

DOVER MOTORSPORTS INC  
Form 10-Q  
November 06, 2017

**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 September 30, 2017**

**Commission file number 1-11929**

**Dover Motorsports, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of Incorporation)

**51-0357525**  
(I.R.S. Employer Identification No.)

**1131 North DuPont Highway, Dover, Delaware 19901**

(Address of principal executive offices)

**(302) 883-6500**

(Registrant's telephone number, including area code)

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N/A

(Former name, former address and former fiscal year, if changed since last report)

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 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  No

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  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 provided 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 Exchange Act). Yes  No

As of October 27, 2017, the number of shares of each class of the registrant's common stock outstanding is as follows:

Common Stock -	18,302,485 shares
Class A Common Stock -	18,509,975 shares



**Part I Financial Information****Item 1. Financial Statements****DOVER MOTORSPORTS, INC.****CONSOLIDATED STATEMENTS OF (LOSS) EARNINGS****AND COMPREHENSIVE (LOSS) INCOME****In Thousands, Except Per Share Amounts****(Unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Revenues:</b>				
Admissions	\$ 425	\$ 82	\$ 3,871	\$ 3,764
Event-related	995	285	5,739	5,098
Broadcasting	1,319		18,824	16,890
Other	1	2	3	9
	2,740	369	28,437	25,761
<b>Expenses:</b>				
Operating and marketing	3,485	1,387	18,639	16,440
General and administrative	1,770	1,799	5,561	5,573
Costs to remove long-lived assets			286	
Depreciation	863	828	2,507	2,591
	6,118	4,014	26,993	24,604
Operating (loss) earnings	(3,378)	(3,645)	1,444	1,157
Interest expense, net	(34)	(41)	(150)	(166)
Benefit (provision) for contingent obligation	11	(17)	(41)	(73)
Other income	5	24	51	16
(Loss) earnings before income taxes	(3,396)	(3,679)	1,304	934
Income tax benefit (expense)	1,381	1,512	(521)	(378)
Net (loss) earnings	(2,015)	(2,167)	783	556
Unrealized gain on available-for-sale securities, net of income taxes	11	5	17	15
Change in net actuarial loss and prior service cost, net of income taxes	17	20	67	55
Comprehensive (loss) income	\$ (1,987)	\$ (2,142)	\$ 867	\$ 626
<b>Net (loss) earnings per common share:</b>				
Basic	\$ (0.06)	\$ (0.06)	\$ 0.02	\$ 0.02

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Diluted	\$	(0.06)	\$	(0.06)	\$	0.02	\$	0.02
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The Notes to the Consolidated Financial Statements are an integral part of these consolidated financial statements.

## DOVER MOTORSPORTS, INC.

## CONSOLIDATED BALANCE SHEETS

In Thousands, Except Share and Per Share Amounts

(Unaudited)

	September 30, 2017	December 31, 2016
<b>ASSETS</b>		
Current assets:		
Cash	\$ 146	\$ 1
Accounts receivable	2,420	419
Inventories	16	17
Prepaid expenses and other	4,352	1,104
Receivable from Dover Downs Gaming & Entertainment, Inc.	27	
Prepaid income taxes	982	
Assets held for sale	2,555	2,555
Total current assets	10,498	4,096
Property and equipment, net	51,968	52,723
Nashville Superspeedway facility	23,445	23,445
Other assets	1,065	1,022
Total assets	\$ 86,976	\$ 81,286
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 129	\$ 347
Accrued liabilities	3,176	2,858
Payable to Dover Downs Gaming & Entertainment, Inc.		7
Income taxes payable		218
Deferred revenue	4,702	1,355
Total current liabilities	8,007	4,785
Revolving line of credit	5,880	3,840
Liability for pension benefits	3,765	4,143
Provision for contingent obligation	1,843	1,802
Deferred income taxes	12,778	12,911
Total liabilities	32,273	27,481
Commitments and contingencies (see Notes to the Consolidated Financial Statements)		
Stockholders equity:		
Preferred stock, \$0.10 par value; 1,000,000 shares authorized; shares issued and outstanding: none		
Common stock, \$0.10 par value; 75,000,000 shares authorized; shares issued and outstanding: 18,302,485 and 18,276,360, respectively	1,830	1,828
Class A common stock, \$0.10 par value; 55,000,000 shares authorized; shares issued and outstanding: 18,509,975 and 18,509,975, respectively	1,851	1,851
Additional paid-in capital	101,887	101,858
Accumulated deficit	(47,557)	(48,340)
Accumulated other comprehensive loss	(3,308)	(3,392)
Total stockholders equity	54,703	53,805
Total liabilities and stockholders equity	\$ 86,976	\$ 81,286

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## DOVER MOTORSPORTS, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

In Thousands

(Unaudited)

	Nine Months Ended September 30,	
	2017	2016
Operating activities:		
Net earnings	\$ 783	\$ 556
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation	2,507	2,591
Amortization of credit facility fees	48	71
Stock-based compensation	305	233
Excess tax benefits from stock-based compensation		(27)
Deferred income taxes	(272)	(328)
Provision for contingent obligation	41	73
Changes in assets and liabilities:		
Accounts receivable	(2,001)	(348)
Inventories	1	56
Prepaid expenses and other	(3,302)	(4,567)
Receivable from/payable to Dover Downs Gaming & Entertainment, Inc.	(34)	88
Prepaid income taxes/income taxes payable	(1,119)	(1,594)
Accounts payable	(191)	(82)
Accrued liabilities	318	(411)
Deferred revenue	3,347	4,036
Liability for pension benefits	(265)	(48)
Net cash provided by operating activities	166	299
Investing activities:		
Capital expenditures	(1,779)	(1,923)
Purchases of available-for-sale securities	(142)	(267)
Proceeds from available-for-sale securities	134	185
Net cash used in investing activities	(1,787)	(2,005)
Financing activities:		
Borrowings from revolving line of credit	20,660	22,500
Repayments on revolving line of credit	(18,620)	(20,340)
Repurchase of common stock	(274)	(189)
Excess tax benefits from stock-based compensation		27
Credit facility fees		(78)
Net cash provided by financing activities	1,766	1,920
Net increase in cash	145	214
Cash, beginning of period	1	1
Cash, end of period	\$ 146	\$ 215
Supplemental information:		
Interest paid	\$ 278	\$ 279
Income tax payments	\$ 1,912	\$ 2,299
Change in accounts payable and accrued liabilities for capital expenditures	\$ (27)	\$ 519



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The Notes to the Consolidated Financial Statements are an integral part of these consolidated financial statements.

**DOVER MOTORSPORTS, INC.**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**(Unaudited)**

**NOTE 1 Basis of Presentation**

References in this document to we, us and our mean Dover Motorsports, Inc. and/or its wholly owned subsidiaries, as appropriate.

The accompanying consolidated financial statements have been prepared in compliance with Rule 10-01 of Regulation S-X and U.S. generally accepted accounting principles, and accordingly do not include all of the information and disclosures required for audited financial statements. These consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our latest Annual Report on Form 10-K filed on March 1, 2017. In the opinion of management, these consolidated financial statements include all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the results of operations, financial position and cash flows for the interim periods presented. Operating results for the three and nine-month periods ended September 30, 2017 are not necessarily indicative of the results that may be expected for the year ending December 31, 2017 due to the seasonal nature of our business.

**NOTE 2 Business Operations**

Dover Motorsports, Inc. is a public holding company that is a leading marketer and promoter of motorsports entertainment in the United States. Through our subsidiaries, we own and operate Dover International Speedway® in Dover, Delaware and Nashville Superspeedway® near Nashville, Tennessee. As of the date of this filing, our Dover facility promoted the following six events during 2017, all of which were under the auspices of the premier sanctioning body in motorsports - the National Association for Stock Car Auto Racing ( NASCAR ):

- 2 NASCAR Cup Series events (June and October);
- 2 NASCAR XFINITY Series events (June and September);
- 1 NASCAR Camping World Truck Series event (June); and
- 1 NASCAR K&N Pro Series East event (September).

A NASCAR Camping World Truck series event, a NASCAR XFINITY Series event, and a NASCAR Cup Series event were held at Dover International Speedway during the second quarter of 2017 and 2016. Our fall NASCAR event weekends, which consist of a K&N Pro Series East event, an XFINITY Series event, and a Monster Energy Cup Series event were held on September 29 - October 1 in 2017 and September 30 - October 2 in 2016.

We have hosted the Firefly Music Festival ( Firefly ) on our property in Dover, Delaware for six consecutive years. The inaugural three day festival with 40 musical acts was held in July 2012 and the 2017 event was held on June 15-18, 2017 with over 140 musical acts. In September 2014, Red Frog Events LLC formed RFGV Festivals LLC - a joint venture with Goldenvoice that promotes Firefly. Goldenvoice is owned by AEG Live, one of the world's largest presenters of live music and entertainment events. We entered into an amended agreement with RFGV Festivals granting them two 5 year options to extend our facility rental agreement through 2032 (from its original expiration date of 2022) in exchange for a rental commitment to secure our property for up to two festivals per year. Rent is at differing rates depending on how many events are actually held. In addition to the facility rental fee, we also receive a percentage of the concession sales we manage (ACA ), among other things, clarified the intent requirements of the Federal Anti-Kickback Statute and the federal criminal statutes governing healthcare fraud. Specifically, a person or entity can be found to have violated the statutes without actual knowledge of these statutes or specific intent to violate them. In addition, the PPACA amended the Social Security Act to provide that the government may assert that a claim including items or services resulting from a violation of the Federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the Federal False Claims Act or federal civil money penalties statute. Recent amendments to the Federal False Claims Act provide that a violation of the Federal Anti-Kickback Statute is also a violation of the Federal False Claims Act, subjecting healthcare entities to treble damages and mandatory penalties for each false claim or statement.

Additionally, the civil Federal False Claims Act prohibits, among other things, knowingly presenting or causing the presentation of a false, fictitious or fraudulent claim for payment of federal funds, or knowingly

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making, or causing to be made, a false record or statement material to a false or fraudulent claim to avoid, decrease or conceal an obligation to pay money to the federal government. The purpose of the Federal False Claims Act is to prevent manufacturers from causing or inducing inappropriate prescriptions leading to an inappropriate government reimbursement. It often comes into play where a manufacturer suggests or assists a health care provider to bill for an off-label, uncovered use. It also can occur when the reimbursement advice given by a manufacturer results in inappropriate reimbursement claims from upcoding, miscoding, stretched coding, the use of inappropriate modifiers or inappropriate care settings. These behaviors can result in the government paying for products or procedures that should not be reimbursed by the federal government. The manufacturer must be truthful and not misleading in the reimbursement advice it gives to customers.

Actions under the Federal False Claims Act may be brought by the Attorney General or as a qui tam action by a private individual in the name of the government. Violations of the Federal False Claims Act can result in very significant monetary penalties and treble damages. The federal government is using the Federal False Claims Act, and the accompanying threat of significant liability, in its investigations of healthcare companies throughout the country for a wide variety of Medicare billing practices, as well as federal Anti-Kickback Statute violations and certain marketing practices, including off-label promotion, and has obtained multi-million and multi-billion dollar settlements under the Federal False Claims Act in addition to individual criminal convictions under applicable criminal statutes.

Given the significant size of actual and potential settlements, it is expected that the government will continue to devote substantial resources to investigating healthcare providers and suppliers compliance with the healthcare reimbursement rules and fraud and abuse laws.

The Federal False Claims Act amendments in 2009 and 2010 expanded the scope of the liability for health care entities generally to potentially reach violations of regulatory duties, such as good manufacturing practices. There have been large settlements in the life sciences arena related to FDA regulatory violations for promotional activities and good manufacturing practices.

Even in instances where a company may have no actual liability, the Federal False Claims Act private citizen provisions (qui tam) allow the filing of Federal False Claims Act actions under seal and impose a mandatory duty on the United States Department of Justice to investigate such allegations. Most private citizen actions are declined by the Department of Justice or dismissed by federal courts. However, the investigation costs for a company can be significant and material even if the allegations are without merit.

Federal False Claims Act liability is potentially significant in the health industry because the statute provides for treble damages and mandatory minimum penalties of \$5,500 to \$11,000 per false claim or statement. Because of the potential for large monetary exposure, health care companies resolve allegations without admissions of liability for significant and material amounts to avoid the uncertainty of treble damages that may awarded in litigation proceedings. They may be required, however, to enter into corporate integrity agreements with the government, which may impose substantial costs to companies to ensure compliance.

There has also been a recent trend of increased federal and state regulation requiring the public disclosure of payments and transfers of value provided to healthcare professionals or entities. The Federal Physician Payments Sunshine Act imposes annual reporting requirements on device manufacturers for payments and other transfers of value provided by them, directly or indirectly, to physicians (including physician family members) and teaching hospitals, as well as ownership and investment interests held by physicians. A manufacturer's failure to submit timely, accurately and completely the required information for all payments, transfers of value or ownership or investment interests may result in civil monetary penalties of up to an aggregate of \$150,000 per year, and up to an aggregate of \$1.0 million per year for knowing failures. Manufacturers must submit reports by the 15<sup>th</sup> day of each calendar year. Certain states also mandate implementation of commercial compliance programs, impose restrictions on device manufacturer

marketing practices and require tracking and reporting of gifts, compensation and other remuneration to healthcare professionals and entities. The shifting commercial compliance environment and the need to build and maintain robust and expandable systems to comply with different compliance or reporting requirements in multiple jurisdictions increase the possibility that a healthcare company may fail to comply fully with one or more of these requirements.

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If a governmental authority were to conclude that Xtant is not in compliance with applicable laws and regulations, Xtant and its officers and employees could be subject to severe criminal and civil penalties, including, for example, exclusion from participation as a supplier of product to beneficiaries covered by Medicare, Medicaid and other federal health care programs.

Our United States operations are subject to the U.S. Foreign Corrupt Practices Act ( FCPA ). We are required to comply with the FCPA, which generally prohibits covered entities and their intermediaries from engaging in bribery or making other prohibited payments to foreign officials for the purpose of obtaining or retaining business or other benefits. In addition, the FCPA imposes accounting standards and requirements on publicly traded United States corporations and their foreign affiliates, which are intended to prevent the diversion of corporate funds to the payment of bribes and other improper payments, and to prevent the establishment of off books slush funds from which such improper payments can be made. We also are subject to similar anticorruption legislation implemented in Europe under the Organization for Economic Co-operation and Development s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

### **Coverage and Reimbursement**

Xtant s currently approved products are commonly treated as general supplies utilized in spinal and orthopedic surgery and if covered by third-party payors, are paid for as part of the surgical procedure. Accordingly, healthcare providers in the United States generally rely on third-party payors, principally private insurers and governmental payors such as Medicare and Medicaid, to cover and reimburse all or part of the cost of a spine surgery in which Xtant products are used. Sales volumes and fees for Xtant products will continue to depend in large part on the availability of coverage and reimbursement from such third-party payors. Third-party payors perform analyses on new technologies to determine if they are medically necessary before providing coverage for them. These third-party payors may still deny reimbursement on covered technologies if they determine that a device used in a procedure was not used in accordance with the payor s coverage policy. Particularly in the United States, third-party payors continue to carefully review, and increasingly challenge, the prices charged for procedures and medical products.

In the United States, a large percentage of insured individuals receive their medical care through managed care programs, which monitor and often require pre-approval of the services that a member will receive. Some managed care programs pay their providers on a per capita basis, which puts the providers at financial risk for the services provided to their patients by paying these providers a predetermined payment per member per month and, consequently, may limit the willingness of these providers to use Xtant products.

The overall escalating cost of medical products and services has led to, and will likely continue to lead to increased pressures on the healthcare industry to reduce the costs of products and services. Government or private third-party payors cannot be guaranteed to cover and reimburse the procedures using Xtant products in whole or in part in the future or that payment rates will be adequate. In addition, it is possible that future legislation, regulation or coverage and reimbursement policies of third-party payors will adversely affect the demand for Xtant products or the ability to sell them on a profitable basis.

Internationally, reimbursement and healthcare payment systems vary substantially from country to country and include single-payor, government-managed systems as well as systems in which private payors and government managed systems exist side-by-side. Xtant s ability to achieve market acceptance or significant sales volume in international markets will be dependent in large part on the availability of reimbursement for procedures performed using company products under the healthcare payment systems in such markets. A number of countries may require Xtant to gather additional clinical data before recognizing coverage and reimbursement for its products.

## ISO Certification

Xtant is proud to be an International Organization for Standardization ( ISO ) certified organization, which declares our company-wide commitment to quality. To obtain ISO 13485:2003 certification, an organization must demonstrate its ability to provide medical devices that consistently meet applicable customer and regulatory requirements. The primary objective of ISO 13485:2003 is to facilitate harmonized medical device regulatory requirements for quality management systems. All requirements of ISO 13485:2003 are specific to

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organizations providing medical devices, regardless of the type or size of the organization. The certification assures our customers and partners of our commitment to quality, and in the quality of our innovative products and processes. Additionally, we believe that our ISO 13485:2003 certification offers new markets and business opportunities for our products in the global marketplace.

## **Employees**

As of August, 2016, Xtant had 250 full-time employees and 255 total employees, of whom 103 were in operations, 62 were in sales, 13 were in marketing, 15 were in R&D and Engineering, 34 were in QA/QC, and 28 were in administrative functions. In addition, we make use of a varying number of outsourced services to manage normal business cycles. None of our employees are covered by a collective bargaining agreement and management considers relations with employees and service partners to be good.

## **Facilities**

We lease approximately 17,700 square feet in a building located at 600 Cruiser Lane, Belgrade, Montana 59714. This space includes six Class 100 (ISO 5) clean rooms, a fully equipped diagnostics laboratory, microbiology laboratory and testing laboratory. We lease the building under a ten-year operating lease which runs through August 2023. The lease also has a ten-year renewal option.

We lease an approximately 14,000 square foot facility at 664 Cruiser Lane, Belgrade, Montana 59714., which was involved in a sale-leaseback transaction in October, 2015 (See Note 12, Commitments and Contingencies to our audited consolidated financial statements for the year ended December 31, 2015). This building is an FDA registered facility with a Class 10,000 (ISO 7) environmentally controlled area. The validated manufacturing areas and laboratory facilities located in this facility provide processing and testing space to manufacture medical devices pursuant to FDA, GMP regulations, and ISO 13485:2003. The facility is registered with the FDA for device design, device manufacture, and contract manufacture, as well as for screening, testing, storing, and distributing biological tissues.

We also lease a 21,000 square foot facility at 732 Cruiser Lane, Belgrade, Montana 59714, where one Class 1,000 (ISO 6) clean room is located.

We also lease a facility at 452 Alexandersville Road, Miamisburg, Ohio 45342. The leased property contains approximately 31,600 square feet, of which approximately 19,260 square feet are office space and approximately 4,740 square feet are warehouse space. The space includes a 7,600 square feet of manufacturing space with multi-axis CNC machining capacity. The facility specializes in the manufacturing of prototypes, custom instrumentation, test fixtures and key production items. The space includes an advanced biomechanical laboratory and a full bioskills lab for cadaver surgery and clinician training. The leased facility renewal term begins December 1, 2016 and runs through November 30, 2019 and has a three-year renewal option.

We lease additional office space located at 363 Centennial Parkway, Louisville, Colorado 80027.

## **Recent Developments**



On March 31, 2016, our credit agreement was amended to extend the time frame during which interest can accrue on loans in lieu of making interest payments from December 31, 2015 to March 31, 2016, and to lower the minimum required liquidity amount to \$500,000 prior to June 30, 2016. At all times after June 30, 2016 and until January 1, 2017, we are required to maintain a minimum liquidity amount of \$2,500,000 or greater.

On April 14, 2016, we issued in a private placement to the OrbiMed purchasers \$2,238,166.45 aggregate principal amount of promissory notes.

On May 25, 2016, we entered into a Loan and Security Agreement (the LSA ) with Silicon Valley Bank, a California corporation (the Bank ), pursuant to which the Bank agreed to provide us with a revolving line of credit in the aggregate principal amount of \$6,000,000, bearing interest at a floating per annum rate equal to one percentage point (1.00%) above the Prime Rate (as that term is defined in the LSA). The line of credit is secured by a first priority perfected security interest in certain of our assets (including our patent and trademark assets) in favor of the Bank. The maturity date of the revolving line of credit is May 25, 2019.

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On July 29, 2016 we entered into the Fourth Amendment to Amended and Restated Credit Agreement (the Fourth Amendment ) with OrbiMed and ROS, which amended the facility. The Fourth Amendment modified the facility by including an additional Tranche A Commitment in an amount up to \$1,000,000 from ROS and OrbiMed, which was made available to us on July 29, 2016. The facility continues to be secured by a security interest in certain of our assets (including our patent and trademark assets).

On August 12, 2016, we entered into a First Loan Modification Agreement (the Modification Agreement ) with the Bank, which amended certain provisions of the LSA. Pursuant to the terms of the Modification Agreement, the Bank increased the aggregate principal amount of the revolving line of credit to \$11,000,000. Any principal amounts outstanding now bear interest at a floating per annum rate equal to four percentage points (4.00%) above the Prime Rate (as that term is defined in the Modification Agreement).

On August 12, 2016, we entered into the Fifth Amendment to Amended and Restated Credit Agreement with OrbiMed and ROS, which amended one of the negative covenants under the facility to take into account the Modification Agreement.

On August 15, 2016, we received a letter from NYSE MKT notifying us that we are not in compliance with NYSE MKT's continued listing standards. Specifically, we are not in compliance with Section 1003(a)(i) of the Company Guide with stockholders' equity of less than \$2,000,000 and net losses in two of our three most recent fiscal years, Section 1003(a)(ii) with stockholders' equity of less than \$4,000,000 and net losses in three of our four most recent fiscal years and Section 1003(a)(iii) of the Company Guide with stockholders' equity of less than \$6,000,000 and net losses in five of our most recent fiscal years. Therefore, we have become subject to the procedures and requirements of Section 1009 of the Company guide and submitted a plan of compliance addressing how we intend to regain compliance with Sections 1003(a)(i), 1003(a)(ii) and 1003(a)(iii) of the Company Guide by February 15, 2018.

This notice has no effect on the listing of the Common Stock at this time, subject to compliance with other NYSE MKT continued listing standards; however, the consolidated tape now includes a .BC indicator, which will be removed at such time as the Company is deemed compliant with NYSE MKT's continued listing standards. However, because we are not currently in compliance with Section 1003(a)(i) of the Company Guide, we are not currently eligible to list the Warrants on NYSE MKT. The Company intends to submit a business plan and intends to address the issue through the successful completion of the Rights Offering.

On September 27, 2016, we entered into the Sixth Amendment to Amended and Restated Credit Agreement (the Sixth Amendment ) with OrbiMed and ROS, which amended the facility. Under the facility, we are required to pay a fee for any amounts prepaid or paid, whether voluntarily, involuntarily or on the maturity date under the facility. The Sixth Amendment modifies the facility by increasing this fee from 7.50% to 9.00%. Under the Sixth Amendment, regular interest will not accrue during the period from July 1, 2016 to September 30, 2016; however, during such period, additional interest ( PIK Interest ) will accrue at a rate per annum equal to 9.00%, and such PIK Interest will be added to the outstanding principal amount of the loans at September 30, 2016. The Sixth Amendment also modifies the negative covenants of the facility by increasing the amount of purchase money indebtedness and capitalized lease liabilities allowed to be incurred by us and lowering the minimum revenue base for the quarters ending September 30, 2016 and December 31, 2016.

On October 6, 2016, our board of directors appointed Carl D. O'Connell to serve as the President of the Company. His appointment became effective October 6, 2016.



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## SUMMARY OF THE RIGHTS OFFERING

### **Securities to be offered:**

We are distributing to you, at no charge, two non-transferable Subscription Rights to each purchase one Unit for every share of our Common Stock that you owned on the Record Date, either as a holder of record or, in the case of shares held of record by brokers, banks, or other nominees, on your behalf, as a beneficial owner of such shares.

Each Unit consists of one share of Common Stock and of a Warrant representing the right to purchase one share of Common Stock at an exercise price of \$ per share.

For certain investors whose subscriptions may result in the purchaser beneficially owning more than 4.99% of our outstanding Common Stock, such investors may elect to receive in the Rights Offering, in lieu of shares of Common Stock, certain pre-funded warrants (which we refer to as the Pre-Funded Warrants) to purchase the same number of shares of Common Stock. If you do not wish to exceed the ownership threshold, you may elect to receive a Pre-Funded Warrant in lieu of any share of Common Stock underlying the Units for which you have subscribed.

You will not be eligible to elect to receive Pre-Funded Warrants, except to the extent that your beneficial ownership could exceed 4.99% of the shares of Common Stock outstanding following the consummation of the Rights Offering. Each Pre-Funded Warrant will have an exercise price of \$0.01, and the subscription price per Unit for any such electing investors will be \$ (which equals the Subscription Price for the other Units sold in the Rights Offering, less the \$0.01 exercise price for each Pre-Funded Warrant). The Pre-Funded Warrants do not confer upon the holder any voting or any other rights of a stockholder of the Company.

Holders of our currently outstanding convertible notes will also be entitled to receive two Subscription Rights to purchase one Unit for every share of Common Stock the convertible notes are convertible into immediately prior to the record date for the Rights Offering.

### **Size of offering:**

Units, each consisting of one share of Common Stock and of a Warrant representing the right to purchase one share of Common Stock at an exercise price of \$ per share.

### **Subscription Price:**

\$ per Unit. The Subscription Price per Unit will be determined by our board of directors prior to the effectiveness of the registration statement of which this prospectus is a part.

### **Warrants:**

Each Warrant entitles the holder to purchase one share of Common Stock at an exercise price of \$ per share, from the date of issuance through its expiration on . The Warrants will be exercisable by paying the exercise price in cash, or, solely during any period when a registration statement for the exercise of the Warrants is not in effect, exercisable on a cashless basis. We will seek to have the Warrants trade on the OTCBB promptly after the expiration of the Subscription Rights, and if we regain compliance with NYSE MKT minimum listing criteria and the Warrants are eligible for listing on NYSE MKT, we intend to apply to list the Warrants on NYSE MKT. After the one-year anniversary of issuance, we may redeem the Warrants for \$0.01

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per Warrant if the volume weighted average price of our Common Stock is above \$    per share, for each of 10 consecutive trading days.

**Pre-Funded Warrants:**

Each Pre-Funded Warrant entitles the holder to purchase one share of Common Stock at an exercise price of \$0.01 per share, and the subscription price per Unit for any such electing investors will be \$    (which equals the Subscription Price for the other Units sold in the Rights Offering, less the \$0.01 exercise price for each Pre-Funded Warrant). Each Pre-Funded Warrant will be exercisable from the date of issuance through its expiration 12 years after the date of issuance. The Pre-Funded Warrants will be exercisable by paying the exercise price in cash or on a cashless basis. The Pre-Funded Warrants will not be listed for trading on any stock exchange or market. The Pre-Funded Warrants do not confer upon the holder any voting or any other rights of a stockholder of the Company. See Description of Securities Pre-Funded Warrants Issuable in Lieu of Common Stock in the Rights Offering.

**Record Date:**

5:00 PM Eastern Time, October 21, 2016.

**Subscription Right:**

Each Subscription Right consists of a Basic Subscription Right and an Over-Subscription Privilege.

**Basic Subscription Rights:**

Basic Subscription Right will entitle you to purchase one Unit at the Subscription Price.

**Over-Subscription Privilege:**

If you exercise your Basic Subscription Rights in full, you may also choose to purchase a portion of any Units that are not purchased by our other stockholders or holders of convertible notes through the exercise of their Basic Subscription Rights. You may subscribe for additional Units pursuant to this Over-Subscription Privilege, subject to proration described elsewhere.

**Expiration date:**

The Subscription Rights will expire at 5:00 PM Eastern Time, on November 11, 2016. We reserve the right to extend the expiration date in our sole discretion, provided, however, that we may not extend the expiration date of the rights offering more than thirty (30) days past the original expiration date.

**Procedure for exercising Subscription Rights:**

To exercise your Subscription Rights, you must take the following steps:

If you are a record holder of our Common Stock or a holder of convertible notes, you must deliver payment and a properly completed Subscription Rights Statement to the Subscription Agent to be received before 5:00 PM Eastern Time, on November 11, 2016. You may deliver the documents and payments by first class mail or courier service. If you use first class mail for this purpose, we recommend using registered mail, properly insured, with return receipt requested.

If you are a beneficial owner of shares that are registered in the name of a broker, dealer, custodian bank, or other nominee, you should instruct your broker, dealer, custodian bank, or other nominee to exercise your Subscription Rights on your behalf.

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Please follow the instructions of your nominee, who may require that you meet a deadline earlier than 5:00 PM Eastern Time, on November 11, 2016.

**Delivery of shares, Warrants and Pre-Funded Warrants:**

As soon as practicable after the expiration of the Rights Offering, the Subscription Agent will arrange for the issuance of the shares of Common Stock, Warrants and Pre-Funded Warrants purchased pursuant to the Rights Offering. All shares and Warrants that are purchased in the Rights Offering will be issued in book-entry, or uncertificated, form meaning that you will receive a direct registration (DRS) account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of shares or convertible notes. If you hold your shares in the name of a custodian bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the securities you purchased in the Rights Offering. The Pre-Funded Warrants will be issued in certificated form.

**Non-transferability of Subscription Rights:**

The Subscription Rights may not be sold, transferred, assigned or given away to anyone. The Subscription Rights will not be listed for trading on any stock exchange or market.

**Transferability of Warrants:**

The Warrants will be separately transferable following their issuance and through their expiration      years from the issuance date.

**No board recommendation:**

Our board of directors is not making a recommendation regarding your exercise of the Subscription Rights. You are urged to make your decision to invest based on your own assessment of our business and the Rights Offering. Please see Risk Factors for a discussion of some of the risks involved in investing in our securities.

**Directors and Officers:**

While none of our directors or executive officers has entered into any binding commitment or agreement to exercise Subscription Rights received in the Rights Offering, our directors and executive officers have indicated interests in subscribing for up to an aggregate of \$      in the Rights Offering, subject to potential proration.

**No revocation:**

All exercises of Subscription Rights are irrevocable, even if you later learn of information that you consider to be unfavorable to the exercise of your Subscription Rights.

**Use of proceeds:**

We intend to use the net proceeds from this Rights Offering:

to provide equity capital to support the continuing execution of the Company's growth strategy, specifically to increase surgical instruments and fixation and biologics inventory, and

for general corporate purposes, including research and development, business development and operational purposes.

See Use of Proceeds.

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**Material U.S. federal income tax consequences:**

For U.S. federal income tax purposes, we do not believe you should recognize income or loss upon receipt or exercise of a Subscription Right. You should consult your own tax advisor as to the tax consequences of the Rights Offering in light of your particular circumstances. See Material U.S. Federal Income Tax Consequences on page 46.

**Extension and termination:**

Although we do not presently intend to do so, we may extend the Rights Offering for additional time in our sole discretion, provided, however, that we may not extend the expiration date of the rights offering more than thirty (30) days past the original expiration date. Our board of directors may for any reason terminate the Rights Offering at any time before the completion of the Rights Offering.

**Subscription Agent:**

Corporate Stock Transfer, Inc.

**Questions:**

If you have any questions about the Rights Offering, please contact the dealer-manager, Maxim Group LLC, at 405 Lexington Avenue, New York, New York 10174, Attention Syndicate Department, email: syndicate@maximgrp.com or telephone: (212) 895-3745.

**Market for Common Stock:**

Our Common Stock is listed on NYSE MKT under the symbol XTNT. See Market Price of and Dividends on our Common Stock on page 37.

**Risk factors:**

Before you exercise your Subscription Rights to purchase Units, you should be aware that there are risks associated with your investment, and you should carefully read and consider risks described in the section captioned Risk Factors together with all of the other information included in this prospectus.

**Dealer-Manager:**

Maxim Group LLC.

**Distribution arrangements:**

Under the terms and subject to the conditions contained in the dealer-manager agreement, the dealer-manager will use its best efforts to solicit the exercise of Subscription Rights. We have agreed to pay the dealer-manager certain fees for acting as dealer-manager and to reimburse the dealer-manager for certain out-of-pocket expenses incurred in connection with this offering. The dealer-manager is not underwriting or placing any of the Subscription Rights or the Units, shares of Common Stock or Warrants being issued in this offering, and does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), Units, shares of Common Stock or Warrants. See Plan of Distribution on page 58 for a discussion of the fees and expenses to be paid to the dealer-manager.

**Lock-Up Agreements:**

We anticipate that certain of our officers, directors and shareholders beneficially owning 5% or more of our Common Stock will agree to be subject to a lockup prohibiting certain sales, transfers or hedging transactions in our securities held by them for a period of 180 days after the date of the closing of the Rights Offering. See section titled Lock-Up Agreements in this prospectus.

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## RISK FACTORS

*Our business and an investment in our securities are subject to a variety of risks. The following risk factors describe some of the most significant events, facts or circumstances that could have a material adverse effect upon our business, financial condition, results of operations, ability to implement our business plan and the market price for our securities. Many of these events are outside of our control. If any of these risks actually occurs, our business, financial condition or results of operations may be materially adversely affected. In such case, the trading price of our Common Stock could decline and investors in our Common Stock could lose all or part of their investment.*

*Before making an investment decision, you should carefully consider these risks, including those set forth below and those described in the Risk Factors section of our most recent Annual Report on Form 10-K, filed with the Commission on March 24, 2016, as revised or supplemented by our Quarterly Reports on Form 10-Q filed with the SEC since the filing of our most recent Annual Report on Form 10-K, each of which is incorporated by reference into this prospectus, and you should also carefully consider any other information we include or incorporate by reference in this prospectus.*

### Risks Related to the Rights Offering

**We will incur substantial expenses in connection with the Rights Offering, which may not return adequate value if the Rights Offering is ultimately not consummated or successful.**

The estimated expenses for the Rights Offering are approximately \$ , excluding fees and expenses of the dealer-manager that we have engaged to assist us with the Rights Offering. If the registration statement of which this prospectus is a part is not declared effective, the Rights Offering is not commenced or the Rights Offering is not ultimately consummated or successful, we will incur these expenses nonetheless. We will reimburse the dealer-manager upon completion of the Rights Offering up to \$75,000 for expenses incurred in connection with the Rights Offering. We advanced \$30,000 against out-of-pocket accountable expenses to Maxim Group LLC upon its engagement as a dealer-manager; provided that Maxim Group LLC will promptly reimburse to us any portion of the advance not used for actual out-of-pocket expenses. See Plan of Distribution on page 58.

**Your interest in the Company may be diluted as a result of this Rights Offering or due to other transactions.**

Stockholders who do not fully exercise their Subscription Rights should expect that they will, at the completion of this offering, own a smaller proportional interest in the Company than would otherwise be the case had they fully exercised their Basic Subscription Right and Over-Subscription Privilege. Further, the shares issuable upon the exercise of the Warrants to be issued pursuant to the Rights Offering will dilute the ownership interest of stockholders not participating in this offering or holders of Warrants issued pursuant to this offering who have not exercised them.

In addition, as of June 30, 2016, there were approximately 22,396,279 shares of our Common Stock underlying outstanding convertible notes (subject to adjustment), 1,235,896 shares of Common Stock underlying outstanding warrants and 562,206 shares of Common Stock underlying outstanding stock options. The conversion or exercise of all or a portion of these notes, warrants or options would result in additional dilution to your ownership interest. If we do not increase our revenue or reduce our expenses, we may need to raise additional capital, which may result in



further dilution to our stockholders. We may also consider other options from time to time in order to improve our capital structure, including restructuring or amending the terms of our existing convertible notes, any of which may result in additional dilution to our stockholders.

Further, because the price per Unit being offered may be substantially higher than the net tangible book value per share of our Common Stock, you may suffer substantial dilution in the net tangible book value of the Common Stock you purchase in this offering. If you purchase Units in this offering at the Subscription Price, you may suffer immediate and substantial dilution in the net tangible book value of the Common Stock. See Dilution in this prospectus for a more detailed discussion of the dilution which may incur in connection with this offering.

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**We must increase our shareholders' equity by February 15, 2018, to avoid a delisting action by NYSE MKT.**

NYSE MKT notified us on August 15, 2016, that we have fallen out of compliance with NYSE MKT's continued listing standards. Specifically, we are not in compliance with Section 1003(a)(i) of the Company Guide with stockholders' equity of less than \$2,000,000 and net losses in two of our three most recent fiscal years, Section 1003(a)(ii) with stockholders' equity of less than \$4,000,000 and net losses in three of our four most recent fiscal years and Section 1003(a)(iii) of the Company Guide with stockholders' equity of less than \$6,000,000 and net losses in five of our most recent fiscal years.

This notice has no effect on the listing of the Common Stock at this time, subject to compliance with other NYSE MKT continued listing standards; however, the consolidated tape now includes a .BC indicator, which will be removed at such time as the Company is deemed compliant with NYSE MKT's continued listing standards. However, because we are not currently in compliance with Section 1003(a)(i) of the Company Guide, we are not currently eligible to list the Warrants on NYSE MKT.

We submitted a plan to regain compliance prior to February 15, 2018. If we fail to submit the plan or to fulfill it in the allotted time, our shares may be delisted from NYSE MKT, and it would become very difficult to trade our shares based on a lack of liquidity. We believe that successful completion of this rights offering will enable us to satisfy even this higher shareholders' equity requirement, but if we fail to raise sufficient shareholders' equity by February 15, 2018, or if NYSE MKT does not accept our plan to regain compliance, our shares could be delisted.

**Completion of the Rights Offering is not subject to us raising a minimum offering amount and we will still need additional funding to carry out our proposed operating activities after the Rights Offering.**

Completion of the Rights Offering is not subject to us raising a minimum offering amount and therefore the net proceeds from the Rights Offering may be insufficient to meet our objectives, thereby increasing the risk to investors in this offering, including investing in a company that continues to require capital.

**This Rights Offering may cause the trading price of our Common Stock to decrease.**

The Subscription Price, together with the number of shares of Common Stock we propose to issue and ultimately will issue if this Rights Offering is completed, may result in an immediate decrease in the market price of our Common Stock. This decrease may continue after the completion of this Rights Offering. If that occurs, you may have committed to buy shares of Common Stock in the Rights Offering at a price greater than the prevailing market price. We cannot predict the effect, if any, that the availability of shares for future sale represented by the Warrants issued in connection with the Rights Offering, or the ability to trade the Warrants themselves, will have on the market price of our Common Stock from time to time. Further, if a substantial number of Subscription Rights are exercised and the holders of the shares received upon exercise of those Subscription Rights or the related Warrants choose to sell some or all of the shares underlying the Subscription Rights or the related Warrants, the resulting sales could depress the market price of our Common Stock. Following the exercise of your Subscription Rights you may not be able to sell your Common Stock at a price equal to or greater than the Subscription Price.

We must increase our shareholders' equity by February 15, 2018, to avoid a delisting action by NYSE MKT.

**Because the exercise of your Subscription Rights is not revocable, you could be committed to buying shares of Common Stock above the prevailing market price.**

Once you exercise your Subscription Rights, you may not revoke such exercise even if you later learn information that you consider to be unfavorable to the exercise of your Subscription Rights. The market price of our shares of Common Stock may decline prior to the expiration of this offering or a Subscribing Rights holder may not be able to sell shares of Common Stock purchased in this offering at a price equal to or greater than the Subscription Price. Until shares of our Common Stock are delivered upon expiration of the Rights Offering, you will not be able to sell or transfer the shares of our Common Stock that you purchase in the Rights Offering. Any such delivery will occur as soon as practicable after the Rights Offering has expired, payment for the shares of Common Stock and attached Warrants subscribed for has cleared, and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected.

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**If we terminate this offering for any reason, we will have no obligation other than to return subscription monies as soon as practicable.**

We may decide, in our sole discretion and for any reason, to cancel or terminate the Rights Offering at any time prior to the expiration date. If this offering is cancelled or terminated, we will have no obligation with respect to Subscription Rights that have been exercised except to return as soon as practicable, without interest, the subscription payments deposited with the Subscription Agent.

If we terminate this offering and you have not exercised any Subscription Rights, such Subscription Rights will expire worthless.

**Our Common Stock price may be volatile as a result of this Rights Offering.**

The trading price of our Common Stock may fluctuate substantially. The price of the Common Stock that will prevail in the market after this offering may be higher or lower than the Subscription Price depending on many factors, some of which are beyond our control and may not be directly related to our operating performance. These factors include, but are not limited to, the following:

- regulatory actions with respect to our products or our competitors' products;
- actual or anticipated changes in our growth rate relative to our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, collaborations or capital commitments;
- the success of competitive products or technologies;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key personnel;
- the level of expenses related to any of our product candidates;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;
- variations in our financial results or those of companies that are perceived to be similar to us;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- announcement or expectation of additional financing efforts;
- sales of our Common Stock by us, our insiders or our other stockholders;
- market conditions in our core business sectors; and
- general economic, industry and market conditions.

Additionally, the stock market historically has experienced significant price and volume fluctuations. These fluctuations are often unrelated to the operating performance of particular companies. These broad market fluctuations may cause declines in the trading price and market value of our Common Stock.

**The Subscription Price determined for this offering is not an indication of the fair value of our Common Stock.**

In determining the Subscription Price, our board of directors considered a number of factors, including, but not limited to, the price at which our stockholders might be willing to participate in the Rights Offering, the value of the Warrant being issued as a component of the Unit, historical and current trading prices for our Common Stock, the amount of

If we terminate this offering for any reason, we will have no obligation other than to return subscription monies as soon as

proceeds desired, the potential need for liquidity and capital, potential market conditions, and the desire to provide an opportunity to our stockholders to participate in the Rights Offering. In conjunction with its review of these factors, our board of directors also reviewed a range of discounts to

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market value represented by the subscription prices in various prior Rights Offerings by other public companies. The Subscription Price does not necessarily bear any relationship to the book value of our assets, results of operations, cash flows, losses, financial condition or any other established criteria for value. You should not consider the Subscription Price as an indication of the fair value of our Common Stock. After the date of this prospectus, our Common Stock may trade at prices above or below the Subscription Price.

**If you do not act on a timely basis and follow subscription instructions, your exercise of Subscription Rights may be rejected.**

Holders of Subscription Rights who desire to purchase shares of our Common Stock and attached Warrants in this offering must act on a timely basis to ensure that all required forms and payments are actually received by the Subscription Agent prior to 5:00 PM Eastern Time, on the expiration date, unless extended. If you are a beneficial owner of shares of Common Stock and you wish to exercise your Subscription Rights, you must act promptly to ensure that your broker, dealer, custodian bank, trustee or other nominee acts for you and that all required forms and payments are actually received by your broker, dealer, custodian bank, trustee or other nominee in sufficient time to deliver such forms and payments to the Subscription Agent to exercise the Subscription Rights granted in this offering that you beneficially own prior to 5:00 PM Eastern Time on the expiration date, as may be extended. We will not be responsible if your broker, dealer, custodian bank, trustee or other nominee fails to ensure that all required forms and payments are actually received by the Subscription Agent prior to 5:00 PM Eastern Time, on the expiration date.

If you fail to complete and sign the required subscription forms, send an incorrect payment amount, or otherwise fail to follow the subscription procedures that apply to your exercise in this Rights Offering, the Subscription Agent may, depending on the circumstances, reject your subscription or accept it only to the extent of the payment received. Neither we nor the Subscription Agent undertakes to contact you concerning an incomplete or incorrect subscription form or payment, nor are we under any obligation to correct such forms or payment. We have the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

**You may not receive all of the Units for which you over-subscribe.**

Holders who fully exercise their Basic Subscription Rights will be entitled to subscribe for an additional number of Units. Over-Subscription Privileges will be allocated pro rata among Rights holders who over-subscribed, based on the number of over-subscription Units to which they have subscribed. We cannot guarantee that you will receive any or the entire number of Units for which you over-subscribed. If the prorated number of Units allocated to you in connection with your Over-Subscription Privilege is less than your Over-Subscription Request, then the excess funds held by the Subscription Agent on your behalf will be returned to you, without interest, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected, and we will have no further obligations to you.

**The receipt of Subscription Rights may be treated as a taxable distribution to you.**

We believe the distribution of the Subscription Rights in this Rights Offering should be a non-taxable distribution to holders of shares of Common Stock and convertible notes under Section 305(a) of the Internal Revenue Code of 1986, as amended, or the Code. Please see the discussion on the Material U.S. Federal Income Tax Consequences on page 46. This position is not binding on the IRS, or the courts, however. If this Rights Offering is deemed to be part of a disproportionate distribution under Section 305 of the Code, your receipt of Subscription Rights in this offering may

If you do not act on a timely basis and follow subscription instructions, your exercise of Subscription Rights may be

be treated as the receipt of a taxable distribution to you equal to the fair market value of the Subscription Rights. Any such distribution would be treated as dividend income to the extent of our current and accumulated earnings and profits, if any, with any excess being treated as a return of capital to the extent thereof and then as capital gain. Each holder of shares of Common Stock and each holder of a convertible note is urged to consult his, her or its own tax advisor with respect to the particular tax consequences of this Rights Offering.

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**The Subscription Rights are not transferable, and there is no market for the Subscription Rights.**

You may not sell, transfer, assign or give away your Subscription Rights. Because the Subscription Rights are non-transferable, there is no market or other means for you to directly realize any value associated with the Subscription Rights. You must exercise the Subscription Rights to realize any potential value from your Subscription Rights.

**Absence of a public trading market for the Warrants may limit your ability to resell the Warrants.**

There is no established trading market for the Warrants to be issued pursuant to this offering, and the Warrants may not be widely distributed. We will seek to have the Warrants trade on the OTCBB promptly after the expiration of the Subscription Rights, and if we regain compliance with NYSE MKT minimum listing criteria and the Warrants are eligible for listing on NYSE MKT, we intend to apply to list the Warrants on NYSE MKT. There also can be no assurance that a market will develop for the Warrants. Even if a market for the Warrants does develop, the price of the Warrants may fluctuate and liquidity may be limited. If the Warrants are not accepted for trading on the OTCBB or listing on NYSE MKT or if a market for the Warrants does not develop, then purchasers of the Warrants may be unable to resell the Warrants or sell them only at an unfavorable price for an extended period of time, if at all. Even if the Warrants become listed on NYSE MKT, the Warrants will not be listed immediately following the closing of the Rights Offering.

Securities traded on the OTCBB are usually thinly traded, highly volatile, have fewer market makers and are not followed by analysts. Therefore, prices for securities traded solely on the OTCBB may be difficult to obtain and holders of our securities may be unable to resell their securities at or near their original acquisition price, or at any price. Further, there is no assurance that the application for quotation of those securities on the OTCBB will be accepted by the OTCBB or, in the future, NYSE MKT. If the Warrants are not listed on a securities exchange or quoted on the OTCBB, you may not be able to sell those securities.

Future trading prices of the Warrants will also depend on many other factors, including:

- our operating performance and financial condition;
- our ability to continue the effectiveness of the registration statement, of which this prospectus is a part, covering the Warrants and the Common Stock issuable upon exercise of the Warrants;
- the interest of securities dealers in making a market; and
- the market for similar securities.

**There is no market for the Pre-Funded Warrants.**

There is no established trading market for the Pre-Funded Warrants to be issued pursuant to this offering, if any, and the Pre-Funded Warrants will not be listed for trading on any stock exchange or market.

**The market price of our Common Stock may never exceed the exercise price of the Warrants issued in connection with this offering.**

The Warrants being issued in connection with this offering become exercisable upon issuance and will expire years after issuance. We cannot provide you any assurance that the market price of our Common Stock will ever



exceed the exercise price of the Warrants prior to their date of expiration. Any Warrants not exercised by their date of expiration will expire worthless and we will be under no further obligation to the Warrant holder.

**The Warrants may be redeemed on short notice. This may have an adverse impact on their price.**

After the one-year anniversary of issuance, we may redeem the Warrants for \$0.01 per Warrant once the closing price of our Common Stock has equaled or exceeded \$ per share, subject to adjustment, for 10 consecutive trading days. If we give notice of redemption, you will be forced to sell or exercise your Warrants or accept the redemption price. The notice of redemption could come at a time when it is not advisable or possible for you to exercise the Warrants. As a result, you would be unable to benefit from owning the Warrants being redeemed.

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**The dealer-manager is not underwriting, nor acting as placement agent of, the Subscription Rights or the securities underlying the Subscription Rights.**

Maxim Group LLC is acting as dealer-manager for this Rights Offering. Under the terms and subject to the conditions contained in the dealer-manager agreement, the dealer-manager will provide marketing assistance in connection with this offering. The dealer-manager is not underwriting or placing any of the Subscription Rights or the Units, shares of Common Stock or Warrants being issued in this offering, and does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), Units, shares of Common Stock or Warrants. The dealer-manager will not be subject to any liability to us in rendering the services contemplated by the dealer-manager agreement except for any act of bad faith or gross negligence by the dealer-manager. The services of the dealer-manager to us in connection with this offering cannot be construed as any assurance that this offering will be successful.

**Since the Warrants and Pre-Funded Warrants are executory contracts, they may have no value in a bankruptcy or reorganization proceeding.**

In the event a bankruptcy or reorganization proceeding is commenced by or against us, a bankruptcy court may hold that any unexercised Warrants and Pre-Funded Warrants are executory contracts that are subject to rejection by us with the approval of the bankruptcy court. As a result, holders of the Warrants and Pre-Funded Warrants may, even if we have sufficient funds, not be entitled to receive any consideration for their Warrants and Pre-Funded Warrants or may receive an amount less than they would be entitled to if they had exercised their Warrants and Pre-Funded Warrants prior to the commencement of any such bankruptcy or reorganization proceeding.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

The statements set forth and incorporated by reference in this prospectus that are not purely historical are forward-looking statements within the meaning of applicable securities laws. Our forward-looking statements include, but are not limited to, statements regarding our expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts, or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words anticipate, believe, continue, could, estimate, expect, intend, may, might, plan, possible, potential, predict, project, as well as similar expressions, may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward looking. Forward-looking statements set forth and incorporated by reference in this prospectus may include, for example, statements about:

our ability to integrate the acquisition of X-spine Systems, Inc. and any other business combinations or acquisitions successfully;

our ability to remain listed on NYSE MKT;  
our ability to obtain financing on reasonable terms;

our ability to increase revenue;  
our ability to comply with the covenants in our credit facility;  
our ability to maintain sufficient liquidity to fund our operations;  
the ability of our sales force to achieve expected results;

our ability to remain competitive;  
government regulations;

our ability to innovate and develop new products;  
our ability to obtain donor cadavers for our products;

our ability to engage and retain qualified technical personnel and members of our management team;  
the availability of our facilities;

government and third-party coverage and reimbursement for our products;  
our ability to obtain regulatory approvals;

our ability to successfully integrate recent and future business combinations or acquisitions;  
our ability to use our net operating loss carry-forwards to offset future taxable income;

our ability to deduct all or a portion of the interest payments on the notes for U.S. federal income tax purposes;  
our ability to service our debt;

product liability claims and other litigation to which we may be subjected;  
product recalls and defects;

timing and results of clinical studies;

our ability to obtain and protect our intellectual property and proprietary rights;  
infringement and ownership of intellectual property;

our ability to remain accredited with the American Association of Tissue Banks;  
influence by our management;

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our ability to pay dividends; and  
our ability to issue preferred stock.

The forward-looking statements set forth and incorporated by reference in this prospectus are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties or assumptions, many of which are beyond our control, which may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the Risk Factors section of this prospectus and the documents incorporated by reference. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

You should also read carefully the factors described in the Risk Factors in our annual report on Form 10-K filed with the SEC on March 24, 2016, to better understand significant risks and uncertainties inherent in our business and underlying any forward-looking statements. As a result of these factors, actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements in this report and you should not place undue reliance on any forward-looking statements.

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## **USE OF PROCEEDS**

Assuming that all Units are sold in the Rights Offering and no elections to receive Pre-Funded Warrants are made, we estimate that the gross proceeds from the Rights Offering will be approximately \$15.0 million and the net proceeds from the Rights Offering will be approximately \$13.75 million, based on a Subscription Price of \$ per Unit, after deducting fees and expenses payable to the dealer-manager, and after deducting other expenses payable by us and excluding any proceeds received upon exercise of any Warrants issued in the Rights Offering.

We intend to use the net proceeds from this Rights Offering as follows: \$7.0 million to provide equity capital to support the continuing execution of the Company's growth strategy, specifically to increase surgical instruments and fixation and biologics inventory, diversify our supply of donor tissue, expand our processing capabilities and develop a hybrid sales force, and \$6.75 million for general corporate purposes, including research and development, business development and operational purposes.

Our management will have broad discretion in the application of the net proceeds from this offering, and investors will be relying on the judgment of our management with regard to the use of these net proceeds.

TABLE OF CONTENTS**CAPITALIZATION**

The following table presents our cash, cash equivalents and capitalization, as of June 30, 2016:

on an actual basis; and

on a pro forma as adjusted basis to give further effect to the sale by us in this Rights Offering of maximum of Units (consisting of shares of our Common Stock (assuming no Pre-Funded Warrants) and Warrants to purchase an aggregate of shares of Common Stock upon exercise), at the Subscription Price of \$ per Unit, and our receipt of the net proceeds from that sale after deducting estimated offering expenses.

The table below does not reflect the exercise of Warrants issued in connection with the Rights Offering. The pro forma as adjusted information set forth below assumes equity accounting for the Warrants, is illustrative only and will be adjusted based on the Units sold. You should read this information in conjunction with our consolidated financial statements and notes thereto incorporated by reference into this prospectus.

	As of June 30, 2016 (Unaudited)	
	Actual	Pro Forma as Adjusted
Cash, cash equivalents and trade accounts receivable	\$2,217,405	\$
Long-term debt:		
Total lease obligations (less current portion)	757,137	
Long-term debt (less issuance costs)	46,655,722	
6.00% convertible senior notes due 2021	68,792,700	
Total long-term debt	116,205,559	
Stockholders' equity:		
Preferred stock, \$0.000001 par value per share; 5,000,000 shares authorized; no shares issued and outstanding, actual and pro forma		
Common Stock, \$0.000001 par value per share; 95,000,000 shares authorized; 12,135,150 issued and outstanding	11	
Additional paid-in capital	82,603,270	
Accumulated deficit	(83,099,619 )	
Total stockholders' (deficit) equity	(496,338 )	
Total capitalization	\$115,709,221	\$

The number of outstanding shares of Common Stock in the table above excludes, as of June 30, 2016:

562,206 shares issuable upon the exercise of outstanding stock options with a weighted average exercise price of \$10.83 per share;

1,235,986 shares issuable upon the exercise of outstanding warrants with a weighted average exercise price of \$7.65 per share;

Approximately 1 million shares available for issuance under our Amended and Restated Equity Incentive Plan; 1,071,629 shares reserved for issuance pursuant to a common stock purchase agreement with Aspire Capital Fund, LLC; and

22,396,279 shares reserved for issuance upon conversion of the notes.



TABLE OF CONTENTS**DILUTION**

Purchasers of our Common Stock in the Rights Offering (and upon exercise of the Warrants issued pursuant to this Rights Offering) will experience an immediate dilution of the net tangible book value per share of our Common Stock.

Our net tangible book value as of June 30, 2016 was negative \$38.6 million, or \$(3.18) per share of our Common Stock. Net tangible book value per share is equal to our total net tangible book value, which is our total tangible assets less our total liabilities, divided by the number of shares of our outstanding Common Stock. Dilution per share equals the difference between the amount per share paid by purchasers of shares of Common Stock in the Rights Offering and the net tangible book value per share of our Common Stock immediately after the Rights Offering.

Based on the sale by us in this Rights Offering of a maximum of Units (consisting of shares of our Common Stock (assuming no Pre-Funded Warrants) and Warrants to purchase an aggregate of shares of Common Stock upon exercise), at the Subscription Price of \$ per Unit, and after deducting estimated offering expenses and dealer-manager fees and expenses payable by us of \$ million, and the application of the estimated \$ million of net proceeds from the Rights Offering, assuming equity accounting for the Warrants, our pro forma net tangible book value as of June 30, 2016 would have been approximately \$ , or \$ per share. This represents an immediate increase in pro forma net tangible book value to existing stockholders of \$ per share and an immediate dilution to purchasers in the Rights Offering of \$ per share.

The following table illustrates this per-share dilution on a pro forma basis, assuming a fully subscribed for Rights Offering of Units at the Subscription Price of \$ per Unit (assuming no Pre-Funded Warrants and excluding any issuance of shares of Common Stock upon exercise of Warrants):

Subscription Price	\$
Net tangible book value per share as of June 30, 2016, before Rights Offering	\$ (3.18 )
Increase in net tangible book value per share attributable to Rights Offering	\$
Pro forma net tangible book value per share as of June 30, 2016, after giving effect to Rights Offering	
Dilution in net tangible book value per share to purchasers	\$

The information above is as of June 30, 2016 and excludes:

562,206 shares issuable upon the exercise of outstanding stock options with a weighted average exercise price of \$10.83 per share;

1,235,986 shares issuable upon the exercise of outstanding warrants with a weighted average exercise price of \$7.65 per share;

Approximately 1 million shares available for issuance under our Amended and Restated Equity Incentive Plan; 1,071,629 shares reserved for issuance pursuant to a common stock purchase agreement with Aspire Capital Fund, LLC; and

22,396,279 shares reserved for issuance upon conversion of the notes.

To the extent that outstanding options or warrants are exercised, the investor purchasing our Common Stock in this offering will experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations. To the extent that additional capital is raised through the sale of securities, the issuance of those securities could result in further dilution to our stockholders.





TABLE OF CONTENTS**MARKET PRICE OF AND DIVIDENDS ON OUR COMMON STOCK****Market Information**

Our Common Stock is listed on NYSE MKT under the ticker symbol XTNT. From April 9, 2015 until October 19, 2015, our Common Stock traded on the OTCQX marketplace under the ticker symbol BONE, and from March 7, 2011 to April 8, 2015, our Common Stock was listed on NYSE MKT under the ticker symbol BONE. The following table sets forth the range of high and low prices per share of our Common Stock for each quarter, as reported by NYSE MKT and the OTCQX marketplace, as applicable, for the periods indicated below. Prices have been adjusted to reflect the Company's July 25, 2014 1:10 reverse stock split.

	High	Low
First Quarter 2014 (January 1, 2014 – March 31, 2014)	\$ 14.10	\$ 4.80
Second Quarter 2014 (April 1, 2014 – June 30, 2014)	\$ 8.50	\$ 6.30
Third Quarter 2014 (July 1, 2014 – September 30, 2014)	\$ 7.40	\$ 4.07
Fourth Quarter 2014 (October 1, 2014 – December 31, 2014)	\$ 4.75	\$ 2.19
First Quarter 2015 (January 1, 2015 – March 31, 2015)	\$ 4.50	\$ 2.75
Second Quarter 2015 (April 1, 2015 – June 30, 2015)	\$ 4.49	\$ 2.55
Third Quarter 2015 (July 1, 2015 – September 30, 2015)	\$ 4.49	\$ 2.70
Fourth Quarter 2015 (October 1, 2015 – December 31, 2015)	\$ 3.50	\$ 2.28
First Quarter 2016 (January 1, 2016 – March 31, 2016)	\$ 3.75	\$ 2.02
Second Quarter 2016 (April 1, 2016 – June 30, 2016)	\$ 2.72	\$ 1.51
Third Quarter 2016 (July 1, 2016 – September 30, 2016)	\$ 1.98	\$ 0.93
Fourth Quarter 2016 (October 1, 2016 – October 4, 2016)	\$ 1.30	\$ 1.12

**Holders of Record**

As of October 4, 2016, we had 213 holders of record.

**Dividends**

We have not paid any cash dividends and do not expect to do so in the foreseeable future. In addition, our amended and restated credit agreement with ROS precludes us from paying dividends.

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## **THE RIGHTS OFFERING**

### **The Subscription Rights**

We are distributing to the record holders and to holders of outstanding convertible notes, at no charge, non-transferable Subscription Rights to purchase one Unit at a subscription price per Unit to be determined. The Subscription Price per Unit is \$ . The Subscription Price per Unit will be determined by our board of directors prior to the effectiveness of the registration statement of which this prospectus is a part. Each Basic Subscription Right will entitle you to purchase one share of our Common Stock and of a Warrant for the purchase of one additional share of our Common Stock at an exercise price of \$ per share, from the date of issuance through its expiration on . Each record holder will receive two Subscription Rights for each whole share of our Common Stock owned by such record holder as of the Record Date. Each holder of an outstanding convertible note will receive two Subscription Rights for each whole share of our Common Stock as if each of such convertible notes had been converted immediately prior to the record date for the Rights Offering. Each Subscription Right entitles the record holder or holder of a convertible note to a Basic Subscription Right and an Over-Subscription Privilege.

#### **Basic Subscription Rights**

Your Basic Subscription Rights will entitle you to purchase one share of our Common Stock and of a Warrant to purchase one share of our Common Stock at the exercise price described elsewhere in this prospectus. For example, if you owned 50 shares of Common Stock as of the Record Date, you will receive 100 Subscription Rights and will have the right to purchase 100 shares of our Common Stock and Warrants to purchase 100 shares of our Common Stock for \$ per whole Unit, or a total payment of \$ . You may exercise all or a portion of your Basic Subscription Rights, or you may choose not to exercise any of your Basic Subscription Rights. If you do not exercise your Basic Subscription Rights in full, you will not be entitled to exercise your Over-Subscription Privilege.

#### **Over-Subscription Privilege**

If you exercise your Basic Subscription Rights in full, you may also choose to exercise your Over-Subscription Privilege. Subject to proration, if applicable, we will seek to honor the Over-Subscription Privilege requests in full. If Over-Subscription Privilege requests exceed the number of Units available, however, we will allocate the available Units pro rata among the record holders and convertible note holders exercising the Over-Subscription Privilege in proportion to the number of shares of our Common Stock each of those record holders owned or the number of shares underlying convertible notes held by each of those convertible note holders on the Record Date, relative to the number of shares owned or underlying convertible notes on the Record Date by all record holders and convertible note holders exercising the Over-Subscription Privilege. If this pro rata allocation results in any record holder or convertible note holder receiving a greater number of Units than the record holder or convertible note holder subscribed for pursuant to the exercise of the Over-Subscription Privilege, then such record holder or convertible note holder will be allocated only that number of Units for which the record holder or convertible note holder oversubscribed, and the remaining Units will be allocated among all other record holders and convertible note holders exercising the Over-Subscription Privilege on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated.

Corporate Stock Transfer, Inc., the Subscription Agent for the Rights Offering, will determine the over-subscription allocation based on the formula described above.

To the extent the aggregate subscription payment of the actual number of unsubscribed Units available to you pursuant to the Over-Subscription Privilege is less than the amount you actually paid in connection with the exercise of the Over-Subscription Privilege, you will be allocated only the number of unsubscribed Units available to you, and any excess subscription payments will be returned to you, without interest or penalty, as soon as practicable after expiration of the Rights Offering.

We can provide no assurances that you will actually be entitled to purchase the number of Units issuable upon the exercise of your Over-Subscription Privilege in full at the expiration of the Rights Offering. We will not be able to satisfy any requests for Units pursuant to the Over-Subscription Privilege if all of our stockholders

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and convertible note holders exercise their Basic Subscription Rights in full, and we will only honor an Over-Subscription Privilege to the extent sufficient Units are available following the exercise of Basic Subscription Rights.

### **Pre-Funded Warrants**

If your subscription for Units in the Rights Offering may result in the your beneficial ownership of more than 4.99% of our outstanding Common Stock following the consummation of the Rights Offering, and you do not wish to exceed that ownership threshold, you may elect to receive a Pre-Funded Warrant to purchase one share of Common Stock in lieu of any share of Common Stock underlying the Units for which you have subscribed in excess of such threshold.

You may make an election to receive Pre-Funded Warrants in lieu of Common Stock, to the extent that your beneficial ownership would otherwise be above the ownership threshold. If you intend to do so, in addition to making your election on your Subscription Rights Statement, we ask that you contact the dealer-manager for the Rights Offering as follows:

**Maxim Group LLC**  
**405 Lexington Avenue**  
**New York, New York 10174**  
**Attention Syndicate Department**  
**Email: [syndicate@maximgrp.com](mailto:syndicate@maximgrp.com)**  
**Telephone: (212) 895-3745**

If you make an election to receive Pre-Funded Warrants but fail to timely provide the required holder information for the issuance of any Pre-Funded Warrants, you may receive the shares of Common Stock underlying all of your subscribed Units.

### **Our Convertible Note Holders**

On July 27, 2015, we entered into an Amended and Restated Credit Agreement with ROS, and on April 14, 2016, we entered into Convertible Promissory Notes with ROS and OrbiMed. In order to comply with certain provisions set forth in such agreements, the convertible notes contained in these transactions, referred to as our convertible notes, will be entitled to participate in this Rights Offering as if each of such convertible notes had been converted immediately prior to the record date for the Rights Offering. As a result, holders of our convertible notes are receiving Subscription Rights for an aggregate of approximately Units in connection with this Rights Offering.

### **Limitation on the Purchase of Units**

You may only purchase the number of whole Units purchasable upon exercise of the number of Basic Subscription Rights distributed to you in the Rights Offering, plus the Over-Subscription Privilege, if any. Accordingly, the number of Units that you may purchase in the Rights Offering is limited by the number of shares of our Common Stock you held on the Record Date or the number of shares underlying your outstanding convertible notes and by the extent to which other stockholders and convertible note holders exercise their Basic Subscription Rights and Over-Subscription Privileges, which we cannot determine prior to completion of the Rights Offering.

## **Subscription Price**

The Subscription Price per Unit is \$ . The Subscription Price per Unit will be determined by our board of directors prior to the effectiveness of the registration statement of which this prospectus is a part. The Subscription Price does not necessarily bear any relationship to our past or expected future results of operations, cash flows, current financial condition, or any other established criteria for value. No change will be made to the Subscription Price by reason of changes in the trading price of our Common Stock or other factor prior to the expiration of this Rights Offering.

### **Determination of Subscription Price**

In the determining the Subscription Price, the board of directors may consider a variety of factors including those listed below:

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our need to raise capital in the near term to continue our operations;  
the current and historical trading prices of our Common Stock;  
our continued listing on NYSE MKT;  
a price that would increase the likelihood of participation in the Rights Offering;  
the cost of capital from other sources;  
the value of the Warrant being issued as a component of the Unit;  
comparable precedent transactions, including the percentage of shares offered, the terms of the subscription rights being offered, the subscription price and the discount that the subscription price represents to the immediately prevailing closing prices for these offerings;  
an analysis of stock price trading multiples for companies similar to us that, among other things, did not need to raise capital in the near-term; and  
our most recently forecasted revenue relative to our peer group.

The Subscription Price does not necessarily bear any relationship to any established criteria for value. No valuation consultant or investment banker has opined upon the fairness or adequacy of the Subscription Price. You should not consider the Subscription Price as an indication of actual value of the Company or our Common Stock. You should not assume or expect that, after the Rights Offering, our shares of Common Stock will trade at or above the Subscription Price in any given time period. The market price of our Common Stock may decline during or after the Rights Offering. We cannot assure you that you will be able to sell the shares of our Common Stock purchased during the Rights Offering at a price equal to or greater than the Subscription Price. You should obtain a current price quote for our Common Stock before exercising your Subscription Rights and make your own assessment of our business and financial condition, our prospects for the future, and the terms of this Rights Offering. Once made, all exercises of Subscription Rights are irrevocable.

We intend to initially have the Warrants trade on the OTCBB. If we regain compliance with NYSE MKT minimum listing criteria and the Warrants are eligible for listing on NYSE MKT, we intend to apply to list the Warrants on NYSE MKT. There is no guarantee that the Warrants will be accepted for trading on the OTCBB or, in the future, accepted for listing on NYSE MKT. The OTCBB is an inter-dealer, over-the-counter market that provides significantly less liquidity than NYSE MKT. Securities traded on the OTCBB are usually thinly traded, highly volatile, have fewer market makers and are not followed by analysts. Therefore, prices for securities traded solely on the OTCBB may be difficult to obtain and holders of our securities may be unable to resell their securities at or near their original acquisition price, or at any price. Further, there is no assurance that the application for quotation of those securities on the OTCBB will be accepted. If the Warrants are not listed on a securities exchange or quoted on the OTCBB, you may not be able to sell those securities.

## **No Recombination**

The Common Stock and Warrants comprising the Units will separate upon the effectiveness of the exercise of the Subscription Rights and will be issued as separate securities, and the Units will not trade as a separate security. Holders may not recombine shares of Common Stock and Warrants to receive a Unit.

## **Non-Transferability of Subscription Rights**

The Subscription Rights are non-transferable (other than by operation of law) and, therefore, you may not sell, transfer, assign or give away your Subscription Rights to anyone. The Subscription Rights will not be listed for trading on any stock exchange or market.

## **Expiration Date; Extension**

The subscription period, during which you may exercise your Subscription Rights, expires at 5:00 PM Eastern Time, on November 11, 2016, which is the expiration of the Rights Offering. If you do not exercise your Subscription Rights before that time, your Subscription Rights will expire and will no longer be exercisable.

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We will not be required to issue shares to you if the Subscription Agent receives your Subscription Rights Statement or your subscription payment after that time. We have the option to extend the Rights Offering in our sole discretion (provided, however, that we may not extend the expiration date of the rights offering more than thirty (30) days past the original expiration date), although we do not presently intend to do so. We may extend the Rights Offering by giving oral or written notice to the Subscription Agent before the Rights Offering expires. If we elect to extend the Rights Offering, we will issue a press release announcing the extension no later than 9:00 AM Eastern Time, on the next business day after the most recently announced expiration date of the Rights Offering.

If you hold your shares of Common Stock in the name of a broker, dealer, custodian bank or other nominee, the nominee will exercise the Subscription Rights on your behalf in accordance with your instructions. Please note that the nominee may establish a deadline that may be before 5:00 PM Eastern Time, on November 11, 2016, which is the expiration date that we have established for the Rights Offering.

## **Termination**

We may terminate the Rights Offering at any time and for any reason prior to the completion of the Rights Offering. If we terminate the Rights Offering, we will issue a press release notifying stockholders, convertible note holders and the public of the termination.

## **Return of Funds upon Completion or Termination**

The Subscription Agent will hold funds received in payment for shares in a segregated account pending completion of the Rights Offering. The Subscription Agent will hold this money until the Rights Offering is completed or is terminated. To the extent you properly exercise your Over-Subscription Privilege for a number of Units that exceeds the number of unsubscribed Units available to you, any excess subscription payments will be returned to you as soon as practicable after the expiration of the Rights Offering, without interest or penalty. If the Rights Offering is terminated for any reason, all subscription payments received by the Subscription Agent will be returned as soon as practicable, without interest or penalty.

## **Shares of Our Common Stock Outstanding After the Rights Offering**

On October 4, 2016, 12,193,970 shares of our Common Stock were outstanding. Based on the foregoing, and assuming no other transactions by us involving our Common Stock prior to the expiration of the Rights Offering, and that no Pre-Funded Warrants are issued in lieu of Common Stock, if the Rights Offering is fully subscribed approximately shares of our Common Stock will be issued and outstanding and Warrants to purchase approximately additional shares of our Common Stock will be outstanding (excluding the currently outstanding warrants). The exact number of shares of Common Stock, Warrants and Pre-Funded Warrants that we will issue in this Rights Offering will depend on the number of Units that are subscribed for in the Rights Offering and the elections of eligible investors to receive Pre-Funded Warrants.

## **Methods for Exercising Subscription Rights**

The exercise of Subscription Rights is irrevocable and may not be cancelled or modified. You may exercise your Subscription Rights as follows:

## **Subscription by Record Holders**

If you are a stockholder of record or a holder of a convertible note, the number of Units you may purchase pursuant to your Subscription Rights is indicated on the enclosed Subscription Rights Statement. You may exercise your Subscription Rights by properly completing and executing the Subscription Rights Statement and forwarding it, together with your full payment, to the Subscription Agent at the address given below under Subscription Agent, to be received before 5:00 PM Eastern Time, on November 11, 2016.

## **Subscription by Beneficial Owners**

If you are a beneficial owner of shares of our Common Stock that are registered in the name of a broker, dealer, custodian bank, or other nominee, you will not receive a Subscription Rights Statement. Instead, we will issue two Subscription Rights to such nominee record holder for each share of our Common Stock held by such nominee at the Record Date. If you are not contacted by your nominee, you should promptly contact your nominee in order to subscribe for shares in the Rights Offering and follow the instructions provided by your nominee.

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To properly exercise your Over-Subscription Privilege, you must deliver the subscription payment related to your Over-Subscription Privilege before the Rights Offering expires. Because we will not know the total number of unsubscribed Units before the Rights Offering expires, if you wish to maximize the number of shares you purchase pursuant to your Over-Subscription Privilege, you will need to deliver payment in an amount equal to the aggregate subscription payment for the maximum number of Units that you wish to purchase.

## **Payment Method**

Payments must be made in full in U.S. currency by cashier's check or by wire transfer, and payable to Corporate Stock Transfer, Inc., as Subscription Agent for Xtant Medical Holdings, Inc. You must timely pay the full subscription payment, including payment for the Over-Subscription Privilege, for the full number of Units of our Common Stock and Warrants you wish to acquire pursuant to the exercise of Subscription Rights by delivering a:

cashier's check, drawn on a U.S. bank payable to Corporate Stock Transfer, Inc., as Subscription Agent for Xtant Medical Holdings, Inc. ; or

wire transfer of immediately available funds directly to the account maintained by Corporate Stock Transfer, Inc., as Subscription Agent, for purposes of accepting subscriptions in this Rights Offering at Corporate Stock Transfer, Inc., Credit: , for further credit to Xtant Medical Holdings, Inc., and name of the Subscription Rights holder.

You should read the instruction letter accompanying the Subscription Rights Statement carefully and strictly follow it.

**DO NOT SEND SUBSCRIPTION RIGHTS STATEMENTS OR PAYMENTS DIRECTLY TO US.** We will not consider your subscription received until the Subscription Agent has received delivery of a properly completed and duly executed Subscription Rights Statement and payment of the full subscription amount.

The method of delivery of Subscription Rights Statements and payment of the subscription amount to the Subscription Agent will be at the risk of the holders of Subscription Rights. If sent by mail, we recommend that you send those statements and payments by registered mail, properly insured, with return receipt requested, or by overnight courier, and that you allow a sufficient number of days to ensure delivery to the Subscription Agent before the Rights Offering expires.

## **Missing or Incomplete Subscription Forms or Payment**

If you fail to complete and sign the Subscription Rights Statement or otherwise fail to follow the subscription procedures that apply to the exercise of your Subscription Rights before the Rights Offering expires, the Subscription Agent will reject your subscription or accept it to the extent of the payment received. Neither we nor our Subscription Agent undertakes any responsibility or action to contact you concerning an incomplete or incorrect subscription form, nor are we under any obligation to correct such forms. We have the sole discretion to determine whether a subscription exercise properly complies with the subscription procedures.

If you send a payment that is insufficient to purchase the number of shares you requested, or if the number of shares you requested is not specified in the forms, the payment received will be applied to exercise your Subscription Rights to the fullest extent possible based on the amount of the payment received. Any excess subscription payments received by the Subscription Agent will be returned, without interest or penalty, as soon as practicable following the expiration of the Rights Offering.

## **Issuance of Common Stock and Warrants**

The shares of Common Stock and Warrants that are purchased in the Rights Offering as part of the Units will be issued in book-entry, or uncertificated, form meaning that you will receive a direct registration (DRS) account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of shares or convertible notes. If you hold your shares of Common Stock in the name of a custodian bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the securities you purchased in the Rights Offering.

Any Pre-Funded Warrants that are purchased in the Rights Offering will be issued in physical form.

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## **Lock-Up Agreements**

We anticipate that certain of our officers, directors and shareholders beneficially owning 5% or more of our Common Stock will agree to be subject to a lock-up period of 180 days following the date of the closing of the Rights Offering.

This means that, during the applicable lock-up period, such persons may not offer for sale, contract to sell, sell, distribute, grant any option, right or warrant to purchase, pledge, hypothecate or otherwise dispose of, directly or indirectly, any shares of our Common Stock or any securities convertible into, or exercisable or exchangeable for, shares of our Common Stock. Certain limited transfers are permitted during the lock-up period if the transferee agrees to these lock-up restrictions.

## **Subscription Agent**

The Subscription Agent for the Rights Offering is Corporate Stock Transfer, Inc. The address to which Subscription Rights Statements and payments should be mailed or delivered by overnight courier is provided below. If sent by mail, we recommend that you send documents and payments by registered mail, properly insured, with return receipt requested, and that you allow a sufficient number of days to ensure delivery to the Subscription Agent before the Rights Offering expires. Do not send or deliver these materials to us.

*By Mail or Hand or Overnight Courier:*  
**Corporate Stock Transfer, Inc.**  
**3200 Cherry Creek Drive South, Suite 430**  
**Denver, Colorado 80209**

If you deliver the Subscription Rights Statements in a manner different than that described in this prospectus, we may not honor the exercise of your Subscription Rights.

## **Dealer-Manager**

You should direct any questions or requests for assistance concerning the method of subscribing for the shares of our Common Stock or for additional copies of this prospectus to the dealer-manager for the Rights Offering as follows:

**Maxim Group LLC**  
**405 Lexington Avenue**  
**New York, New York 10174**  
**Attention Syndicate Department**  
**Email: [syndicate@maximgrp.com](mailto:syndicate@maximgrp.com)**  
**Telephone: (212) 895-3745**

## **No Fractional Shares**

We will not issue fractional shares of Common Stock in the Rights Offering. Rights holders will only be entitled to purchase a number of Units representing a whole number of shares of Common Stock, rounded down to the nearest whole number of Units a holder would otherwise be entitled to purchase. Any excess subscription payments received by the Subscription Agent will be returned as soon as practicable after expiration of the Rights Offering, without interest or penalty. Similarly, no fractional shares of Common Stock will be issued in connection with the exercise of a Warrant or Pre-Funded Warrant. If, upon exercise of a Warrant, the holder thereof would be entitled to receive a

fractional share of Common Stock, upon exercise, the holder will only be entitled to receive a whole number of shares of Common Stock, rounded down to the nearest whole number.

## **Notice to Brokers and Nominees**

If you are a broker, dealer, bank, or other nominee holder that holds shares of our Common Stock for the account of others on the Record Date, you should notify the beneficial owners of the shares for whom you are the nominee of the Rights Offering as soon as possible to learn their intentions with respect to exercising their Subscription Rights. If a beneficial owner of our Common Stock so instructs, you should complete the Subscription Rights Statement and submit it to the Subscription Agent with the proper subscription payment by the expiration date. You may exercise the number of Subscription Rights to which all beneficial owners in the aggregate otherwise would have been entitled had they been direct holders of our Common Stock on the

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Record Date, provided that you, as a nominee record holder, make a proper showing to the Subscription Agent by submitting the form entitled Nominee Holder Certification, which is provided with your Rights Offering materials. If you did not receive this form, you should contact our Subscription Agent to request a copy.

### **Validity of Subscriptions**

We will resolve all questions regarding the validity and form of the exercise of your Subscription Rights, including time of receipt and eligibility to participate in the Rights Offering. Our determination will be final and binding. Once made, subscriptions are irrevocable; we will not accept any alternative, conditional, or contingent subscriptions. We reserve the absolute right to reject any subscriptions not properly submitted or the acceptance of which would be unlawful. You must resolve any irregularities in connection with your subscriptions before the expiration date of the Rights Offering, unless we waive them in our sole discretion. Neither we nor the Subscription Agent is under any duty to notify you or your representative of defects in your subscriptions. A subscription will be considered accepted, subject to our right to withdraw or terminate the Rights Offering, only when the Subscription Agent receives a properly completed and duly executed Subscription Rights Statement and any other required documents and the full subscription payment. Our interpretations of the terms and conditions of the Rights Offering will be final and binding.

### **Stockholder Rights**

You will have no rights as a holder of the shares of our Common Stock you purchase in the Rights Offering until shares are issued in book-entry form or your account at your broker, dealer, bank, or other nominee is credited with the shares of our Common Stock purchased in the Rights Offering. Holders of Warrants issued in connection with the Rights Offering will not have rights as holders of our Common Stock until such Warrants are exercised and the shares of Common Stock underlying the Warrants are issued to the holder.

### **Foreign Stockholders**

We will not mail this prospectus or Subscription Rights Statements to stockholders with addresses that are outside the United States or that have an army post office or foreign post office address. The Subscription Agent will hold these Subscription Rights Statements for their account. To exercise Subscription Rights, our foreign stockholders must notify the Subscription Agent prior 5:00 PM Eastern Time, on November 11, 2016, the third business day prior to the expiration date, of your exercise of Subscription Rights and provide evidence satisfactory to us, such as a legal opinion from local counsel, that the exercise of such Subscription Rights does not violate the laws of the jurisdiction in which such stockholder resides and payment by a U.S. bank in U.S. dollars before the expiration of the offer. If no notice is received by such time or the evidence presented is not satisfactory to us, the Subscription Rights represented thereby will expire.

### **No Revocation or Change**

Once you submit the Subscription Rights Statement or have instructed your nominee of your subscription request, you are not allowed to revoke or change the exercise or request a refund of monies paid. All exercises of Subscription Rights are irrevocable, even if you learn information about us that you consider to be unfavorable. You should not exercise your Subscription Rights unless you are certain that you wish to purchase shares at the Subscription Price.

## **U.S. Federal Income Tax Treatment of Rights Distribution**

For U.S. federal income tax purposes, we do not believe holders of shares of our Common Stock or convertible notes should recognize income or loss upon receipt or exercise of a Subscription Right. See Material U.S. Federal Income Tax Consequences on page 46.

### **No Recommendation to Rights Holders**

Our board of directors is not making a recommendation regarding your exercise of the Subscription Rights. Stockholders who exercise Subscription Rights risk investment loss on money invested. We cannot assure you that the market price of our Common Stock will reach or exceed the Subscription Price, and even if it does so, that it will not decline during or after the Rights Offering. We also cannot assure you that you will be able to sell shares of our Common Stock or Warrants purchased in the Rights Offering at a price equal to or



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greater than the Subscription Price. You should make your investment decision based on your assessment of our business and financial condition, our prospects for the future and the terms of this Rights Offering. Please see **Risk Factors** for a discussion of some of the risks involved in investing in our Common Stock.

## **Fees and Expenses**

We will pay all fees charged by the Subscription Agent and by the dealer-manager. You are responsible for paying any other commissions, fees, taxes or other expenses incurred in connection with the exercise of your Subscription Rights.

## **Listing**

The Subscription Rights may not be sold, transferred, assigned or given away to anyone, and will not be listed for trading on any stock exchange or market. We will seek to have the Warrants trade on the OTCBB promptly after the expiration of the Subscription Rights, and if we regain compliance with NYSE MKT minimum listing criteria and the Warrants are eligible for listing on NYSE MKT, we intend to apply to list the Warrants on NYSE MKT. The shares of our Common Stock, including the shares to be issued in the Rights Offering and the shares underlying the Warrants and any Pre-Funded Warrants to be issued in the Rights Offering, are traded on NYSE MKT under the symbol XTNT. The Pre-Funded Warrants will not be listed for trading on any stock exchange or market.

## **Important**

**Please follow the directions regarding delivery of Subscription Rights Statements and payments described above. Do not send Subscription Rights Statements directly to us. You are responsible for choosing the payment and delivery method for your Subscription Rights Statement and you bear the risks associated with such delivery. If you choose to deliver your Subscription Rights Statement and payment by mail, we recommend that you use registered mail, properly insured, with return receipt requested. We also recommend that you allow a sufficient number of days to ensure delivery to the Subscription Agent prior to the expiration time.**

## **Distribution Arrangements**

Maxim Group LLC is the dealer-manager for the Rights Offering. The dealer-manager will provide marketing assistance and advice to us in connection with the Rights Offering and will use its best efforts to solicit the exercise of Subscription Rights and participation in the Over-Subscription Privilege. The dealer-manager is not underwriting or placing any of the Subscription Rights or the Units, shares of Common Stock or Warrants to be issued in the Rights Offering, and does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), Units, shares of Common Stock or Warrants. We have agreed to pay the dealer-manager certain fees and to reimburse the dealer-manager for certain out-of-pocket expenses incurred in connection with this offering. See **Plan of Distribution** on page 58 for a discussion of the fees and expenses to be paid to the dealer-manager in connection with this Rights Offering.

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## **MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES**

The following discussion is a summary of material U.S. federal income tax consequences relating to the receipt and exercise (or expiration) of the Subscription Rights acquired through the Rights Offering and the ownership and disposition of shares of our Common Stock and Warrants received upon exercise of the Subscription Rights, Pre-Funded Warrants or Warrants.

This summary deals only with Subscription Rights acquired through the Rights Offering, shares of our Common Stock, Pre-Funded Warrants and Warrants acquired upon exercise of Subscription Rights and shares of our Common Stock acquired upon exercise of the Pre-Funded Warrants or Warrants, in each case, that are held as capital assets by a beneficial owner. This discussion does not address all aspects of U.S. federal income taxation that may be relevant to such a beneficial owner in light of their personal circumstances, including the alternative minimum tax and the Medicare contribution tax on investment income. This discussion also does not address tax consequences to holders that may be subject to special tax rules, including, without limitation, insurance companies, real estate investment trusts, regulated investment companies, grantor trusts, tax-exempt organizations, employee stock purchase plans, partnerships and other pass-through entities, persons holding Subscription Rights, shares of our Common Stock, convertible notes, Pre-Funded Warrants or Warrants as part of a hedging, integrated, conversion or constructive sale transaction or a straddle, financial institutions, brokers, dealers in securities or currencies, traders that elect to mark-to-market their securities, persons that acquired Subscription Rights, shares of our Common Stock, convertible notes, Pre-Funded Warrants or Warrants in connection with employment or other performance of services, U.S. Holders (as defined below) that have a functional currency other than the U.S. dollar, U.S. expatriates, and certain former citizens or residents of the United States. In addition, the discussion does not describe any tax consequences arising out of the tax laws of any state, local or foreign jurisdiction, or any U.S. federal tax considerations other than income taxation (such as estate, generation skipping or gift taxation).

The discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended, or the Code, the United States Treasury regulations promulgated thereunder, rulings and judicial decisions, as of the date hereof, and such authorities may be repealed, revoked or modified, perhaps retroactively. We have not sought, and will not seek, any rulings from the Internal Revenue Service, or the IRS, regarding the matters discussed below. There can be no assurance that the IRS or a court (if the matter were contested) will not take positions concerning the tax consequences of the receipt of Subscription Rights acquired through the Rights Offering by persons holding shares of our Common Stock or convertible notes, the exercise (or expiration) of the Subscription Rights, the acquisition, ownership and disposition of shares of our Common Stock and the acquisition, ownership and disposition (or expiration) of Pre-Funded Warrants or Warrants acquired upon exercise of the Subscription Rights that are different from those discussed below.

As used herein, a U.S. Holder means a beneficial owner of shares of our Common Stock, convertible notes, Subscription Rights, shares of our Common Stock, Pre-Funded Warrants and Warrants acquired upon exercise of Subscription Rights or shares of our Common Stock acquired upon exercise of Pre-Funded Warrants or Warrants, as the case may be, that is for U.S. federal income tax purposes: (1) an individual who is a citizen or resident of the United States; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or (4) a trust (a) the administration of which is subject to the primary supervision of a court within the United States and one or more United States persons as described in Section 7701(a)(30) of the Code have authority to control all substantial decisions of the trust

or (b) that has a valid election under the Treasury Regulations in effect to be treated as a United States person. A Non-U.S. Holder is such a beneficial owner (other than an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes) that is not a U.S. Holder.

If any entity or arrangement that is treated as a partnership for U.S. federal income tax purposes is the record owner, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. Holders that are partnerships (and partners in such partnerships) are urged to consult their own tax advisors.

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HOLDERS OF SHARES OF OUR COMMON STOCK AND CONVERTIBLE NOTES SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES UNDER FEDERAL ESTATE AND GIFT TAX LAWS, FOREIGN, STATE AND LOCAL LAWS AND TAX TREATIES OF THE RECEIPT, OWNERSHIP AND EXERCISE OF SUBSCRIPTION RIGHTS AND THE ACQUISITION, OWNERSHIP AND DISPOSITION OF SHARES OF OUR COMMON STOCK, PRE-FUNDED WARRANTS AND WARRANTS ACQUIRED UPON EXERCISE OF SUBSCRIPTION RIGHTS AND SHARES OF OUR COMMON STOCK ACQUIRED UPON EXERCISE OF PRE-FUNDED WARRANTS OR WARRANTS.

### **Tax Treatment of Pre-Funded Warrants**

Any person that elects to receive Pre-Funded Warrants in lieu of our Common Stock upon the exercise of Subscription Rights should consult their own tax advisor regarding the application of the U.S. federal income tax laws to their particular situation.

## **Tax Consequences to U.S. Holders**

### **Taxation of Subscription Rights**

#### **Receipt of Subscription Rights**

Although the authorities governing transactions such as this Rights Offering are complex and do not speak directly to the consequences of certain aspects of this Rights Offering, including the distribution of the subscription rights to holders of our convertible notes, the inclusion of the right to purchase Pre-Funded Warrants and Warrants in the Subscription Rights (rather than the right to purchase only shares of our Common Stock), the distribution of Subscription Rights and the effects of the Over-Subscription Privilege, we do not believe your receipt of Subscription Rights pursuant to the Rights Offering should be treated as a taxable distribution with respect to your existing shares of Common Stock or convertible notes for U.S. federal income tax purposes. Pursuant to Section 305(a) of the Code, in general, the receipt by a stockholder of a right to acquire stock or warrants should not be included in the taxable income of the recipient. For this purpose, rights to acquire stock are treated as stock, so that holders of our convertible notes and other rights to acquire our stock would be treated as stockholders. The general rule of non-recognition in Section 305(a) is subject to exceptions in Section 305(b), which include disproportionate distributions. A disproportionate distribution is a distribution or a series of distributions, including deemed distributions, that has the effect of the receipt of cash or other property by some stockholders and an increase in the proportionate interest of other stockholders in a corporation's assets or earnings and profits. During the last 36 months, we have made payments of interest to holders of our convertible notes. However, we have not made any distributions of cash or non-stock property with respect to: (i) our Common Stock or (ii) our options or warrants to acquire Common Stock. Currently we do not intend to make any future distributions of cash or non-stock property with respect to: (i) our Common Stock or (ii) our options or warrants to acquire Common Stock; however, there is no guarantee that we will not make such distributions in the future.

Our position regarding the tax-free treatment of the Subscription Rights distribution is not binding on the IRS or the courts. If this position is finally determined by the IRS or a court to be incorrect, whether on the basis that the issuance of the Subscription Rights is a disproportionate distribution or otherwise, the fair market value of the Subscription Rights would be taxable to holders of our Common Stock as a dividend to the extent of the holder's pro rata share of our current and accumulated earnings and profits, if any, with any excess being treated as a return of capital to the extent thereof and then as capital gain. Although no assurance can be given, it is anticipated that we will not have

current and accumulated earnings and profits through the end of 2016. Further, if our position is incorrect, the treatment of holders of convertible notes may differ from the treatment of the holders of our Common Stock on the receipt of the Subscription Rights. The convertible note holders may be treated in a manner similar to holders of our Common Stock but it is possible that they may be subject to different and adverse U.S. federal income tax consequences.

The following discussion is based upon the treatment of the Subscription Rights issuance as a non-taxable distribution with respect to your existing shares of Common Stock or convertible notes for U.S. federal income tax purposes.

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### **Tax Basis in the Subscription Rights**

If the fair market value of the Subscription Rights you receive is less than 15% of the fair market value of your existing shares of Common Stock (with respect to which the Subscription Rights are distributed) on the date you receive the Subscription Rights, the Subscription Rights will be allocated a zero dollar basis for U.S. federal income tax purposes, unless you elect to allocate your basis in your existing shares of Common Stock between your existing shares of Common Stock and the Subscription Rights in proportion to the relative fair market values of the existing shares of Common Stock and the Subscription Rights, determined on the date of receipt of the Subscription Rights. If you choose to allocate basis between your existing Common Stock and the Subscription Rights, you must make this election on a statement included with your timely filed tax return (including extensions) for the taxable year in which you receive the Subscription Rights. Such an election is irrevocable.

However, if the fair market value of the Subscription Rights you receive is 15% or more of the fair market value of your existing shares of Common Stock on the date you receive the Subscription Rights with respect to the Common Stock, then you must allocate your basis in your existing shares of Common Stock between those shares or convertible notes and the Subscription Rights you receive in proportion to their fair market values determined on the date you receive the Subscription Rights. It is unclear whether the rules for allocating tax basis will apply in the same way to Subscription Rights received with respect to our convertible notes. We urge you to consult with your own tax advisor as to the computation of the basis in the Subscription Rights received with respect to our convertible notes.

The fair market value of the Subscription Rights on the date that the Subscription Rights are distributed is uncertain, and we have not obtained, and do not intend to obtain, an appraisal of the fair market value of the Subscription Rights on that date. In determining the fair market value of the Subscription Rights, you should consider all relevant facts and circumstances, including any difference between the Subscription Price of the Subscription Rights and the trading price of our shares of Common Stock on the date that the Subscription Rights are distributed, the exercise price of the Warrants, the length of the period during which the Subscription Rights may be exercised and the fact that the Subscription Rights are non-transferable.

### **Exercise of Subscription Rights**

Generally, you will not recognize gain or loss upon the effectiveness of the exercise of a Subscription Right in the Rights Offering. Your adjusted tax basis, if any, in the Subscription Right plus the Subscription Price should be allocated between the new Common Stock and Warrant acquired upon exercise of the Subscription Right. The basis in the stock upon which the Subscriptions Rights were issued which is allocated to the Subscription Rights under the prior section entitled Tax Basis in the Subscription Rights would be further allocated between the new Common Stock and the Warrant acquired upon exercise of the Subscription Right in proportion to their relative fair market values on the date the Subscription Rights were distributed. The Subscription Price should be allocated between the new Common Stock and Warrant acquired upon exercise of the Subscription Right in proportion to their relative fair market values on the exercise date. These allocations will establish your initial tax basis for U.S. federal income tax purposes in your new Common Stock and Warrants. The holding period of shares of Common Stock or a Warrant acquired upon exercise of a Subscription Right in the Rights Offering will begin on the date of exercise.

If you exercise a Subscription Right received in the Rights Offering after disposing of the shares of our Common Stock or convertible notes with respect to which such Subscription Right is received, then certain aspects of the tax treatment of the exercise of the Subscription Right are unclear, including (1) the allocation of the tax basis between the shares of Common Stock or convertible notes previously sold and the Subscription Right, (2) the impact of such allocation on the amount and timing of gain or loss recognized with respect to the shares of our Common Stock or convertible notes previously sold and (3) the impact of such allocation on the tax basis of the shares of our Common

Stock and Warrants acquired upon exercise of the Subscription Right. If you exercise a Subscription Right received in the Rights Offering after disposing of shares of our Common Stock or convertible notes with respect to which the Subscription Right is received, you should consult with your own tax advisor.

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### **Expiration of Subscription Rights**

If you allow Subscription Rights received in the Rights Offering to expire, you should not recognize any gain or loss for U.S. federal income tax purposes, and you should re-allocate any portion of the tax basis in your existing Common Stock or convertible notes previously allocated to the Subscription Rights that have expired to the existing Common Stock or convertible notes.

### **Taxation of Warrants**

#### **Sale, Exchange, Redemption or other Taxable Disposition of Warrants**

Upon the sale, exchange, redemption or other taxable disposition of a Warrant, in general, you will recognize taxable gain or loss measured by the difference, if any, between (i) the amount of cash and the fair market value of any property received upon such taxable disposition and (ii) your adjusted tax basis in the Warrant as determined pursuant to the rules discussed above. Your gain or loss generally will be capital gain or loss and generally will be long-term capital gain or loss if, at the time of the sale or other disposition, your holding period for the Warrant is more than one year. The deductibility of capital losses is subject to limitations.

#### **Exercise of Warrants**

Upon the exercise of a Warrant by paying the exercise price in cash, in general, you will not recognize gain or loss for U.S. federal income tax purposes, except to the extent you receive a cash payment for any such fractional share that would otherwise have been issuable upon exercise of the Warrant. Your initial tax basis in Common Stock received will equal your adjusted tax basis in the Warrant exercised (as determined pursuant to the rules discussed above), increased by the amount of cash paid to exercise the Warrant and decreased by the adjusted tax basis allocable to any fractional share that would otherwise have been issuable upon exercise of the Warrant. Your holding period for the shares of our Common Stock received on exercise generally will commence on the day of exercise.

In certain circumstances, namely during any period when a registration statement for the exercise of the Warrants is not in effect, the Warrants will be exercisable on a cashless basis. The tax consequences of a cashless exercise are not clear and could differ from the consequences described above, including the possibility that a cashless exercise could be a taxable event. You should consult your own tax advisor regarding the tax consequences of a cashless exercise of a Warrant.

#### **Expiration of Warrants**

If you allow a Warrant to expire, you will generally recognize a loss for U.S. federal income tax purposes equal to your adjusted tax basis in the Warrant. In general, such a loss will be a capital loss and will be a short-term or long-term capital loss depending on your holding period for the Warrant.

#### **Certain Adjustments to the Warrants**

Under Section 305 of the Code, an adjustment to the number of common shares that will be issued on the exercise of the Warrants, or an adjustment to the exercise price of the Warrants, may be treated as a constructive distribution to you if, and to the extent that, such adjustment has the effect of increasing your proportionate interest in our earnings and profits or assets, depending on the circumstances of such adjustment (for example, if such adjustment is to compensate for a distribution of cash or other property to our stockholders). Adjustments to the exercise price of



Warrants made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing dilution of the interest of the holders of the Warrants should generally not be considered to result in a constructive distribution. Any such constructive distribution would be taxable whether or not there is an actual distribution of cash or other property.

See the more detailed discussion of the rules applicable to distributions made by us under the heading "Taxation of Common Stock Distributions" below.

## **Taxation of Common Stock**

### **Distributions**

Distributions with respect to shares of our Common Stock acquired upon exercise of Subscription Rights or upon exercise of Warrants will be taxable as dividend income when actually or constructively received to the extent of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes.

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Dividend income received by certain non-corporate U.S. Holders with respect to shares of our Common Stock generally will be qualified dividends subject to preferential rates of U.S. federal income tax, provided that the U.S. Holder meets applicable holding period and other requirements. Subject to similar exceptions for short-term and hedged positions, dividend income on our shares of Common Stock paid to U.S. Holders that are domestic corporations generally will qualify for the dividends-received deduction. To the extent that the amount of a distribution exceeds our current and accumulated earnings and profits, such distribution will be treated first as a tax-free return of capital to the extent of your adjusted tax basis in such shares of our Common Stock and thereafter as capital gain.

### **Dispositions**

If you sell or otherwise dispose of shares of Common Stock acquired upon exercise of Subscription Rights or upon exercise of Warrants in a taxable transaction, you will generally recognize capital gain or loss equal to the difference between the amount realized and your adjusted tax basis in the shares. Such capital gain or loss will be long-term capital gain or loss if your holding period for such shares is more than one year at the time of disposition. Long-term capital gain of a non-corporate U.S. Holder is generally taxed at preferential rates of U.S. federal income tax. The deductibility of capital losses is subject to limitations.

### **Information Reporting and Backup Withholding**

You may be subject to information reporting and/or backup withholding with respect to the gross proceeds from the disposition of Warrants, shares of our Common Stock acquired through the exercise of Subscription Rights or through the exercise of Warrants, or dividend payments. Backup withholding (currently at the rate of 28%) may apply under certain circumstances if you (1) fail to furnish your social security or other taxpayer identification number, or TIN, (2) furnish an incorrect TIN, (3) fail to report interest or dividends properly or (4) fail to provide a certified statement, signed under penalty of perjury, that the TIN provided is correct, that you are not subject to backup withholding and that you are a U.S. person for U.S. federal income tax purposes on IRS Form W-9. Any amount withheld from a payment under the backup withholding rules is allowable as a credit against (and may entitle you to a refund with respect to) your U.S. federal income tax liability, provided that the required information is timely furnished to the IRS. Certain persons are exempt from information reporting and backup withholding, including corporations and certain financial institutions, provided that they demonstrate this fact, if requested. You are urged to consult your own tax advisor as to your qualification for exemption from backup withholding and the procedure for obtaining such exemption.

### **Tax Consequences to Non-U.S. Holders**

#### **Taxation of the Subscription Rights**

##### **Receipt, Exercise and Expiration of the Subscription Rights**

The discussion below assumes that the receipt of Subscription Rights will be treated as a non-taxable distribution. See Tax Consequences to U.S. Holders Taxation of Subscription Rights Receipt of Subscription Rights above.

#### **Exercise and Expiration of Warrants and Certain Adjustments to Warrants**

### **Exercise of Warrants**

In general, a Non-U.S. Holder will not recognize gain or loss for U.S. federal income tax purposes upon exercise of a Warrant, except to the extent the Non-U.S. Holder receives a cash payment for any such fractional share that would otherwise have been issuable upon exercise of the Warrant, which will be treated as a sale subject to the rules described under *Sale or Other Disposition of our Common Stock or Warrants* below.

### **Expiration of Warrants**

In general, a Non-U.S. Holder will not be able to utilize a loss recognized upon expiration of a Warrant against the Non-U.S. Holder's U.S. federal income tax liability unless the loss is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if an income tax treaty so provides, is attributable to a permanent establishment in the United States) or is treated as a U.S.-source loss and the Non-U.S. Holder is present 183 days or more in the taxable year of disposition and certain other conditions are met.

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### **Certain Adjustments to the Warrants**

Under Section 305 of the Code, an adjustment to the number of common shares that will be issued on the exercise of the Warrants, or an adjustment to the exercise price of the Warrants, may be treated as a constructive distribution to a Non-U.S. Holder of the Warrants if, and to the extent that, such adjustment has the effect of increasing such Non-U.S.

Holder's proportionate interest in our earnings and profits or assets, depending on the circumstances of such adjustment (for example, if such adjustment is to compensate for a distribution of cash or other property to our stockholders). Adjustments to the exercise price of Warrants made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing dilution of the interest of the holders of the Warrants should generally not be considered to result in a constructive distribution. Any such constructive distribution would be taxable whether or not there is an actual distribution of cash or other property. See the more detailed discussion of the rules applicable to distributions made by us under the heading "Taxation of Distributions on Common Stock" below.

### **Taxation of Distributions on Common Stock**

Any distributions of cash or property (including any adjustments to the Warrants described in the immediately preceding paragraph) made with respect to our Common Stock generally will be subject to withholding tax to the extent paid out of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes, if any, at a rate of 30% (or a lower rate prescribed by an applicable income tax treaty). In order to obtain a reduced withholding tax rate, if applicable, you will be required to provide a properly completed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, certifying your entitlement to benefits under a treaty. In addition, you will not be subject to withholding tax if you provide an IRS Form W-8ECI certifying that the distributions are effectively connected with your conduct of a trade or business within the United States (and, if an applicable income tax treaty so provides, are attributable to a permanent establishment within the United States); instead, you generally will be subject to U.S. federal income tax, net of certain deductions, with respect to such income at the same rates applicable to U.S. persons. If you are a corporation, a branch profits tax of 30% (or a lower rate prescribed by an applicable income tax treaty) also may apply to such effectively connected income.

Non-U.S. Holders may be required to periodically update their IRS Forms W-8.

Any distribution will also be subject to the discussion below under the headings "Information Reporting and Backup Withholding" and "FATCA."

### **Sale or Other Disposition of Our Common Stock or Warrants**

Subject to the discussion below regarding backup withholding and FATCA, you generally will not be subject to U.S. federal income tax on any gain realized on a sale or other disposition of shares of our Common Stock or Warrants unless:

the gain is effectively connected with your conduct of a trade or business within the United States (and, if an applicable income tax treaty so provides, is attributable to a permanent establishment in the United States); you are an individual, you hold your Subscription Rights, shares of Common Stock or Warrants as capital assets, you are present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are met (in which case you will be subject to a 30% tax, or such lower rate as may be specified by an applicable income tax treaty, on the net gain derived from the disposition, which may be offset by your U.S.-source capital losses, if any); or

we are or have been a United States real property holding corporation, or USRPHC, for U.S. federal income tax purposes unless an exception for 5% or less stockholders applies.

Gain that is effectively connected with your conduct of a trade or business within the United States (and, if an applicable income tax treaty so provides, is attributable to a permanent establishment within the United States) generally will be subject to U.S. federal income tax, net of certain deductions, at the same rates applicable to U.S. persons. If you are a corporation, a branch profits tax of 30% (or a lower rate prescribed in an applicable income tax treaty) also may apply to such effectively connected gain.

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A domestic corporation is treated as a USRPHC if the fair market value of its United States real property interests equals or exceeds 50% of the sum of (1) the fair market value of its United States real property interests, (2) the fair market value of its non-United States real property interests and (3) the fair market value of any other of its assets which are used or held for use in a trade or business. We believe that we are not currently, and have not been within the relevant testing period, a USRPHC. However, no assurance can be given that we will not become a USRPHC in the future. If we are a USRPHC or become a USRPHC in the future, a Non-U.S. Holder may still not be subject to U.S. federal income tax on a sale or other disposition if an exception for 5% or less stockholders applies. You are urged to consult your own tax advisor regarding the U.S. federal income tax considerations that could result if we are, or become, a USRPHC and with respect to the exception for 5% or less stockholders.

### **Information Reporting and Backup Withholding**

Distributions on our Common Stock and the amount of tax withheld, if any, with respect to such distributions will generally be subject to information reporting. If you comply with certification procedures to establish that you are not a United States person, additional information reporting and backup withholding should not generally apply to distributions on our Common Stock and information reporting and backup withholding should not generally apply to the proceeds from a sale or other disposition of Warrants or shares of our Common Stock. Generally, a Non-U.S. Holder will comply with such procedures if it provides a properly executed IRS Form W-8BEN or W-8BEN-E, as applicable, (or other applicable IRS Form W-8) or otherwise meets documentary evidence requirements for establishing that it is a Non-U.S. Holder, or otherwise establishes an exemption. The amount of any backup withholding will generally be allowed as a refund or credit against your U.S. federal income tax liability, provided that the required information is timely furnished to the IRS.

### **FATCA**

Payments of dividends on our Common Stock to a Non-U.S. Holder will be subject to a 30% withholding tax if the Non-U.S. Holder fails to provide the withholding agent with documentation sufficient to show that it is compliant with FATCA. Generally such documentation is provided on an executed and properly completed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. If dividends are subject to the 30% withholding tax under FATCA, they will not be subject to the 30% withholding tax described above under Tax Consequences to Non-U.S. Holders Taxation of Distributions on Common Stock. Starting in 2019, payments of the gross proceeds from a sale or exchange of our Common Stock or other securities may also be subject to FATCA withholding absent proof of FATCA compliance prior to January 1, 2019.

THE PRECEDING DISCUSSION OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES IS NOT TAX ADVICE. HOLDERS OF SUBSCRIPTION RIGHTS, SHARES OF OUR COMMON STOCK AND CONVERTIBLE NOTES SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES UNDER FEDERAL ESTATE AND GIFT TAX LAWS, FOREIGN, STATE AND LOCAL LAWS AND TAX TREATIES OF THE RECEIPT, OWNERSHIP AND EXERCISE OF SUBSCRIPTION RIGHTS AND THE ACQUISITION, OWNERSHIP AND DISPOSITION OF SHARES OF OUR COMMON STOCK, PRE-FUNDED WARRANTS AND WARRANTS ACQUIRED UPON EXERCISE OF SUBSCRIPTION RIGHTS AND SHARES OF OUR COMMON STOCK ACQUIRED UPON EXERCISE OF PRE-FUNDED WARRANTS OR WARRANTS.



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## **DESCRIPTION OF SECURITIES**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of our Common Stock and preferred stock. For the complete terms of our Common Stock and preferred stock, please refer to our Restated Certificate of Incorporation and Amended and Restated Bylaws that are filed as exhibits to our reports incorporated by reference into the registration statement that includes this prospectus. The Delaware General Corporation Law may also affect the terms of our Common Stock and preferred stock.

### **Authorized and Outstanding Capital Stock**

Our Restated Certificate of Incorporation provides that we have authority to issue (i) 95,000,000 shares of Common Stock, par value \$0.000001 per share, 12,193,970 of which are issued and outstanding as of October 4, 2016, and (ii) 5,000,000 shares of preferred stock, par value \$0.000001 per share, none of which are issued and outstanding as of the date of this prospectus. As of October 4, 2016, we also had outstanding warrants to purchase approximately 1,278,566 shares of our Common Stock and 530,000 shares authorized for issuance under our Amended and Restated Equity Incentive Plan.

### **Common Stock**

#### **Principal Market for our Common Stock**

Our Common Stock is listed on NYSE MKT under the symbol XTNT.

#### **Dividends**

Our board of directors may authorize, and we may make, distributions to our stockholders, subject to any restriction in our Restated Certificate of Incorporation and to those limitations prescribed by law and contractual restrictions.

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our Common Stock will be entitled to share equally, identically and ratably in any dividends that our board of directors may determine to issue from time to time. However, we have never paid cash dividends on our Common Stock or any other securities. We anticipate that we will retain all of our future earnings, if any, for use in the expansion and operation of our business and do not anticipate paying any cash dividends in the foreseeable future.

#### **Fully Paid and Non-Assessable**

All shares of our outstanding Common Stock are fully paid and non-assessable.

#### **Voting Rights**

Each share of our Common Stock is entitled to one vote in each matter submitted to a vote at a meeting of stockholders, including in all elections for directors. Stockholders are not entitled to cumulative voting in the election for directors. Our stockholders may vote either in person or by proxy. Except in respect of matters relating to the election of directors and as otherwise provided in our Restated Certificate of Incorporation or required by law, all matters to be voted on by our stockholders must be approved by holders of a majority of the shares present in person



or by proxy at the meeting and entitled to vote on the subject matter. In the case of election of directors, all matters to be voted on by our stockholders must be approved by a plurality of the votes entitled to be cast by holders of all outstanding shares of Common Stock.

### **Preemptive and Other Rights**

Holders of our Common Stock have no preemptive rights and have no other rights to subscribe for additional securities of ours under Delaware law, nor does our Common Stock have any conversion rights or rights of redemption. Upon liquidation, all holders of our Common Stock are entitled to participate pro rata in our assets available for distribution, subject to the rights of any class of preferred stock then outstanding.

### **Preferred Stock**

Though we currently have no plans to issue any shares of preferred stock, our board of directors has the authority, without further action by our stockholders, to designate and issue up to 5,000,000 shares of preferred stock in one or more series. Our board of directors may also designate the rights, preferences and

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privileges of the holders of each such series of preferred stock, any or all of which may be greater than or senior to those granted to the holders of Common Stock. Though the actual effect of any such issuance on the rights of the holders of Common Stock will not be known until our board of directors determines the specific rights of the holders of preferred stock, the potential effects of such an issuance include:

diluting the voting power of the holders of Common Stock;  
reducing the likelihood that holders of Common Stock will receive dividend payments;  
reducing the likelihood that holders of Common Stock will receive payments in the event of our liquidation, dissolution or winding up; and  
delaying, deterring or preventing a change in control or other corporate takeover.

## **Warrants**

### **Warrants Included in Units Issuable in the Rights Offering**

The Warrants to be issued as a part of this Rights Offering will be separately transferable following their issuance and through their expiration \_\_\_\_\_ years from the date of issuance. The Warrants entitle the holder to purchase one share of Common Stock at an exercise price of \$ \_\_\_\_\_ per share, from the date of issuance through its expiration on \_\_\_\_\_, 2021. We will seek to have the Warrants trade on the OTCBB promptly after the expiration of the Subscription Rights, and if we regain compliance with NYSE MKT minimum listing criteria and the Warrants are eligible for listing on NYSE MKT, we intend to apply to list the Warrants on NYSE MKT. The Common Stock underlying the Warrants, upon issuance, will also be traded on NYSE MKT under the symbol XTNT.

All Warrants that are purchased in the Rights Offering as part of the Units will be issued in book-entry, or uncertificated, form meaning that you will receive a direct registration (DRS) account statement from our transfer agent reflecting ownership of Warrants if you are a holder of record of shares or convertible notes. The Subscription Agent will arrange for the issuance of the Warrants as soon as practicable after the expiration of the Rights Offering, payment for the Units subscribed for has cleared, and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected. If you hold your shares of Common Stock in the name of a custodian bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the Warrants you purchased in the Rights Offering.

The Warrants will be exercisable by paying the exercise price in cash, or, solely during any period when a registration statement for the exercise of the Warrants is not in effect, exercisable on a cashless basis.

The exercise price of the Warrants and the number of shares of Common Stock issuable upon exercise of the Warrants are subject to adjustment in certain circumstances, including a stock split of, stock dividend on, or a subdivision, combination or recapitalization of the Common Stock.

Except as described below, a holder may not exercise any portion of the Warrant to the extent that the holder would beneficially own more than 4.99% of our outstanding Common Stock after exercise, except that upon at least 61 days prior notice from the holder to us, the holder may increase the amount of ownership of outstanding stock after exercising the holder's Warrants up to 9.99% of the number of shares of our Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Warrants. The foregoing limitation on exercise does not apply to any holder who beneficially owns in excess of 4.99% of our outstanding Common Stock immediately prior to the Rights Offering.

No public market currently exists for the Warrants. We will seek to have the Warrants trade on the OTCBB promptly after the expiration of the Subscription Rights, and if we regain compliance with NYSE MKT minimum listing criteria and the Warrants are eligible for listing on NYSE MKT, we intend to apply to list the Warrants on NYSE MKT. Even if the Warrants are listed on NYSE MKT, an active public market for the Warrants may not be developed or sustained.

Without an active trading market, the liquidity of the Warrants will be limited.

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Subject to applicable laws and the restriction on transfer set forth in the Warrant, the Warrant may be transferred at the option of the holder upon surrender of the Warrant to us together with the appropriate instruments of transfer.

After the one-year anniversary of issuance, we may redeem the Warrants for \$0.01 per Warrant if our Common Stock is above \$     per share, for each of 10 consecutive trading days.

The Warrants do not confer upon the holder any voting or any other rights of a stockholder of the Company. Upon notice to the Warrants holders, we have the right at any time and from time to time, to reduce the exercise price or to extend the Warrants termination date.

The Warrants will be issued pursuant to a warrant agreement by and between us and Corporate Stock Transfer, Inc., as the warrant agent.

## **Pre-Funded Warrants Issuable in Lieu of Common Stock in the Rights Offering**

Any Pre-Funded Warrants issued as a part of this Rights Offering will be separately transferable following their issuance and through their expiration 12 years from the date of issuance. The Pre-Funded Warrants entitle the holder to purchase one share of Common Stock at an exercise price of \$0.01 per share, and the subscription price per Unit for any such electing investors will be \$     (which equals the Subscription Price for the other Units sold in the Rights Offering, less the \$0.01 exercise price for each Pre-Funded Warrant). Each Pre-Funded Warrant will be exercisable from the date of issuance through its expiration 12 years after the date of issuance. The Pre-Funded Warrants will not be listed for trading on any stock exchange or market.

Any Pre-Funded Warrants that are purchased in the Rights Offering as part of the Units will be issued in physical form. The Subscription Agent will arrange for the issuance of the Pre-Funded Warrants as soon as practicable after the expiration of the Rights Offering, payment for the Units subscribed for has cleared, and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected.

The Pre-Funded Warrants will be exercisable by paying the exercise price in cash or on a cashless basis. The exercise price of the Pre-Funded Warrants and the number of shares of Common Stock issuable upon exercise of the Pre-Funded Warrants are subject to adjustment in certain circumstances, including a stock split of, stock dividend on, or a subdivision, combination or recapitalization of the Common Stock.

A holder may not exercise any portion of the Pre-Funded Warrant to the extent that the holder would beneficially own more than 4.99% of our outstanding Common Stock after exercise, except that upon at least 61 days     prior notice from the holder to us, the holder may increase the amount of ownership of outstanding stock after exercising the holder's Pre-Funded Warrant up to 9.99% of the number of shares of our Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Pre-Funded Warrant.

Subject to applicable laws, the Pre-Funded Warrants may be offered for sale, sold, transferred or assigned without our consent.

The Pre-Funded Warrants do not confer upon the holder any voting or any other rights of a stockholder of the Company.

## **Anti-Takeover Provisions**

### **Certificate of Incorporation and Bylaws**

Our board of directors is divided into three classes, the members of each of which serve for staggered three-year terms. Our stockholders may elect only one-third of our board of directors each year. Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the shares of Common Stock outstanding will be able to elect all of our directors. Our Amended and Restated Bylaws provide that only our board of directors, Chairman of the board or Chief Executive Officer may call a special meeting of stockholders.

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The combination of these factors will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, these provisions may have the effect of deterring hostile takeovers or delaying changes in our control or management. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our stock and, as a consequence, they also may inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts.

**Section 203 of the Delaware General Corporation Law**

We have elected to be subject to Section 203 of the Delaware General Corporation Law ( Section 203 ), and we are prohibited from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

before such date, the board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting shares outstanding at the time the transaction began, excluding for purposes of determining the voting shares outstanding (but not the outstanding voting shares 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

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

In general, Section 203 defines business combination to include the following:

any merger or consolidation involving the Company and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the Company involving the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the Company of any shares of the Company to the interested stockholder;

any transaction involving the Company that has the effect of increasing the proportionate share of the shares or any class or series of shares of the Company beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the Company.

In general, by reference to Section 203, an interested stockholder is an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status owned, 15% or more of the outstanding voting shares of the Company.

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## Limitations of Liability and Indemnification Matters

We have adopted provisions in our Restated Certificate of Incorporation that limit or eliminate the liability of our directors for monetary damages for breach of their fiduciary duties, except for a breach of the duty of loyalty to the Company or its stockholders, for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, or for any transaction from which a director derived an improper personal benefit. Accordingly, our directors will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except with respect to the following:

any breach of their duty of loyalty to us or our stockholders;  
acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;  
unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or  
any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission. If Delaware law is amended to authorize the further elimination or limiting of director liability, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law as so amended.

Our Amended and Restated Bylaws provide for mandatory indemnification of directors and officers to the maximum extent allowed by applicable law. We believe that indemnification under our Amended and Restated Bylaws covers at least negligence and gross negligence on the part of indemnified parties. In addition, we have also entered into indemnification agreements with our directors and officers, pursuant to which we must:

indemnify officers and directors against certain liabilities that may arise because of their status as officers and directors;

advance expenses, as incurred, to officers and directors in connection with a legal proceeding subject to limited exceptions; and

cover officers and directors under any general or directors and officers liability insurance policy maintained by us.

We also maintain directors and officers liability insurance. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the opinion of the SEC is that such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

## Transfer Agent

The transfer agent for our Common Stock is Corporate Stock Transfer, Inc.

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## PLAN OF DISTRIBUTION

On or about \_\_\_\_\_, 2016, we will distribute the Subscription Rights, Subscription Rights Statements and copies of this prospectus to the holders of our Common Stock and convertible notes on the Record Date. Subscription Rights holders who wish to exercise their Subscription Rights and purchase Units must complete the Subscription Rights Statement and return it with payment for the shares to the Subscription Agent at the following address:

*By Mail or Hand or Overnight Courier:*  
**Corporate Stock Transfer, Inc.**  
**3200 Cherry Creek Drive South, Suite 430**  
**Denver, Colorado 80209**

See The Rights Offering Methods for Exercising Subscription Rights.

If you have any questions, you should contact the dealer-manager for the Rights Offering:

**Maxim Group LLC**  
**405 Lexington Avenue**  
**New York, New York 10174**  
**Attention Syndicate Department**  
**Email: [syndicate@maximgrp.com](mailto:syndicate@maximgrp.com)**  
**Telephone: (212) 895-3745**

Other than as described in this prospectus, we do not know of any existing agreements between any stockholder, broker, dealer, underwriter or agent relating to the sale or distribution of the underlying Common Stock.

Maxim Group LLC is the dealer-manager of this Rights Offering. We and Maxim may introduce one or more co-dealer-managers and one or more financial advisors to assist in the Rights Offering. In any such event, Maxim Group LLC will be the lead dealer-manager. In such capacity, the dealer-manager will provide marketing assistance and advice to us in connection with this offering and will solicit the exercise of Subscription Rights and participation in the Over-Subscription Privilege. The dealer-manager is not underwriting or placing any of the Subscription Rights or the Units, shares of Common Stock, Warrants or Pre-Funded Warrants being issued in this offering, and does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), Units, shares of Common Stock, Warrants or Pre-Funded Warrants.

In connection with this Rights Offering, we have agreed to pay to the dealer-manager a cash fee equal to 7% of the gross proceeds received by us directly from exercises of Subscription Rights. We will reimburse the dealer-manager up to \$75,000 for expenses incurred in connection with the Rights Offering. We advanced \$30,000 of this \$75,000 allowance to Maxim Group LLC upon its engagement as a dealer-manager; provided that Maxim Group LLC will promptly reimburse to us any portion of the advance not used for actual out-of-pocket expenses.

From the Record Date until 90 days after the closing of the Rights Offering, we have agreed not to issue, agree to issue or announce the issuance of any shares of Common Stock or common stock equivalents without the consent of the dealer-manager, subject to certain exceptions including a pre-existing agreement, equity awards, conversion of derivative securities and in connection with any acquisitions, partnerships or strategic transactions.



We have also agreed to indemnify the dealer-manager and its respective affiliates against certain liabilities arising under the Securities Act. The dealer-manager's participation in this offering is subject to customary conditions contained in the dealer-manager agreement, including the receipt by the dealer-manager of an opinion of our counsel. The dealer-manager and its affiliates may provide to us from time to time in the future in the ordinary course of their business certain financial advisory, investment banking and other services for which they will be entitled to receive fees.

Maxim Group LLC is a broker-dealer and member of the Financial Industry Regulatory Authority, Inc. The principal business address of Maxim Group LLC is 405 Lexington Avenue, New York, New York 10174.

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## LEGAL MATTERS

The validity of the issuance of the Common Stock offered in this offering was passed upon for us by Ballard Spahr LLP.

## EXPERTS

The financial statements for the years ended December 31, 2015 and 2014 incorporated by reference into this prospectus and registration statement have been audited by EKS&H LLLP, an independent registered public accounting firm, as set forth in their report thereon appearing in our Annual Report on Form 10-K for the year ended December 31, 2015 and incorporated by reference into this prospectus and registration statement, and such report is included in reliance upon the authority of such firm as experts in accounting and auditing.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference information from other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus.

We incorporate by reference into this prospectus and the registration statement of which this prospectus is a part the information or documents listed below that we have filed with the SEC:

our Annual Report on Form 10-K for the year ended December 31, 2015, filed on March 24, 2016;  
our Quarterly Report on Form 10-Q for the quarters ended March 31, 2016, and June 30, 2016, filed on May 11, 2016, and August 10, 2016, respectively;

Our definitive proxy statement on Schedule 14A, filed with the SEC on May 26, 2016;  
our Current Reports on Form 8-K (other than portions thereof furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits accompanying such reports that are related to such items) filed on January 22, 2016, April 4, 2016, April 19, 2016, May 31, 2016, June 17, 2016, August 2, 2016, August 16, 2016, August 19, 2016, September 28, 2016, and October 6, 2016;

all documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, after the date of the initial filing of the registration statement of which this prospectus is a part and prior to the effectiveness of such registration statement; and  
all documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date of this prospectus and before we stop offering the securities under this prospectus.

We are not, however, incorporating by reference any documents, or portions of documents, which are not deemed filed with the SEC.

You can obtain a copy of any or all of the documents incorporated by reference in this prospectus (other than an exhibit to a document unless that exhibit is specifically incorporated by reference into that document) from the SEC on its website at [www.sec.gov](http://www.sec.gov). You may also obtain these documents from us, free of charge, by visiting our internet website [www.xtantmedical.com](http://www.xtantmedical.com) or by writing to us or calling us at the following address and phone number:

Xtant Medical Holdings, Inc.  
600 Cruiser Lane  
Belgrade, Montana 59714  
Attn: Corporate Secretary  
(406) 388-0480

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## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement under the Securities Act that registers the distribution of the securities offered under this prospectus. The registration statement, including the attached exhibits and schedules and the information incorporated by reference, contains additional relevant information about us and the securities. The rules and regulations of the SEC allow us to omit from this prospectus certain information included in the registration statement. In addition, we file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy this information and the registration statement at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room.

You may also obtain the documents that we file electronically on the SEC's website at [www.sec.gov](http://www.sec.gov) or on our website at [www.xtantmedical.com](http://www.xtantmedical.com). Information contained on our website is not incorporated by reference herein and does not constitute part of this prospectus.

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**XTANT MEDICAL HOLDINGS, INC.**

**PROSPECTUS**

**Subscription Rights to Purchase Up to      Units  
Consisting of an Aggregate of Up to      Shares of  
Common Stock  
and Warrants to Purchase Up to      Shares of Common  
Stock  
at a Subscription Price of \$      Per Unit**

*Dealer-Manager*

# Maxim Group LLC

, 2016

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The following table sets forth all expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of the common stock being registered. All the amounts shown are estimates except the SEC registration fee.

	Amount to be paid
SEC registration fee	\$ 2,267
Printing expenses	\$ 5,000
Accounting fees and expenses	\$ 10,000
Legal fees and expenses	\$ 200,000
Miscellaneous	\$ 3,000
Total	\$ 220,267

**Item 14. Indemnification of Directors and Officers.****Delaware General Corporation Law**

Section 145(a) of the General Corporation Law of the State of Delaware, (the "DGCL"), provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

Section 145(b) of the DGCL states that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as

to which the person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

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Section 145(d) of the DGCL states that any indemnification under subsections (a) and (b) of Section 145 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145. Such determination shall be made with respect to a person who is a director or officer at the time of such determination (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (4) by the stockholders.

Section 145(f) of the DGCL states that the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 145(g) of the DGCL provides that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of Section 145.

Section 145(j) of the DGCL states that the indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## **Certificate of Incorporation**

The Company has adopted provisions in its Amended and Restated Certificate of Incorporation that limit director liability to the maximum extent permitted under the DGCL.

## **Bylaws**

The Company's Amended and Restated Bylaws provide for the indemnification of directors and officers to the fullest extent permitted by applicable law.

## **Indemnification Agreements**

We have entered into agreements with our directors and executive officers that require us to indemnify them against certain liabilities that may arise by reason of their status or service as directors or executive officers to the fullest extent not prohibited by Delaware law.

## **Insurance Policies**

We have purchased an insurance policy that purports to insure our directors and officers against certain liabilities incurred by them in the discharge of their functions as directors and officers.

The foregoing description of our Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws, and Section 145 of the DGCL is only a summary and is qualified in its entirety by the full text of each of the foregoing.

We have been advised that it is the position of the Securities and Exchange Commission that insofar as the foregoing provisions may be invoked to disclaim liability for damages arising under the Securities Act, that such provisions are against public policy as expressed in the Securities Act and are therefore unenforceable.

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## Item 15. Recent Sales of Unregistered Securities

### Aspire Capital Transaction

On April 17, 2015, the Company entered into an Amended and Restated Common Stock Purchase Agreement (the Purchase Agreement ) with Aspire Capital Fund, LLC, an Illinois limited liability company ( Aspire Capital ), which provides that, upon the terms and subject to the conditions and limitations set forth therein, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company s Common Stock (the Purchase Shares ) over the 24-month term of the Purchase Agreement. Pursuant to the terms of the Purchase Agreement, we issued 207,182 shares of our Common Stock (the Initial Purchase Shares ) to Aspire Capital for \$750,000 in aggregate proceeds. We also issued 154,189 shares of our Common Stock to Aspire Capital as a commitment fee (the Commitment Shares ). Subsequent to the issuance of the Initial Purchase Shares and the Commitment Shares, pursuant to the Purchase Agreement, we issued 417,000 shares of our Common Stock to Aspire Capital for \$1,387,439 in aggregate proceeds.

The Purchase Shares may be sold by the Company to Aspire Capital on any business day the Company selects in two ways: (1) through a regular purchase of up to 50,000 shares at a known price based on the market price of our Common Stock prior to the time of each sale, and (2) through a volume-weighted average price purchase of a number of shares up to 30% of the volume traded on the purchase date at a price equal to the lesser of the closing sale price or 97% of the volume-weighted average price for such purchase date.

The issuance of the Initial Purchase Shares, the Commitment Shares and all other shares of Common Stock that have been or may be issued from time to time to Aspire Capital under the Purchase Agreement is exempt from registration under the Securities Act, pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act.

### Other Sales of Unregistered Securities

In addition to the shares we recently issued to Aspire Capital pursuant to the Purchase Agreement, during the past three years, we issued unregistered securities as outlined below, in reverse chronological order. Unless otherwise specifically noted, no commissions were paid in connection with the issuances described below and each issuance was effected pursuant to Section 4(a)(2) of the Securities Act, as a transaction by an issuer not involving any public offering. Share amounts and prices per share have been adjusted to reflect our July 25, 2014 1:10 reverse stock split.

#### Issuances of Capital Stock

- (1) On September 4, 2015, we issued 140,053 shares of our Common Stock to certain directors for aggregate proceeds of \$515,395.
- (2) On July 31, 2015, in connection with our acquisition of X-spine, we issued 4,242,655 shares of our Common Stock at an assumed value of \$4.00 per share to the owners of the issued and outstanding shares of X-spine s capital stock.
- (3) On September 5, 2014, we issued 4,000 shares of our Common Stock to Cameron Beckman in exchange for a release to settle a claim.  
On March 11, 2014, we issued 150,000 shares of our Common Stock to Royalty Opportunities S.à.r.l. as consideration for the Sixth Amendment to our credit agreement with ROS Acquisition Offshore LP ( ROS ) whereby we borrowed an additional \$4 million under our credit agreement.
- (5) On November 25, 2013, we issued 150,000 shares of our Common Stock to Royalty Opportunities S.à.r.l. as consideration for a Waiver and Fifth Amendment to our credit agreement with ROS whereby ROS (i) waived our

failure to achieve the revenue required by Section 8.4.1 of our credit agreement for the quarter ended September 30, 2013 and (ii) agreed to reduce our future revenue requirements.

(6) On June 10, 2013, we issued 850,877 shares of our Common Stock to accredited investors pursuant to Rule 506 of Regulation D at a price of \$5.70 per share, along with warrants to purchase 425,438 shares of our Common Stock at an exercise price of \$7.20 per share, for aggregate gross proceeds of \$4.85 million. William Blair & Company, LLC served as sole placement agent for the transaction and received a commission of approximately \$400,000.

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**Convertible Note Financing**

- (7) On April 14, 2016, we issued in a private placement to the OrbiMed purchasers an aggregate principal amount of approximately \$2.2 million of 6.00% convertible senior promissory notes due 2021.
- (8) On July 31, 2015, we issued 6.00% convertible senior unsecured notes due 2021 ( Notes ) to qualified institutional buyers for an aggregate principal amount of \$65 million, and on August 13, 2015, we issued additional Notes in the aggregate principal amount of \$3 million pursuant to the initial purchaser's partial exercise of its overallotment option.

**Grants of Stock Options**

- (9) On July 1, 2014, we issued an option to purchase 55,000 shares of our Common Stock at \$6.80 per share to our former President, Robert Di Silvio, outside of our Amended and Restated Equity Incentive Plan.
- (10) On August 14, 2013, we issued an option to purchase 200,000 shares of our Common Stock at \$6.00 per share to our Chief Executive Officer, Daniel Goldberger, outside of our Amended and Restated Equity Incentive Plan.

**Item 16. Exhibits and Financial Statement Schedules**

**(a) Exhibits**

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated herein by reference.

**(b) Financial Statement Schedules**

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

**Item 17. Undertakings**

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 14 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or

decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

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- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.  
That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment
- (2) shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of this offering.  
That, for the purpose of determining liability under the Securities Act to any purchaser: if the registrant is subject to Rule 430C (§230.430C of this chapter), each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§230.430A of this chapter), shall be deemed to be part of and included in the
- (4) registration statement as of the date it is first used after effectiveness; provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.  
That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities
- (5) of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (§230.424 of this chapter);
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.  
The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer (c) or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes that:

For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form (1) of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that (2) contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription (e) period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

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Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Belgrade, State of Montana, on October 6, 2016.

**XTANT MEDICAL HOLDINGS, INC.**

/s/ John Gandolfo

By:

Name: John Gandolfo

Title: Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this amendment to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Capacity	Date
<i>/s/ Daniel Goldberger</i>	Chief Executive Officer and Director (Principal Executive Officer)	October 6, 2016
Daniel Goldberger <i>/s/ John P. Gandolfo</i>	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	October 6, 2016
John P. Gandolfo *	Chairman of the Board of Directors	October 6, 2016
Kent Swanson *	Director	October 6, 2016
Michael Lopach *	Director	October 6, 2016
John Deedrick *	Director	October 6, 2016
David Kirschman *	Director	October 6, 2016
Paul R. Buckman *	Director	October 6, 2016
Rudy A. Mazzocchi *	Director	October 6, 2016
Eric B. Timko	Director	October 6, 2016

The undersigned by signing his name hereto signs and executes this Pre-Effective Amendment No. 2 to Registration Statement on Form S-1 pursuant to the Powers of Attorney executed by the above named signatories and previously

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filed with the Commission on August 26, 2016.

/s/ John P. Gandolfo

\*By:

John P. Gandolfo, Attorney-in-Fact

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**Exhibit Index**

Exhibit No.	Description
1.1*	Form of Dealer-Manager Agreement
2.1	Agreement and Plan of Merger, dated as of June 30, 2010, by and among K-Kitz, Inc., KB Merger Sub, Inc. and Bacterin International, Inc. <sup>(1)</sup>
2.2	Common Stock Purchase Agreement dated March 16, 2015 by and between Bacterin and Aspire Capital Fund, LLC <sup>(9)</sup>
2.3	Amended and Restated Common Stock Purchase Agreement dated April 17, 2015 by and between Bacterin and Aspire Capital Fund, LLC <sup>(18)</sup>
2.4	Stock Purchase Agreement dated July 27, 2015 by and among Bacterin, X-spine Systems, Inc. and the sellers named therein <sup>(19)</sup>
3.1	Restated Certificate of Incorporation <sup>(2)</sup>
3.2	Certificate of Amendment to Restated Certificate of Incorporation <sup>(3)</sup>
3.3	Certificate of Amendment to Restated Certificate of Incorporation <sup>(4)</sup>
3.4	Amended and Restated Bylaws <sup>(5)</sup>
4.1	Form of Warrant to Purchase Common Stock <sup>(1)(6)(7)</sup>
4.2	Form of Common Stock Certificate <sup>(26)</sup>
4.3	Registration Rights Agreement dated March 16, 2015 by and between Bacterin and Aspire Capital Fund, LLC <sup>(9)</sup>
4.4	Registration Rights Agreement dated July 31, 2015 by and among Bacterin, Leerink Partners LLC, OrbiMed Royalty Opportunities II, LP and ROS Acquisition Offshore LP <sup>(10)</sup>
4.5	Indenture dated July 31, 2015 by and between Bacterin and Wilmington Trust, National Association <sup>(11)</sup>
4.6	Form of 6.00% Convertible Senior Note due 2021 <sup>(11)</sup>
4.7*	Form of Subscription Rights Statement
4.8	Form of Warrant Certificate for Warrants underlying Units
4.9	Form of Warrant Agreement
4.10	Form of Pre-Funded Warrant
5.1	Opinion of Ballard Spahr LLP
10.1	Form of Indemnification Agreement for officers and directors <sup>(27)</sup>
10.2	Amended and Restated Xtant Medical Equity Incentive Plan <sup>(12)</sup>
10.3	Form of Stock Option Agreement <sup>(13)</sup>
10.4	Form of Amended and Restated Restricted Stock Agreement <sup>(34)</sup>
10.5	Daniel Goldberger Employment Agreement <sup>(14)</sup>
10.6	Daniel Goldberger Stock Option Agreement <sup>(15)</sup>
10.7	Daniel Goldberger Indemnification Agreement <sup>(16)</sup>
10.8	John Gandolfo Employment Agreement <sup>(17)</sup>
10.9	David Kirschman Restricted Stock Agreement <sup>(35)</sup>
10.10	Form of Director Agreement <sup>(39)</sup>
10.11	Amended and Restated Credit Agreement dated July 27, 2015 by and between Bacterin and ROS Acquisition Offshore LP <sup>(20)</sup>
10.12	Termination of Royalty Agreement dated July 27, 2015 by and between Bacterin and ROS Acquisition Offshore LP <sup>(21)</sup>
10.13	

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Securities Purchase Agreement dated July 27, 2015 by and between Bacterin and the investors named therein<sup>(22)</sup>

10.14

Purchase Agreement dated July 27, 2015 by and between Bacterin and Leerink Partners LLC<sup>(23)</sup>

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Exhibit No.	Description
10.15	Distribution Agreement dated January 23, 2014 by and between X-spine Systems, Inc. and Zimmer Spine, Inc., as amended <sup>(24)</sup>
10.16	First Amendment to Amended and Restated Credit Agreement, dated March 31, 2016, by and among Bacterin International, as the Borrower, and Orbimed Royalty Opportunities II, LP and ROS Acquisition Offshore LP, as the Lenders <sup>(28)</sup>
10.17	Securities Purchase Agreement, dated April 14, 2016, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP <sup>(29)</sup>
10.18	Convertible Promissory Note, dated April 14, 2016, made by Xtant Medical Holdings, Inc. in favor of ROS Acquisition Offshore LP <sup>(30)</sup>
10.19	Convertible Promissory Note, dated April 14, 2016, made by Xtant Medical Holdings, Inc. in favor of OrbiMed Royalty Opportunities II, LP <sup>(31)</sup>
10.20	Registration Rights Agreement, dated April 14, 2016, among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP <sup>(32)</sup>
10.21	Amendment to Amended and Restated Credit Agreement, dated as of April 14, 2016, by and among Bacterin International, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP <sup>(33)</sup>
10.22	Fourth Amendment to Amended and Restated Credit Agreement, dated as of July 29, 2016, by and among Bacterin International, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP <sup>(38)</sup>
10.23	Loan and Security Agreement, dated May 25, 2016, among Xtant Medical Holdings, Inc., Bacterin International, Inc., X-spine Systems, Inc., Xtant Medical, Inc. and Silicon Valley Bank <sup>(36)</sup>
10.24	Intellectual Property Security Agreement, dated May 25, 2016, among Xtant Medical Holdings, Inc., Bacterin International, Inc., X-spine Systems, Inc., Xtant Medical, Inc. and Silicon Valley Bank <sup>(37)</sup>
10.25	First Loan Modification Agreement, dated August 12, 2016, among Xtant Medical Holdings, Inc., Bacterin International, Inc., X-spine Systems, Inc., Xtant Medical, Inc. and Silicon Valley Bank <sup>(40)</sup>
10.26	Sixth Amendment to Amended and Restated Credit Agreement, dated as of September 27, 2016, by and among Bacterin International, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP <sup>(41)</sup>
10.27*	Carl O Connell Employment Agreement <sup>(42)</sup>
10.28*	Carl O Connell Stock Option Agreement <sup>(43)</sup>
21.1	Subsidiaries of the Registrant <sup>(25)</sup>
23.1*	Consent of Independent Accounting Firm, EKS&H LLLP
23.2	Consent of Ballard Spahr LLP (included in Exhibit 5.1)
24.1*	Power of Attorney
99.1*	Form of Instructions as to Use of Subscription Rights Statements
99.2*	Form of Letter to Stockholders who are Record Holders
99.3*	Form of Letter to Brokers, Dealers, Banks and Other Nominees
99.4*	Form of Broker Letter to Clients Who are Beneficial Holders
99.5*	Form of Beneficial Owner Election Form
99.6*	Form of Nominee Holder Certification
99.7*	Form of Notice of Important Tax Information

\* Indicates a management contract or compensatory plan.  
Previously filed.  
To be filed by amendment.

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- (1) Incorporated herein by reference to the Registrant's Form 8-K filed with the SEC on June 30, 2010.
  - (2) Incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-Q filed with the SEC on November 14, 2011.
  - (3) Incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed with the SEC on July 25, 2014.
  - (4) Incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed with the SEC on August 3, 2015.
  - (5) Incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K filed with the SEC on October 1, 2015.
  - (6) Incorporated by reference to Exhibit 4.1 to the Registrant's Form 8-K filed with the SEC on July 31, 2014.
  - (7) Incorporated by reference to Exhibit 4.1 to the Registrant's Form 8-K filed with the SEC on June 5, 2013.
  - (8) Incorporated by reference to the Registrant's Form 10-K filed with the SEC on March 18, 2015.
  - (9) Incorporated by reference to the Registrant's Form 8-K filed with the SEC on March 17, 2015.
  - (10) Incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K filed with the SEC on August 3, 2015.
  - (11) Incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on August 3, 2015.
  - (12) Incorporated by reference to Exhibit 10.8 to the Registrant's Form 10-Q filed with the SEC on November 16, 2015.
  - (13) Incorporated by reference to Exhibit 10.23 to the Registrant's Form 10-Q filed with the SEC on May 4, 2012.
  - (14) Incorporated by reference to Exhibit 10.25 to the Registrant's Form 8-K filed with the SEC on August 15, 2013.
  - (15) Incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-8 filed with the SEC on September 19, 2013.
  - (16) Incorporated by reference to Exhibit 10.26 to the Registrant's Form 10-Q filed with the SEC on November 14, 2013.
  - (17) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on July 29, 2014.
  - (18) Incorporated by reference to Exhibit 10.23 to the Registrant's Registration Statement on Form S-1 filed with the SEC on April 17, 2015.
  - (19) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on July 28, 2015.
  - (20) Incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on July 28, 2015.
  - (21) Incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K filed with the SEC on July 28, 2015.
  - (22) Incorporated by reference to Exhibit 10.4 to the Registrant's Form 8-K filed with the SEC on July 28, 2015.
  - (23) Incorporated by reference to Exhibit 10.5 to the Registrant's Form 8-K filed with the SEC on July 28, 2015.
  - (24) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 3, 2015.
  - (25) Incorporated by reference to Exhibit 21.1 to the Registrant's Registration Statement on Form S-1/A filed with the SEC on August 25, 2015.
  - (26) Incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form S-1 filed with the SEC on December 21, 2015.
  - (27) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-K filed with the SEC on March 18, 2015.
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- (28) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on April 1, 2016.
  - (29) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on April 19, 2016.
  - (30) Incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on April 19, 2016.
  - (31) Incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K filed with the SEC on April 19, 2016.
  - (32) Incorporated by reference to Exhibit 10.4 to the Registrant's Form 8-K filed with the SEC on April 19, 2016.
  - (33) Incorporated by reference to Exhibit 10.5 to the Registrant's Form 8-K filed with the SEC on April 19, 2016.
  - (34) Incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-K filed with the SEC on March 24, 2016.
  - (35) Incorporated by reference to Exhibit 10.10 to the Registrant's Form 10-K filed with the SEC on March 24, 2016.
  - (36) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on May 31, 2016.
  - (37) Incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on May 31, 2016.
  - (38) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 2, 2016.
  - (39) Incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-Q filed with the SEC on August 10, 2016.
  - (40) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 16, 2016.
  - (41) Incorporated herein by reference to the Registrant's Form 8-K filed with the SEC on September 28, 2016.
  - (42) Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on October 6, 2016.
  - (43) Incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on October 6, 2016.
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