

DEPOMED INC  
Form PRRN14A  
October 30, 2015

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

**SCHEDULE 14A**  
**(Rule 14a-101)**  
**INFORMATION REQUIRED IN PROXY STATEMENT**  
**SCHEDULE 14A INFORMATION**  
**Proxy Statement Pursuant to Section 14(a) of the**  
**Securities Exchange Act of 1934**  
**(Amendment No. 1)**

Filed by the Registrant

Filed by a Party other than the Registrant

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 Rule 14a-12

**DEPOMED, INC.**

**(Name of Registrant as Specified in Its Charter)**

**HORIZON PHARMA PUBLIC LIMITED COMPANY**

**HORIZON PHARMA, INC.**

**Robert M. Daines**

**Charles M. Fleischman**

**Elizabeth M. Greetham**

**Jack L. Kaye**

**Steven A. Lisi**

**Steven J. Shulman**

**Ralph H. Thurman**

**(Name of Persons(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:

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(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

\*\*\*PRELIMINARY PROXY STATEMENT SUBJECT TO COMPLETION\*\*\*

**PROXY STATEMENT**  
**IN CONNECTION WITH**  
**THE REMOVAL AND BYLAW AMENDMENTS SPECIAL MEETING**  
**OF DEPOMED, INC. SHAREHOLDERS**

**PROXY STATEMENT**  
**OF**  
**HORIZON PHARMA PUBLIC LIMITED COMPANY**  
**AND**  
**HORIZON PHARMA, INC.**

To the Fellow Shareholders of Depomed, Inc.:

This proxy statement (this Proxy Statement ) and the accompanying WHITE proxy card (the WHITE Proxy Card ) are being furnished to you as a shareholder of Depomed, Inc., a California corporation (the Company or Depomed ), with its principal executive offices at 7999 Gateway Blvd., Suite 300, Newark, California 94560, by and on behalf of Horizon Pharma public limited company, an Irish public limited company, and its wholly owned subsidiary, Horizon Pharma, Inc., a Delaware corporation (the Horizon Sub ) (collectively unless context requires otherwise, we, our or Horizon ) in connection with the solicitation of revocable proxies in the form of the accompanying WHITE Proxy Cards from Company shareholders by Horizon for use at the special meeting (including any adjournments or postponements thereof and any meeting held in lieu thereof) of shareholders of Depomed for the purposes described below (the Removal and Bylaw Amendments Special Meeting ), to be held at [ ] on [ ], 2015, at [ ]. Only holders of record at the close of business on [ ], 2015 (the Record Date ) will be entitled to vote in person or by proxy at the Removal and Bylaw Amendments Special Meeting.

Pursuant to the General Corporation Law of the California Corporations Code (the CGCL ) and the Company s Amended and Restated Bylaws, effective July 12, 2015 (the Bylaws ), the holders of shares of Company Common Stock (as defined below) entitled to cast not less than 10% of the votes at the Removal and Bylaw Amendments Special Meeting (the Special Meeting Percentage ) have called the Removal and Bylaw Amendments Special Meeting.

The date of this Proxy Statement is [ ], 2015. This Proxy Statement and the accompanying WHITE Proxy Cards are first being sent or given to shareholders on or about [ ], 2015.

We are soliciting your proxy for the Removal and Bylaw Amendments Special Meeting to vote **FOR** the following proposals:

1. to remove from office, without cause, the seven members of the Depomed board of directors (the Board ), constituting the entire current Board,

Peter D. Staple, Vicente Anido, Jr., Karen A. Dawes, Louis J. Lavigne, Jr., Samuel R. Saks, James A. Schoeneck and David B. Zenoff, as well as any person or persons elected or appointed to the Board without shareholder approval after Depomed's 2015 Annual Meeting of Shareholders, and up to and including the date of the Removal and Bylaw Amendments Special Meeting, each such removal to become effective upon the election of each successor by the shareholders of the Company;

2. to repeal the amendments to Sections 2 and 5 of the Bylaws adopted and approved by the Board on July 12, 2015 to remove what Horizon believes are onerous requirements imposed thereby on the process for calling a special meeting of shareholders and for submitting shareholder proposals;
3. to repeal any amendment or provision of the Bylaws adopted and approved by the Board that changes the Bylaws in any way from the version of the Bylaws adopted and approved by the Board on July 12, 2015 through the date of the Removal and Bylaw Amendments Special Meeting, and to amend the section of the Bylaws entitled "AMENDMENT OF BYLAWS" to eliminate the power of the Board to adopt, amend or repeal the Bylaws from the date of the Removal and Bylaw Amendments Special Meeting through the date that is 120 days following the date of the Removal and Bylaw Amendments Special Meeting; and
4. to approve the adjournment of the Removal and Bylaw Amendments Special Meeting, or any adjournments thereof, to another time and place if necessary or appropriate to, among other things, solicit additional proxies if there are insufficient votes at the time of the Removal and Bylaw Amendments Special Meeting to approve Proposals 1 through 3 (Proposals 1 through 4 collectively, the "Proposals").

*Background to Solicitation and Proposals*

Please see the section titled "Our Proposals for the Removal and Bylaw Amendments Special Meeting" of this Proxy Statement below for additional details regarding the Proposals.

We will be concurrently soliciting revocable proxies from Depomed shareholders for a second, additional special meeting (such meeting, the "Election Special Meeting") solely to consider and vote on a proposal from us to elect a slate of what we believe are independent, highly qualified nominees as successor directors (the "Horizon Nominees") to the Board, contingent on Proposal 1, Horizon's proposal to remove the current Board, being passed (such election proposal, the "Election Proposal"). We will be soliciting revocable proxies for the Election Special Meeting for election of the Horizon Nominees by means of a separate proxy statement and a separate proxy card. As a result of what we believe to be Depomed's rigid interpretation of its recently amended Bylaws, we were forced to seek the calling of a second, additional special meeting of Depomed shareholders solely to consider the Election Proposal

to try and avoid any further Depomed-caused delay in calling the Removal and Bylaw Amendments Special Meeting. For additional details regarding our solicitation of revocable proxies for calling the Election Special Meeting, please see our definitive Solicitation Statement (as defined below) filed with the U.S. Securities and Exchange Commission (the SEC) on September 8, 2015. For additional details regarding the Election Special Meeting and the Horizon Nominees, our slate of what in our view are independent, highly qualified nominees, please see the section titled Our Plans for the Election Special Meeting and Schedule I to this Proxy Statement.

On July 7, 2015, after our repeated attempts to engage the Board and Depomed's management in friendly and confidential discussions regarding a business combination with Horizon were rebuffed with no meaningful engagement, Horizon publicly proposed to acquire the Company (the Horizon Offer) in an all-stock transaction for \$29.25 per share of common stock, no par value, of the Company (Company Common Stock), with such consideration consisting of Horizon ordinary shares, no par value (Horizon Ordinary Shares). Then, on July 10, 2015, one of Depomed's representatives suggested to us that if Horizon would increase its proposed price to acquire Depomed by \$3.00 to \$4.00 per share in Horizon Ordinary Shares, Depomed would engage in a constructive dialogue with Horizon regarding negotiating a transaction. That weekend, we indicated to Depomed representatives that Horizon would be willing to increase its proposed price to acquire Depomed by \$3.00 to \$32.25 per share in Horizon Ordinary Shares, contingent on Depomed engaging in constructive dialogue toward a transaction. The Depomed representatives stated that they would discuss the new price with Depomed management and with the Board on July 12, 2015, and would follow up with us after the Board meeting of that day. They never followed up. Instead, Depomed announced the next day that it had taken formal measures to hinder the shareholders' statutory right to consider the Horizon Offer by implementing what we believe are onerous Bylaw amendments with respect to shareholder special meetings and shareholder proposals and by adopting, as discussed below, a so-called poison pill.

Nevertheless, to demonstrate our commitment to pursuing the combination, on July 21, 2015, Horizon publicly revised the terms of the Horizon Offer to increase its offer to \$33.00 per share of Company Common Stock, representing approximately a 60% premium to Company shareholders based on the closing per share price of Company Common Stock as of July 6, 2015, the last trading day prior to the first public announcement of the Horizon Offer and approximately a [ ]% premium based on such price as of [ ], the date of this Proxy Statement. The Horizon Offer, at \$33.00 per share of Company Common Stock, was valued at more than \$3 billion on an enterprise basis. On August 13, 2015, we publicly reiterated the Horizon Offer at \$33.00 per share of Company Common Stock and fixed the exchange ratio of such offer at 0.95 Horizon Ordinary Shares for each share of Company Stock based on the 15-day volume weighted average price of a Horizon Ordinary Share as of August 12, 2015, or \$34.74 per share. That same day, subject to our ongoing discussions with Depomed shareholders, we also publicly announced our willingness to amend the Horizon Offer to offer Depomed shareholders a cash-stock mix with up to 25% of the consideration in cash at the election of each respective Depomed shareholder, subject to certain terms and conditions, including a reduction in the total consideration per share to \$32.50 per share to partially offset

incremental costs associated with including cash as a component of the consideration.

On August 19, 2015, the Board again unanimously rejected the Horizon Offer and pre-emptively rejected our possible amendment of the Horizon Offer to offer Depomed shareholders a cash-stock mix with up to 25% of the consideration in cash at the election of each respective Depomed shareholder, subject to certain terms and conditions, as discussed above.

On September 8, 2015, to further demonstrate our commitment to pursuing the combination notwithstanding Depomed's ongoing refusal to meaningfully engage with us, Horizon commenced an exchange offer at a fixed exchange ratio of 0.95 Horizon Ordinary Shares for each issued and outstanding share of Company Common Stock reflecting the economic terms of the Horizon Offer as publicly reiterated on August 13, 2015 by Horizon (the Exchange Offer). The Exchange Offer was scheduled to expire at 5:00 p.m., Eastern Time, on Friday, November 6, 2015, but was extended on October 26, 2015 to expire at 5:00 p.m., Eastern Time, on November 20, 2015, unless Horizon further extends the period of time for which the Exchange Offer is open. The Exchange Offer is subject to a number of conditions, including that the Board shall have redeemed the poison pill discussed below, or such poison pill shall have been otherwise rendered inapplicable to the Exchange Offer. The premium, if any, represented by the fixed exchange ratio of the Exchange Offer or any revised Exchange Offer may be larger or smaller depending on the market price of shares of Company Common Stock and Horizon Ordinary Shares on any given date and will fluctuate between the date of this Proxy Statement and the dates of the Removal and Bylaw Amendments Special Meeting and the Election Special Meeting and between the date of this Proxy Statement and the date of consummation of any such Exchange Offer.

On September 14, 2015, Depomed filed a Schedule 14D-9 with the SEC stating that the Board unanimously determined that the Exchange Offer is inadequate and not in the best interests of Depomed and its shareholders and that the Board was recommending Depomed shareholders reject the Exchange Offer and not tender their respective shares of Company Common Stock in the Exchange Offer.

We firmly believe, but cannot assure, that a combination of Horizon and Depomed would yield significant revenue, operating and tax synergies, accelerated revenue and earnings growth and strong cash flow, as well as create substantial, immediate and long-term value for our and Depomed's shareholders. Despite our repeated attempts beginning in March 2015 to engage the Board and Depomed's management in friendly and confidential discussions, the Board and Depomed's management have refused to engage in meaningful discussions with us, have rejected the Horizon Offer and have even created new obstacles for shareholder consideration of the Horizon Offer by, among other things, amending the Bylaws to hinder Depomed shareholders' statutory right to call a special meeting and the process for shareholder proposal submission and adopting a shareholder rights plan, or so-called poison pill, that precludes a party from acquiring the 10% of the votes of Depomed necessary to call a special shareholders meeting or privately soliciting up to ten (10) other shareholders for the purpose of calling a special meeting.

While we have sought to comply in good faith with what we believe is an onerous process for calling a special meeting of shareholders imposed by the Board, we also are challenging such process as contrary to California law in a judicial proceeding seeking to protect the Company shareholders' franchise rights.

For additional background on the Horizon Offer, please see the section titled "Background and Past Contacts" in this Proxy Statement below. For additional background on the foregoing litigation, please see the section titled "Litigation" in this Proxy Statement below.

We are seeking your support at the Removal and Bylaw Amendments Special Meeting and asking shareholders to vote **FOR** each of the Proposals using one of the voting methods set forth below.

#### *Voting Methods*

- Voting by Mail. A WHITE Proxy Card is enclosed for your use. Whether or not you expect to attend the Removal and Bylaw Amendments Special Meeting, please sign, date and mail your WHITE Proxy Card promptly in the enclosed postage paid envelope provided.
- Voting by Telephone. If you live in the United States, you may vote your proxy toll-free 24 hours a day, 7 days a week up until 11:59 P.M. Eastern Time on [ ], 2015 by calling the toll-free telephone number on the WHITE Proxy Card. Please refer to the voting instructions on the WHITE Proxy Card. If you vote by telephone, please do not return your WHITE Proxy Card by mail.
- Voting via the Internet. If you wish to vote via the Internet, you may submit your proxy from any location in the world 24 hours a day, 7 days a week, up until 11:59 P.M. Eastern Time on [ ], 2015 by visiting the website provided on the WHITE Proxy Card. Please refer to the voting instructions on the WHITE Proxy Card. If you vote through the Internet, please do not return your WHITE Proxy Card by mail.
- Vote in person by attending the Removal and Bylaw Amendments Special Meeting. Written ballots will be distributed to shareholders who wish to vote in person at the Removal and Bylaw Amendments Special Meeting. If you hold your shares through a bank, broker or other nominee, you must obtain a legal proxy from such custodian in order to vote in person at the Removal and Bylaw Amendments Special Meeting. If you hold your shares through a bank, broker or other nominee and you do not intend to vote in person at the Removal and Bylaw Amendments Special Meeting, only such nominee can vote your shares, and only after receiving specific voting instructions from you. Please contact your bank, broker or nominee and instruct them to vote a WHITE Proxy Card **FOR** each of the Proposals thereon.

If Horizon receives WHITE Proxy Cards that have no explicit voting instructions, Horizon intends to vote such proxies **FOR** each of the Proposals thereon.

Pursuant to the WHITE Proxy Cards, we are requesting authority (i) to initiate and vote for the Proposals, (ii) to oppose and vote against any other proposals that come before the Removal and Bylaw Amendments Special Meeting, (iii) to adjourn or postpone the Removal and Bylaw Amendments Special Meeting if necessary or appropriate to, among other things, solicit additional proxies if there are insufficient votes at the time of the Removal and Bylaw Amendments Special Meeting to approve Proposals 1 through 3 and (iv) to oppose and vote against any proposal other than Proposal 4 to adjourn or postpone the Removal and Bylaw Amendments Special Meeting.

If you have any questions, require assistance in voting your WHITE Proxy Card, or need additional copies of this Proxy Statement, please contact our proxy solicitor at:

105 Madison Avenue

New York, NY 10016

Email: [depomed@mackenziepartners.com](mailto:depomed@mackenziepartners.com)

Call collect: (212) 929-5500

Call toll-free: (800) 322-2885

**IMPORTANT**

**This solicitation does not constitute an offer to buy or solicitation of any offer to sell securities. The Exchange Offer will be made only through the Tender Offer Statement on Schedule TO or the Prospectus/Offer to Exchange included in the Registration Statement on Form S-4 (including the Letter of Transmittal and related documents and as amended from time to time, the Exchange Offer Documents ) that Horizon has filed with the SEC on September 8, 2015. DEPOMED SHAREHOLDERS ARE URGED TO READ CAREFULLY THE EXCHANGE OFFER DOCUMENTS (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS) AND ANY REGISTRATION STATEMENTS, PROSPECTUSES, PROXY STATEMENTS AND OTHER DOCUMENTS FILED WITH THE SEC IN CONNECTION WITH THE EXCHANGE OFFER WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT HORIZON, DEPOMED AND THE EXCHANGE OFFER.**

THIS SOLICITATION OF PROXIES IS BEING MADE BY HORIZON, AND NOT ON BEHALF OF THE COMPANY OR THE BOARD.

YOUR VOTE IS IMPORTANT TO US, NO MATTER HOW MANY OR HOW FEW SHARES YOU OWN. WE URGE YOU TO VOTE **FOR** THE PROPOSALS BY COMPLETING, SIGNING, DATING AND RETURNING THE ENCLOSED WHITE PROXY CARD. YOU MAY ALSO VOTE BY TELEPHONE USING THE TOLL-FREE NUMBER ON THE WHITE PROXY CARD OR VIA THE INTERNET USING THE URL PROVIDED ON THE WHITE PROXY CARD.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE SOLICITATION OF PROXIES FOR THE REMOVAL AND BYLAW AMENDMENTS SPECIAL MEETING.** In addition to delivering printed versions of this Proxy Statement and the WHITE Proxy Card to all shareholders by mail, this Proxy Statement and WHITE Proxy Card are also available on the Internet. You have the ability to access and print this Proxy Statement and the WHITE Proxy Card at [www.HorizonandDepomed.com](http://www.HorizonandDepomed.com). As a shareholder of Depomed, you may receive the Company's proxy statement with respect to the Removal and Bylaw Amendments Special Meeting and an accompanying proxy card. Since only your latest dated proxy card will count, we urge you **NOT** to return any proxy card you receive from the Company with respect to the Removal and Bylaw Amendments Special Meeting. Please make certain that the latest dated proxy card you return is the WHITE Proxy Card.

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## QUESTIONS AND ANSWERS REGARDING THE REMOVAL AND BYLAW AMENDMENTS SPECIAL MEETING

The following are answers to some of the questions you, as a Depomed shareholder, may have with respect to Horizon's solicitation of revocable proxies for the Removal and Bylaw Amendments Special Meeting. The following is not a substitute for the information contained in this Proxy Statement, and the information contained below is qualified in its entirety by reference to the more detailed descriptions and explanations contained elsewhere in this Proxy Statement. We urge you to read this Proxy Statement carefully and in its entirety.

**Q: Who is making the solicitation of revocable proxies for the Removal and Bylaw Amendments Special Meeting?**

A: The solicitation is being made by Horizon. Please see the section titled "Certain Information Regarding the Participants" in this Proxy Statement below for additional information regarding the participants in the solicitation under SEC rules.

**Q: How many shares of Company Common Stock does Horizon own?**

A: Horizon, through the Horizon Sub, owns 2,250,000 shares of Company Common Stock, representing approximately 3.73% of the outstanding shares of Company Common Stock as of September 10, 2015, as reported in the definitive Revocation Statement (as defined below) filed by the Company on September 30, 2015.

**Q: What are we asking you to do?**

A: We are asking you to vote **FOR** the following Proposals at the Removal and Bylaw Amendments Special Meeting:

1. to remove from office, without cause, the seven members of the current Board, constituting the entire current Board, Peter D. Staple, Vicente Anido, Jr., Karen A. Dawes, Louis J. Lavigne, Jr., Samuel R. Saks, James A. Schoeneck and David B. Zenoff, as well as any person or persons elected or appointed to the Board without shareholder approval after Depomed's 2015 Annual Meeting of Shareholders, and up to and including the date of the Removal and Bylaw Amendments Special Meeting, each such removal to become effective upon the election of each successor by the shareholders of the Company;
2. to repeal the amendments to Sections 2 and 5 of the Bylaws adopted and approved by the Board on July 12, 2015 to remove what Horizon believes are onerous requirements imposed thereby on the process for calling a special meeting of shareholders and for submitting shareholder proposals;



3. to repeal any amendment or provision of the Bylaws adopted and approved by the Board that changes the Bylaws in any way from the version of the Bylaws adopted and approved by the Board on July 12, 2015 through the date of the Removal and Bylaw Amendments Special Meeting, and to amend the section of the Bylaws entitled "AMENDMENT OF BYLAWS" to eliminate the power of the Board to adopt, amend or repeal the Bylaws from the date of the Removal and Bylaw Amendments Special Meeting through the date that is 120 days following the date of the Removal and Bylaw Amendments Special Meeting; and
4. to approve the adjournment of the Removal and Bylaw Amendments Special Meeting, or any adjournments thereof, to another time and place if necessary or appropriate to, among other things, solicit additional proxies if there are insufficient votes at the time of the Removal and Bylaw Amendments Special Meeting to approve Proposals 1 through 3.

Please see the section titled "Our Proposals for the Removal and Bylaw Amendments Special Meeting" in this Proxy Statement below for additional details regarding the Proposals.

**Q: Why are we soliciting your vote on the Proposals?**

A: Given the Board's and Depomed management's refusal to meaningfully engage with us, we feel strongly that the Board, as currently constituted, does not provide assurance that the interests of Depomed shareholders are being sufficiently taken into account with respect to the Horizon Offer, especially in light of what we believe are onerous Bylaw provisions adopted by the Board limiting shareholders' rights and the poison pill adopted by the Board.

In that belief, we are soliciting Depomed shareholders to consider and vote on Proposal 1 to remove the entire current Board and on Proposals 2 and 3 to repeal such onerous Bylaw provisions and to prevent the Board from making any further changes to the Bylaws to limit shareholder rights.

**Q: If I, as a Depomed shareholder, joined you in requesting that the Company call the Removal and Bylaw Amendments Special Meeting, do I have any special obligations under the Bylaws?**

A: Yes, with respect to two specific representations you made previously. If you joined us in calling the Removal and Bylaw Amendments Special Meeting by granting us the authority to request the calling of such meeting on your behalf, then as a result of what we believe are onerous provisions in the Bylaws, you had to represent on such authorizing proxy that (i) you would notify the Company in writing within five (5) business days after the Record Date of the class or series and number of shares of stock of the Company owned of record

by you, if any, and (ii) you intended to appear in person or by proxy at the Removal and Bylaw Amendments Special Meeting to propose such business as proposed in the Record Date Request Notice.

So as not to possibly invalidate such proxy for the calling of the Removal and Bylaw Amendments Special Meeting and to comply with the Bylaws, if you are such a shareholder, please provide the Company the foregoing written notice of shares owned of record by you in writing by [ ], 2015 along with a copy to us c/o MacKenzie Partners, Inc. at 105 Madison Avenue, New York, NY 10016, so that we will be aware of all updates and will be able to ensure compliance with such notice requirement.

As your proxy for the calling of the Removal and Bylaw Amendments Special Meeting will not count as a vote **FOR** the Proposals, however, we also ask that you please submit a signed and completed WHITE Proxy Card so as to authorize us to initiate a vote on the Proposals by proxy on your behalf.

**Q: Are you planning on submitting a slate of nominees to the Board to replace the current Board if Proposal 1 is passed at the Removal and Bylaw Amendments Special Meeting?**

A: Yes, at a second, additional special meeting of Depomed shareholders. As a result of what we believe to be Depomed's rigid interpretation of its recently amended Bylaws, we were forced to seek the calling of a second, additional special meeting of Depomed shareholders solely to consider a proposal to elect a slate of what we believe are independent, highly qualified nominees as successor directors if Proposal 1 is passed at the Removal and Bylaw Amendments Special Meeting to try and avoid any further Depomed-caused delay in calling the Removal and Bylaw Amendments Special Meeting. We refer to such nominees as the Horizon Nominees in this Proxy Statement.

We are currently soliciting revocable proxies from Depomed shareholders to call such second, additional special meeting, which we are referring to in this Proxy Statement as the Election Special Meeting. We will also be soliciting revocable proxies for the Election Special Meeting for election of the Horizon Nominees by means of a separate proxy statement and a separate proxy card.

For additional details regarding our solicitation of revocable proxies for calling the Election Special Meeting, please see our definitive solicitation statement filed with the SEC on September 8, 2015. For additional details regarding the Election Special Meeting and our slate of what in our view are independent, highly qualified nominees, please the section titled "Our Plans for the Election Special Meeting" and Schedule I to this Proxy Statement.

**Q: Who would the Horizon Nominees to the Board be at the Election Special Meeting?**

A: At the Election Special Meeting, we expect to nominate Robert M. Daines, Charles M. Fleischman, Elizabeth M. Greetham, Jack L. Kaye, Steven A. Lisi, Steven J. Shulman and Ralph H. Thurman for election to the Board contingent on Proposal 1 having been passed at the Removal and Bylaw Amendments Special Meeting.

We believe that each of the Horizon Nominees is a highly qualified, independent, experienced and well-respected member of the business community. None of the Horizon Nominees is employed by or otherwise affiliated with Horizon or any subsidiary of Horizon. The Horizon Nominees have not made any commitment to us if elected other than that they will serve as directors, exercise their independent judgment in accordance with their fiduciary duties in all matters before the Board and otherwise discharge their duties as directors of the Company consistent with all applicable legal requirements. We believe, however, that the Horizon Nominees, if elected, are more likely than the current Board to engage in good faith discussions with Horizon with respect to the Horizon Offer or any future business combination offer from Horizon.

For additional details regarding the Horizon Nominees, please see Schedule I of this Proxy Statement.

**Q: When and where is the Removal and Bylaw Amendments Special Meeting to be held?**

A: The Removal and Bylaw Amendments Special Meeting will be held at [ ] on [ ], 2015, at [ ].

**Q: When do you expect the Election Special Meeting to be held if called?**

A: As close in time as possible to the Removal and Bylaw Amendments Special Meeting, if not the same day, as permitted under the Bylaws and the CGCL.

**Q: What effect might passage of the Proposals at the Removal and Bylaw Amendments Special Meeting and/or the election of any Horizon Nominees pursuant to the Election Proposal at Election Special Meeting have under the change in control provisions of the Company's publicly filed agreements?**

A: Please see the section titled "Certain Effects Related to This Solicitation" of this Proxy Statement for discussion of such possible effects.

**Q: Who can vote at the Removal and Bylaw Amendments Special Meeting?**

A: Only holders of record at the close of business on [ ], 2015, i.e., the Record Date, will be entitled to vote in person or by proxy at the Removal and Bylaw Amendments Special Meeting.

**Q: What will constitute a quorum at the Removal and Bylaw Amendments Special Meeting?**

A: A majority of the outstanding shares of Company Common Stock entitled to vote at the Removal and Bylaw Amendments Special Meeting must be present in person or by proxy in order for there to be a quorum at the Removal and Bylaw Amendments Special Meeting.

**Q: How many shares must be voted in favor of each of the Proposals to approve them and each Horizon Nominee to elect him or her pursuant to the Election Proposal at the Election Special Meeting, if called?**

A: Proposals 1 through 3 require the approval by the affirmative vote of a majority of the outstanding shares of Company Common Stock entitled to vote. Proposal 4 requires the approval by the affirmative vote of a majority of the shares of Company Common Stock entitled to vote and represented either in person or by proxy, whether or not a quorum is present, at the Removal and Bylaw Amendments Special Meeting.

The election of any Horizon Nominee pursuant to the Election Proposal will require approval of the affirmative vote of a majority of the shares represented and voting at a duly called meeting of shareholders at which a quorum is present (in which shares voting affirmatively also constitute at least a majority of the required quorum).

**Q: Will there be cumulative voting with respect to the removal of directors pursuant to Proposal 1 if passed at the Removal and Bylaw Amendments Special Meeting or the election of any Horizon Nominees pursuant to the Election Proposal at the Election Special Meeting, if called?**

A: No. Under Depomed's charter, cumulative voting with respect to director elections has been eliminated as permitted under the CGCL. Additionally, hypothetical cumulative voting shall not apply with respect to the removal of directors pursuant to Proposal 1, if passed. Under Section 303(a)(1) of the CGCL, unless the Board is removed in its entirety, no director can be removed if the votes cast against removal would be sufficient to elect the director if voted cumulatively, and the number of directors authorized at the time of the director's most recent election were then being elected. Since Proposal 1, if passed, would effect the removal of the entire current Board, subject to the election of successor directors, such hypothetical cumulative voting is inapplicable.

**Q: How may Depomed shareholders vote their shares?**

A: See the section titled **Removal and Bylaw Amendments Special Meeting Voting Procedures** in this Proxy Statement below for the four ways Depomed shareholders may vote at the Removal and Bylaw Amendments Special Meeting: by promptly mailing in the WHITE Proxy Card, by telephone, via the Internet and by attending the Removal and Bylaw Amendments Special Meeting and voting in person.

**Q: How will my shares be voted if the enclosed WHITE Proxy Card is signed and returned but no specific voting direction is given?**

A: If you are a holder of record of shares of Company Common Stock and properly sign and return the enclosed WHITE Proxy Card, but do not specify how to vote, Horizon intends to vote such proxies **FOR** each of the Proposals thereon.

**Q: Aside from voting authority on the Proposals, may the enclosed WHITE Proxy Card, if signed and returned, grant Horizon any other authority in respect of my shares of Company Common Stock?**

A: Yes. Pursuant to the WHITE Proxy Cards, we are also requesting discretionary authority (i) to oppose and vote against any proposals other than the Proposals that come before the Removal and Bylaw Amendments Special Meeting and (ii) to oppose and vote against any proposal to adjourn or postpone the Removal and Bylaw Amendments Special Meeting, unless necessary or appropriate to, among other things, solicit additional proxies if there are insufficient votes at the time of the Removal and Bylaw Amendments Special Meeting to approve Proposals 1 through 3.

**Q: If my shares of Company Common Stock are held in street name by my broker or other nominee, will my broker or other nominee vote my shares with respect to any of the Proposals?**

A: No, your broker or other nominee will not vote your shares of Company Common Stock on your behalf on any of the Proposals unless you provide instructions on how to vote.

Without your instructions, your street name shares will not be voted in favor of the Proposals, which will have the same effect as voting **AGAINST** each of the Proposals other than Proposal 4 and will have no effect on the Proposal 4 vote. Accordingly, it is critical that you promptly give instructions to your broker or other nominee to vote on the Proposals.

Horizon urges you to confirm in writing your instructions to your broker or other nominee as soon as possible and provide a copy of those instructions to

Horizon c/o MacKenzie Partners, Inc. at 105 Madison Avenue, New York, NY 10016, so that Horizon will be aware of all instructions given and can attempt to ensure that those instructions are followed.

**Q: What effect will an abstention have on the vote on the Proposals?**

A: Abstentions will have the effect of a vote **AGAINST** each of the Proposals.

**Q: How may WHITE Proxy Cards be revoked?**

A: Company shareholders who execute and deliver WHITE Proxy Cards solicited on behalf of Horizon in connection with the Proposals at the Removal and Bylaw Amendments Special Meeting will be permitted to revoke such proxies at any time before the proxy is exercised at the Removal and Bylaw Amendments Special Meeting by:

- delivering an instrument revoking the earlier proxy card, or a duly executed later-dated proxy card for the same shares, including a Company-furnished proxy card, to MacKenzie Partners, Inc. ( MacKenzie Partners ), our proxy solicitor, at 105 Madison Avenue, New York, NY 10016;
- filing with the Company's Corporate Secretary prior to the Removal and Bylaw Amendments Special Meeting either a notice of revocation or a duly executed later dated proxy for the same shares, including a Company-furnished proxy card;
- if you have voted by telephone or through the Internet, calling the same toll-free number or by accessing the same web site and following the instructions provided on the WHITE Proxy Card; or
- voting in person at the Removal and Bylaw Amendments Special Meeting.

Please note that if your shares of Company Common Stock are held in street name by a broker or other nominee, you must follow the instructions set forth in the instruction cards to revoke your earlier vote.

**Q: Who is paying for the solicitation of proxies for the Removal and Bylaw Amendments Special Meeting?**

A: The entire expense of preparing and mailing this Proxy Statement and any other soliciting material and the total expenditures relating to the solicitation of proxies for approval of the Proposals at the Removal and Bylaw Amendments Special Meeting will be borne by Horizon.



**Q: Do you expect to call the Election Special Meeting before knowing whether Proposal 1 has passed at the Removal and Bylaw Amendments Special Meeting?**

A: Yes, assuming we obtain support from shareholders holding shares of Company Common Stock representing, together with Horizon, at least the Special Meeting Percentage. On obtaining such support, in order to facilitate holding the Election Special Meeting as close in time as possible, if not the same day, as the vote on Proposal 1 so as to minimize the period between the removal of the current Board and the election of successor directors upon which such removal is contingent, we expect to submit a request to call the Election Special Meeting before a vote on Proposal 1 has been held at the Removal and Bylaw Amendments Special Meeting.

**Q: If I vote on the Proposals at the Removal and Bylaw Amendments Special Meeting, am I voting, or agreeing to vote, on the Horizon Offer or any other business combination with Horizon?**

A: No. We are not currently seeking your proxy, consent, authorization or agent designation for approval of the Horizon Offer or any other business combination with Horizon. Neither the calling of the Removal and Bylaw Amendments Special Meeting or the Election Special Meeting nor the approval by Depomed shareholders of any of the Proposals or the Election Proposal would ensure that Depomed pursues or consummates the Horizon Offer or any other business combination with Horizon. Depomed shareholders who submit a WHITE Proxy Card or otherwise vote their shares at the Removal and Bylaw Amendments Special Meeting or the Election Special Meeting, if called, are not, therefore, receiving an opportunity to vote directly on the Horizon Offer or any other business combination with Horizon.

**Q: Do I have to tender my shares of Company Common Stock in the Exchange Offer to vote on any of the Proposals?**

A: No, you do not need to tender your shares in the Exchange Offer to vote for any of the Proposals. You only need to sign, date and return the enclosed WHITE Proxy Card, or vote by telephone or via the Internet or in person at the Removal and Bylaw Amendments Special Meeting to vote on the Proposals.

**This solicitation does not constitute an offer to buy or solicitation of any offer to sell securities. The Exchange Offer will be made only through the Tender Offer Statement on Schedule TO or the Prospectus/Offer to Exchange included in the Registration Statement on Form S-4 (including the Letter of Transmittal and related documents and as amended from time to time, the Exchange Offer Documents ) that Horizon has filed with the SEC on September 8, 2015. DEPOMED SHAREHOLDERS ARE**

**URGED TO READ CAREFULLY THE EXCHANGE OFFER DOCUMENTS (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS) AND ANY REGISTRATION STATEMENTS, PROSPECTUSES, PROXY STATEMENTS AND OTHER DOCUMENTS FILED WITH THE SEC IN CONNECTION WITH THE EXCHANGE OFFER WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT HORIZON, DEPOMED AND THE EXCHANGE OFFER.**

**Q: Whom should I call with any questions?**

**A:** Depomed shareholders should call MacKenzie Partners, our proxy solicitor, toll-free at (800) 322-2885 with any questions about the Proxy Solicitation, the Removal and Bylaw Amendments Special Meeting, the Election Special Meeting or how to vote their shares.

## BACKGROUND AND PAST CONTACTS

Horizon regularly considers a variety of potential transactions to acquire products in primary care, orphan diseases and specialty businesses. As part of this process, Horizon identified Depomed as a possible acquisition target. The following is a chronology of events leading up to this Proxy Statement:

- On February 24, 2015, the Horizon board of directors held a regularly scheduled meeting in Dublin, Ireland, and discussed, among other things, a possible combination with Depomed and authorized management to make a proposal to Depomed.
- On March 11, 2015, Horizon's Chairman, President and Chief Executive Officer, Timothy P. Walbert, spoke to Depomed's President and Chief Executive Officer, James A. Schoeneck, about engaging in confidential discussions to combine the two companies. Mr. Schoeneck declined to engage citing less than ideal timing.
- On March 24, 2015, the transaction committee of the Horizon board of directors (the Horizon Transaction Committee), which had been delegated authority to oversee the offers made to Depomed and authorize changes to the terms of the offers, at a meeting in Dublin, Ireland, discussed, among other things, a potential combination with Depomed, including changes in Depomed's stock price since February 2015 and the terms of Depomed's recent high yield financing, including expected breakage costs. The Horizon Transaction Committee authorized Horizon to continue to pursue the proposed combination, within authorized terms, and authorized the engagement of Citigroup and Jefferies to serve as financial advisors in connection with the potential transaction.
- On May 7, 2015, the Horizon board of directors, at its regular meeting in Dublin, Ireland, discussed, among other things, the continuing interest of Horizon to pursue a combination with Depomed, the recent stock price performance of Depomed and the proposed acquisition structure.
- On May 14, 2015, Mr. Walbert requested a meeting with Mr. Schoeneck. Mr. Schoeneck responded on May 19, 2015 that he would be available for a call on May 27, 2015.
- On May 27, 2015, Mr. Walbert spoke to Mr. Schoeneck and subsequently sent a letter setting forth the Horizon Offer as an all-stock transaction in which Depomed shareholders would receive \$29.25 in Horizon Ordinary Shares.
- On June 12, 2015, Horizon sent Depomed a follow-up letter reiterating the Horizon Offer sent on May 27, 2015.
- On June 18, 2015, one of Horizon's directors called the Depomed Chairman of the Board to encourage Depomed to engage in discussions with Horizon regarding a possible combination.



- On June 20, 2015, the Horizon Transaction Committee met telephonically to discuss the status of discussions with Depomed.
- On June 25, 2015, Depomed sent a letter to Horizon indicating that the Board had unanimously rejected the Horizon Offer.
- On June 29, 2015, one of Horizon's directors communicated electronically with the Depomed Chairman of the Board about the Horizon Offer.
- On the same day, Depomed's financial advisors, Morgan Stanley and Leerink, also spoke to Horizon's financial advisors, Citi and Jefferies, about the Horizon Offer. Morgan Stanley and Leerink told Citi and Jefferies that the Horizon Offer was not compelling enough to justify engaging further.
- On June 30, 2015, the Horizon Transaction Committee held a telephonic meeting to consider next steps in light of the Board's rejection of the Horizon Offer and stated unwillingness to engage in any discussions about value or price based on Horizon's May 27 offer. The Horizon Transaction Committee authorized Horizon to issue a public letter to the Board in response to Depomed's rejection of the Horizon Offer.
- On July 7, 2015, Horizon delivered a letter to Depomed further reiterating the Horizon Offer and its value and issued a press release detailing the proposal.
- Later that day on July 7, 2015, Horizon held a conference call to answer questions about the Horizon Offer and discuss its benefits.
- On the same day, Depomed confirmed receipt of the Horizon Offer.
- From July 9, 2015 through August 19, 2015, Horizon, through the Horizon Sub, purchased 2,250,000 shares of Company Common Stock, representing approximately 3.73% of the outstanding shares of Company Common Stock as of September 10, 2015, as reported in the definitive Revocation Statement (as defined below) filed by the Company on September 30, 2015.
- On July 10, 2015, one of Depomed's financial advisors, Leerink, spoke with one of Horizon's financial advisors, Citi, and suggested that if Horizon would increase its proposed price to acquire Depomed by \$3.00 to \$4.00 per share in Horizon Ordinary Shares, Depomed would engage in a constructive dialogue with Horizon regarding negotiating a transaction.
- During the weekend of July 10, 2015, Depomed's financial advisors spoke with Horizon's financial advisors, and Horizon's financial advisors indicated that Horizon would be willing to increase its proposed price to acquire Depomed by \$3.00 to \$32.25 per share in Horizon Ordinary Shares, contingent on Depomed engaging in constructive dialogue toward a transaction. Depomed's financial advisors stated that they would discuss the

new price with Depomed management and discuss with the

Board on July 12, 2015, and would follow up with Horizon's financial advisors after the Board meeting of that day. They never followed up, and Depomed instead announced the next day the adoption of the Rights Agreement (as defined below) and the Bylaw amendments discussed immediately below.

· On July 12, 2015, Depomed adopted a rights agreement declaring a dividend of one right for each outstanding share of Company Common Stock (the Rights Agreement). The plan is triggered by, among other things, a person or group acquiring 10% or more of the outstanding shares of Company Common Stock.

· On the same day, Depomed amended its previous Bylaws and instituted various notice and information requirements with respect to the shareholders' right to call a special meeting, making it more difficult and time-consuming to do so.

· On July 13, 2015, Horizon issued a press release voicing its disappointment with Depomed's decision to limit shareholders' ability to take advantage of the Horizon Offer by implementing the Rights Agreement and amending the Bylaws to delay and make more difficult the calling of a special meeting.

· On July 18, 2015, one of Horizon's directors spoke to the Depomed Chairman of the Board to encourage Depomed to engage in discussions with Horizon.

· On July 21, 2015, Horizon delivered a letter to Depomed increasing its proposed price to acquire the Company to \$33.00 per share in Horizon Ordinary Shares.

· On the same day, Depomed confirmed receipt of the revised Horizon Offer.

· On July 23, 2015, Mr. Walbert contacted Mr. Schoeneck to yet again encourage discussions on the potential combination.

· On July 29, 2015, Depomed issued a press release announcing that the Board had unanimously rejected Horizon's July 21, 2015 offer of \$33.00 per share in Horizon Ordinary Shares.

· On the same day, Depomed sent a letter to Horizon stating that the Board had rejected the revised Horizon Offer.

· On July 30, 2015, Mr. Walbert had a discussion with Mr. Schoeneck to request feedback regarding a value and terms that would compel Depomed to engage with Horizon. Mr. Schoeneck committed to follow up within one (1) day.

· On July 31, 2015, Morgan Stanley and Leerink, financial advisors to Depomed, informed Citi and Jefferies, financial advisors to Horizon, that Depomed again would not be providing any guidance other than that

Horizon should submit a substantially more compelling offer.

· On the same day, Mr. Walbert sent a letter via email to Mr. Schoeneck further clarifying the Horizon Offer to ensure consistency with the message being delivered to Depomed by its financial advisors and reiterating the value being offered by Horizon to the Depomed shareholders. Additionally, the letter made clear that if Depomed did not provide feedback on what value and terms it would be willing to consider and Depomed did not engage in constructive discussions with Horizon, Horizon would take its proposal directly to Depomed's shareholders and challenge the decision making of the Board.

· On August 1, 2015, letters substantially similar to the July 31st letter sent by Mr. Walbert to Mr. Schoeneck described immediately above were sent via email by two Horizon directors to the Depomed Chairman of the Board and another Depomed director.

· On August 3, 2015, Horizon issued a press release announcing, among other things, that it had submitted to Depomed a notice pursuant to the Bylaws to request that the Board set a record date for determining shareholders entitled to call a special meeting (such notice, the Record Date Request Notice and such date, a Request Record Date ) and filed a preliminary solicitation statement with the SEC to solicit revocable proxies from shareholders who, together with Horizon, held shares of Company Common Stock representing not less than the Special Meeting Percentage (the Solicitation Statement ), beginning the process for calling a shareholder meeting to consider the Proposals.

· On the same day, Horizon announced it is judicially challenging the Rights Agreement and Bylaw amendments that delay and make more difficult the calling of a special meeting. For additional background on the foregoing litigation, please see the section titled Litigation in this Proxy Statement below.

· On the same day, Horizon sent a letter to Depomed requesting clarification as to how it would apply certain portions of the Bylaws to the special meeting process.

· On the same day, Depomed announced it would review the Record Date Request Notice and that it was filing a lawsuit to assert a claim for violation of the California Uniform Trade Secrets Act and breach of contract and alleging that Horizon made fraudulent and misleading statements to the Company's shareholders. For additional background on the foregoing litigation, please see the section titled Litigation in this Proxy Statement below.

· On August 7, 2015, Depomed sent a letter to Horizon indicating its unwillingness to make a counter-offer to the revised Horizon Offer.

· On August 10, 2015, Depomed sent a letter to Horizon asking Horizon to clarify Proposal 1 regarding the removal of the Board and confirming that unaffiliated beneficial owners of shares of Company Common Stock will not be required to provide information that would not be customary for a solicitation process of this nature.

- On August 12, 2015, Horizon sent a letter to Depomed in response to the letter immediately above providing clarification with respect to Proposal 1 and acknowledging Depomed's confirmation that unaffiliated beneficial owners of shares of Company Common Stock would not be required to provide information that would not be customary for a solicitation process of this nature.
- On August 13, 2015, Horizon issued a press release and delivered a letter to the Board reiterating the Horizon Offer to acquire Depomed for \$33.00 per share in Horizon Ordinary Shares and fixing the exchange ratio of such offer at 0.95 Horizon Ordinary Shares for each share of Company Stock based on the 15-day volume weighted average price of a Horizon Ordinary Share as of August 12, 2015, or \$34.74 per share. Additionally, in that same press release and letter, Horizon announced that, subject to its ongoing discussions with Depomed shareholders, it would be willing to amend the Horizon Offer to offer Depomed shareholders a cash-stock mix with up to 25% of the consideration in cash at the election of each respective Depomed shareholder, subject to certain terms and conditions, including a reduction in the total consideration per share to \$32.50 per share to partially offset incremental costs associated with including cash as a component of the consideration.
- On the same day, Depomed issued a press release, among other things, commenting on the Horizon August 13, 2015 letter and indicating that the Board, consistent with its fiduciary duties, would carefully review and evaluate the revised offer to determine the course of action it believes is in the best interests of Depomed and its shareholders.
- On August 14, 2015, Horizon filed amendment no. 1 to the Solicitation Statement with the SEC.