NUVASIVE INC
Form 10-Q
April 25, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2017

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission File Number: 000-50744

NUVASIVE, INC.

(Exact name of registrant as specified in its charter)

Delaware	33-0768598
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

7475 Lusk Boulevard

San Diego, CA 92121

(Address of principal executive offices)

(858) 909-1800

(Registrant's telephone number, including area code)

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 than 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 website, 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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer		Accelerated filer
Non-accelerated filer	(Do not check if a small reporting company)	Small 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 April 19, 2017 there were 50,662,754 shares of the registrant's common stock (par value $0.001 per share) outstanding.

NuVasive, Inc.

Quarterly Report on Form 10-Q

March 31, 2017

Table of Contents

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NUVASIVE, INC.

CONSOLIDATED BALANCE SHEETS

(in thousands, except par values and share amounts)

	March 31, 2017	December 31, 2016
ASSETS	(Unaudited)	
Current assets:		
Cash and cash equivalents	$ 134,008	$ 153,643
Accounts receivable, net of allowances of $8,086 and $8,912, respectively	172,103	171,595
Inventory, net	223,075	208,249
Prepaid income taxes	21,161	31,926
Prepaid expenses and other current assets	12,921	10,030
Total current assets	563,268	575,443
Property and equipment, net	203,677	181,524
Intangible assets, net	279,603	291,143
Goodwill	486,342	485,685
Deferred tax assets	5,977	5,810
Restricted cash and investments	7,547	7,405
Other assets	23,721	23,794
Total assets	$ 1,570,135	$ 1,570,804
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable and accrued liabilities	$ 82,467	$ 77,585
Contingent consideration liabilities	48,576	49,742
Accrued payroll and related expenses	38,651	51,000
Income tax liabilities	2,130	2,469
Senior convertible notes	62,486	61,701
Total current liabilities	234,310	242,497
Long-term senior convertible notes	568,939	564,412
Deferred and income tax liabilities, non-current	20,529	18,607
Other long-term liabilities	47,629	44,764
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized, none outstanding	—	—
Common stock, $0.001 par value; 120,000,000 shares authorized at March 31, 2017 and December 31, 2016, 55,623,735 and 55,184,660 issued and outstanding at March 31, 2017 and December 31, 2016, respectively	56	55
Additional paid-in capital	1,020,672	1,010,238

Accumulated other comprehensive loss	(8,774)	(10,631)
Accumulated deficit	(65,738)	(66,859)
Treasury stock at cost; 4,963,014 shares and 4,758,828 shares at March 31, 2017 and December 31, 2016, respectively	(252,633)	(237,867)
Total NuVasive, Inc. stockholders' equity	693,583	694,936
Non-controlling interest	5,145	5,588
Total equity	698,728	700,524
Total liabilities and equity	$ 1,570,135	$ 1,570,804

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

	Three Months Ended March 31,	
(unaudited)	2017	2016
Revenue	249,864	$215,104
Cost of goods sold (excluding below amortization of intangible assets)	61,613	54,226
Gross profit	188,251	160,878
Operating expenses:		
Sales, marketing and administrative	140,502	124,838
Research and development	12,414	10,629
Amortization of intangible assets	12,061	7,871
Business transition costs	55	5,307
Total operating expenses	165,032	148,645
Interest and other expense, net:		
Interest income	137	328
Interest expense	(9,799)	(8,472)
Loss on repurchases of convertible notes	—	(17,444)
Other income, net	258	50
Total interest and other expense, net	(9,404)	(25,538)
Income (loss) before income taxes	13,815	(13,305)
Income tax (expense) benefit	(1,490)	9,480
Consolidated net income (loss)	$12,325	$(3,825)
Add back net loss attributable to non-controlling interest	$(443)	$(457)
Net income (loss) attributable to NuVasive, Inc.	$12,768	$(3,368)
Net income (loss) per share attributable to NuVasive, Inc.:		
Basic	$0.25	$(0.07)
Diluted	$0.22	$(0.07)
Weighted average shares outstanding:		
Basic	50,566	49,617
Diluted	57,786	49,617

See accompanying Notes to Unaudited Consolidated Financial Statements.

4

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(in thousands)

	Three Months Ended March 31,	
(unaudited)	2017	2016
Consolidated net income (loss)	$12,325	$(3,825)
Other comprehensive income:		
Unrealized (loss) gain on marketable securities, net of tax	(2)	348
Translation adjustments, net of tax	1,859	2,685
Other comprehensive income	1,857	3,033
Total consolidated comprehensive income (loss)	14,182	(792)
Net loss attributable to non-controlling interest	(443)	(457)
Comprehensive income (loss) attributable to NuVasive, Inc.	$14,625	$(335)

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)	Three Months Ended March 31, 2017			2016		
Operating activities:						
Consolidated net income (loss)	$	12,325		$	(3,825	)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:						
Depreciation and amortization		29,510			21,224	
Loss on repurchases of convertible notes		—			17,444	
Amortization of non-cash interest		5,369			5,112	
Stock-based compensation		7,017			4,492	
Reserves on current assets		(2,153	)		4,162	
Other non-cash adjustments		3,013			3,491	
Deferred income taxes		1,645			(2,630	)
Changes in operating assets and liabilities, net of effects from acquisitions:						
Accounts receivable		924			6,939	
Inventory		(13,630	)		(9,449	)
Prepaid expenses and other current assets		(2,756	)		1,303	
Accounts payable and accrued liabilities		593			10,021	
Accrued payroll and related expenses		(12,531	)		(9,219	)
Income taxes		(1,298	)		8,327	
Net cash provided by operating activities		28,028			57,392	
Investing activities:						

Acquisition of Ellipse Technologies, net of cash acquired	—	(380,674)
Other acquisitions and investments	(2,500)	(8,079)
Purchases of intangible assets	(1,249)	(1,027)
Purchases of property and equipment	(34,545)	(18,279)
Purchases of marketable securities	—	(36,096)
Proceeds from sales of marketable securities	—	253,435
Net cash used in investing activities	(38,294)	(190,720)
Financing activities:		
Proceeds from the issuance of common stock	410	444
Purchase of treasury stock	(10,356)	(12,599)
Proceeds from issuance of convertible debt, net of issuance costs	—	634,140
Proceeds from sale of warrants	—	44,850
Purchase of convertible note hedge	—	(111,150)
Repurchases of convertible notes	—	(343,835)
Proceeds from revolving line of credit	—	50,000
Repayments on revolving line of credit	—	(50,000)
Other financing activities	(181)	(1,442)
Net cash (used in) provided by financing activities	(10,127)	210,408
Effect of exchange rate changes on cash	758	686
(Decrease) increase in cash and cash equivalents	(19,635)	77,766
Cash and cash equivalents at beginning of period	153,643	192,339
Cash and cash equivalents at end of period	$ 134,008	$ 270,105

See accompanying Notes to Unaudited Consolidated Financial Statements.

Table of Contents

NUVASIVE, INC.

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business and Basis of Presentation

Description of Business

NuVasive, Inc. (the "Company" or "NuVasive") was incorporated in Delaware on July 21, 1997, and began commercializing its products in 2001. The Company's principal product offering includes a minimally-disruptive surgical platform called Maximum Access Surgery, or MAS. The MAS platform combines three categories of solutions that collectively minimize soft tissue disruption during spine fusion surgery, provide maximum visualization and are designed to enable safe and reproducible outcomes for the surgeon and the patient. The platform includes the Company's proprietary software-driven nerve detection and avoidance systems and Intraoperative Monitoring ("IOM") services and support; MaXcess, an integrated split-blade retractor system; and a wide variety of specialized implants and biologics. In May 2015, the Company launched Integrated Global Alignment ("iGA"); in which products and computer assisted technology under the MAS platform help achieve more precise spinal alignment. The individual components of the MAS platform, and many of the Company's products, can also be used in open or traditional spine surgery. The Company continues to focus research and development efforts to expand its MAS product platform and advance the applications of its unique technology into procedurally-integrated surgical solutions. The Company dedicates significant resources toward training spine surgeons on its unique technology and products.

The Company's primary business model is to loan its MAS systems to surgeons and hospitals that purchase implants, biologics and disposables for use in individual procedures. In addition, for larger customers, the Company's proprietary nerve monitoring systems, MaXcess and surgical instrument sets are placed with hospitals for an extended period at no up-front cost to them. The Company also offers a range of bone allograft in patented saline packaging, disposables and spine implants, which include its branded CoRoent products and fixation devices such as rods, plates and screws. The Company sells MAS instrument sets, MaXcess and nerve monitoring systems to hospitals, however, such sales are immaterial to the Company's results of operations.

The Company also designs and sells expandable growing rod implant systems that can be non-invasively lengthened following implantation with precise, incremental adjustments via an external remote controller using magnetic technology called MAGnetic External Control, or MAGEC, which allows for the minimally invasive treatment of early-onset and adolescent scoliosis. This technology is also the basis for the Company's PRECICE limb lengthening system, which allows for the correction of long bone limb length discrepancy, as well as enhanced bone healing in patients that have experienced traumatic injury.

The Company intends to continue development on a wide variety of projects intended to broaden surgical applications for greater procedural integration of its MAS techniques and additional applications of the MAGEC technology. Such applications include tumor, trauma, and deformity, as well as increased fixation options, sagittal alignment products, imaging and navigation. The Company also expects to continue expanding its other product and services offerings as it executes on its strategy to offer customers an end-to-end, integrated procedural solution for spine surgery. The Company intends to continue to pursue business and technology acquisition targets and strategic partnerships.

Basis of Presentation and Principles of Consolidation

The accompanying Unaudited Consolidated Financial Statements include the accounts of the Company and its majority-owned or controlled subsidiaries, collectively referred to as either NuVasive or the Company. The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. When there is a portion of equity in an acquired subsidiary not attributable, directly or indirectly, to the respective parent entity, the Company records the fair value of the non-controlling interest at the acquisition date and classifies the amounts attributable to non-controlling interest separately in equity in the Company's Consolidated Financial Statements. Any subsequent changes in a parent's ownership interest while the parent retains its controlling financial interest in its subsidiary are accounted for as equity transactions. All significant intercompany balances and transactions have been eliminated in consolidation.

The accompanying Unaudited Consolidated Financial Statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual Consolidated Financial Statements prepared in accordance with generally accepted accounting principles in the United States (“GAAP”). Operating results for the three months ended March 31, 2017 are not necessarily indicative of the results that may be expected for any other interim period or for the full year. These Unaudited Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements and notes thereto for the year ended December 31, 2016 included in the Company’s Annual Report on Form 10-K filed with the SEC. In the opinion of management, the Unaudited Consolidated Financial Statements include all adjustments that are of a normal and recurring nature that are necessary for the fair presentation of the Company’s financial position and of the results of operations and cash flows for the periods presented.

Table of Contents

The Company has reclassified certain operating expenses into business transition costs. The reclassification had no impact on previously reported results of operations or financial position. Refer to "Recently Adopted Accounting Standards" below for information regarding historical financial information adjusted for a change in accounting policy.

Use of Estimates

To prepare financial statements in conformity with GAAP, management must make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Recent Accounting Pronouncements Not Yet Adopted

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"), an updated standard on revenue recognition. ASU 2014-09 provides enhancements to the quality and consistency of how revenue is reported by companies while also improving comparability in the financial statements of companies reporting using International Financial Reporting Standards or GAAP. The main purpose of the new standard is for companies to recognize revenue to depict the transfer of goods or services to customers in amounts that reflect the consideration to which a company expects to be entitled in exchange for those goods or services. The new standard also will result in enhanced disclosures about revenue, provide guidance for transactions that were not previously addressed comprehensively and improve guidance for multiple-element arrangements. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers: Deferral of the Effective Date, which deferred the effective date of the new revenue standard for periods beginning after December 15, 2016 to December 15, 2017, with early adoption permitted but not earlier than the original effective date. Accordingly, the updated standard is effective for the Company in the first quarter of fiscal 2018. The Company performed a preliminary assessment of the impact of ASU 2014-09 on the Consolidated Financial Statements, and considered all items outlined in the standard. In assessing the impact, the Company has outlined all revenue generating activities, mapped those activities to deliverables and traced those deliverables to the standard. The Company is now assessing what impact the change in standard will have on those deliverables. The Company will continue to evaluate the future impact and method of adoption of ASU 2014-09 and related amendments on the Consolidated Financial Statements and related disclosures throughout 2017. The Company believes the adoption will modify the way the Company analyzes contracts. The Company will adopt the new standard beginning January 2018.

In January 2016, the FASB issued Accounting Standards Update No. 2016-01, Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities ("ASU 2016-01"), which requires that (i) all equity investments, other than equity-method investments, in unconsolidated entities generally be measured at fair value through earnings and (ii) when the fair value option has been elected for financial liabilities, changes in fair value due to instrument-specific credit risk will be recognized separately in other comprehensive income. Additionally, the ASU 2016-01 changes the disclosure requirements for financial instruments. The new standard will be effective for the Company starting in the first quarter of fiscal 2019. Early adoption is permitted for certain provisions. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt certain provisions.

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, Leases, which outlines a comprehensive lease accounting model and supersedes the current lease guidance. The new accounting standard requires lessees to recognize lease liabilities and corresponding right-of-use assets for all leases with lease terms of greater than twelve months. It also changes the definition of a lease and expands the disclosure requirements of lease arrangements. The new accounting standard must be adopted using the modified retrospective approach and will be effective for the Company starting in the first quarter of fiscal 2019. Early adoption is permitted. The Company believes the adoption will modify its analyses and disclosures of lease agreements considering operating leases are a significant portion of the Company’s total lease commitments. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In June 2016, the FASB issued Accounting Standards Update No. 2016-13, Financial Instruments – Credit Losses, which changes the accounting for recognizing impairments of financial assets. Under the new guidance, credit losses for certain types of financial instruments will be estimated based on expected losses. The new guidance also modifies the impairment models for available-for-sale debt securities and for purchased financial assets with credit deterioration since their origination. The new guidance will be effective for the Company starting in the first quarter of fiscal 2021. Early adoption is permitted starting in the first quarter of fiscal 2020. The Company believes the adoption will modify the way the Company analyzes financial instruments, but it does not anticipate a material impact on results of operations. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

Table of Contents

In August 2016, the FASB issued Accounting Standards Update No. 2016-15, Classification of Certain Cash Receipts and Cash Payments ("ASU 2016-15"), which eliminates the diversity in practice related to the classification of certain cash receipts and payments for debt prepayment or extinguishment costs, the maturing of a zero coupon bond, the settlement of contingent liabilities arising from a business combination, proceeds from insurance settlements, distributions from certain equity method investees and beneficial interests obtained in a financial asset securitization. ASU 2016-15 designates the appropriate cash flow classification, including requirements to allocate certain components of these cash receipts and payments among operating, investing and financing activities. The retrospective transition method, requiring adjustment to all comparative periods presented, is required unless it is impracticable for some of the amendments, in which case those amendments would be prospectively as of the earliest date practicable. This update is effective for annual periods beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted, including adoption in an interim period. The Company does not expect the adoption to have any significant impact on its Consolidated Financial Statements.

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, Restricted Cash, which requires entities to show the changes in the total of cash, cash equivalents, restricted cash and restricted cash equivalents in the statement of cash flows. As a result, entities will no longer present transfers between cash and cash equivalents and restricted cash and restricted cash equivalents in the statement of cash flows. The amendments in this update should be applied using a retrospective transition method to each period presented. This update is effective for annual periods beginning after December 15, 2017, and interim periods within those fiscal years with early adoption permitted, including adoption in an interim period. The Company does not expect the adoption to have any significant impact on its Consolidated Financial Statements.

In January 2017, the FASB issued Accounting Standards Update No. 2017-01, Clarifying the Definition of a Business, which clarifies and provides a more robust framework to use in determining when a set of assets and activities is a business. The amendments in this update should be applied prospectively on or after the effective date. This update is effective for annual periods beginning after December 15, 2017, and interim periods within those periods. Early adoption is permitted for acquisition or deconsolidation transactions occurring before the issuance date or effective date and only when the transactions have not been reported in issued or made available for issuance financial statements. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In January 2017, the FASB issued Accounting Standards Update No. 2017-04, Intangibles – Goodwill and Other, which eliminates the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. Instead, entities will record an impairment charge based on the excess of a reporting unit's carrying amount over its fair value. The standard has tiered effective dates, starting in 2020 for calendar-year public business entities that meet the definition of an SEC filer. Early adoption is permitted for annual and interim goodwill impairment testing dates after January 1, 2017. The Company is in the process of determining the effects the adoption will have on its Consolidated Financial Statements as well as whether to early adopt the new guidance.

In February 2017, the FASB issued Accounting Standards Update No. 2017-05, Other Income – Gains and Losses from the Derecognition of Nonfinancial Assets, which clarifies the scope of asset derecognition and adds guidance for partial sales and nonfinancial assets. An entity is required to apply the amendments in this update at the same time that it applies the amendments in ASU 2014-09. For public entities, this update is effective for annual periods beginning after December 15, 2017, and interim periods within those periods. Public entities may apply the guidance earlier but only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. The Company will adopt the new standard beginning January 2018.

Recently Adopted Accounting Standards

In March 2016, the FASB issued Accounting Standards Update 2016-09, Improvements to Employee Share-Based Payment Accounting (“ASU 2016-09”), which simplifies the accounting for employee share-based payments. The new standard requires the immediate recognition of all excess tax benefits and deficiencies in the income statement, and requires classification of excess tax benefits as an operating activity as opposed to a financing activity in the statements of cash flows. The provisions of the new standard are effective for the Company beginning January 1, 2017, with early adoption permitted. The Company elected to early adopt ASU 2016-09 in the second quarter 2016, which requires any adjustments to be recorded as of the beginning of fiscal 2016. As a result, the Company recorded a modified retrospective adjustment of $16.6 million to deferred tax assets and accumulated deficit as of January 1, 2016, and a retrospective adjustment to the previously reported first quarter 2016 provision for income taxes of approximately $5.5 million for the recognition of excess tax benefits in the provision for income taxes rather than additional paid-in capital. This resulted in a decrease in net loss per share of $0.11 for the three months ended March 31, 2016. The Company elected to apply the change in classification for excess tax benefits in the statement of cash flows on a prospective basis, and elected to continue estimating stock-based compensation award forfeitures in determining the amount of compensation cost to be recognized each period.

Table of Contents

In October 2016, the FASB issued Accounting Standards Update No. 2016-16, Intra-Entity Transfers of Assets Other Than Inventory (“ASU 2016-16”), which aims to improve the accounting for the income tax consequences of intra-entity transfers of assets other than inventory. This amendment requires an entity to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. The amendments in this update should be applied on a modified retrospective basis through a cumulative-effect adjustment directly to retained earnings as of the beginning of the period of adoption. This update is effective for annual periods beginning after December 15, 2017, and interim periods within those fiscal years with early adoption permitted, including adoption in an interim period. The Company elected to early adopt ASU 2016-16 in the first quarter 2017, which requires any adjustments to be recorded as of the beginning of fiscal 2017. As a result, the Company recorded a modified retrospective adjustment of $11.6 million to deferred tax assets and accumulated deficit as of January 1, 2017. The early adoption resulted in a decrease of $0.6 million in income tax expense that would have amortized out of prepaid income taxes in the first quarter 2017 and an increase in both basic and diluted earnings per share of $0.01 for the three months ended March 31, 2017.

In January 2017, the FASB issued Accounting Standards Update No. 2017-03, Accounting Changes and Error Corrections and Investments – Equity Method and Joint Ventures (“ASU 2017-03”), which will require registrants to disclose the effect that recently issued accounting standards will have on their financial statements when adopted in a future period. This update is effective immediately. The Company is in the process of determining the effects of recently issued accounting standards on its Consolidated Financial Statements. The Company will revise its disclosures for the standards not yet adopted as required by ASU 2017-03 as the Company progresses through its impact assessments.

Revenue Recognition

In accordance with the SEC guidance, the Company recognizes revenue when all four of the following criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectability is reasonably assured. Specifically, revenue from the sale of implants, biologics and disposables is generally recognized upon a purchase order from the hospital or acknowledgment from the hospital indicating product use or implantation, or upon shipment to third-party customers who immediately accept title. Revenue from IOM services is recognized in the period the service is performed for the amount of payment expected to be received. Revenue from the sale of instrument sets and nerve monitoring systems is recognized upon receipt of a purchase order and the subsequent shipment to customers who immediately accept title.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income (loss) includes unrealized gains or losses, net of tax, on the Company’s marketable securities and foreign currency translation adjustments. The cumulative translation adjustments included in accumulated other comprehensive income (loss) were $8.8 million and $10.6 million at March 31, 2017 and December 31, 2016, respectively.

Product Shipment Costs

Product shipment costs, included in sales, marketing and administrative expense in the accompanying Consolidated Statements of Operations, were $5.9 million and $6.2 million for the three months ended March 31, 2017 and March

31, 2016, respectively. The majority of the Company's shipping costs are related to the loaning of instrument sets, which are not typically sold as part of the Company's core sales offering. Amounts billed to customers for shipping and handling of products are reflected in revenues and are not significant for any period presented.

Business Transition Costs

The Company incurs certain costs related to acquisition, integration and business transition activities which include severance, relocation, consulting, leasehold exit costs, third party merger and acquisitions costs and other costs directly associated with such activities. During the three months ended March 31, 2017, the business transition costs were immaterial to the results of operations. During the three months ended March 31, 2016, the Company incurred $5.3 million of such costs primarily related to acquisition and integration activities.

Table of Contents

2. Net Income (Loss) Per Share

The following table sets forth the computation of basic and diluted income (loss) per share attributable to the Company:

	Three Months Ended March 31,	
(in thousands, except per share data)	2017	2016
Numerator:		
Net income (loss) attributable to NuVasive, Inc.	$12,768	$(3,368)
Denominator for basic and diluted net income (loss) per share:		
Weighted average common shares outstanding for basic	50,566	49,617
Dilutive potential common stock outstanding:		
Stock options and employee stock purchase plan	221	—
Restricted stock units	1,416	—
Warrants	3,046	—
Senior Convertible Notes	2,537	—
Weighted average common shares outstanding for diluted	57,786	49,617
Basic net income (loss) per share attributable to NuVasive, Inc.	$0.25	$(0.07)
Diluted net income (loss) per share attributable to NuVasive, Inc.	$0.22	$(0.07)

The following weighted-average outstanding common stock equivalents were not included in the calculation of net income (loss) per diluted share because their effects were anti-dilutive:

	Three Months Ended March 31,	
(in thousands)	2017	2016
Stock options, employee stock purchase plan, and restricted stock units	102	3,647
Warrants	10,865	20,418
Senior Convertible Notes	—	19,336
Total	10,967	43,401

As discussed in Note 1 to the Unaudited Consolidated Financial Statements, the Company elected to early adopt ASU 2016-09 in the second quarter 2016, which requires any adjustments to be recorded as of the beginning of the fiscal year. The retrospective adjustments to the Company's financial results for the three months ended March 31, 2016 included a decrease in net loss attributable to the Company of $5.5 million, which resulted in a decrease in net loss per share of $0.11. The financial information in the table above for the three months ended March 31, 2016 reflects this retrospective adjustment to the Company's financial results for the three months ended March 31, 2016.

3. Financial Instruments and Fair Value Measurements

As of March 31, 2017, the Company held investments in securities classified as cash equivalents. During the periods presented, the Company did not hold any investments that were in a significant unrealized loss position and no impairment charges were recorded. Realized gains and losses and interest income related to marketable securities were immaterial during all periods presented.

Foreign Currency and Derivative Financial Instruments

The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations.

Some of the Company's reporting entities conduct a portion of their business in currencies other than the entity's functional currency. These transactions give rise to receivables and payables that are denominated in currencies other than the entity's functional currency. The value of these receivables and payables is subject to changes in currency exchange rates from the point at which the transactions are originated until the settlement in cash. Both realized and unrealized gains and losses in the value of these receivables and payables are included in the determination of net income. Net currency exchange gains, which include gains and losses from derivative instruments, were $0.2 million and $0.1 million for the three months ended March 31, 2017 and March 31, 2016, respectively, and are included in other income (expense) in the Consolidated Statements of Operations.

Table of Contents

To manage foreign currency exposure risks, the Company uses derivatives for activities in entities that have short-term intercompany receivables and payables denominated in a currency other than the entity's functional currency. The fair value is based on a quoted market price (Level 1). As of March 31, 2017 and December 31, 2016 a notional principal amount of $16.9 million and $15.1 million, respectively, in foreign currency forward contracts was outstanding to hedge currency risk relative to the Company's foreign receivables and payables. Derivative instrument net losses on the Company's forward exchange contracts were $0.4 million and $0.2 million for the three months ended March 31, 2017 and March 31, 2016, respectively, and are included in other income (expense) in the Consolidated Statements of Operations. The fair value of the forward contract exchange derivative instrument asset (liability) was de minimis as of March 31, 2017 and $(0.2) million as of December 31, 2016. The derivative instruments are recorded in other current assets or other current liabilities in the Consolidated Balance Sheets commensurate with the nature of the instrument at period end.

Fair Value Measurements

The Company measures certain assets and liabilities in accordance with authoritative guidance which requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.

Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value measurement hierarchy during the three months ended March 31, 2017.

The fair values of the Company's assets and liabilities, including cash equivalents, marketable securities, restricted investments, derivatives, and contingent consideration liabilities are measured at fair value on a recurring basis, and are determined under the fair value categories as follows:

(in thousands)	Total	Quoted Price in Active Market (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
March 31, 2017:				
Cash equivalents:				
Money market funds	$61,985	$ 61,985	$ —	$ —
Corporate notes	2,899	—	2,899	—
Commercial paper	11,985	—	11,985	—
Securities of government-sponsored entities	3,026	—	3,026	—
Total cash equivalents	$79,895	$ 61,985	$ 17,910	$ —

December 31, 2016:				
Cash equivalents:				
Money market funds	$72,866	$ 72,866	$ —	$ —
Corporate notes	4,551	—	4,551	—
Commercial paper	21,471	—	21,471	—
Securities of government-sponsored entities	5,995	—	5,995	—
Total cash equivalents	$104,883	$ 72,866	$ 32,017	$ —

The fair value of certain financial instruments was measured and classified within Level 1 of the fair value hierarchy based on quoted prices. Certain financial instruments classified within Level 2 of the fair value hierarchy include the types of instruments that trade in markets that are not considered to be active, but are valued based on quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency.

The carrying amounts of certain financial instruments such as cash equivalents, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses, and other current liabilities as of March 31, 2017 and December 31, 2016 approximate their related fair values due to the short-term maturities of these instruments.

Table of Contents

The fair value, based on a quoted market price (Level 1), of the Company's outstanding Senior Convertible Notes due 2017 at March 31, 2017 and December 31, 2016 were approximately $112.1 million and $102.7 million, respectively. The fair value, based on a quoted market price (Level 1), of the Company's outstanding Senior Convertible Notes due 2021 at March 31, 2017 and December 31, 2016 was $888.6 million and $827.6 million, respectively. See Note 6 to the Unaudited Consolidated Financial Statements for further discussion on the carrying value of the Company's Senior Convertible Notes.

Contingent Consideration Liabilities

The fair value of contingent consideration liabilities assumed in business combinations is recorded as part of the purchase price consideration of the acquisition, and is determined using a discounted cash flow model or probability simulation model. The significant inputs of such models are not observable in the market, such as certain financial metric growth rates, volatility rates, projections associated with the applicable milestone, the interest rate, and the related probabilities and payment structure in the contingent consideration arrangement. Fair value adjustments to contingent consideration liabilities are recorded through operating expenses in the Consolidated Statement of Operations. Contingent consideration arrangements assumed by an asset purchase will be measured and accrued when such contingency is resolved.

Contingent consideration liabilities were $66.2 million and $67.5 million as of March 31, 2017 and December 31, 2016, respectively, and were recorded in the Consolidated Balance Sheet commensurate with the respective payment terms. In April 2017, the Company paid the $30.0 million outstanding milestone obligation associated with the Ellipse Technologies acquisition. See Note 5 to the Unaudited Consolidated Financial Statements for further discussion on contingent consideration liabilities assumed in business combinations.

The following table sets forth the changes in the estimated fair value of the Company's liabilities measured on a recurring basis using significant unobservable inputs (Level 3):

	Three Months Ended March 31,	
(in thousands)	2017	2016
Fair value measurement at beginning of period	$67,501	$—
Contingent consideration liability recorded upon acquisition	—	21,439
Change in fair value measurement	(1,352)	—
Changes resulting from foreign currency fluctuations	12	—
Fair value measurement at end of period	$66,161	$21,439

Non-financial assets and liabilities measured on a nonrecurring basis

Certain non-financial assets and liabilities are measured at fair value, usually with Level 3 inputs including the discounted cash flow method or cost method, on a nonrecurring basis in accordance with authoritative guidance. These include items such as non-financial assets and liabilities initially measured at fair value in a business combination and non-financial long-lived assets measured at fair value for an impairment assessment. In general, non-financial assets, including goodwill, intangible assets and property and equipment, are measured at fair value when there is an indication of impairment and are recorded at fair value only when an impairment is recognized. The carrying values of the Company's capital lease obligations approximated their estimated fair value as of March 31, 2017 and December 31, 2016.

4. Goodwill and Intangible Assets

Goodwill and intangible assets consisted of the following:

(in thousands, except years) March 31, 2017:	Weighted-Average Amortization Period (in years)	Gross Amount	Accumulated Amortization	Intangible Assets, net
Intangible assets subject to amortization:				
Developed technology	8	$247,148	$ (74,592)	$172,556
Manufacturing know-how and trade secrets	12	21,084	(13,997)	7,087
Trade name and trademarks	9	25,200	(8,251)	16,949
Customer relationships	9	117,212	(34,201)	83,011
Total intangible assets subject to amortization	9	$410,644	$ (131,041)	$279,603
Intangible assets not subject to amortization:				
Goodwill				$486,342
Total goodwill and intangible assets, net				$765,945

13

Table of Contents

December 31, 2016:	Weighted-Average Amortization Period (in years)	Gross Amount	Accumulated Amortization	Intangible Assets, net
Intangible assets subject to amortization:				
Developed technology	8	$247,148	$ (66,833)	$180,315
Manufacturing know-how and trade secrets	13	20,572	(13,604)	6,968
Trade name and trademarks	9	25,200	(7,478)	17,722
Customer relationships	9	117,018	(30,880)	86,138
Total intangible assets subject to amortization	9	$409,938	$ (118,795)	$291,143
Intangible assets not subject to amortization:				
Goodwill				$485,685
Total goodwill and intangible assets, net				$776,828

The following table summarizes the changes in the carrying value of the Company's goodwill:

(in thousands)
December 31, 2016