

DEPOMED INC
Form DEFA14A
August 07, 2015

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934**

Filed by the Registrant X

Filed by a Party other than the Registrant O

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material under §240.14a-12

DEPOMED, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:
 - (5) Total fee paid:
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Edgar Filing: DEPOMED INC - Form DEFA14A

- (1) Amount Previously Paid:
 - (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
-

Edgar Filing: DEPOMED INC - Form DEFA14A

On August 7, 2015, Depomed, Inc. (the Company), (1) issued the following press release and (2) made the following investor presentation available on the Company s website at investor.depomedinc.com

* * * * *

FOR IMMEDIATE RELEASE

Depomed Sends Letter to Horizon Pharma

Highlights Horizon's Failure to Make Compelling Proposal Despite Horizon's Stated Willingness to Increase Price and Include Cash Component

Depomed Files Investor Presentation

NEWARK, Calif., August 7, 2015 Depomed, Inc. (NASDAQ: DEPO) (Depomed or the Company) today announced that it has sent the following letter to Horizon Pharma plc (NASDAQ: HZNP) (Horizon):

August 7, 2015

Timothy P. Walbert

Chairman of the Board, President and Chief Executive Officer

Horizon Pharma plc

Connaught House, 1st Floor, 1 Burlington Road

Dublin 4, Ireland

Dear Tim,

In our conversation late last week, you stated that Horizon was prepared to increase its proposal and to include a cash component of up to 25%. This was confirmed in an email late Friday night from one of your Board members to our Board Chairman. Yet you still have not made a new proposal. Instead, you have insisted that we need to first make a counter-offer. It does not make any sense to engage with Horizon unless you make a sufficiently compelling and detailed proposal.

As we have previously told you, in order to be compelling, a proposal must reflect what Depomed would contribute to the combined company, as well as the value of synergies from the transaction. Surely your bankers and internal staff have this information as confirmed by the reference from one of your bankers last week.

Edgar Filing: DEPOMED INC - Form DEFA14A

You continue to be wrongly focused on a premium to unaffected price, when you know that our so-called unaffected price did not take account of our recent strong results, the additional insights we provided about NUCYNTA and the confirmation this week that all Depomed products remain covered by the major PBMs. What matters is the intrinsic value of Depomed and the contribution Depomed would make to the combined company. The inclusion of 25% cash does not change this from being mostly a stock-for-stock transaction.

We are making available an investor presentation today which shows the continued period of accelerated growth we have experienced and Depomed's promising outlook. It also includes an equity contribution analysis which shows Depomed's equity contribution to the combined company for example, based on revenues in 2016 and 2017, Depomed's equity contribution would be 33% and 35%, respectively.⁽¹⁾ The Depomed shareholders are entitled to an ownership interest that is commensurate with what Depomed would contribute to the combined company as well as a share of the synergies.

Your willingness to increase your proposal is an obvious recognition that the vast majority of our shareholders do not support what you have proposed. Our Board takes its fiduciary duties seriously and will always be open to any compelling proposal that creates value for its shareholders, but we are prepared and committed to take actions that we deem appropriate to protect our shareholders' interests, even if it involves protracted litigation and a proxy fight.

Best regards, Jim

Depomed also made available an investor presentation under the webcast and presentation section of the company's investor relations page at investor.depomedinc.com.

Morgan Stanley & Co. LLC and Leerink Partners LLC are serving as financial advisors to Depomed and Baker Botts L.L.P. and Gibson, Dunn & Crutcher LLP are serving as legal counsel.

About Depomed

Depomed is a specialty pharmaceutical company that commercializes products for pain and neurology related disorders. Our NUCYNTA® franchise includes NUCYNTA® ER (tapentadol) extended release tablets indicated for the management of pain, including neuropathic pain associated with diabetic peripheral neuropathy (DPN), severe enough to require daily, around-the-clock, long-term opioid treatment, and NUCYNTA® (tapentadol), an immediate release version of tapentadol, for management of moderate to severe acute pain in adults. Gralise® (gabapentin) is a once-daily treatment approved for the management of postherpetic neuralgia. CAMBIA® (diclofenac potassium for oral solution) is a non-steroidal anti-inflammatory drug indicated for acute treatment of migraine attacks with or without aura in adults (18 years of age or older). Zipsor® (diclofenac potassium) Liquid Filled Capsules is a non-steroidal anti-inflammatory drug indicated for relief of mild to moderate acute pain in adults. Lazanda® (fentanyl) Nasal Spray is an intranasal fentanyl drug used to manage breakthrough pain in adults (18 years of age or older) who are already routinely taking other opioid pain medicines around-the-clock for cancer pain. Gralise, Nucynta ER and various partner product candidates are formulated with Depomed's proven, proprietary Acuform® drug delivery technology. Additional information about Depomed may be found at www.depomed.com.

Forward-Looking Statements

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995. The statements that are not historical facts contained in this release are forward-looking statements that involve risks and uncertainties including, but not limited to, those related to Depomed's prospects as a standalone business, Depomed's business strategy, expectations regarding Depomed's future financial results and the ability to create shareholder value, expectations regarding anticipated growth and the future contributions and potential of NUCYNTA, and other risks detailed in the company's Securities and Exchange Commission filings, including the company's Annual Report on Form 10-K for the year ended December 31, 2014 and its most recent Quarterly Report on Form 10-Q. The inclusion of forward-looking statements should not be regarded as a representation that any of the company's plans, objectives or expectations will be achieved. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The company undertakes no obligation to publicly release the result of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Important Additional Information

Depomed intends to file a revocation statement and revocation card with the U.S. Securities and Exchange Commission (the SEC) in connection with a proposed solicitation by Horizon Pharma, plc to be able to call a special meeting of Depomed shareholders (the Horizon Special Meeting Solicitation). INVESTORS AND SHAREHOLDERS ARE STRONGLY ENCOURAGED TO READ THE REVOCATION STATEMENT (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS) AND OTHER DOCUMENTS FILED WITH THE SEC IF AND WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION.

These documents, including any solicitation statement (and amendments or supplements thereto) and other documents filed by Depomed with the SEC, will be available for no charge at the SEC's website at <http://www.sec.gov> and at the investor relations section of Depomed's website at <http://www.depomed.com>. Copies may also be obtained by contacting Depomed's Investor Relations by mail at 7999 Gateway Blvd., Suite 300, Newark, CA 94560 or by telephone at 510-744-8000.

Certain Information Regarding Participants

Depomed, its directors and certain of its executive officers may be deemed to be participants in the solicitation of revocations in connection with the Horizon Special Meeting Solicitation. Information regarding the names of Depomed's directors and executive officers and their respective interests in Depomed by security holdings or otherwise is set forth in Depomed's proxy statement for the 2015 Annual Meeting of Shareholders, filed with the SEC on April 6, 2015. To the extent holdings of such participants in Depomed's securities have changed since the amounts described in the 2015 proxy statement, such changes have been reflected on Initial Statements of Beneficial Ownership on Form 3 or Statements of Change in Ownership on Form 4 filed with the SEC. Additional information can also be found in Depomed's Annual Report on Form 10-K for the year ended December 31, 2014, filed with the SEC on February 26, 2015 and in Depomed's latest Quarterly Report on Form 10-Q.

Investor Contact:

Depomed, Inc.

August J. Moretti

Chief Financial Officer

510-744-8000

amoretti@depomed.com

or

Christopher Keenan

VP, Investor Relations and Corporate Communication

510-744-8000

Edgar Filing: DEPOMED INC - Form DEFA14A

ckeenan@depomed.com

Innisfree M&A Incorporated

Larry Miller / Jonathan Salzberger / Scott Winter

(212) 750-5833

Media Contact:

Joele Frank, Wilkinson Brimmer Katcher

Eric Brielmann

415-869-3950

Andy Brimmer and Averell Withers

212-355-4449

(1) Based on median metrics from Bloomberg and Wall Street research reports available to Depomed published since each company revised its guidance (7/20/15 for Horizon and 7/29/15 for Depomed)
