

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## AYTU BIOSCIENCE, INC

**Form: 8-K**

**Date Filed: 2020-06-01**

Corporate Issuer CIK: 1385818

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **May 29, 2020**

**AYTU BIOSCIENCE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**001-38247**

(Commission File Number)

**47-0883144**

(IRS Employer  
Identification No.)

**373 Inverness Parkway, Suite 206  
Englewood, CO 80112**

(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code: **(720) 437-6580**

**N/A**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, par value \$0.0001 per share	AYTU	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

### Item 1.01 Entry into a Material Definitive Agreement.

As set forth in the Current Report on Form 8-K as originally filed with the SEC on November 4, 2019 and as amended on November 4, 2019 and November 7, 2019, in connection with the purchase agreement by and between Aytu BioScience, Inc. (the “**Company**”) and Cerecor Inc. (“**Cerecor**”), the Company assumed from Cerecor a fixed payment obligation to Deerfield CSF, LLC (“**Deerfield**”) of approximately \$16.6 million (the “**Deerfield Obligation**”). In connection with the Company’s assumption of the Deerfield Obligation, the Company, each of Deerfield and certain of its affiliates (collectively, the “**Deerfield Parties**”), Avadel U.S. Holdings, Inc. and its subsidiaries, Armistice Capital Master Fund, Ltd. (“**Armistice**”) and Cerecor entered into a Consent and Limited Waiver Agreement dated October 31, 2019 (the “**Waiver**”), pursuant to which: (i) Armistice agreed to enter into a guarantee of the Deerfield Obligation (the “**Armistice Guarantee**”); (ii) Cerecor agreed to enter into a guarantee of the Deerfield Obligation; and (iii) Armistice agreed to enter into an escrow agreement (the “**Escrow Agreement**”) with the Deerfield Parties and JPMorgan Chase Bank, N.A. (the “**Escrow Agent**”), pursuant to which Armistice deposited approximately \$15 million into an escrow account (the “**Escrow Funds**”) to guarantee the balloon payment of \$15 million due to the Deerfield Parties by the Company on the last business day of January 2021 or earlier (the “**Balloon Payment Obligation**”).

On May 29, 2020, the Company, Armistice and the Deerfield Parties entered into an Early Payment Agreement and Escrow Instruction (the “**Early Payment Agreement**”) pursuant to which, (i) the Company agreed to transfer the sum of \$15 million to the Deerfield Parties in early satisfaction of the Balloon Payment Obligation (ii) the Deerfield Parties jointly and severally, acknowledged receipt and payment in full of the Balloon Payment and (iii) the Deerfield Parties and Armistice agreed to deliver to the Escrow Agent the joint written instruction to release the Escrow Funds to Armistice. The parties to the Early Payment Agreement acknowledged and agreed that the remaining fixed payments set forth on Schedule I of the Waiver other than the Balloon Payment Obligation remain due and payable pursuant to the terms of the Waiver, and that nothing in the Early Payment Agreement alters, amends, or waives any provisions or obligations in the Waiver or the deerfield agreement other than as expressly set forth therein. As further consideration for the early payment of the Balloon Payment Obligation contemplated by the Early Payment Agreement, Armistice agreed (i) to pay to the Company, in immediately available funds, an amount equal to \$200,000 and (ii) to reimburse the Company for all reasonable out-of-pocket legal expenses and fees incurred in connection with the Early Payment Agreement and the transactions contemplated thereby. On April 3, 2020, a majority of the Company’s disinterested board of directors approved the Company entering into an agreement whereby the Company would either assume the Escrow Agreement pursuant to an assignment and assumption agreement or paying the Balloon Payment Obligation.

The foregoing description of the Early Payment Agreement is qualified in its entirety by the full text of the Early Payment Agreement, a copy of which is attached hereto as Exhibit 10.1.

**Item 7.01 Regulation FD Disclosure.**

On June 1, 2020, the Company issued two press releases, (i) announcing the payment of the Balloon Payment Obligation and (ii) announcing that the U.S Food and Drug Administration (the "FDA") has granted Emergency Use Authorization for the COVID-19 IgG/IgM Rapid Test Cassette distributed by the Company. A copy of the press releases are attached as Exhibit 99.1 and 99.2, respectively, and incorporated herein by reference. In accordance with General Instruction B.2 of Form 8-K, the information in the press releases attached as Exhibit 99.1 and 99.2, respectively, hereto shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

**Item 9.01 Financial Statements and Exhibits.**

(d) The following exhibit is being filed herewith:

<b>Exhibit</b>	<b>Description</b>
10.1	<a href="#">Early Payment Agreement, dated May 29, 2020</a>
99.1	<a href="#">Press Release, dated June 1, 2020</a>
99.2	<a href="#">Press Release, dated June 1, 2020</a>

SIGNATURES

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

AYTU BIOSCIENCE, INC.

Date: June 1, 2020

By: /s/ Joshua R. Disbrow  
Joshua R. Disbrow  
Chief Executive Officer

## EARLY PAYMENT AGREEMENT AND ESCROW INSTRUCTION

This EARLY PAYMENT AGREEMENT AND ESCROW INSTRUCTION (this "Agreement") dated as of May 29, 2020 is by and among Armistice Capital Master Fund, Ltd. ("Armistice"), Aytu BioScience, Inc. ("Aytu") and James Flynn, Peter Steelman and Deerfield CSF, LLC (collectively, the "Deerfield Parties").

WHEREAS, the Deerfield Parties, Armistice, Aytu, Aytu Therapeutics LLC, Avadel U.S. Holdings, Inc. and its subsidiaries and affiliates (collectively, "Avadel") and Cerecor Inc. ("Cerecor"), are parties to that certain Consent and Limited Waiver Agreement dated as of November 1, 2019 (the "Waiver");

WHEREAS, Armistice previously deposited \$15,000,000 (the "Escrow Funds") in an escrow account (the "Escrow Account") governed by that certain Escrow Agreement dated as of November 1, 2019 (the "Escrow Agreement"), by and among Armistice, the Deerfield Parties and JPMorgan Chase Bank, N.A (the "Escrow Agent"), for the purpose of securing a portion of Armistice's obligations under the Armistice Guarantee, to guarantee the balloon payment of \$15,000,000 due to the Deerfield Parties by Aytu on the last business day of January 2021 or earlier in accordance with Section 1.6(g) of the Deerfield Agreement (the "Balloon Payment Obligation"); and

WHEREAS, Aytu desires to transfer the sum of \$15,000,000 to the Deerfield Parties in early satisfaction of the Balloon Payment Obligation.

In consideration of the foregoing premises and the respective representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Capitalized terms used herein (including in the preamble and recitals above) but not otherwise defined herein have the meanings ascribed to them in the Waiver.

2. In full satisfaction of the Balloon Payment Obligation, Aytu has paid to the Deerfield Parties, by wire transfers in immediately available funds, an aggregate amount equal to \$15,000,000, pursuant to the wire instructions set forth below:

\$14,720,600.96  
Deerfield CSF, LLC  
Name of Bank:  
ABA Number:  
Beneficiary:  
Account Number:

\$256,220.38  
James Flynn  
Bank:  
ABA Number:  
Beneficiary:  
Account Number:

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\$23,178.66

Peter W. Steelman TTEE and Sara H. Steelman TTEE

Bank of America

ABA

Account

Reference:

3. The Deerfield Parties, jointly and severally, hereby acknowledge receipt and payment in full of the Balloon Payment Obligation. All parties to this Agreement acknowledge and agree that the remaining fixed payments set forth on Schedule I of the Waiver other than the Balloon Payment Obligation remain due and payable pursuant to the terms of the Waiver, and that nothing in his Agreement alters, amends, or waives any provisions or obligations in the Waiver or the Deerfield Agreement other than as expressly set forth herein.

4. Upon receipt of the payments set forth in Section 2 of this Agreement, the Deerfield Parties and Armistice shall deliver to the Escrow Agent the Joint Written Instruction described in the Escrow Agreement and attached hereto as Exhibit A.

5. As between Armistice and Aytu as additional consideration for the early payment of the Balloon Payment Obligation and the resulting release of the Escrow Funds, Armistice hereby agrees (i) to pay to Aytu, in immediately available funds, an amount equal to \$200,000 and (ii) to reimburse Aytu for all reasonable out-of-pocket legal expenses and fees incurred in connection with this Agreement and the transactions contemplated hereby. The amount referenced in (i) above will be paid via wire transfer on the date hereof to the below wire instructions. The reimbursement described in (ii) shall be made at the same time and in the same manner as the amount in (i) to the extent calculable at such time, with the remainder to be made within 30 days of a request describing the remaining amount to be reimbursed.

"Aytu BioScience, Inc.:

Bank Name:

Bank Address:

ABA Number:

Credit A/C Name:

Credit A/C #: "

6. Each party to this Agreement agrees to execute and deliver, or cause to be executed and delivered, and to make or cause to be done or made, upon the reasonable written request of any other party to this Agreement, any and all instruments, acts or things, as may be reasonably requested by any other party for the purpose of, or in connection with early payment of the Balloon Payment Obligation and the release of the Escrow Funds.

7. This Agreement will be governed by, and construed in accordance with, the laws of the State of New York.

8. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or by electronic delivery in Adobe Portable Document Format or other electronic format based on common standards will be effective as delivery of a manually executed counterpart of this Agreement.

*(Signature Page Follows)*

The parties hereto have caused this Assignment and Assumption Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**ARMISTICE:**

Armistice Capital Master Fund, Ltd.

By: /s/ Steven Boyd

Name: Steven Boyd

Title: Director

**AYTU:**

Aytu BioScience, Inc.

By: /s/ Josh Disbrow

Name: Josh Disbrow

Title: Chief Executive Officer

[Signature Page to Early Payment Agreement and Escrow Instruction]

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**DEERFIELD PARTIES:**

Deerfield CSF, LLC

By: /s/ David J. Clark  
Name: David J. Clark  
Title: Manager

/s/ Peter Steelman  
Peter Steelman

/s/ James Flynn  
James Flynn

[Signature Page to Early Payment Agreement and Escrow Instruction]

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**Exhibit A**

**Escrow Release Notice – Joint Instructions**

See attached.

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**Escrow Release Notice – Joint Instructions**

JPMorgan Chase Bank, N.A., Escrow Services  
Escrow Services  
4 New York Plaza, Floor 11  
New York, NY 10004  
Attention: Renfred Pico / Donna Fitzsimmons  
Fax No.: 212-552-2812  
Email Address: [ec.escrow@jpmorgan.com](mailto:ec.escrow@jpmorgan.com)

Date: May 29, 2020

**Re: Armistice Capital Master Fund LTD (“Armistice”), James Flynn, Peter Steelman and Deerfield CSF, LLC (collectively, “Deerfield”) – Escrow Agreement dated November 1, 2019**  
**Escrow Account no.**

**Dear Sir/Madam:**

We refer to an escrow agreement dated November 1, 2019, among Armistice, Deerfield and JPMorgan Chase Bank, N.A., as Escrow Agent (the “ **Escrow Agreement**”).

Capitalized terms in this letter that are not otherwise defined shall have the same meaning given to them in the Escrow Agreement.

Pursuant to Section 3 of the Escrow Agreement, the Parties instruct Escrow Agent to release the Fund, or the portion specified below, to the specified Party as instructed below.

Amount: **\$15,000,000**  
(In writing): **Fifteen Million and no/100 Dollars**  
Beneficiary: Armistice Capital Master Fund LTD  
City: New York, NY  
Country: USA

**US Instructions:**

ABA:  
Swift Address:  
Beneficiary: A/C No:  
A/C Name:  
Swift Address:

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Armistice Capital Master Fund, Ltd.

By: /s/ Steven Boyd  
Name: Steven Boyd  
Title: Director

Deerfield CSF, LLC

By: /s/ David J. Clark  
Name: David J. Clark  
Title:

/s/ Peter Steelman  
Peter Steelman

/s/ James Flynn  
James Flynn

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## Aytu BioScience Announces \$15 Million Debt Retirement

Company Retires \$15M Obligation Assumed with Previously Announced Cerecor Commercial Portfolio Asset Purchase

**ENGLEWOOD, CO / ACCESSWIRE / June 1, 2020 /** Aytu BioScience, Inc. (NASDAQ:AYTU), a specialty pharmaceutical company (the “Company”) focused on commercializing novel products that address significant medical needs, today reported that the Company has retired \$15 million in a payment obligation (the “Balloon Payment Obligation”) owed to Deerfield CSF, LLC and affiliated parties (the “Deerfield Parties”). This early payment has satisfied the previously described \$15 million Balloon Payment Obligation that was assumed through the Company’s purchase of the former Cerecor prescription product portfolio (the “Commercial Portfolio”) announced on November 4, 2019.

Josh Disbrow, Chief Executive Officer of Aytu BioScience, commented, “We are pleased to have retired the \$15 million obligation that represents the bulk of the overall fixed amounts payable to Deerfield following our assumption of this responsibility that came as part of the acquisition of the Cerecor commercial portfolio last fall. By making this early payment, the Company has removed a large debt overhang, leaving only the \$86,840 fixed monthly payments owed to Deerfield through the end of January 2021. Following the removal of this obligation, and with the large cash infusion we’ve had over the preceding two months, the Company’s cash balance remains strong and the Company’s debt load is reduced to approximately \$1 million.”

The details of the Company’s early payment of the Balloon Payment Obligation are included on Form 8-K which was filed with the Securities and Exchange Commission today.

### About Aytu BioScience, Inc.

Aytu BioScience, Inc. is a commercial-stage specialty pharmaceutical company focused on commercializing novel products that address significant patient needs. The Company currently markets a portfolio of prescription products addressing large primary care and pediatric markets. The primary care portfolio includes (i) Natesto®, the only FDA-approved nasal formulation of testosterone for men with hypogonadism (low testosterone, or “Low T”), (ii) ZolpiMist™, the only FDA-approved oral spray prescription sleep aid, and (iii) Tuzistra® XR, the only FDA-approved 12-hour codeine-based antitussive syrup. The pediatric portfolio includes (i) AcipHex® Sprinkle™, a granule formulation of rabeprazole sodium, a commonly prescribed proton pump inhibitor; (ii) Cefaclor, a second-generation cephalosporin antibiotic suspension; (iii) Karbinal® ER, an extended-release carbinoxamine (antihistamine) suspension indicated to treat numerous allergic conditions; and (iv) Poly-Vi-Flor® and Tri-Vi-Flor®, two complementary prescription fluoride-based supplement product lines containing combinations of fluoride and vitamins in various for infants and children with fluoride deficiency. Aytu recently acquired exclusive U.S. distribution rights to two COVID-19 IgG/IgM rRapid tTests. These is coronavirus tests are is a solid phase immunochromatographic assays used in the rapid, qualitative and differential detection of IgG and IgM antibodies to the 2019 Novel Coronavirus in human whole blood, serum or plasma. The Company also recently signed an exclusive worldwide licensing agreement with Cedars-Sinai to develop the Healight™ technology platform, which is being studied as a potential treatment for COVID-19 and other severe respiratory infections.

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Aytu recently acquired Innovus Pharmaceuticals, a specialty pharmaceutical company commercializing, licensing and developing safe and effective consumer healthcare products designed to improve men's and women's health and vitality. Innovus commercializes over thirty-five consumer health products competing in large healthcare categories including diabetes, men's health, sexual wellness and respiratory health. The Innovus product portfolio is commercialized through direct-to-consumer marketing channels utilizing the Company's proprietary Beyond Human® marketing and sales platform.

Aytu's strategy is to continue building its portfolio of revenue-generating products, leveraging its focused commercial team and expertise to build leading brands within large therapeutic markets. For more information visit [aytubio.com](http://aytubio.com) and visit [innovuspharma.com](http://innovuspharma.com) to learn about the Company's consumer healthcare products.

### **Forward-Looking Statement**

This press release includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act. All statements other than statements of historical facts contained in this presentation, are forward-looking statements. Forward-looking statements are generally written in the future tense and/or are preceded by words such as "may," "will," "should," "forecast," "could," "expect," "suggest," "believe," "estimate," "continue," "anticipate," "intend," "plan," or similar words, or the negatives of such terms or other variations on such terms or comparable terminology. These statements are just predictions and are subject to risks and uncertainties that could cause the actual events or results to differ materially. These risks and uncertainties include, among others: market and other conditions, our ability to successfully commercialize Healight Platform Technology, our ability to obtain FDA approval for the Healight Platform Technology, the effectiveness of the Healight Platform Technology in treating patients with COVID-19 or other illnesses, our ability to adequately protect the intellectual property associated with the Healight Platform Technology, regulatory delays, the reliability of the Healight Platform Technology in killing viruses and bacteria, market acceptance of UV based medical devices, the regulatory and commercial risks associated with introducing the COVID-19 rapid tests, any delays in shipment that may impact our ability to distribute the COVID-19 rapid tests, any reputational harm we may incur if there are delays in receiving the shipment of the COVID-19 rapid tests, our ability to enforce the exclusivity provisions of the distribution agreements, the reliability of serological testing in detecting COVID-19, shipping delays and their impact on our ability to introduce the COVID-19 rapid tests, the ability of the COVID-19 rapid tests to accurately and reliably test for COVID-19, the manufacturers of the COVID-19 rapid tests' ability to manufacture such testing kits on a high volume scale, manufacturing problems or delays related to the COVID-19 rapid tests, our ability to satisfy any labelling conditions or other FDA or other regulatory conditions to sell the COVID-19 rapid test kits, the demand or lack thereof for the COVID-19 rapid test kits, our ability to obtain additional COVID-19 rapid tests to meet demand, our ability to secure additional tests if the manufacturers of the COVID-19 rapid tests are unable to meet demand, the effects of the business combination of Aytu and the Commercial Portfolio and the recently completed merger ("Merger") with Innovus Pharmaceuticals, including the combined company's future financial condition, results of operations, strategy and plans, the ability of the combined company to realize anticipated synergies in the timeframe expected or at all, changes in capital markets and the ability of the combined company to finance operations in the manner expected, the diversion of management time on Merger-related issues and integration of the Commercial Portfolio, the ultimate timing, outcome and results of integrating the operations the Commercial Portfolio and Innovus with Aytu's existing operations, risks relating to gaining market acceptance of our products, obtaining or maintaining reimbursement by third-party payors for our prescription products, and their potential future commercialization.

### **Contact for Investors:**

James Carbonara  
Hayden IR  
(646) 755-7412  
[james@haydenir.com](mailto:james@haydenir.com)  
Source: Aytu BioScience, Inc.

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## Aytu BioScience Announces Emergency Use Authorization of COVID-19 IgG/IgM Rapid Test

*Fourth FDA Emergency Use Authorization of a COVID-19 IgG/IgM Lateral Flow Rapid Test*

*1.4 Million Rapid Tests Available for Distribution at Company's Warehouse*

**ENGLEWOOD, CO / ACCESSWIRE / June 1, 2020 /** Aytu BioScience, Inc. (NASDAQ:AYTU), a specialty pharmaceutical company (the "Company") focused on commercializing novel products that address significant medical needs, today announced the U.S. Food and Drug Administration (the "FDA") has granted Emergency Use Authorization (EUA) for the COVID-19 IgG/IgM Rapid Test Cassette distributed by the Company. This is only the fourth lateral flow COVID-19 rapid serology test authorized by the FDA.

Additionally, more than 1.4 million COVID-19 IgG/IgM rapid tests have been delivered to the Company's warehouse in San Diego and are available for distribution.

Emergency Use Authorization of the COVID-19 IgG/IgM Rapid Test Cassette was granted by the FDA on May 29, 2020 to Healgen Scientific, LLC, the U.S. subsidiary of manufacturer Zhejiang Orient Gene Biotech, Limited. Aytu BioScience announced a U.S. distribution agreement to distribute the Zhejiang Orient Gene rapid test on March 10, 2020.

The COVID-19 IgG/IgM Rapid Test Cassette (Whole Blood/Serum/Plasma) is a qualitative test for the detection and differentiation of IgM and IgG antibodies against SARS-CoV-2 in whole blood, plasma (Li+-heparin, K2-EDTA and sodium citrate), and serum. The product is intended for use as an aid in identifying individuals with an adaptive immune response to SARS-CoV-2, indicating recent or prior infection.

Josh Disbrow, Chief Executive Officer of Aytu BioScience, stated, "This Emergency Use Authorization is an important milestone for the Company in its fight against the COVID-19 pandemic. This EUA establishes the clinical utility of the COVID-19 IgG/IgM Rapid Test in helping to identify individuals demonstrating an immune response to the COVID-19 virus. This test may serve as an important clinical tool as the U.S. and other countries work to reopen businesses and schools and we collectively work to re-establish normalcy in our everyday lives. Further, with more than 1.4 million tests now in stock at our San Diego warehouse, we look forward to serving the medical professionals in need of serology testing. We are proud to be playing a role to help in the COVID-19 health crisis."

The FDA authorization letter for the COVID-19 IgG/IgM Rapid Test Cassette can be found in the link below:

<https://www.fda.gov/media/138435/download>

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Aytu recently acquired Innovus Pharmaceuticals, a specialty pharmaceutical company commercializing, licensing and developing safe and effective consumer healthcare products designed to improve men’s and women’s health and vitality. Innovus commercializes over thirty-five consumer health products competing in large healthcare categories including diabetes, men’s health, sexual wellness and respiratory health. The Innovus product portfolio is commercialized through direct-to-consumer marketing channels utilizing the Company’s proprietary Beyond Human® marketing and sales platform.

Aytu's strategy is to continue building its portfolio of revenue-generating products, leveraging its focused commercial team and expertise to build leading brands within large therapeutic markets. For more information visit [aytubio.com](http://aytubio.com) and visit [innovuspharma.com](http://innovuspharma.com) to learn about the Company’s consumer healthcare products.

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### Contact for Investors:

James Carbonara

Hayden IR

(646) 755-7412

james@haydenir.com

Source: Aytu BioScience, Inc.

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