

HYPERION THERAPEUTICS INC
Form SC TO-T/A
May 07, 2015

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

SCHEDULE TO
Tender Offer Statement Under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 5)

Hyperion Therapeutics, Inc.

(Name of Subject Company)

Ghrian Acquisition Inc.

(Name of Offeror)

A Wholly Owned Subsidiary of

Horizon Pharma, Inc.

(Parent of Offeror)

An Indirect Wholly-Owned Subsidiary of

Horizon Pharma Public Limited Company

(Name of Offerors)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

Common Stock, Par Value \$0.0001 Per Share

(Title of Class of Securities)

44915N101

(CUSIP Number of Class of Securities)

Timothy P. Walbert

Chairman, President and Chief Executive Officer

Horizon Pharma plc

Connaught House, 1st Floor

1 Burlington Road

Dublin 4, Ireland

011-353-1-772-2100

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

Barbara Borden

Kay Chandler

Sean Clayton

Cooley LLP

4401 Eastgate Mall

San Diego, California 92121

(858) 550-6000

CALCULATION OF FILING FEE

| Transaction Valuation* | Amount of Filing Fee** |
|-------------------------------|-------------------------------|
| \$1,121,128,560 | \$130,275.14 |

- * Estimated solely for purposes of calculating the filing fee. The transaction value calculation does not take into account the effect of any cash received or deemed received by Hyperion Therapeutics, Inc. (Hyperion) in connection with the exercise of any outstanding equity awards. The transaction valuation was determined by multiplying (a) \$46.00, the tender offer price, by (b) the sum of (i) 20,874,966, the number of issued and outstanding shares of common stock of Hyperion, (ii) 3,099,078, the number of shares of Hyperion common stock subject to issuance pursuant to outstanding options to purchase shares of Hyperion common stock, and (iii) 398,316, the number of shares of Hyperion common stock subject to issuance pursuant to outstanding restricted stock unit awards to acquire shares of Hyperion common stock. The foregoing share figures have been provided by Hyperion and are as of April 7, 2015, the most recent practicable date.
- ** The amount of the filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #1 for Fiscal Year 2015, issued August 29, 2014, by multiplying the transaction valuation by 0.0001162.
- x Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$130,275.14

Filing Party: Horizon Pharma Public Limited Company, Horizon Pharma, Inc. and Ghria Acquisition Inc.

Form or Registration No.: Schedule TO

Date Filed: April 9, 2015

- .. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- x third-party tender offer subject to Rule 14d-1.
- .. issuer tender offer subject to Rule 13e-4.
- .. going-private transaction subject to Rule 13e-3.
- .. amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer. ..

Check the following box if the filing is a final amendment reporting the results of the tender offer. ..

This Amendment No. 5 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (as amended and together with any subsequent amendments and supplements thereto, the Schedule TO), filed with the Securities and Exchange Commission on April 9, 2015 by Ghrian Acquisition Inc. (Purchaser), a Delaware corporation and a wholly owned subsidiary of Horizon Pharma, Inc. (Parent), a Delaware corporation. The Schedule TO relates to the offer by Purchaser to purchase all of the outstanding shares of common stock, par value \$0.0001 per share (the Shares), of Hyperion Therapeutics, Inc., a Delaware corporation (Hyperion), at \$46.00 per Share, net in cash, without interest (less any required withholding taxes), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated April 9, 2015 (together with any amendments and supplements thereto, the Offer to Purchase), and in the related letter of transmittal (the Letter of Transmittal), copies of which are attached hereto as Exhibits (a)(1)(i) and (a)(1)(ii), respectively, which Offer to Purchase and Letter of Transmittal collectively constitute the Offer.

The information in the Offer to Purchase and the Letter of Transmittal is incorporated in this Amendment by reference to all of the applicable items in the Schedule TO, except that such information is amended and supplemented to the extent specifically provided in this Amendment. Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

Amendments to the Offer to Purchase

Items 1 through 9; Item 11.

The Offer to Purchase and Items 1 through 9 and Item 11 of the Schedule TO are hereby amended and supplemented as follows:

At 12:01 a.m., New York City time, on May 7, 2015, the Offer expired as scheduled and was not extended. Purchaser was advised by the Depository that, as of the Expiration Date, a total of 18,522,306 Shares (excluding Shares with respect to which Notices of Guaranteed Delivery had been delivered) were validly tendered into and not properly withdrawn from the Offer, representing approximately 86% of the Shares outstanding as of the Expiration Date. In addition, the Depository advised that Notices of Guaranteed Delivery have been delivered with respect to 498,982 additional Shares, representing approximately 2% of the outstanding Shares as of the Expiration Date.

The number of Shares tendered pursuant to the Offer satisfied the Minimum Condition. All conditions to the Offer having been satisfied, Purchaser accepted for payment and will promptly pay for all Shares validly tendered into and not properly withdrawn from the Offer.

Promptly following the consummation of the Offer, Parent and Purchaser intend to complete the acquisition of Hyperion through the Merger without a meeting of stockholders of Hyperion in accordance with Section 251(h) of the DGCL. At the Effective Time, each Share then outstanding (other than Shares that were held by any stockholders who properly demanded appraisal in connection with the Merger as described in Section 16 Certain Legal Matters; Regulatory Approvals Appraisal Rights of the Offer to Purchase) will be converted into the right to receive the Offer Price, net in cash, without interest (less any required withholding taxes) except for Shares held by Hyperion as treasury stock or held by Parent, Purchaser or any other wholly owned subsidiary of Parent, which Shares will be cancelled and retired and cease to exist, and no consideration will be delivered in exchange therefor.

Following the Merger, the Shares will be delisted and will cease to trade on NASDAQ.

On May 7, 2015, Horizon Pharma plc and Hyperion issued a joint press release announcing the expiration and results of the Offer. The full text of the press release is attached as Exhibit (a)(5)(iv) to the Schedule TO and is incorporated herein by reference.

Item 12. Exhibits

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit:

| Exhibit No. | Description |
|------------------------|--|
| (a)(5)(iv) | Press Release issued by Horizon Pharma plc on May 7, 2015. |

SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: May 7, 2015

Ghrian Acquisition Inc.

By: /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Title: President and Chief Executive Officer

Horizon Pharma, Inc.

By: /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Title: President and Chief Executive Officer

Horizon Pharma plc

By: /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Title: Chairman, President and Chief Executive Officer

Item 12. Exhibits

| Exhibit No. | Description |
|--------------------|---|
| (a)(1)(i) | Offer to Purchase, dated as of April 9, 2015* |
| (a)(1)(ii) | Form of Letter of Transmittal (including Internal Revenue Service Form W-9)* |
| (a)(1)(iii) | Form of Notice of Guaranteed Delivery* |
| (a)(1)(iv) | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees* |
| (a)(1)(v) | Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees* |
| (a)(1)(vi) | Summary Advertisement, as published in <i>The New York Times</i> on April 9, 2015* |
| (a)(5)(i) | Press Release issued by Horizon Pharma plc, dated March 30, 2015 (incorporated by reference to the Current Report on Form 8-K filed by Horizon Pharma plc on March 30, 2015)* |
| (a)(5)(ii) | Joint Press Release issued by Horizon Pharma plc, dated May 29, 2015* |
| (a)(5)(iii) | Joint Press Release issued by Horizon Pharma plc, dated May 30, 2015* |
| (a)(5)(iv) | Press Release issued by Horizon Pharma plc, dated May 7, 2015 |
| (b)(i) | Commitment letter with Citigroup Global Markets Inc. and Jefferies Finance LLC, dated March 29, 2015 (incorporated by reference to the Current Report on Form 8-K filed by Horizon Pharma plc on March 31, 2015)* |
| (c) | Not applicable |
| (d)(1) | Agreement and Plan of Merger, dated as of March 29, 2015, among Hyperion, Parent and Purchaser (incorporated by reference to the Current Report on Form 8-K/A filed by Hyperion on April 9, 2015)* |
| (d)(2) | Form of Tender and Support Agreement, dated as of March 29, 2015, among Parent, Purchaser and certain stockholders of Hyperion (incorporated by reference to the Current Report on Form 8-K filed by Hyperion on March 30, 2015)* |
| (d)(3) | Confidentiality Agreement, dated as of March 8, 2015, between Horizon Pharma plc and Hyperion, as amended.* |
| (e) | Not applicable |
| (f) | Not applicable |
| (g) | Not applicable |
| (h) | Not applicable |

* Previously filed.