

TERCICA INC  
Form SC 13E3/A  
September 11, 2008

As filed with the Securities and Exchange Commission on September 11, 2008

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**AMENDMENT NO. 2**

**TO**

**SCHEDULE 13E-3**

**(§240.13e-100)**

**RULE 13e-3 TRANSACTION STATEMENT**

**UNDER SECTION 13(e) OF**

**THE SECURITIES EXCHANGE ACT OF 1934**

**TERCICA, INC.**

(Name of the Issuer)

**TERCICA, INC.**

**IPSEN, S.A.**

**SURAYPHARM, S.A.S.**

**BEAUFOR IPSEN PHARMA, S.A.S.**

**TRIBECA ACQUISITION CORPORATION**

(Name of Person(s) Filing Statement)

**COMMON STOCK, PAR VALUE \$0.001 PER SHARE**

(Title of Class of Securities)

**88078L 10 5**

(CUSIP Number of Class of Securities)

Edgar Filing: TERCICA INC - Form SC 13E3/A

**Willy Mathot**

**General Counsel**

**Ipsen, S.A.**

**42, rue du Docteur Blanche**

**75016 Paris,**

**France**

**+33 1 4496 1010**

(Name, Address, and Telephone Numbers of Person Authorized to Receive

Notices and Communications on Behalf of the Person(s) Filing Statement)

**John A. Scarlett, M.D.**

**Chief Executive Officer**

**Tercica, Inc.**

**2000 Sierra Point Parkway**

**Suite 400**

**Brisbane, CA 94005**

**(650) 624-4900**

**COPIES TO:**

**Mathew L. Jacobson, Esq.**

**Freshfields Bruckhaus Deringer US LLP**

**520 Madison Avenue**

**34th Floor**

**New York, NY 10022**

**(212) 277-4000**

**Suzanne Sawochka Hooper, Esq.**

**Chadwick L. Mills, Esq.**

**Cooley Godward Kronish LLP**

**Five Palo Alto Square**

**3000 El Camino Real**

**Palo Alto, CA 94306**

**(650) 843-5000**

This statement is filed in connection with (check the appropriate box):

- a.  The filing of solicitation materials or an information statement subject to Regulation 14A (17 CFR 240.14a-1 to 240.14b-2), Regulation 14C (17 CFR 240.14c-1 to 240.14c-101) or Rule 13e-3(c) (§240.13e-3(c)) under the Securities Exchange Act of 1934.
- b.  The filing of a registration statement under the Securities Act of 1933.
- c.  A tender offer.
- d.  None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies:

Check the following box if the filing is a final amendment reporting the results of the transaction:

**Calculation of Filing Fee**

**Transaction valuation\***  
\$366,441,862

**Amount of filing fee\***  
\$14,402

\* For purposes of calculation of this fee only, the transaction valuation is based on the aggregate number of securities to which the transaction applies multiplied by the per unit price or other underlying value of the transaction. For purposes of calculating the aggregate number of securities only, this number is based on 38,642,729 shares of Tercica common stock outstanding and owned by stockholders other than shares held in treasury by Tercica and other than shares owned by members of the Purchaser Group (as defined in the merger agreement described in the Proxy Statement); 6,052,352 shares of Tercica common stock underlying options to purchase shares of Tercica common stock with exercise prices below \$9.00; and 250,603 shares of Tercica common stock represented by outstanding Restricted Stock Units (as defined in the merger agreement described in the Proxy Statement). The filing fee was determined based upon the sum of (a) the product of 38,642,729 shares of Tercica common stock and the merger consideration of \$9.00 per share of Tercica common stock, (b) the product of options to purchase 6,052,352 shares of Tercica common stock and \$2.71 (which is the difference between \$9.00 and \$6.29, the weighted-average exercise price per share of the options to purchase Tercica common stock with an exercise price below \$9.00), and (c) the product of 250,603 shares of Tercica common stock, represented by outstanding Restricted Stock Units, and the merger consideration of \$9.00 per share of Tercica common stock represented by such securities. In accordance with Section 14(g) of the Exchange Act, the filing fee was determined by calculating a fee of \$39.30 per \$1,000,000 of the aggregate value of the transaction.

Check the 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: \$14,402

Form or Registration No.: Schedule 14A

Filing Party: Tercica, Inc.

Date Filed: July 3, 2008



### Introduction

This Amendment No. 2 (this Amendment No. 2) amends and supplements the Schedule 13E-3 initially filed with the Securities and Exchange Commission on July 3, 2008 as amended on August 12, 2008 (the Schedule 13E-3) and is being filed by (i) Tercica, Inc., a Delaware corporation and the issuer of the equity securities which are the subject of the Rule 13e-3 transaction (Tercica), (ii) Ipsen, S.A., a société anonyme organized under the laws of France (Ipsen), (iii) Suraypharm, S.A.S. (Suraypharm), a société par actions simplifiée organized under the laws of France and a wholly owned subsidiary of Ipsen and its subsidiaries, (iv) Beaufour Ipsen Pharma, a société par actions simplifiée organized under the laws of France and a subsidiary of Ipsen (the Purchaser), and (v) Tribeca Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of the Purchaser (Merger Sub).

This Amendment No. 2 and the Schedule 13E-3 relate to the Agreement and Plan of Merger, dated as of June 4, 2008, by and among Tercica, the Purchaser and Merger Sub (the Merger Agreement). Pursuant to the Merger Agreement, Merger Sub will merge with and into Tercica, and Tercica will be the surviving corporation in the merger (the Merger).

Concurrently with the filing of this Amendment No. 2, Tercica is filing with the Securities and Exchange Commission an amended proxy statement (the Proxy Statement) under Regulation 14A of the Securities Exchange Act of 1934, as amended (the Exchange Act), relating to the special meeting of stockholders of Tercica at which the stockholders of Tercica will consider and vote upon a proposal to adopt the Merger Agreement and if necessary to adjourn the special meeting for the purpose of soliciting additional proxies to vote in favor of the adoption of the Merger Agreement. A copy of the Proxy Statement is attached to the Schedule 13E-3 as Exhibit (a)(3) and a copy of the Merger Agreement is attached as Annex A to the Proxy Statement. All references in this Amendment No. 2 to Items numbered 1001 to 1016 are references to Items contained in Regulation M-A under the Exchange Act.

The information contained in the Proxy Statement, including all appendices thereto, is hereby expressly incorporated herein by reference pursuant to General Instruction G to Schedule 13E-3. As of the date hereof, the Proxy Statement is in preliminary form and is subject to completion. Capitalized terms used but not defined in this Amendment No. 2 shall have the meanings given to them in the Proxy Statement.

The information contained in this Amendment No. 2, the Schedule 13E-3 and/or the Proxy Statement concerning (i) Tercica was supplied by Tercica and no other filing person takes responsibility for the accuracy of such information and (ii) each other filing person was supplied by such filing person and Tercica takes no responsibility for the accuracy of such information.

This Amendment No. 2 is being made to reflect the filing of the Proxy Statement on September 11, 2008 (and all references in the Schedule 13E-3 to the Proxy Statement should be read as referring to the amended Proxy Statement filed on September 11, 2008), to add Suraypharm as a filing person to the Schedule 13E-3, to amend and restate certain items as specified below and to amend and restate the exhibit index.

Item 3 is amended and restated to read in its entirety as follows:

**Item 3. Identity and Background of Filing Person.**

- (a) *Name and address.* The business address and business telephone number of Tercica, the subject company, is set forth in Item 2(a). The business address and business telephone number of all of directors and executive officers of Tercica is c/o Tercica, Inc., 2000 Sierra Point Parkway, Suite 400, Brisbane California 94005, telephone number (650) 624-4900. The business address of Ipsen is 42, rue du Docteur Blanche, 75016 Paris, France, and the business telephone number of Ipsen is +33 (01) 44 30 4343. The business address of Suraypharm is 42, rue du Docteur Blanche, 75016 Paris, France, and the business telephone number of Suraypharm is +33 (01) 44 30 4343. The business address of the Purchaser is 24, rue Erlanger, 75016 Paris, France, and the business telephone number of the Purchaser is +33 (01) 44 96 1313. The business address of Merger Sub is 42, rue du Docteur Blanche, 75016 Paris, France, and the business telephone number of Merger Sub is +33 (01) 44 30 4343. The affiliation of Ipsen, Suraypharm, the Purchaser and Merger Sub to Tercica is set forth under the captions Summary Term Sheet Ipsen, Suraypharm, Beaufour Ipsen Pharma and Tribeca Acquisition Corporation, Summary Term Sheet Going-Private Transaction and The Companies of the Proxy Statement and is incorporated by reference.
- (b) *Business and background of entities.* The information required by this item with respect to Ipsen, Suraypharm, the Purchaser and Merger Sub is set forth under the captions Summary Term Sheet Ipsen, Suraypharm, Beaufour Ipsen Pharma and Tribeca Acquisition Corporation and The Companies of the Proxy Statement and is incorporated by reference. During the last five years, none of Ipsen, Suraypharm, the Purchaser, or Merger Sub have been (i) convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) or (ii) a party to any judicial or administrative proceeding (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining such person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws.
- (c) *Business and background of natural persons.* The information required by this item with respect to all of the directors and executive officers of Tercica is set forth under the captions Important Information Concerning Tercica Directors and Executive Officers of Tercica and Important Information Concerning Tercica Security Ownership of Certain Beneficial Owners and Management of the Proxy Statement and is incorporated by reference. The information required by this item with respect to all of the directors and executive officers of Ipsen, Suraypharm, the Purchaser and Merger Sub is set forth under the captions Important Information Concerning Tercica Directors and Executive Officers of Ipsen, Suraypharm, the Purchaser and Merger Sub and incorporated by reference.

Item 16 is amended and restated to read in its entirety as follows:

**Item 16. Exhibits.**

- (a)(1) Not applicable.
- (a)(2)(i) Preliminary copy of Letter to Stockholders from the Secretary of Tercica (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(2)(ii) Preliminary copy of Notice of Special Meeting of Stockholders (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(2)(iii) Preliminary form of Proxy Card (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(3) Preliminary Proxy Statement (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(4) Not applicable.
- (a)(5)(i) Press Release issued by Tercica, dated June 4, 2008 (incorporated by reference to Exhibit 99.1 to Form 8-K filed by Tercica on June 5, 2008).
- (a)(5)(ii) Current Report on Form 8-K filed by Tercica on June 5, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Tercica on June 5, 2008).
- (a)(5)(iii) Transcript of conference call held by Tercica on June 5, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Tercica on June 6, 2008).
- (a)(5)(iv) Press Release issued by Ipsen, dated June 5, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Ipsen on June 6, 2008).
- (a)(5)(v) Business plan of Tercica delivered to the Purchaser on June 4, 2008.\*
- (a)(5)(vi) Press Release issued by Tercica, dated July 30, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Tercica on July 31, 2008).
- (b)(1) Multicurrency Revolving Credit Facility Agreement for Ipsen, S.A. and certain of its subsidiaries arranged by Société Générale Corporation & Investment Banking with Société Générale acting as Agent dated 4 June 2008.\*
- (c)(1) Presentation of Lehman Brothers Inc. to the Board of Directors of Tercica, dated April 21, 2008.\*
- (c)(2) Presentation of Lehman Brothers Inc. to the Special Committee of the Board of Directors of Tercica, dated April 24, 2008.\*
- (c)(3) Presentation of Lehman Brothers Inc. to the Special Committee of the Board of Directors of Tercica, dated May 1, 2008.\*
- (c)(4) Presentation of Lehman Brothers Inc. to the Special Committee of the Board of Directors of Tercica, dated June 3, 2008.\*
- (c)(5) Opinion of Lehman Brothers Inc., dated June 4, 2008 (incorporated by reference to Annex B of the Proxy Statement).
- (c)(6) Presentation of Goldman Sachs Inc. et Cie to the Board of Directors of Ipsen, S.A., dated February 26, 2008.\*
- (c)(7) Presentation of Goldman Sachs Inc. et Cie to the Board of Directors of Ipsen, S.A., dated June 4, 2008.\*
- (c)(8) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated February 14, 2008.\*
- (c)(9) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated March 18, 2008.\*
- (c)(10) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated March 26, 2008.\*
- (c)(11) Presentation of Goldman Sachs Inc. et Cie to the Board of Directors of Ipsen, S.A., dated March 31, 2008.\*
- (c)(12) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated March 31, 2008.\*
- (c)(13) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated April 30, 2008.\*
- (c)(14) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 13, 2008.\*
- (c)(15) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 16, 2008.\*
- (c)(16) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 21, 2008.\*

## Edgar Filing: TERCICA INC - Form SC 13E3/A

- (c)(17) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 25, 2008.\*
- (d)(1) Agreement and Plan of Merger dated as of June 4, 2008 by and among Tercica, Inc., Beaufour Ipsen Pharma, and Tribeca Acquisition Corporation (incorporated by reference to Annex A of the Proxy Statement).
- (d)(2) Form of Voting Agreement dated as of June 4, 2008 (incorporated by reference to Exhibit 10.2 of Amendment No. 4 to Schedule 13D filed by Ipsen, Suraypharm S.A.S., the Purchaser and Merger Sub on June 9, 2008).
- (d)(3) Form of Voting Agreement, dated as of July 18, 2006 by and between certain stockholders of Tercica, Ipsen and Suraypharm.\*
- (d)(4) Stock Purchase and Master Transaction Agreement, by and between Tercica and Ipsen, dated July 18, 2006 (incorporated by reference to Exhibit 10.14A to Tercica's Current Report on Form 8-K filed July 24, 2006).
- (d)(5) Warrant issued to Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 4.4 to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(6) First Senior Convertible Promissory Note issued to Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 4.5A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(7) Second Senior Convertible Promissory Note issued to Ipsen, dated September 17, 2007 (incorporated by reference to Exhibit 4.5B to Tercica's Current Report on Form 8-K filed September 18, 2007).



- (d)(8) Third Senior Convertible Promissory Note issued to Ipsen, dated September 17, 2007 (incorporated by reference to Exhibit 4.5C to Tercica's Current Report on Form 8-K filed September 18, 2007).
- (d)(9) Affiliation Agreement, by and between Tercica, Suraypharm and Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 10.14B to Tercica's Annual Report on Form 10-K filed February 28, 2008).
- (d)(10) Registration Rights Agreement, by and between Tercica, Suraypharm and Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 10.14G to Tercica's Annual Report on Form 10-K filed February 28, 2008).
- (d)(11) Amendment No. 1 to Registration Rights Agreement, dated as of July 30, 2007, between Tercica, Suraypharm and Ipsen (incorporated by reference to Exhibit 10.14F to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(12) Second Amended and Restated Investors' Rights Agreement dated July 30, 2007 (incorporated by reference to Exhibit 10.10 to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(13) Rights Agreement, dated as of October 13, 2006, between Tercica and Computershare Trust Company, N.A., as Rights Agent (incorporated by reference to Exhibit 4.6A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(14) Amendment No. 1 to Rights Agreement, dated June 4, 2008, between Tercica and Computershare Trust Company, N.A. as Rights Agent (incorporated by reference to Exhibit 4.1 to Tercica's Current Report on Form 8-K filed June 5, 2008).
- (d)(15) Common Stock Purchase Agreement, dated as of July 9, 2007, between Tercica, Suraypharm and Ipsen (incorporated by reference to Exhibit 10.14E to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(16) Common Stock Purchase Agreement, dated as of July 6, 2007, between Genentech, Inc. and Tercica (incorporated by reference to Exhibit 10.7G to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(17) Registration Rights Agreement, by and between Kingsbridge Capital Limited and Tercica, dated October 14, 2005 (incorporated by reference to Exhibit 10.13B to Tercica's Quarterly Report on Form 10-Q filed November 4, 2005).
- (d)(18) Common Stock Purchase Agreement, by and between Kingsbridge Capital Limited and Tercica, dated October 14, 2005 (incorporated by reference to Exhibit 10.13A to Tercica's Quarterly Report on Form 10-Q filed November 4, 2005).
- (d)(19) Warrant issued to Kingsbridge Capital Limited, dated October 14, 2005 (incorporated by reference to Exhibit 4.3 to Tercica's Quarterly Report on Form 10-Q filed November 4, 2005).
- (d)(20) 2002 Stock Plan, as amended (incorporated by reference to Exhibit 10.1A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(21) 2002 Executive Stock Plan, as amended (incorporated by reference to Exhibit 10.2A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(22) Amended and Restated 2004 Stock Plan (incorporated by reference to Exhibit 10.3A to Tercica's Current Report on Form 8-K filed May 21, 2008).
- (d)(23) 2004 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.4A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(24) Letter delivered by Ipsen to Tercica, dated June 4, 2008.\*
- (d)(25) Letter of consent to the merger delivered by Suraypharm S.A.S. to Tercica, dated June 4, 2008.\*
- (d)(26) Letter of consent to the merger delivered by Ipsen, S.A. to Tercica, dated June 4, 2008.\*
- (d)(27) Letter of consent to amendment of the Rights Agreement delivered by Ipsen, S.A. to Tercica, dated June 4, 2008.\*
- (d)(28) Letter of consent to amendment of the Rights Agreement delivered by Suraypharm S.A.S. to Tercica, dated June 4, 2008.\*
- (d)(29) Letter of confirmation of financing delivered by Ipsen, S.A. to Beaufour Ipsen Pharma, S.A.S., dated June 4, 2008.\*
- (d)(30) Letter of undertaking to vote their shares delivered by Ipsen, S.A. and Suraypharm S.A.S. to Beaufour Ipsen Pharma, S.A.S., dated June 4, 2008.\*
- (d)(31) Common Stock Purchase Agreement, dated as of July 22, 2008, between Tercica, Ipsen and Suraypharm (incorporated by reference to Exhibit 10.14H to Tercica's Current Report on Form 8-K filed on July 24, 2008).
- (d)(32) Conversion Notice for the First Senior Convertible Promissory Note, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.1 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (d)(33)

## Edgar Filing: TERCICA INC - Form SC 13E3/A

Conversion Notice for the Second Senior Convertible Promissory Note, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.2 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).

- (d)(34) Conversion Notice for the Third Senior Convertible Promissory Note, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.3 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (d)(35) Warrant Exercise Form, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.4 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (d)(36) Letter, dated July 18, 2008 confirming Ipsen's intent to subscribe for the shares on July 22, 2008, delivered to the Issuer by Suraypharm (incorporated by reference to Exhibit 99.5 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (f)(1) Section 262 of the Delaware General Corporation Law (incorporated by reference to Annex C of the Proxy Statement).
- (f)(2) For a description of appraisal rights, reference is made to Exhibit (a)(3).
- (g) Not applicable.
- (h) Not applicable.

\* Previously filed.

**SIGNATURES**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

TERCICA, INC.

By: /s/ Stephen N. Rosenfield  
Name: Stephen N. Rosenfield  
Title: Executive Vice President of Legal Affairs and  
General Counsel

IPSEN, S.A.

By: /s/ Jean-Luc Bélingard  
Name: Jean-Luc Bélingard  
Title: Authorized Signatory

SURAYPHARM, S.A.S.

By: /s/ Jean-Luc Bélingard  
Name: Jean-Luc Bélingard  
Title: Authorized Signatory

BEAUFOR IPSEN PHARMA, S.A.S.

By: /s/ Christophe Jean  
Name: Christophe Jean  
Title: Authorized Signatory

TRIBECA ACQUISITION CORPORATION

By: /s/ Claire Giraut  
Name: Claire Giraut  
Title: Director

**EXHIBIT INDEX**

- (a)(1) Not applicable.
- (a)(2)(i) Preliminary copy of Letter to Stockholders from the Secretary of Tercica (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(2)(ii) Preliminary copy of Notice of Special Meeting of Stockholders (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(2)(iii) Preliminary form of Proxy Card (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(3) Preliminary Proxy Statement (incorporated by reference to Schedule 14A filed by Tercica on September 11, 2008).
- (a)(4) Not applicable.
- (a)(5)(i) Press Release issued by Tercica, dated June 4, 2008 (incorporated by reference to Exhibit 99.1 to Form 8-K filed by Tercica on June 5, 2008).
- (a)(5)(ii) Current Report on Form 8-K filed by Tercica on June 5, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Tercica on June 5, 2008).
- (a)(5)(iii) Transcript of conference call held by Tercica on June 5, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Tercica on June 6, 2008).
- (a)(5)(iv) Press Release issued by Ipsen, dated June 5, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Ipsen on June 6, 2008).
- (a)(5)(v) Business plan of Tercica delivered to the Purchaser on June 4, 2008.\*
- (a)(5)(vi) Press Release issued by Tercica, dated July 30, 2008 (incorporated by reference to soliciting material filed on Schedule 14A filed pursuant to Rule 14a-12 of the Exchange Act by Tercica on July 31, 2008).
- (b)(1) Multicurrency Revolving Credit Facility Agreement for Ipsen, S.A. and certain of its subsidiaries arranged by Société Générale Corporation & Investment Banking with Société Générale acting as Agent dated 4 June 2008.\*
- (c)(1) Presentation of Lehman Brothers Inc. to the Board of Directors of Tercica, dated April 21, 2008.\*
- (c)(2) Presentation of Lehman Brothers Inc. to the Special Committee of the Board of Directors of Tercica, dated April 24, 2008.\*
- (c)(3) Presentation of Lehman Brothers Inc. to the Special Committee of the Board of Directors of Tercica, dated May 1, 2008.\*
- (c)(4) Presentation of Lehman Brothers Inc. to the Special Committee of the Board of Directors of Tercica, dated June 3, 2008.\*
- (c)(5) Opinion of Lehman Brothers Inc., dated June 4, 2008 (incorporated by reference to Annex B of the Proxy Statement).
- (c)(6) Presentation of Goldman Sachs Inc. et Cie to the Board of Directors of Ipsen, S.A., dated February 26, 2008.\*
- (c)(7) Presentation of Goldman Sachs Inc. et Cie to the Board of Directors of Ipsen, S.A., dated June 4, 2008.\*
- (c)(8) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated February 14, 2008.\*
- (c)(9) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated March 18, 2008.\*
- (c)(10) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated March 26, 2008.\*
- (c)(11) Presentation of Goldman Sachs Inc. et Cie to the Board of Directors of Ipsen, S.A., dated March 31, 2008.\*
- (c)(12) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated March 31, 2008.\*
- (c)(13) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated April 30, 2008.\*
- (c)(14) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 13, 2008.\*
- (c)(15) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 16, 2008.\*
- (c)(16) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 21, 2008.\*
- (c)(17) Presentation of Goldman Sachs Inc. et Cie to members of management of Ipsen, S.A., dated May 25, 2008.\*

## Edgar Filing: TERCICA INC - Form SC 13E3/A

- (d)(1) Agreement and Plan of Merger dated as of June 4, 2008 by and among Tercica, Inc., Beaufour Ipsen Pharma, and Tribeca Acquisition Corporation (incorporated by reference to Annex A of the Proxy Statement).
- (d)(2) Form of Voting Agreement dated as of June 4, 2008 (incorporated by reference to Exhibit 10.2 of Amendment No. 4 to Schedule 13D filed by Ipsen, Suraypharm S.A.S., the Purchaser and Merger Sub on June 9, 2008).
- (d)(3) Form of Voting Agreement, dated as of July 18, 2006 by and between certain stockholders of Tercica, Ipsen and Suraypharm.\*
- (d)(4) Stock Purchase and Master Transaction Agreement, by and between Tercica and Ipsen, dated July 18, 2006 (incorporated by reference to Exhibit 10.14A to Tercica's Current Report on Form 8-K filed July 24, 2006).
- (d)(5) Warrant issued to Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 4.4 to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(6) First Senior Convertible Promissory Note issued to Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 4.5A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).

- (d)(7) Second Senior Convertible Promissory Note issued to Ipsen, dated September 17, 2007 (incorporated by reference to Exhibit 4.5B to Tercica's Current Report on Form 8-K filed September 18, 2007).
- (d)(8) Third Senior Convertible Promissory Note issued to Ipsen, dated September 17, 2007 (incorporated by reference to Exhibit 4.5C to Tercica's Current Report on Form 8-K filed September 18, 2007).
- (d)(9) Affiliation Agreement, by and between Tercica, Suraypharm and Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 10.14B to Tercica's Annual Report on Form 10-K filed February 28, 2008).
- (d)(10) Registration Rights Agreement, by and between Tercica, Suraypharm and Ipsen, dated October 13, 2006 (incorporated by reference to Exhibit 10.14G to Tercica's Annual Report on Form 10-K filed February 28, 2008).
- (d)(11) Amendment No. 1 to Registration Rights Agreement, dated as of July 30, 2007, between Tercica, Suraypharm and Ipsen (incorporated by reference to Exhibit 10.14F to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(12) Second Amended and Restated Investors' Rights Agreement dated July 30, 2007 (incorporated by reference to Exhibit 10.10 to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(13) Rights Agreement, dated as of October 13, 2006, between Tercica and Computershare Trust Company, N.A., as Rights Agent (incorporated by reference to Exhibit 4.6A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(14) Amendment No. 1 to Rights Agreement, dated June 4, 2008, between Tercica and Computershare Trust Company, N.A. as Rights Agent (incorporated by reference to Exhibit 4.1 to Tercica's Current Report on Form 8-K filed June 5, 2008).
- (d)(15) Common Stock Purchase Agreement, dated as of July 9, 2007, between Tercica, Suraypharm and Ipsen (incorporated by reference to Exhibit 10.14E to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(16) Common Stock Purchase Agreement, dated as of July 6, 2007, between Genentech, Inc. and Tercica (incorporated by reference to Exhibit 10.7G to Tercica's Quarterly Report on Form 10-Q filed August 2, 2007).
- (d)(17) Registration Rights Agreement, by and between Kingsbridge Capital Limited and Tercica, dated October 14, 2005 (incorporated by reference to Exhibit 10.13B to Tercica's Quarterly Report on Form 10-Q filed November 4, 2005).
- (d)(18) Common Stock Purchase Agreement, by and between Kingsbridge Capital Limited and Tercica, dated October 14, 2005 (incorporated by reference to Exhibit 10.13A to Tercica's Quarterly Report on Form 10-Q filed November 4, 2005).
- (d)(19) Warrant issued to Kingsbridge Capital Limited, dated October 14, 2005 (incorporated by reference to Exhibit 4.3 to Tercica's Quarterly Report on Form 10-Q filed November 4, 2005).
- (d)(20) 2002 Stock Plan, as amended (incorporated by reference to Exhibit 10.1A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(21) 2002 Executive Stock Plan, as amended (incorporated by reference to Exhibit 10.2A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(22) Amended and Restated 2004 Stock Plan (incorporated by reference to Exhibit 10.3A to Tercica's Current Report on Form 8-K filed May 21, 2008).
- (d)(23) 2004 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.4A to Tercica's Quarterly Report on Form 10-Q filed November 3, 2006).
- (d)(24) Letter delivered by Ipsen to Tercica, dated June 4, 2008.\*
- (d)(25) Letter of consent to the merger delivered by Suraypharm S.A.S. to Tercica, dated June 4, 2008.\*
- (d)(26) Letter of consent to the merger delivered by Ipsen, S.A. to Tercica, dated June 4, 2008.\*
- (d)(27) Letter of consent to amendment of the Rights Agreement delivered by Ipsen, S.A. to Tercica, dated June 4, 2008.\*
- (d)(28) Letter of consent to amendment of the Rights Agreement delivered by Suraypharm S.A.S. to Tercica, dated June 4, 2008.\*
- (d)(29) Letter of confirmation of financing delivered by Ipsen, S.A. to Beaufour Ipsen Pharma, S.A.S., dated June 4, 2008.\*
- (d)(30) Letter of undertaking to vote their shares delivered by Ipsen, S.A. and Suraypharm S.A.S. to Beaufour Ipsen Pharma, S.A.S., dated June 4, 2008.\*
- (d)(31) Common Stock Purchase Agreement, dated as of July 22, 2008, between Tercica, Ipsen and Suraypharm (incorporated by reference to Exhibit 10.14H to Tercica's Current Report on Form 8-K filed on July 24, 2008).
- (d)(32) Conversion Notice for the First Senior Convertible Promissory Note, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.1 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24,

Edgar Filing: TERCICA INC - Form SC 13E3/A

2008).

- (d)(33) Conversion Notice for the Second Senior Convertible Promissory Note, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.2 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (d)(34) Conversion Notice for the Third Senior Convertible Promissory Note, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.3 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (d)(35) Warrant Exercise Form, dated as of July 22, 2008 (incorporated by reference to Exhibit 99.4 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (d)(36) Letter, dated July 18, 2008 confirming Ipsen's intent to subscribe for the shares on July 22, 2008, delivered to the Issuer by Suraypharm (incorporated by reference to Exhibit 99.5 to Amendment No. 5 to Schedule 13D filed by Ipsen, Suraypharm, the Purchaser and Merger Sub on July 24, 2008).
- (f)(1) Section 262 of the Delaware General Corporation Law (incorporated by reference to Annex C of the Proxy Statement).
- (f)(2) For a description of appraisal rights, reference is made to Exhibit (a)(3).
- (g) Not applicable.
- (h) Not applicable.

\* Previously filed.