPhi Biosciences Corp  
Form S-1  
April 06, 2017

As filed with the Securities and Exchange Commission on April 6, 2017

**Registration No. 333-**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM S-1  
REGISTRATION STATEMENT  
*UNDER*  
*THE SECURITIES ACT OF 1933***

**AmpliPhi Biosciences Corporation**

(Exact Name of Registrant as Specified in Its Charter)

Washington  
(State or Other Jurisdiction of  
Incorporation or Organization)

2836  
(Primary Standard Industrial  
Classification Code Number)

91-1549568  
(I.R.S. Employer  
Identification Number)

**3579 Valley Centre Drive, Suite 100  
San Diego, California 92130  
(858) 829-0829**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**M. Scott Salka**  
**Chief Executive Officer**  
**AmpliPhi Biosciences Corporation**  
**3579 Valley Centre Drive, Suite 100**  
**San Diego, California 92130**  
**(858) 829-0829**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act), check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

M. Scott Salka Chief Executive Officer AmpliPhi Biosciences Corporation 3579 Valley Centre Drive, Suite 100 San Diego, California 92130 (858) 829-0829

offering. 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. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered <sup>(1)</sup>	Proposed maximum aggregate offering price <sup>(2)</sup>	Amount of registration fee
Common Stock, \$0.01 par value per share		
Warrants to purchase shares of common stock		
<b>Total</b>	<b>\$ 8,280,000</b>	<b>\$ 960</b>

The securities registered hereunder also include the shares of common stock as may be issued upon exercise of warrants registered hereby. Pursuant to Rule 416, the securities being registered hereunder include such (1) indeterminate number of additional securities as may be issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.

Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) (2) under the Securities Act. Includes the offering price of any additional securities that the underwriters have the option to purchase.

**The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

**PRELIMINARY PROSPECTUS**

**SUBJECT TO COMPLETION, DATED APRIL 6, 2017**

## Shares of Common Stock

### Warrants to Purchase

### Shares of Common Stock

We are offering \_\_\_\_\_ shares of our common stock and warrants to purchase an aggregate of \_\_\_\_\_ shares of our common stock (and the shares of common stock that are issuable from time to time upon exercise of the warrants). Each share of common stock is being sold together with a warrant to purchase \_\_\_\_\_ of a share of our common stock (which equates to \_\_\_\_\_ % warrant coverage on the shares purchased in this offering), at an exercise price of \$ \_\_\_\_\_ per share. The warrants will be exercisable immediately and will expire \_\_\_\_\_ years from the date of issuance. The shares of common stock and \_\_\_\_\_ warrants can only be purchased together in this offering but will be issued separately and will be immediately separable upon issuance. Our common stock is listed on the NYSE MKT under the symbol APHB. On April 5, 2017, the last reported sale price of our common stock on the NYSE MKT was \$0.415 per share. The public offering price \_\_\_\_\_ per share and accompanying warrant will be determined between us and the underwriter at the time of pricing, and may be at a discount to the current market price. There is no established public trading market for the warrants, and we do not expect a market to develop. In addition, we do not intend to apply for a listing of the warrants on any national securities exchange.

We are an emerging growth company as that term is used in the Jumpstart Our Business Startups Act of 2012 and, as such, we have elected to comply with certain reduced public company reporting requirements for this prospectus and future filings.

	Per Share and Accompanying Warrant	Total
Public offering price <sup>(1)</sup>	\$	\$
Underwriting discounts and commissions <sup>(2)</sup>	\$	\$
Proceeds, before expenses, to us	\$	\$

(1) The public offering price is \$ \_\_\_\_\_ per share of common stock and \$0.01 per accompanying warrant.

(2) In addition, we have agreed to reimburse the underwriter for certain expenses. See Underwriting beginning on page 19 of this prospectus for additional information.

The offering is being underwritten on a firm commitment basis. We have granted the underwriter an option for a period of 30 days from the date of this prospectus to purchase up to an additional \_\_\_\_\_ shares of our common stock at a price of \$ \_\_\_\_\_ per share and/or warrants to purchase up to an aggregate of \_\_\_\_\_ shares of common stock at a price of \$ \_\_\_\_\_

per warrant, to cover over-allotments, if any.

**Investing in our securities involves a high degree of risk. See the section entitled Risk Factors beginning on page 6 of this prospectus and elsewhere in this prospectus for a discussion of information that should be considered in connection with an investment in our securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The underwriter expects to deliver the shares of common stock and warrants to purchasers on or about \_\_\_\_\_, 2017.

*Sole Book-Running Manager*

**Rodman & Renshaw  
a unit of H.C. Wainwright & Co.**

The date of this prospectus is \_\_\_\_\_, 2017

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We have not, and the underwriter has not, authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the securities offered hereby, and only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or in any applicable free writing prospectus is current only as of its date, regardless of its time of delivery or any sale of our securities. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: We have not, and the underwriter has not, done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the securities and the distribution of this prospectus outside the United States.

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## PROSPECTUS SUMMARY

*This summary highlights information contained in other parts of this prospectus or incorporated by reference into this prospectus from our filings with the Securities and Exchange Commission, or SEC, listed in the section of the prospectus entitled *Incorporation of Certain Information by Reference*. Because it is only a summary, it does not contain all of the information that you should consider before purchasing our securities in this offering and it is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere or incorporated by reference into this prospectus. You should read the entire prospectus, the registration statement of which this prospectus is a part, and the information incorporated by reference herein in their entirety, including the *Risk Factors* and our financial statements and the related notes incorporated by reference into this prospectus, before purchasing our securities in this offering. Unless the context requires otherwise, references in this prospectus to AmpliPhi, we, us and our refer to AmpliPhi Biosciences Corporation together with its wholly owned subsidiaries.*

### Overview

### Our Company

We are a biotechnology company focused on the discovery, development and commercialization of novel phage therapeutics. Phage therapeutics use bacteriophages, a family of viruses, to kill pathogenic bacteria. Phages have powerful and highly selective mechanisms of action that permit them to target and kill specific bacteria. We believe that phages represent a promising means to treat bacterial infections, especially those that have developed resistance to current therapies, including the so-called multi-drug-resistant or “superbug” strains of bacteria.

The extensive use of antibiotics since their discovery in the 1940s has resulted in drug resistance among many disease-causing bacteria. According to the U.S. Centers for Disease Control and Prevention, or CDC, resistance to antibiotics threatens to reverse many of the key medical advances of the last half-century. Examples of clinically important microbes that are rapidly developing resistance to available antimicrobials include bacteria that cause skin, bone, lung and bloodstream infections (e.g., *Staphylococcus aureus*, or *S. aureus* and methicillin-resistant *S. aureus*, or MRSA), pneumonia and lung infections in both community and hospital settings and cystic fibrosis, or CF, patients (e.g., *A. baumannii*, *P. aeruginosa*, and *K. pneumoniae*), meningitis (e.g., *S. pneumoniae*), urinary tract and gastrointestinal infections (e.g., *E. coli* and *C. difficile*). As phages kill bacteria in ways entirely unlike the mechanisms used by traditional antibiotics, we believe that most multi-drug resistant bacteria will be susceptible to phage therapy. Furthermore, should resistant bacteria emerge or evolve, we believe it will remain possible to identify phages that can effectively kill these resistant bacteria.

Our goal is to be the leading developer of phage therapeutics. We are combining our expertise in the manufacture of drug-quality bacteriophages and our proprietary approach and expertise in identifying, characterizing and developing naturally occurring bacteriophages with that of collaboration partners in bacteriophage biology, synthetic biology and manufacturing, to develop state-of-the-art bacteriophage products. We are developing phage products to combat multi- or pan-drug-resistant bacterial pathogens, leveraging advances in sequencing and molecular biology. We have developed certain phage combinations that we believe maximize efficacy and minimize phage resistance. We currently have product candidates for the treatment of *S. aureus* infections, including MRSA, *P. aeruginosa* infections, and *C. difficile* infections.

We believe our bacteriophage technology may have unique application in the area of personalized medicine. In particular, we believe our bacteriophage technology can be used to develop personalized, targeted therapies for patients who suffer from serious or life-threatening antibiotic-resistant bacterial infections and who have limited or no other satisfactory treatment options. Moreover, we believe our ability to customize phage therapies for antibiotic-resistant infections, combined with the ability of bacteriophage to re-sensitize drug-resistant populations to antibiotics, represents what could be a powerful tool against the growing challenge of antibiotic-resistant infections. We continue to explore opportunities to leverage our bacteriophage technology and customization capabilities.

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## **Risks Associated with Our Business and this Offering**

Our business and our ability to implement our business strategy are subject to numerous risks, as more fully described in the section entitled "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2016, incorporated herein by reference. You should read these risks before you invest in our securities. We may be unable, for many reasons, including those that are beyond our control, to implement our business strategy. In particular, risks associated with our business include:

There is substantial doubt about our ability to continue as a going concern, which may affect our ability to obtain future financing and may require us to curtail our operations. We will need to raise additional capital to continue our operations.

We have incurred losses since our inception and anticipate that we will continue to incur significant losses for the foreseeable future, and our future profitability is uncertain.

Our product candidates must undergo rigorous clinical testing, such clinical testing may fail to demonstrate safety and efficacy and any of our product candidates could cause undesirable side effects, which would substantially delay or prevent regulatory approval or commercialization.

We may be required to issue a significant number of additional shares of common stock for no additional consideration to certain of our stockholders in connection with our November 2016 public offering as well as the closing of this offering; we may not be able to satisfy our potential contractual obligation to issue these shares.

We are dependent on patents and proprietary technology. If we fail to adequately protect this intellectual property or if we otherwise do not have exclusivity for the marketing of our products, our ability to commercialize products could suffer.

If our competitors are able to develop and market products that are more effective, safer or more affordable than ours, or obtain marketing approval before we do, our commercial opportunities may be limited.

If you purchase our securities in this offering, you will incur immediate and substantial dilution.

We will have broad discretion in the use of the net proceeds from this offering and may not use them effectively.

## **Corporate and Other Information**

We were incorporated under the laws of the State of Washington in March 1989 as a wholly owned subsidiary of Immunex Corporation and began operations as an independent company in 1992 as Targeted Genetics Corporation.

In January 2011, we completed the acquisition of Biocontrol Ltd, an antimicrobial biotechnology company based in the United Kingdom, with the goal of developing their phage therapy programs using funding from the sale of our legacy gene therapy assets.

In February 2011, we changed our name to AmpliPhi Biosciences Corporation.

In November 2012, we completed the acquisition of Special Phage Holdings Pty Ltd, a company based in Australia, which we refer to as SPH, with the goal of combining SPH's research on addressing the rapidly escalating problem of antibiotic resistance through the development of a series of bacteriophage-based treatments into our own development programs.

In August 2015, we effected a 1-for-50 reverse split of our common stock. The share and per share information for transactions described in this prospectus that occurred prior to the reverse split have been adjusted to give retroactive effect to the reverse split.

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Our principal executive offices are located at 3579 Valley Centre Drive, Suite 100, San Diego, California 92130. The telephone number at our principal executive office is (858) 829-0829. Our website address is *<http://www.ampliphio.com>*. Our website and the information contained on, or that can be accessed through,

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our website will not be deemed to be incorporated by reference in, and are not considered part of, this prospectus. You should not rely on our website or any such information in making your decision whether to purchase our securities in this offering.

This prospectus contains references to our trademarks and to trademarks and trade names belonging to other entities. Solely for convenience, trademarks and trade names referred to in this prospectus, including logos, artwork and other visual displays, may appear without the® or ™ symbols, but such references are not intended to indicate, in any way, that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto. 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.

## **Implications of Being an Emerging Growth Company and a Smaller Reporting Company**

We qualify as an emerging growth company as defined in the Jumpstart Our Business Startups Act, or JOBS Act, enacted in April 2012. An emerging growth company may take advantage of reduced reporting requirements that are otherwise applicable to public companies. These provisions include, but are not limited to:

being permitted to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations in the documents incorporated by reference into this prospectus;

not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act;

reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and

exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We may use these provisions until the last day of our fiscal year following the fifth anniversary of the first sale of our equity securities pursuant to an effective registration statement under the Securities Act of 1933, as amended, or the Securities Act, after we became a reporting company under the Securities Exchange Act of 1934, as amended, or the Exchange Act, pursuant to our registration statement on Form 10 (File No. 000-23930). However, if certain events occur prior to the end of such five-year period, including if we become a large accelerated filer, our annual gross revenues exceed approximately \$1.0 billion or we issue more than \$1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company prior to the end of such five-year period.

We are also a smaller reporting company as defined in Exchange Act and have elected to take advantage of certain of the scaled disclosures available to smaller reporting companies.

We have elected to take advantage of certain of the reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

The JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. We have irrevocably elected not to avail ourselves of this exemption and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.



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## The Offering

Common stock offered by us in this offering

shares

Warrants offered by us in this offering

Warrants to purchase an aggregate of shares of our common stock. Each share of our common stock is being sold together with a warrant to purchase of a share of our common stock, which equates to % warrant coverage on the shares purchased in this offering. Each warrant will have an exercise price of \$ per share, will be immediately exercisable and will expire on the anniversary of the original issuance date. This prospectus also relates to the offering of the shares of common stock issuable upon exercise of the warrants.

Common stock to be outstanding after this offering

shares (assuming none of the warrants issued in this offering are exercised).

Option to purchase additional shares and/or warrants

The underwriter has a 30-day option to purchase up to an additional shares of our common stock at a price of \$ per share and/or warrants to purchase up to shares of our common stock at a price of \$ per warrant, to cover over-allotments, if any.

Use of proceeds

We intend to use the net proceeds from this offering for general corporate purposes, including manufacturing expenses, clinical trial expenses, research and development expenses and general and administrative expenses. See

Use of Proceeds.

Risk factors

You should read the Risk Factors section of this prospectus for a discussion of certain of the factors to consider carefully before deciding to purchase any shares of our common stock and warrants in this offering.

National Securities Exchange Listing

Our common stock is listed on the NYSE MKT under the symbol APHB. We do not intend to list the warrants on any securities exchange or nationally recognized trading system.

The number of shares of our common stock to be outstanding after this offering is based on 16,488,120 shares of common stock outstanding as of December 31, 2016 and assumes the issuance by us of shares of common stock in this offering;

and excludes, as of December 31, 2016:

748,938 shares of common stock issuable upon the exercise of outstanding stock options, at a weighted-average exercise price of \$6.45 per share;

1,640,162 shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, or the 2016 plan;

87,274 shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, or the ESPP;

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7,751,376 shares of common stock issuable upon the exercise of outstanding warrants, at a weighted-average exercise price of \$2.29 per share; and

286,846 shares of common stock issuable in connection with the closing of our November 2016 public offering pursuant to the Common Stock Issuance Agreement, dated April 8, 2016, or the CSIA, by and between us and certain of our stockholders, as well as any additional shares that we become required to issue in connection with our November 2016 public offering or the closing of this offering.

The \$2.29 weighted-average exercise price set forth above with respect to the 7,751,376 shares of common stock issuable upon the exercise of outstanding warrants does not take into account any exercise price adjustment that will likely result under the warrants issued in November 2016 (exercisable for 5,335,000 shares of common stock in the aggregate at an exercise price of \$0.75 per share) pursuant to the terms of such warrants in connection with the closing of this offering.

The number of shares we may be required to issue pursuant to the CSIA in connection with our November 2016 public offering and/or the closing of this offering may be in excess of the 286,846 shares described above. See *Risk Factors Risks Related to this Offering We may be required to issue a significant number of additional shares of common stock for no additional consideration to certain of our stockholders in connection with our November 2016 public offering as well as the closing of this offering; we may not be able to satisfy our potential contractual obligation to issue these shares* for additional information.

Unless otherwise indicated, all information contained in this prospectus assumes no exercise by the underwriter of its option to purchase additional shares and/or warrants in this offering.

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## RISK FACTORS

*Investing in our securities involves a high degree of risk. You should consider carefully the risks described below, together with all of the other information included or incorporated by reference in this prospectus, including the risks and uncertainties discussed under Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2016, before deciding whether to purchase shares of our common stock and warrants in this offering. All of these risk factors are incorporated herein in their entirety. The risks described below and incorporated by reference are material risks currently known, expected or reasonably foreseeable by us. If any of these risks actually materialize, our business, prospects, financial condition, and results of operations could be seriously harmed. This could cause the trading price of our common stock and the value of the warrants to decline, resulting in a loss of all or part of your investment.*

### Risks Related to this Offering

#### **You will experience immediate and substantial dilution if you purchase securities in this offering.**

As of December 31, 2016, our net tangible book deficit was approximately \$(1.0) million, or \$(0.06) per share. Since the price per share of our common stock being offered in this offering is substantially higher than the net tangible book deficit per share of our common stock, you will suffer substantial dilution with respect to the net tangible book value of the common stock you purchase in this offering. Based on the assumed combined public offering price of \$ per share of common stock and accompanying warrant being sold in this offering, and our net tangible book deficit per share as of December 31, 2016, if you purchase shares of common stock in this offering, you will suffer immediate and substantial dilution of \$ per share with respect to the net tangible book value of the common stock. See the section entitled Dilution for a more detailed discussion of the dilution you will incur if you purchase common stock in this offering.

#### **We may be required to issue a significant number of additional shares of common stock for no additional consideration to certain of our stockholders in connection with our November 2016 public offering as well as the closing of this offering; we may not be able to satisfy our potential contractual obligation to issue these shares.**

In April 2016, we entered into a Common Stock Issuance Agreement, or CSIA, with certain former holders, or the Holders, of our Series B Preferred Stock. The terms of the CSIA may require us to issue shares of common stock for no additional consideration to the Holders in connection with the public offering we completed in November 2016 as well as the closing of this offering. Pursuant to the formula set forth in the CSIA, the Holders may claim that we have an obligation to issue them, in the aggregate, 2,224,078 shares of common stock as a result of the November 2016 public offering. However, under Section 713(a) of the NYSE MKT Company Guide, we are only permitted to issue 286,846 shares to the Holders without further stockholder approval. As of the date of this prospectus, no additional shares have been issued to the Holders in connection with the November 2016 public offering. We may be required to obtain stockholder approval to issue additional shares beyond what we are currently allowed to issue them under Section 713(a) of the NYSE MKT, or provide other forms of consideration to the Holders, as a result of the November 2016 public offering or the closing of this offering. Based on the assumed public offering price per share of common

stock in this offering of \$ (which is based on the last reported sale price of our common stock on the NYSE MKT on , 2017), we may become obligated to issue the Holders an aggregate of shares of common stock in connection with the closing of this offering. However, under the rules of the NYSE MKT, the maximum number of shares we can issue to the Holders pursuant to their rights under the CSIA is 286,846 shares, unless we obtain stockholder approval to issue shares in excess of this amount. Our inability to comply in full with our potential obligation under the CSIA to issue shares to the Holders in connection with the closing of this offering could have adverse consequences, including, without limitation:

the Holders may bring an action against us for breach of contract, or threaten to bring an action against us, either of which could require us to expend significant time and resources to resolve the matter, and we may not be successful; we may need to seek approval from our stockholders in order to issue additional shares to the Holders, which would require us to expend time and resources, and our stockholders may not ultimately approve such issuance; and

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we may need to provide other consideration to the Holders to settle potential claims arising from our inability to satisfy our potential contractual obligations under the CSIA, which could involve: cash make-whole payments, which in turn would impact our expected use of the net proceeds from this offering and deplete our cash resources faster than we would otherwise anticipate; and other unfavorable terms that could make it difficult for us to raise financing in the future, which would raise further doubts about our ability to continue as a going concern.

The occurrence of any of the foregoing, or even the potential for them to occur, could result in a material decline in our stock price.

Stockholders will incur dilution of their percentage ownership interest in our common stock to the extent we issue additional shares to the Holders pursuant to their rights under the CSIA. In addition, because any such additional shares will be issued for no additional monetary consideration, any such issuance would reduce our net tangible book value per share.

The actual number o