

DYNAVAX TECHNOLOGIES CORP

Form 424B5

October 30, 2009

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Registration File No.: 333-139664

**PROSPECTUS SUPPLEMENT**

(To Prospectus dated September 17, 2009)

**\$12,200,000**

**Common Stock**

On August 17, 2009, we entered into an equity distribution agreement with Wedbush Morgan Securities, Inc. ( Wedbush ) relating to shares of our common stock, par value \$0.001 per share.

Under the equity distribution agreement, we may offer and sell shares of our common stock having an aggregate offering price of up to \$15 million from time to time through Wedbush as our sales agent. During the period from August 17, 2009 through October 26, 2009, we sold through Wedbush as our sales agent an aggregate of 1,281,100 shares of common stock for net proceeds of \$2.3 million after deducting commissions paid to Wedbush and offering expenses. As of October 26, 2009, we could offer and sell shares of our common stock having an aggregate offering price of up to an additional \$12.2 million from time to time through Wedbush under the equity distribution agreement.

Sales of our common stock through Wedbush, if any, will be made by means of ordinary brokers transactions on The NASDAQ Capital Market or otherwise at market prices prevailing at the time of sale, in block transactions, or as otherwise agreed upon by us and Wedbush.

We will pay Wedbush a commission, or allow a discount, as the case may be, in each case equal to 4.0% of the gross sales prices of the shares sold through it as agent under the equity distribution agreement.

Under the equity distribution agreement, we may also sell shares of common stock to Wedbush, as principal for its own account, at a price to be agreed upon at the time of sale.

Our common stock is listed on The NASDAQ Capital Market under the symbol DVAX. On October 26, 2009, the last reported sale price of our common stock was \$1.30 per share. Based on such last reported sale price, as of the date hereof the aggregate market value of our outstanding voting and nonvoting common equity held by non-affiliates as calculated pursuant to General Instruction I.B.6 of Form S-3 was \$52.3 million. As of the date hereof, we have sold securities with an aggregate market value of \$2.8 million pursuant to General Instruction I.B.6 of Form S-3 during the prior 12 calendar month period that ends on and includes the date hereof.

**Investing in our common stock involves a high degree of risk. See Risk Factors beginning on page S-6 of this prospectus supplement and the risk factors contained in our filings with the Securities and Exchange Commission which have been incorporated herein.**

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

## **Wedbush PacGrow Life Sciences**

The date of this prospectus supplement is October 30, 2009.

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No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus supplement or the accompanying prospectus. You must not rely on any unauthorized information or representations. This prospectus supplement and the accompanying prospectus are an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus supplement and the accompanying prospectus is current only as of their respective dates.

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**FORWARD-LOOKING STATEMENTS**

The statements in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference contain forward-looking statements which are subject to a number of risks and uncertainties. All statements that are not historical facts are forward-looking statements, including statements about our business and financing strategies, our future research and development, our preclinical and clinical product development efforts, our intellectual property rights and ability to commercialize our product candidates, the timing of the clinical development of our products, uncertainty regarding our future operating results and our prospects for profitability and all plans, objectives, expectations and intentions. These statements appear in a number of places and can be identified by the use of forward-looking terminology such as may, will, should, expect, plan, anticipate, believe, estimate, predict, future, intend, or certain or their other variations or comparable terminology, or by discussions of strategy.

Our actual results may differ materially from the results expressed or implied by these forward-looking statements because of the risk factors and other factors disclosed in this prospectus and documents incorporated by reference. The risk factors may not be all of the factors that could cause actual results to vary materially from the forward-looking statements. The forward-looking statements made or incorporated in this prospectus relate only to circumstances as of the date on which the statements are made. Readers should not place undue reliance on these forward-looking statements and are cautioned that any such forward-looking statements are not guarantees of future performance. We assume no obligation to update any forward-looking statements.

**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering and certain other matters and may add, update or change information in the accompanying prospectus. The second part is the accompanying prospectus dated September 17, 2009, which provides you with general information about securities we may offer from time to time, some of which may not apply to this offering. Generally, when we refer to this prospectus, we are referring to both parts of this document combined. To the extent there is a conflict between the information contained in this prospectus supplement, on the one hand, and the information contained in the accompanying prospectus, on the other hand, you should rely on the information in this prospectus supplement. These documents contain important information you should consider when making your investment decision. You should rely only on the information provided in this prospectus supplement, the accompanying prospectus or incorporated by reference in this prospectus supplement or the accompanying prospectus. We have not authorized anyone to provide you with any other information.

This prospectus supplement and the accompanying prospectus do not constitute an offer to sell or a solicitation of an offer to buy the shares offered hereby in any jurisdiction where, or to any person to whom, it is unlawful to make such offer or solicitation.

The information contained in the prospectus and the prospectus supplement is accurate only as of the date of the prospectus and the prospectus supplement, regardless of the time of delivery of this prospectus supplement or of any sale of the shares. We further note that the representations, warranties and covenants made by us in any agreement that is filed as an exhibit to any document that is incorporated by reference in the accompanying prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreements, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants were accurate only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

Unless we have indicated otherwise, or the context otherwise requires, references in this prospectus supplement and the accompanying prospectus to Dynavax, we, us and our refer to Dynavax Technologies Corporation.

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**SUMMARY**

*This summary highlights selected information contained elsewhere or incorporated by reference in this prospectus supplement and the accompanying prospectus. This summary may not contain all the information that you should consider before investing in our common stock. You should read the entire prospectus supplement and the accompanying prospectus carefully, including Risk Factors contained in this prospectus supplement and the documents incorporated by reference in the accompanying prospectus, before making an investment decision. This prospectus supplement may add to, update or change information in the accompanying prospectus.*

**Overview**

Dynavax Technologies Corporation ( Dynavax or the Company ), a clinical-stage biopharmaceutical company, discovers and develops novel products to prevent and treat infectious diseases, asthma and inflammatory and autoimmune diseases. The Company's lead product candidate is HEPLISAV™, a Phase 3 investigational adult hepatitis B vaccine designed to provide more rapid and increased protection with fewer doses than current licensed vaccines.

Our pipeline of product candidates includes: HEPLISAV; clinical-stage programs for hepatitis C and hepatitis B therapies; and preclinical programs including those partnered with AstraZeneca and GlaxoSmithKline ( GSK ) and our Universal Flu vaccine. We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing therapies to prevent or treat infectious diseases, asthma and inflammatory and autoimmune diseases.

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**THE OFFERING**

Common stock offered by us	Shares having an aggregate offering price of up to \$12,200,000.
Use of proceeds	We intend to use the net proceeds from this offering for general corporate purposes, including clinical trials, research and development expenses and general and administrative expenses. See Use of Proceeds.
NASDAQ Capital Market Symbol	DVAX
Risk Factors	See Risk Factors beginning on page S-6 as well as the other information included in or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should consider carefully before making an investment decision.

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**RISK FACTORS**

*An investment in our common stock offered through this prospectus supplement and the accompanying prospectus involves risks. You should carefully consider the specific risks relating to this offering set forth below and relating to our business set forth under the caption "Risk Factors" in our filings with the Securities and Exchange Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, incorporated by reference, before making an investment decision. The risks and uncertainties we have described are not the only ones facing our company. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also affect our business operations.*

**Risks Related to our Business**

**We have incurred substantial losses since inception and do not have any commercial products that generate significant revenue.**

We have experienced significant net losses in each year since our inception. Our accumulated deficit was \$249.0 million as of September 30, 2009. To date, our revenue has resulted from collaboration agreements, services and license fees from customers of Dynavax Europe, and government and private agency grants. The grants are subject to annual review based on the achievement of milestones and other factors. We anticipate that we will incur substantial additional net losses for the foreseeable future as the result of our investment in research and development activities.

We do not have any products that generate revenue. Although the U.S. Food and Drug Administration (FDA) has removed the clinical hold on our HEPLISAV Investigational New Drug (IND) application for individuals with chronic kidney disease, there can be no assurance whether HEPLISAV can be further developed, financed or commercialized in a timely manner without significant additional studies or patient data or significant expense; whether our future development efforts will be sufficient to support product approval; or whether the market for HEPLISAV will be substantial enough for us to reach profitability.

Clinical trials for certain of our other product candidates are ongoing. These and our other product candidates may never be commercialized, and we may never achieve profitability. Our ability to generate revenue depends upon:

demonstrating in clinical trials that our product candidates are safe and effective, in particular, in the current and planned trials for our product candidates;

obtaining regulatory approvals for our product candidates; and

entering into and maintaining successful collaborative relationships.

If we are unable to generate significant revenues or achieve profitability, we may be required to reduce or discontinue our current and planned operations, enter into a transaction that constitutes a change in control of the company, or raise additional capital on less favorable terms.

**We will require substantial additional capital and our failure to obtain additional capital when needed could force us to delay, reduce or eliminate our product development programs or future commercialization efforts, or reduce or discontinue operations.**

We believe our existing capital resources will be adequate to satisfy our capital needs for at least the next twelve months. In the foreseeable future, we will require substantial additional capital resources in order to continue our operations, and any such funding in the current financing environment may not allow us to continue operations as currently planned. Our future capital requirements are difficult to forecast and will depend on many factors, including:

the costs, timing and outcomes of regulatory reviews or other regulatory actions;

the scope, progress, duration, results and cost of clinical trials, as well as non-clinical studies and manufacturing-related services for our product candidates;

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the timing, receipt and amount of milestone and other payments from existing and potential future collaborators and the extent to which our research and development activities result in the achievement of milestone events under our collaboration agreements;

the costs to satisfy our obligations under existing and potential future alliances and collaborations;

the extent of our development and manufacturing costs and costs to establish sales and marketing functions for our product candidates that are not subject to our collaborations;

the timing, receipt and amount of sales or royalties, if any, from our potential products;

our ability to establish strategic alliances, collaborations and licensing or other arrangements on terms favorable to us;

the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims; and

the extent and scope of our general and administrative expenses.

Our plans provide for us to continue, either alone or with a collaborator, to advance our product candidates through the development process. We do not expect our existing capital resources to be sufficient to enable us to fund the completion of the development of any of our product candidates. We believe our existing capital resources will be adequate to satisfy our capital needs for at least the next twelve months. However, our operating plan may change as a result of many factors, including those described above, and we may need additional funds sooner than planned to meet operational needs and capital requirements for product development and commercialization. We may seek additional capital through a combination of public and private equity offerings and collaborative, strategic alliance and licensing arrangements. If we raise additional capital through the sale of our common stock, existing stockholders may experience dilution of their current level of ownership of our common stock and the terms of the financing may adversely affect the holdings or rights of our stockholders. Our ability to raise funds in the foreseeable future may be adversely impacted by recent deterioration in the U.S. and global financial markets, and additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available on a timely basis, we may:

terminate, delay or downsize clinical trials or manufacturing or other development activities for one or more of our product candidates;

delay our establishment of sales and marketing capabilities or other activities that may be necessary to commercialize our product candidates; or

curtail significant drug development programs that are designed to identify new product candidates.

**The success of our product candidates depends on achieving successful clinical results and regulatory approval. Failure to obtain regulatory approvals could require us to discontinue operations.**

None of our product candidates have been approved for sale. Any product candidate we develop is subject to extensive regulation by federal, state and local governmental authorities in the U.S., including the FDA, and by foreign regulatory agencies. Our success is primarily dependent on our ability to obtain regulatory approval for our most advanced product candidates. Approval processes in the U.S. and in other countries are uncertain, take many years and require the expenditure of substantial resources.

We will need to demonstrate in clinical trials that a product candidate is safe and effective before we can obtain the necessary approvals from the FDA and foreign regulatory agencies. If we identify any safety issues associated with our product candidates, we may be restricted from

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initiating further trials for those products. Moreover, we may not see sufficient signs of efficacy in those studies. The FDA or foreign regulatory agencies may require us to conduct additional clinical trials prior to approval. Despite the time and money expended, regulatory approvals are uncertain.

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Failure to successfully complete clinical trials and show that our products are safe and effective would have a material adverse effect on our business and results of operations. Even if approved, the labeling of the product may significantly limit the commercial opportunity for such product.

**Our clinical trials may be extended, suspended, delayed or terminated at any time. Even short delays in the commencement and progress of our trials may lead to substantial delays in the regulatory approval process for our product candidates, which will impair our ability to generate revenues.**

We may extend, suspend or terminate clinical trials at any time for various reasons, including regulatory actions by the FDA or foreign regulatory agencies, actions by institutional review boards, failure to comply with good clinical practice requirements, concerns regarding health risks to test subjects or inadequate supply of the product candidate. Even a small delay in a trial for any product candidate could require us to delay commencement of the trial until the target population is available for testing, which could result in a delay of a year or more.

Our registration and commercial timelines depend on results of the current and planned clinical trials and further discussions with the FDA and corresponding foreign regulatory agencies. Any extension, suspension, modification, termination or unanticipated delays of our clinical trials could:

adversely affect our ability to timely and successfully commercialize or market these product candidates;

result in significant additional costs;

potentially diminish any competitive advantages for those products;

potentially limit the markets for those products;

adversely affect our ability to enter into collaborations, receive milestone payments or royalties from potential collaborators;

cause us to abandon the development of the affected product candidate; or

limit our ability to obtain additional financing on acceptable terms, if at all.

**If we receive regulatory approval for our product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review.**

Any regulatory approvals that we receive for our product candidates are likely to contain requirements for post-marketing follow-up studies, which may be costly. Product approvals, once granted, may be modified based on data from subsequent studies or long-term use. As a result, limitations on labeling indications or marketing claims, or withdrawal from the market may be required if problems occur after commercialization.

In addition, we or our contract manufacturers will be required to adhere to federal regulations setting forth current good manufacturing practice. The regulations require that our product candidates be manufactured and our records maintained in a prescribed manner with respect to manufacturing, testing and quality control activities. Furthermore, we or our contract manufacturers must pass a pre-approval inspection of manufacturing facilities by the FDA and foreign regulatory agencies before obtaining marketing approval and will be subject to periodic inspection by the FDA and corresponding foreign regulatory agencies under reciprocal agreements with the FDA. Further, to the extent that we contract with third parties for the manufacture of our products, our ability to control third-party compliance with FDA requirements will be limited to contractual remedies and rights of inspection.

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Failure to comply with regulatory requirements could prevent or delay marketing approval or require the expenditure of money or other resources to correct. Failure to comply with applicable requirements may also result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution, any of which could be harmful to our ability to generate revenues and our stock price.

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**Our most advanced product candidate and most of our earlier stage programs rely on ISS-based technology. Serious adverse safety data relating to either 1018 ISS or other ISS-based technology may require us to reduce the scope of or discontinue our operations.**

Our most advanced product candidate in clinical trials is based on our 1018 ISS compound, and most of our research and development programs use ISS-based technology. If any of our product candidates in clinical trials produce serious adverse safety data, we may be required to delay, discontinue or modify our clinical trials or our clinical trial strategy. For example, from March 2008 until September 2009, the two IND applications for HEPLISAV were placed on clinical hold by the FDA following a serious adverse event that occurred in one of our clinical trials. In September 2009, the FDA removed the clinical hold on the IND application for individuals with chronic kidney disease. In addition, most of our clinical product candidates contain ISS, and a common safety risk across therapeutic areas may hinder our ability to enter into potential collaborations and if adverse safety data are found to apply to our ISS-based technology as a whole, we may be required to significantly reduce or discontinue our operations.

**We rely on third parties and our facility in Düsseldorf, Germany to supply materials necessary to manufacture our clinical product candidates for our clinical trials. Loss of these suppliers or key employees in Düsseldorf, or failure to timely replace them may delay our clinical trials and research and development efforts and may result in additional costs, delays or significantly higher costs in manufacturing our product candidates.**

We rely on a number of third parties and our facility in Düsseldorf for the multiple steps involved in the manufacturing process of our product candidates, including, for example, ISS, a key component material that is necessary for our product candidates, the production of certain antigens, the combination of the antigens and ISS, and the fill and finish. Termination or interruption of these relationships may occur due to circumstances that are outside of our control, resulting in higher cost or delays in our product development efforts.

We and these third parties are required to comply with applicable FDA current good manufacturing practice regulations and other international regulatory requirements. If one of these parties fails to maintain compliance with these regulations, the production of our product candidates could be interrupted, resulting in delays and additional costs. Additionally, these third parties and our manufacturing facility must undergo a pre-approval inspection before we can obtain marketing authorization for any of our product candidates.

We have relied on a single supplier to produce our ISS for clinical trials. To date, we have manufactured only small quantities of ISS ourselves for research purposes. If we were unable to maintain or replace our existing source for ISS, we would have to establish internal ISS manufacturing capability which would result in increased capital and operating costs and delays in developing and commercializing our product candidates. We or other third parties may not be able to produce ISS at a cost, quantity and quality that are available from our current third-party supplier.

We currently utilize our facility in Düsseldorf to manufacture the hepatitis B surface antigen for HEPLISAV. If HEPLISAV cannot be successfully developed or is not commercially viable, we will have to use the Düsseldorf facility for alternative manufacturing or research activities that may not fully utilize the facility's capacity, resulting in continued operating costs that may not be offset by corresponding revenues, or we may consider other alternatives for the Düsseldorf facility, including its sale or closure which would result in certain costs of disposal or discontinuation of operations.

**We rely on contract research organizations to conduct our clinical trials. If these third parties do not fulfill their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize our product candidates.**

We rely on third parties to conduct our clinical trials. If these third parties do not perform their obligations or meet expected deadlines our planned clinical trials may be extended, delayed, modified or terminated. Any extension, delay, modification or termination of our clinical trials could delay or otherwise adversely affect our ability to commercialize our products and could have a material adverse effect on our business and operations.

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**If any products we develop are not accepted by the market or if regulatory agencies limit our labeling indications or marketing claims, we may be unable to generate significant revenues, if any.**

Even if we obtain regulatory approval for our product candidates and are able to commercialize them, our products may not gain market acceptance among physicians, patients, health care payors and the medical community.

The degree of market acceptance of any of our approved products will depend upon a number of factors, including:

the indication for which the product is approved and its approved labeling;

the presence of other competing approved therapies;

the potential advantages of the product over existing and future treatment methods;

the relative convenience and ease of administration of the product;

the strength of our sales, marketing and distribution support;

the price and cost-effectiveness of the product; and

sufficient third-party reimbursement.

The FDA or other regulatory agencies could limit the labeling indication for which our product candidates may be marketed or could otherwise limit marketing efforts for our products. For example, in connection with the removal of the clinical hold on HEPLISAV in September 2009 and related discussions with the FDA, it is expected that, further development of HEPLISAV in the U.S. initially will be limited to individuals who are less responsive to current licensed vaccines, including adults over 40 years of age and individuals with chronic kidney disease. If we are unable to successfully market any approved product candidates, or marketing efforts are restricted by regulatory limits, our ability to generate revenues could be significantly impaired.

**A key part of our business strategy is to establish collaborative relationships to commercialize and fund development of our product candidates. We may not succeed in establishing and maintaining collaborative relationships, which may significantly limit our ability to develop and commercialize our products successfully, if at all.**

We will need to establish collaborative relationships to obtain domestic and international sales, marketing and distribution capabilities for our product candidates, in particular with respect to the commercialization of HEPLISAV. We also may enter into collaborative relationships to provide funding to support our research and development programs. The process of establishing and maintaining collaborative relationships is difficult, time-consuming and involves significant uncertainty, including:

our partners may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, a change in business strategy, a change of control or other reasons;

our contracts for collaborative arrangements may expire or terminate and we may not have alternative funding available;

our partners may choose to pursue alternative technologies, including those of our competitors;

we may have disputes with a partner that could lead to litigation or arbitration;

we do not have day to day control over the activities of our partners and have limited control over their decisions;

our ability to generate future event payments and royalties from our partners depends upon their abilities to establish the safety and efficacy of our drug candidates, obtain regulatory approvals and achieve market acceptance of products developed from our drug candidates;

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we or our partners may fail to properly initiate, maintain or defend our intellectual property rights, where applicable, or a party may utilize our proprietary information in such a way as to invite litigation that could jeopardize or potentially invalidate our proprietary information or expose us to potential liability;

our partners may not devote sufficient capital or resources towards our product candidates; and

our partners may not comply with applicable government regulatory requirements.

If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development or commercialization efforts related to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for expenses or activities that would otherwise have been the responsibility of our collaborator. If we are unable to establish and maintain collaborative relationships on acceptable terms or to successfully transition terminated collaborative agreements, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of capital.

**Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors despite these disadvantages we may be unable to generate revenues and our business will be harmed.**

We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing therapies to prevent or treat infectious diseases, asthma and inflammatory and autoimmune diseases. Competitors may develop more effective, more affordable or more convenient products or may achieve earlier patent protection or commercialization of their products. These competitive products may render our product candidates obsolete or limit our ability to generate revenues from our product candidates. Many of the companies developing competing technologies and products have significantly greater financial resources and expertise in research and development, manufacturing, preclinical and clinical testing, obtaining regulatory approvals and marketing than we do.

Existing and potential competitors may also compete with us for qualified scientific and management personnel, as well as for technology that would be advantageous to our business. If we are unable to compete successfully, we may not be able to obtain financing, enter into collaborative arrangements, sell our product candidates or generate revenues.

**We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees would affect our ability to develop and commercialize our product candidates and achieve our objectives.**

We are highly dependent on the principal members of our management, operations and scientific staff, including our Chief Executive Officer, Dr. Dino Dina. We experience intense competition for qualified personnel. Our future success also depends in part on the continued service of our executive management team, key scientific and management personnel and our ability to recruit, train and retain essential scientific personnel for our drug discovery and development programs, including those who will be responsible for overseeing our preclinical testing and clinical trials as well as for the establishment of collaborations with other companies. If we lose the services of any key personnel, our research and product development goals, including the identification and establishment of key collaborations, operations and marketing efforts could be delayed or curtailed.

**We may develop, seek regulatory approval for and market our product candidates outside the United States, requiring a significant commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates.**

We may introduce certain of our product candidates in various markets outside the U.S. Developing, seeking regulatory approval for and marketing our product candidates outside the U.S. could impose substantial burdens on our resources and divert management's attention from domestic operations. International operations are subject to risk, including:

the difficulty of managing geographically distant operations, including recruiting and retaining qualified employees, locating adequate facilities and establishing useful business support relationships in the local community;





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compliance with varying international regulatory requirements, laws and treaties;

securing international distribution, marketing and sales capabilities;

adequate protection of our intellectual property rights;

legal uncertainties and potential timing delays associated with tariffs, export licenses and other trade barriers;

adverse tax consequences;

the fluctuation of conversion rates between foreign currencies and the U.S. dollar; and

regional and geopolitical risks.

To date, we have not filed for marketing approval for any of our product candidates outside the U.S.. We may not obtain foreign regulatory approvals on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory agencies in other foreign countries. However, a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory approval process in other jurisdictions, including approval by the FDA. If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates, which would impair our ability to generate revenues.

### **We rely on licenses to intellectual property from third parties. Impairment of these licenses or our inability to maintain them would severely harm our business.**

Our current research and development efforts depend upon our license arrangements for intellectual property owned by third parties. Our dependence on these licenses subjects us to numerous risks, such as disputes regarding the use of the licensed intellectual property and the creation and ownership of new discoveries under such license agreements. In addition, these license arrangements require us to make timely payments in order to maintain our licenses and typically contain diligence or milestone-based termination provisions. Our failure to meet any obligations pursuant to these agreements could allow our licensors to terminate our agreements or undertake other remedies such as converting exclusive to non-exclusive licenses if we are not able to cure or obtain waivers for such failures or amend the term of such agreements on terms acceptable to us. In addition, our license agreements may be terminated or may expire by their terms, and we may not be able to maintain the exclusivity of these licenses. If we cannot maintain licenses that are advantageous or necessary to the development or the commercialization of our product candidates, we may be required to expend significant time and resources to develop or license similar technology or to find other alternatives to maintaining the competitive position of our products. If such alternatives are not available to us in a timely manner or on acceptable terms, we may be unable to continue development or commercialize our product candidates.

### **If third parties successfully assert that we have infringed their patents and proprietary rights or challenge our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and delay or prevent development or commercialization of our product candidates.**

We may be exposed to future litigation by third parties based on claims that our product candidates or proprietary technologies infringe their intellectual property rights, or we may be required to enter into litigation to enforce patents issued or licensed to us or to determine the ownership, scope or validity of our or another party's proprietary rights, including a challenge as to the validity of our issued and pending claims. We are involved in various interference and other administrative proceedings related to our intellectual property which has caused us to incur certain legal expenses. If we become involved in any litigation and/or other significant interference proceedings related to our intellectual property or the intellectual property of others, we will incur substantial additional expenses and it will divert the efforts of our technical and management personnel.



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Two of our potential competitors, Merck & Co., Inc., or Merck, and GlaxoSmithKline plc, or GSK, are exclusive licensees of broad patents covering hepatitis B surface antigen, a component of HEPLISAV. In addition, the Institut Pasteur also owns or has exclusive licenses to patents covering hepatitis B surface antigen. While some of these patents have expired or will soon expire outside the U.S., they remain in force in the U.S. To the extent we are able to commercialize HEPLISAV in the U.S. while these patents remain in force, Merck and/or GSK or the Institut Pasteur may bring claims against us.

If we or our collaborators are unsuccessful in defending or prosecuting our issued and pending claims or in defending potential claims against our products, for example, as may arise in the commercialization of HEPLISAV or any similar product candidate in the U.S., we or our collaborator could be required to pay substantial damages or be unable to commercialize our product candidates or use our proprietary technologies without a license from such third party. A license may require the payment of substantial fees or royalties, require a grant of a cross-license to our technology or may not be available on acceptable terms, if at all. In addition, we must make timely payments or meet diligence obligations in order to maintain any such licenses in effect. In the absence of a current license, we may be required to redesign our technology so it does not infringe a third party's patents, which may not be possible or could require substantial funds and time. Any of these outcomes could require us to change our business strategy and could materially impact our business and operations.

One of our potential competitors, Pfizer Inc., or Pfizer, has issued patent claims, as well as patent claims pending with the U.S. Patent and Trademark Office and foreign patent offices, that may be asserted against our ISS products. We may need to obtain a license to one or more of these patent claims held by Pfizer by paying fees or royalties or offering rights to our own proprietary technologies in order to commercialize one or more of our formulations of ISS in other than with respect to HEPLISAV, for which we have a license. A license for other uses may not be available to us on acceptable terms, if at all, which could preclude or limit our ability to commercialize our products.

**If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our product candidates will decrease.**

Our success depends on our ability to:

obtain and protect commercially valuable patents or the rights to patents both domestically and abroad;

operate without infringing upon the proprietary rights of others; and

prevent others from successfully challenging or infringing our proprietary rights.

We will be able to protect our proprietary rights from unauthorized use only to the extent that these rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We try to protect our proprietary rights by filing and prosecuting U.S. and foreign patent applications. However, in certain cases such protection may be limited, depending in part on existing patents held by third parties, which may only allow us to obtain relatively narrow patent protection. In the U.S., legal standards relating to the validity and scope of patent claims in the biopharmaceutical field can be highly uncertain, are still evolving and involve complex legal and factual questions for which important legal principles remain unresolved.

The biopharmaceutical patent environment outside the U.S. is even more uncertain. We may be particularly affected by this uncertainty since several of our product candidates may initially address market opportunities outside the U.S., where we may only be able to obtain limited patent protection.

The risks and uncertainties that we face with respect to our patents and other proprietary rights include the following:

we may not receive an issued patent for any of our patent applications or for any patent applications that we have exclusively licensed;

the pending patent applications we have filed or to which we have exclusive rights may take longer than we expect to result in issued patents;

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the claims of any patents that are issued may not provide meaningful protection or may not be valid or enforceable;

we might not be able to develop additional proprietary technologies that are patentable;

the patents licensed or issued to us or our collaborators may not provide a competitive advantage;

patents issued to other parties may limit our intellectual property protection or harm our ability to do business;

other parties may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent; and

other parties may design around technologies we have licensed, patented or developed.

We also rely on trade secret protection and confidentiality agreements to protect our interests in proprietary know-how that is not patentable and for processes for which patents are difficult to enforce. We cannot be certain that we will be able to protect our trade secrets adequately. Any disclosure of confidential data in the public domain or to third parties could allow our competitors to learn our trade secrets. If we are unable to adequately obtain or enforce proprietary rights we may be unable to commercialize our products, enter into collaborations, generate revenues or maintain any advantage we may have with respect to existing or potential competitors.

**We have licensed some of our development and commercialization rights to certain of our development programs in connection with our Symphony Dynamo funding arrangement and will not receive any future royalties or revenues with respect to this intellectual property unless we exercise an option to repurchase some or all of the programs in the future. While we exercised the repurchase option with respect to one of the programs, we may not obtain sufficient clinical data in order to determine whether we should exercise our option to repurchase the other programs prior to the expiration of the development period, and we do not currently have the financial resources available to pay the exercise price if we determine that exercising the option to repurchase the other programs is in our best interests.**

In April 2006, we granted an exclusive license to the intellectual property for certain ISS compounds for cancer, hepatitis B and hepatitis C therapies (the Development Programs) to Symphony Dynamo, Inc. (SDI) in consideration for a commitment from Symphony Capital Partners, LP and certain of its affiliates (Symphony) to provide \$50 million of capital to advance the Development Programs. As part of the arrangement, we received an exclusive purchase option (the Purchase Option) to acquire all of the Development Programs through the purchase of all of the equity in SDI during the five-year term at specified prices ranging from \$100.7 million as of September 30, 2009, increasing quarterly up to \$144.1 million at the end of the five-year term. The Purchase Option exercise price is payable in cash or a combination of cash and shares of Dynavax common stock, at our sole discretion. We also received an exclusive option to purchase either the hepatitis B or hepatitis C program (the Program Option) during the first year of the arrangement. In April 2007, we exercised our Program Option for the hepatitis B program. The exercise of this Program Option triggered a payment obligation of \$15 million which will either be (a) due to Symphony upon the expiration of the SDI collaboration in 2011 if the Purchase Option is not exercised; or (b) included as part of the applicable purchase price upon exercise of the Purchase Option. The current terms provide that the intellectual property rights to the remaining cancer and hepatitis C therapy programs not purchased through the exercise of the Purchase Option will remain with SDI.

We and SDI jointly manage the Development Programs and there can be no assurance that we will agree on various decisions that will enable us to successfully develop the potential products, or even if we are in agreement on the development plans, that the development efforts will result in sufficient clinical data to make a fully informed decision with respect to the exercise of our Purchase Option. If we do not exercise the Purchase Option prior to its expiration, then our rights in and with respect to the Development Programs will terminate and we will no longer have rights to any of the programs licensed to SDI under the arrangement.

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If we elect to exercise the Purchase Option, we will be required to make a payment of at least \$106.9 million as of December 31, 2009, increasing thereafter quarterly, which at our discretion may be paid partially in shares of our common stock. As a result, in order to exercise the Purchase Option, we will be required to make a substantial payment of cash and possibly issue a substantial number of shares of our common stock. We do not currently have the resources to exercise the Purchase Option and we may be required to enter into a financing arrangement or license arrangement with one or more third parties, or some combination of these in order to exercise the Purchase Option, even if we paid a portion of the purchase price with our common stock. There can be no assurance that any financing or licensing arrangement will be available or even if available, that the terms would be favorable to us and our stockholders.

**We face product liability exposure, which, if not covered by insurance, could result in significant financial liability.**

While we have not experienced any product liability claims to date, the use of any of our product candidates in clinical trials and the sale of any approved products will subject us to potential product liability claims and may raise questions about a product's safety and efficacy. As a result, we could experience a delay in our ability to commercialize one or more of our product candidates or reduced sales of any approved product candidates. In addition, a product liability claim may exceed the limits of our insurance policies and exhaust our internal resources. We have obtained limited product liability insurance coverage in the amount of \$1 million for each occurrence for clinical trials with umbrella coverage of an additional \$4 million. This coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. We also may not be able to obtain commercially reasonable product liability insurance for any product approved for marketing in the future. A product liability claim, product recalls or other claims, as well as any claims for uninsured liabilities or in excess of insured liabilities, would divert our management's attention from our business and could result in significant financial liability.

**We face uncertainty related to coverage, pricing and reimbursement and the practices of third party payors, which may make it difficult or impossible to sell our product candidates on commercially reasonable terms.**

In both domestic and foreign markets, our ability to achieve profitability will depend in part on the negotiation of a favorable price or the availability of appropriate reimbursement from third party payors, in particular for HEPLISAV where existing products are approved for our target indications. Existing laws affecting the pricing and coverage of pharmaceuticals and other medical products by government programs and other third party payors may change before any of our product candidates are approved for marketing. In addition, third party payors are increasingly challenging the price and cost-effectiveness of medical products and services, and pricing and reimbursement decisions may not allow our products to compete effectively with existing or competitive products. Because we intend to offer products, if approved, that involve new technologies and new approaches to treating disease, the willingness of third party payors to reimburse for our products is particularly uncertain. We will have to charge a price for our products that is sufficiently high to enable us to recover our considerable investment in product development. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to achieve profitability and could harm our future prospects and reduce our stock price.

The current administration has stated that it is committed to reforming the health care system in the U.S. and multiple proposals to effect such reform have been introduced in Congress. It is likely that any legislation that is enacted will affect the biopharmaceutical industry. However, we are unable to predict whether reform legislation will be enacted and, if enacted, what impact that legislation will have on our business or future prospects. The uncertainty as to the nature and scope of any proposed reforms limits our ability to forecast changes that may affect our business and to manage our business accordingly. This uncertainty may also make it more difficult for us to enter into collaboration agreements for our product candidates and to obtain financing for future development of our product candidates.

**We use hazardous materials in our business. Any claims or liabilities relating to improper handling, storage or disposal of these materials could be time consuming and costly to resolve.**

Our research and product development activities involve the controlled storage, use and disposal of hazardous and radioactive materials and biological waste. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and certain waste products. We are currently in compliance with all government permits that are required for the storage, use and disposal of these materials. However, we cannot eliminate the risk of accidental contamination or injury to persons or property from these materials.

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In the event of an accident related to hazardous materials, we could be held liable for damages, cleanup costs or penalized with fines, and this liability could exceed the limits of our insurance policies and exhaust our internal resources. We may have to incur significant costs to comply with future environmental laws and regulations.

**The anti-takeover provisions of our certificate of incorporation, bylaws, Delaware law and our share purchase rights plan may prevent or frustrate a change in control, even if an acquisition would be beneficial to our stockholders, which could affect our stock price adversely and prevent attempts by our stockholders to replace or remove our current management.**

Provisions of our certificate of incorporation and bylaws may delay or prevent a change in control, discourage bids at a premium over the market price of our common stock and adversely affect the market price of our common stock and the voting or other rights of the holders of our common stock. These provisions include:

authorizing our Board of Directors to issue additional preferred stock with voting rights to be determined by the Board of Directors;

limiting the persons who can call special meetings of stockholders;

prohibiting stockholder actions by written consent;

creating a classified board of directors pursuant to which our directors are elected for staggered three year terms;

providing that a supermajority vote of our stockholders is required for amendment to certain provisions of our certificate of incorporation and bylaws; and

establishing advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

Our share purchase rights plan may have certain anti-takeover effects. Specifically, the rights issued pursuant to the plan will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by the Company's Board of Directors. Although the rights should not interfere with any merger or other business combination approved by the Board of Directors since the rights issued may be amended to permit such acquisition or redeemed by the Company at \$0.001 per right prior to the earliest of (i) the time that a person or group has acquired beneficial ownership of 20% or more of the Common Shares or (ii) the final expiration date of the rights, the effect of the rights plan may deter a potential acquisition of the Company. In addition, we remain subject to the provisions of the Delaware corporation law that, in general, prohibit any business combination with a beneficial owner of 15% or more of our common stock for three years unless the holder's acquisition of our stock was approved in advance by our Board of Directors.

**We will continue to implement additional financial and accounting systems, procedures or controls as our business and organization changes and to satisfy new reporting requirements.**

We are required to comply with the Sarbanes-Oxley Act of 2002 and the related rules and regulations of the SEC. Compliance with Section 404 of the Sarbanes-Oxley Act of 2002, or Section 404, and other requirements may increase our costs and require additional management resources. We may need to continue to implement additional finance and accounting systems, procedures and controls in order to accommodate changes in our business and organization and to comply with new reporting requirements. There can be no assurance that we will be able to maintain a favorable assessment as to the adequacy of our internal control over financial reporting. If we are unable to reach an unqualified assessment, or our independent auditors are unable to issue an unqualified attestation as to the effectiveness of our internal controls over financial reporting, investors could lose confidence in the reliability of our financial reporting which could harm our business and could impact the price of our common stock.





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**Risks Related to this Offering**

*We have broad discretion in how we use the net proceeds of this offering, and we may not use these proceeds effectively or in ways with which you agree.*

Our management will have broad discretion as to the application of the net proceeds of this offering and could use them for purposes other than those contemplated at the time of this offering. Our stockholders may not agree with the manner in which our management chooses to allocate and spend the net proceeds. Moreover, our management may use the net proceeds for corporate purposes that may not increase the market price of our common stock.

*Our stock price is subject to volatility, and your investment may suffer a decline in value.*

The market prices for securities of biopharmaceutical companies have in the past been, and are likely to continue in the future to be, very volatile. The market price of our common stock is subject to substantial volatility depending upon many factors, many of which are beyond our control, including:

progress or results of any of our clinical trials or regulatory efforts, in particular any announcements regarding the progress or results of our planned trials and communications from the FDA or other regulatory agencies;

our ability to establish and maintain collaborations for the development and commercialization of our product candidates;

our ability to raise additional capital to fund our operations;

technological innovations, new commercial products or drug discovery efforts and preclinical and clinical activities by us or our competitors;

changes in our intellectual property portfolio or developments or disputes concerning the proprietary rights of our products or product candidates;

our ability to obtain component materials and successfully enter into manufacturing relationships for our product candidates or establish manufacturing capacity on our own;

our ability to establish and maintain licensing agreements for intellectual property necessary for the development of our product candidates;

changes in government regulations, general economic conditions or industry announcements;

issuance of new or changed securities analysts' reports or recommendations;

actual or anticipated fluctuations in our quarterly financial and operating results;

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our ability to maintain continued listing on the NASDAQ markets or similar exchanges; and

volume of trading in our common stock.

One or more of these factors could cause a substantial decline in the price of our common stock. In October 2008, we experienced a decline in our market capitalization of nearly 80% based on the FDA's communication to us regarding the continuation of a clinical hold on two U.S. IND applications for HEPLISAV. While the FDA has removed the clinical hold on the IND application for individuals with chronic kidney disease, our market capitalization remains well below levels prior to the announcement of the FDA's clinical hold. In November 2008, we transferred our listing of Dynavax shares to The NASDAQ Capital Market from The NASDAQ Global Market. We may be delisted from The NASDAQ Capital Market if our share price or market value of publicly held shares does not meet certain thresholds. In addition, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk may be particularly relevant for us because we have experienced greater than average stock price volatility, as have other biotechnology companies in recent years.

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We may in the future be the target of similar litigation. Securities litigation could result in substantial costs, and divert management's attention and resources, which could harm our business, operating results and financial condition.

*There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock.*

We are generally not restricted from issuing additional common stock, including any securities that are convertible into or exchangeable for, or that represent the right to receive, common stock. The market price of our common stock could decline as a result of sales of common stock or securities that are convertible into or exchangeable for, or that represent the right to receive, common stock after this offering or the perception that such sales could occur.

*Sales of our common stock in this offering or the perception that such sales may occur may cause the market price of our common stock to fall.*

We may sell newly issued shares of our common stock with aggregate sales proceeds of up to \$12,200,000 from time to time in connection with this offering. The sale from time to time of these new shares of common stock, in this offering, or the perception that such sales may occur, could have the effect of depressing the market price for our common stock.

### **USE OF PROCEEDS**

We expect to receive net proceeds from this offering of approximately \$11.6 million, after commissions and estimated expenses payable by us, assuming that an aggregate of \$12.2 million of common stock is sold pursuant to this offering. Approximately \$12.2 million of common stock may be sold under this prospectus supplement and approximately \$2.8 million of common stock was sold under a prospectus supplement filed with the SEC on August 17, 2009, under Registration Statement File No. 333-137608. We expect to use the net proceeds from this offering for general corporate purposes, including clinical trials, research and development expenses and general and administrative expenses.

We have not determined the amounts we plan to spend on any of the areas listed above or the timing of these expenditures. As a result, our management will have broad discretion to allocate the net proceeds from this offering. Pending application of the net proceeds as described above, we intend to temporarily invest the proceeds in short-term interest bearing instruments.

**Table of Contents****DILUTION**

Our net tangible book value as of September 30, 2009 was \$13.7 million, or \$0.33 per share of common stock. Net tangible book value per share of common stock is calculated by subtracting our total liabilities from our total tangible assets, which is total assets less intangible assets, and dividing this amount by the number of shares of common stock outstanding. After giving effect to (i) the sale of 1,281,100 shares of common stock pursuant to the equity distribution agreement at an average price of \$2.17 per share and (ii) the sale of our common stock in the aggregate amount of \$12.2 million offered at an assumed public offering price of \$1.30 per share, the last reported sale price of our common stock on October 26, 2009, and after deducting commissions and estimated offering expenses payable by us, our net tangible book value as of September 30, 2009 would have been \$25.3 million, or \$0.50 per share of common stock. This represents an immediate increase in the net tangible book value of \$0.17 per share to our existing stockholders and an immediate and substantial dilution in net tangible book value of \$0.80 per share to new investors. The following table illustrates this per share dilution:

Assumed public offering price per share	\$ 1.30
Net tangible book value per share as of September 30, 2009	\$ 0.33
Increase in net tangible book value per share attributable to new investors	0.17
As adjusted net tangible book value per share after this offering	0.50
Net dilution per share to new investors	\$ 0.80

The table above assumes for illustrative purposes that an aggregate of 9,384,615 shares of our common stock are sold at a price of \$1.30 per share, the last reported sale price of our common stock on NASDAQ on October 26, 2009, for aggregate gross proceeds of \$12.2 million. The shares, if any, sold in this offering will be sold from time to time at various prices. An increase of \$0.50 per share in the price at which the shares are sold from the assumed offering price of \$1.30 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$12.2 million is sold at that price, would increase our adjusted net tangible book value per share after the offering to \$0.53 per share and would increase the dilution in net tangible book value per share to new investors in this offering to \$1.27 per share, after deducting commissions and estimated aggregate offering expenses payable by us. An decrease of \$0.50 per share in the price at which the shares are sold from the assumed offering price of \$1.30 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$12.2 million is sold at that price, would decrease our adjusted net tangible book value per share after the offering to \$0.45 per share and would decrease the dilution in net tangible book value per share to new investors in this offering to \$0.35 per share, after deducting commissions and estimated aggregate offering expenses payable by us. This information is supplied for illustrative purposes only.

The calculations above are based upon 41,274,270 shares of common stock outstanding as of September 30, 2009 and exclude:

5,478,366 shares issuable upon exercise of outstanding options pursuant to our stock incentive plans at a weighted average option exercise price of \$3.80 per share as of September 30, 2009;

917,491 shares available for future grants or issuance under our stock incentive plans and our employee stock purchase plan as of September 30, 2009; and

5,550,000 shares issuable upon exercise of outstanding warrants, at a weighted average exercise price of \$4.70 per share as of September 30, 2009.

**Table of Contents****PRICE RANGE OF COMMON STOCK**

Our common stock is listed on The NASDAQ Capital Market under the symbol DVAX. From our initial public offering on February 19, 2004 until November 24, 2008 our common stock was listed on The NASDAQ Global Market under the same symbol. The following table shows the high and low per share sale prices of our common stock for the periods indicated.

	High	Low
2007		
First Quarter	\$ 9.24	\$ 4.69
Second Quarter	5.81	4.15
Third Quarter	5.19	3.60
Fourth Quarter	5.80	4.17
2008		
First Quarter	\$ 6.55	\$ 1.87
Second Quarter	2.59	1.40
Third Quarter	2.04	0.97
Fourth Quarter	2.60	0.15
2009		
First Quarter	\$ 1.04	\$ 0.50
Second Quarter	2.19	0.64
Third Quarter	3.35	1.15
Fourth Quarter (through October 26, 2009)	1.85	1.30

On October 26, 2009, the last reported sale price of our common stock on The NASDAQ Capital Market was \$1.30 per share. On October 26, 2009, there were 96 holders of record of our common stock. The number of record holders does not include shares held in street name through brokers.

**DIVIDEND POLICY**

We have never declared or paid dividends on our common stock. We currently expect to retain future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends on our common stock is subject to the discretion of our Board of Directors and will depend upon various factors, including, without limitation, our results of operations and financial condition.

**PLAN OF DISTRIBUTION**

We have entered into an equity distribution agreement (the Agreement) with Wedbush Morgan Securities, Inc. (Wedbush) under which we may, from time to time, offer and sell our common stock having aggregate sales proceeds of up to \$15 million through Wedbush, or to Wedbush, for resale. Sales of our common stock through Wedbush, if any, will be made by means of ordinary brokers transactions on The NASDAQ Capital Market or otherwise at market prices prevailing at the time of sale, in block transactions, or as otherwise agreed upon by us and Wedbush. Wedbush will not engage in any transactions that stabilize the price of our common stock.

Wedbush will use its commercially reasonable efforts to sell the common stock offered hereby, from time to time, based upon instructions from us (including any price, time or size limits or other customary parameters or conditions we may impose). Either Wedbush or we may suspend the offering of our common stock pursuant to the Agreement by notifying the other.

We will pay Wedbush a commission, or allow a discount, as the case may be, in each case equal to 4.0% of the gross sales proceeds of any common stock sold through Wedbush as agent under the Agreement. The remaining sales proceeds, after deducting any expenses payable by us and any transaction fees imposed by any governmental or self-regulatory organization in connection with the sales, will equal our net proceeds for the sale of our common stock. We have agreed to reimburse Wedbush for certain expenses incurred by them in connection with the offering, up to an aggregate of \$125,000. We expect our aggregate expenses in connection with this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, to be approximately \$500,000.



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Pursuant to the Agreement, during the period from August 17, 2009 through October 26, 2009, we sold through Wedbush as our sales agent an aggregate of 1,281,000 shares of common stock for net proceeds of \$2.3 million after deducting commissions paid to Wedbush and offering expenses. As of October 26, 2009, we could offer and sell shares of our common stock having an aggregate offering price of up to an additional \$12.2 million from time to time through Wedbush. We expect to receive net proceeds of approximately \$11.6 million, after commissions and estimated expenses payable by us under the Agreement.

Settlement for sales of our common stock will occur on the third business day following the date on which any sales were made in return for payment of the net proceeds to us. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

Under the terms of the Agreement, we also may sell our common stock to Wedbush, as principal for its own account, at a price to be agreed upon at the time of sale. If we sell shares to Wedbush as principal, we will enter into a separate agreement with Wedbush and we will describe this agreement in a separate prospectus supplement or pricing supplement.

In connection with the sale of our common stock, Wedbush may be deemed to be an underwriter within the meaning of the Securities Act of 1933, as amended (the Securities Act), and the compensation paid to Wedbush may be deemed to be underwriting commissions or discounts. We have agreed to provide indemnification and contribution to Wedbush against certain civil liabilities, including liabilities under the Securities Act. Wedbush may engage in transactions with, or perform other services for, us in the ordinary course of its business. In compliance with the guidelines of the Financial Industry Regulatory Authority (FINRA), the maximum discount or commission to be received by any FINRA member or independent broker-dealer may not exceed 8% of the aggregate offering price of the shares offered hereby.

Unless an exemption applies, pursuant to Regulation M under the Securities Exchange Act of 1934, as amended, Wedbush will be prohibited from engaging in certain activities in our common stock while shares of common stock are being offered pursuant to the terms of the Agreement.

The offering of our common stock pursuant to the Agreement will terminate upon the earlier of (1) the sale of all of our common stock subject to the Agreement or (2) the termination of the Agreement by either Wedbush or us.

In connection with the Agreement, we entered into an engagement letter with Wedbush, dated August 10, 2009 with a term of six months.

## **LEGAL MATTERS**

The validity of the shares of common stock being offered has been passed upon for us by Cooley Godward Kronish LLP, Palo Alto, California. Wedbush is being represented in connection with this offering by Lowenstein Sandler PC, Roseland, New Jersey.

## **EXPERTS**

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008, and the effectiveness of our internal control over financial reporting as of December 31, 2008, as set forth in their reports, which are incorporated by reference in this prospectus supplement and elsewhere in the registration statement. Our financial statements are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION**

This prospectus supplement is part of a registration statement on Form S-3 that we filed with the SEC. The registration statement that contains this prospectus supplement, including the exhibits to the registration statement, contains additional information about us and the securities offered by this prospectus supplement.



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We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file with the SEC 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 further information on the Public Reference Room. Our public filings, including reports, proxy and information statements, are also available on the SEC's web site at <http://www.sec.gov>. In addition, you can read and copy our SEC filings at the office of the FINRA at 1735 K Street, N.W., Washington, D.C. 20006.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The SEC allows us to incorporate by reference the information contained in documents that we file with them, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is considered to be part of this prospectus supplement. Information in this prospectus supplement modifies or supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus supplement, and information that we file later with the SEC also will automatically update and supersede this information.

We incorporate by reference the documents listed below and any documents that we file in the future with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this prospectus supplement and before the completion of the offering:

1. Our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on March 6, 2009;
2. Our Quarterly Reports on Form 10-Q for the period ended March 31, 2009, filed with the SEC on April 30, 2009, for the period ended June 30, 2009, filed with the SEC on August 6, 2009, and for the period ended September 30, 2009, filed with the SEC on October 30, 2009;
3. Our Current Reports on Form 8-K filed with the SEC on February 2, 2009, February 9, 2009, March 2, 2009, March 13, 2009, April 28, 2009, April 30, 2009, June 3, 2009, June 5, 2009, June 10, 2009, August 5, 2009, August 7, 2009, August 12, 2009, August 17, 2009, August 20, 2009, September 11, 2009, September 29, 2009 and October 29, 2009;
4. Our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 3, 2009; and
5. The description of our common stock set forth in Amendment No. 4 to Registration Statement on Form S-1 (Registration No. 333-109965) filed with the SEC on February 5, 2004.

We are not incorporating by reference any information furnished under Items 2.02 or 7.01 (or corresponding information furnished under Item 9.01 as an exhibit) in any past or future Current Report on Form 8-K that we file with the SEC, unless otherwise specified in such report.

To the extent that any statement in this prospectus supplement is inconsistent with any statement that is incorporated by reference and that was made on or before the date of this prospectus supplement, the statement in this prospectus supplement shall supersede such incorporated statement. The incorporated statement shall not be deemed, except as modified or superseded, to constitute a part of this prospectus supplement, the accompanying prospectus or the registration statement. Statements contained in this prospectus supplement as to the contents of any contract or other document are not necessarily complete and, in each instance, we refer you to the copy of each contract or document filed as an exhibit to the registration statement.

We will furnish without charge to you, upon written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any requests for documents to

Jennifer Lew

Vice President, Finance

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Dynavax Technologies Corporation

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Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference in this document.

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**Prospectus**

**\$100,000,000**

**Common Stock**

We may offer and sell from time to time shares of our common stock in one or more offerings in amounts, at prices and on the terms that we will determine at the time of offering, with an aggregate initial offering price of up to \$100,000,000. Upon the commencement of any offering of common stock, we will provide specific terms of the offering in a supplement to this prospectus. The prospectus supplement also may add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement, as well as any documents incorporated by reference in this prospectus and any prospectus supplement, carefully before you invest in any securities. This prospectus may not be used to consummate a sale of securities unless accompanied by the applicable prospectus supplement.

We will sell these securities directly to our stockholders or to purchasers or through agents on our behalf or through underwriters or dealers as designated from time to time. If any agents or underwriters are involved in the sale of any of these securities, the applicable prospectus supplement will provide the names of the agents or underwriters and any applicable fees, commissions or discounts.

Our common stock trades on The NASDAQ Capital Market under the trading symbol DVAX. On September 16, 2009, the last reported sale price of our common stock was \$2.12 per share. As of September 16, 2009, the aggregate market value of our outstanding common stock held by non-affiliates was approximately \$82,506,806 based on 39,993,170 shares of outstanding common stock, of which approximately 38,917,965 shares were held by non-affiliates, and a per share price of \$2.12 based on the closing sale price of our common stock on September 16, 2009. We recommend that you obtain current market quotations for our common stock prior to making an investment decision.

**Investing in our securities involve a high degree of risk. See Risk Factors beginning on page 5 of this prospectus and the risk factors contained in our filings with the Securities and Exchange Commission which have been incorporated herein by reference.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is September 17, 2009.**

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This prospectus includes or incorporates by reference summaries of certain provisions contained in some of the documents described herein or in documents incorporated herein by reference. All of the summaries are qualified in their entirety by the actual documents, some of which have been filed or will be filed as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under Where You Can Find More Information About Dynavax and This Offering.

This prospectus is part of a registration statement we filed with the Securities and Exchange Commission (the "SEC"). You should rely only on the information we have provided or incorporated by reference in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with information different from that included in this prospectus. No dealer, salesperson or other person is authorized to give any information or to represent anything not included in this prospectus. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information in this prospectus or any prospectus supplement is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any sale of a security.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf registration process, we may sell common stock in one or more offerings up to a total dollar amount of \$100 million. We may also add, update or change in the prospectus supplement any of the information contained in this prospectus. This prospectus, together with applicable prospectus supplements, includes all material information relating to this offering. Please carefully read both this prospectus and any prospectus supplement together with the additional information described below under **Where You Can Find More Information About Dynavax and This Offering**. **THIS PROSPECTUS MAY NOT BE USED TO CONSUMMATE A SALE OF SECURITIES UNLESS IT IS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.**

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**PROSPECTUS SUMMARY**

**Overview**

Dynavax Technologies Corporation ( Dynavax or the Company ), a clinical-stage biopharmaceutical company, discovers and develops novel products to prevent and treat infectious diseases. The Company's lead product candidate is HEPLISAV<sup>TM</sup>, a Phase 3 investigational adult hepatitis B vaccine designed to provide more rapid and increased protection with fewer doses than current licensed vaccines.

Our pipeline of product candidates includes: HEPLISAV, a Phase 3 hepatitis B vaccine; clinical-stage programs for hepatitis C and hepatitis B therapies; and preclinical programs including those partnered with AstraZeneca and GlaxoSmithKline ( GSK ) and our Universal Flu vaccine.

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### **RISK FACTORS**

You should carefully consider the specific risks set forth under the caption "Risk Factors" in the applicable prospectus supplement and relating to our business set forth under the caption "Risk Factors" in our filings with the Securities and Exchange Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, incorporated by reference in this prospectus, before making an investment decision.

### **INFORMATION REGARDING FORWARD-LOOKING STATEMENTS**

The statements in this prospectus and the documents incorporated by reference contain forward-looking statements which are subject to a number of risks and uncertainties. All statements that are not historical facts are forward-looking statements, including statements about our business strategy, our future research and development, our preclinical and clinical product development efforts, the timing of the introduction of our products, the effect of GAAP accounting pronouncements, uncertainty regarding our future operating results and our profitability, anticipated sources of funds and all plans, objectives, expectations and intentions. These statements appear in a number of places and can be identified by the use of forward-looking terminology such as may, will, should, expect, plan, anticipate, believe, estimate, predict, or certain or the negative of these terms or other variations or comparable terminology, or by discussions of strategy.

Our actual results may differ materially from the results expressed or implied by these forward-looking statements because of the risk factors and other factors disclosed in this prospectus and documents incorporated by reference. The risk factors may not be all of the factors that could cause actual results to vary materially from the forward-looking statements. The forward-looking statements made or incorporated in this prospectus relate only to circumstances as of the date on which the statements are made. Readers should not place undue reliance on these forward-looking statements and are cautioned that any such forward-looking statements are not guarantees of future performance. We assume no obligation to update any forward-looking statements.

### **USE OF PROCEEDS**

Unless otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities under this prospectus for general corporate purposes, including clinical trials, research and development expenses, general and administrative expenses, and potential acquisitions of companies, products and technologies that complement our business. We will set forth in the prospectus supplement our intended use for the net proceeds received from any offering of securities. Pending the application of the net proceeds, we intend to temporarily invest the net proceeds generally in short-term interest-bearing instruments.

### **PLAN OF DISTRIBUTION**

We may sell the securities from time to time pursuant to underwritten public offerings, negotiated transactions, block trades, at-the-market offerings, or a combination of these methods. We may sell the securities (1) through underwriters or dealers, (2) through agents and/or (3) directly to one or more purchasers. We may distribute the securities from time to time in one or more transactions:

at a fixed price or prices, which may be changed;

at market prices prevailing at the time of sale;

at prices related to such prevailing market prices; or

at prices negotiated with the purchasers of the securities.

We may solicit directly offers to purchase the securities being offered by this prospectus. We may also designate agents to solicit offers to purchase the securities from time to time. We will name in a prospectus supplement any agent involved in the offer or sale of our securities.





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If we utilize a dealer in the sale of the securities being offered by this prospectus, we will sell the securities to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

If we utilize an underwriter in the sale of the securities being offered by this prospectus, we will execute an agreement with the underwriter at the time of sale and we will provide the name of any underwriter in the prospectus supplement that the underwriter will use to make resales of the securities to the public. In connection with the sale of the securities, we, or the purchasers of securities for whom the underwriter may act as agent, may compensate the underwriter in the form of underwriting discounts or commissions. The underwriter may sell the securities to or through dealers, and the underwriter may compensate those dealers in the form of discounts, concessions or commissions.

We will provide in the applicable prospectus supplement any compensation we pay to underwriters, dealers or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers. Underwriters, dealers and agents participating in the distribution of the securities may be deemed to be underwriters within the meaning of the Securities Act of 1933, as amended (the Securities Act), and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions. In compliance with the guidelines of the Financial Industry Regulatory Authority (FINRA), the maximum discount or commission to be received by any FINRA member or independent broker-dealer may not exceed 8% of the aggregate offering price of the shares offered thereby. We may enter into agreements to indemnify underwriters, dealers and agents against civil liabilities, including liabilities under the Securities Act, or to contribute to payments they may be required to make in respect thereof.

We may authorize underwriters, dealers or agents to solicit offers by certain purchasers to purchase the securities from us. These purchases will be subject to the terms and conditions of any agreements we enter into with the underwriters, dealers or agents retained by us or directly with purchasers, which will be described in a prospectus supplement relating to the offering, and the prospectus supplement will set forth any commissions we pay for solicitation of these purchases.

To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involves the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover such over-allotments or short positions by making purchases in the open market or by exercising any over-allotment option we grant to them. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

The underwriters, dealers and agents may engage in transactions with us, or perform services for us, in the ordinary course of business.

To the extent required, this prospectus may be amended or supplemented from time to time to describe a specific plan of distribution.

## **LEGAL MATTERS**

The validity of the securities being offered hereby will be passed upon by Cooley Godward Kronish LLP, Palo Alto, California.

## **EXPERTS**

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008, and the

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effectiveness of our internal control over financial reporting as of December 31, 2008, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

### **WHERE YOU CAN FIND MORE INFORMATION ABOUT DYNAVAX AND THIS OFFERING**

We are a reporting company and we file annual, quarterly and current reports, proxy statements and other information with the SEC. We have filed with the SEC a registration statement on Form S-3 under the Securities Act to register the shares of common stock offered by this prospectus. However, this prospectus does not contain all of the information contained in the registration statement and the exhibits and schedules to the registration statement. For further information with respect to us and the securities offered under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. You may read and copy the registration statement, as well as our reports, proxy statements and other information, at the SEC's public reference rooms at 100 F Street, N.E., Washington, D.C. 20549. You can request copies of these documents by contacting the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for further information about the operation of the public reference rooms. Our SEC filings are also available at the SEC's website at [www.sec.gov](http://www.sec.gov). In addition, you can read and copy our SEC filings at the office of the Financial Industry Regulatory Authority at 1735 K Street, N.W., Washington, D.C. 20006.

The SEC allows us to incorporate by reference the information contained in documents that we file with them, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is considered to be part of this prospectus. Information in this prospectus modifies or supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus, and information that we file later with the SEC also will automatically update and supersede this information.

We incorporate by reference the documents listed below and any documents that we file in the future with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this prospectus and before the completion of the offering:

1. Our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on March 6, 2009;
2. Our Quarterly Reports on Form 10-Q for the period ended March 31, 2009, filed with the SEC on April 30, 2009, and for the period ended June 30, 2009, filed with the SEC on August 6, 2009;
3. Our Current Reports on Form 8-K filed with the SEC on February 2, 2009, February 9, 2009, March 2, 2009, March 13, 2009, April 28, 2009, April 30, 2009, June 3, 2009, June 5, 2009, June 10, 2009, August 5, 2009, August 7, 2009, August 12, 2009, August 17, 2009, August 20, 2009 and September 11, 2009;
4. Our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 3, 2009; and
5. The description of our common stock set forth in Amendment No. 4 to Registration Statement on Form S-1 (Registration No. 333-109965) filed with the SEC on February 5, 2004.

We are not incorporating by reference any information furnished under Items 2.02 or 7.01 (or corresponding information furnished under Item 9.01 as an exhibit) in any past or future Current Report on Form 8-K that we file with the SEC, unless otherwise specified in such report.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any requests for documents to

Jennifer Lew

Vice President, Finance

Dynavax Technologies Corporation

2929 Seventh Street, Suite 100

Berkeley, CA 94710-2753

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Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference in this document.

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