

HORIZON PHARMA, INC.
Form DEFM14A
August 08, 2014
Table of Contents

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

SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

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 Pursuant to §240.14a-12

Horizon Pharma, Inc.

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box)

- x No fee required.
- .. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - 1. Title of each class of securities to which transaction applies:

 - 2. Aggregate number of securities to which transaction applies:

 - 3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

 - 4. Proposed maximum aggregate value of transaction:

 - 5. Total fee paid:
- .. Fee paid previously with preliminary materials.
- .. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - 1. Amount Previously Paid:

 - 2. Form, Schedule or Registration Statement No.:

 - 3. Filing Party:

4. Date Filed:

Table of Contents

PROXY STATEMENT/PROSPECTUS

Dear Fellow Stockholder:

You are cordially invited to attend the Special Meeting of Stockholders on Thursday, September 18, 2014. The Special Meeting will begin at 8:00 a.m., Central Time, at Horizon's corporate office, located at 520 Lake Cook Road, Suite 520, Deerfield, IL 60015.

The attached Notice of Special Meeting and proxy statement/prospectus describes how Horizon's Board of Directors operates, provides biographical information on Horizon's director nominees, gives information for the voting matters to be acted upon at the Special Meeting and explains the proxy voting process.

Horizon's Board of Directors urges you to read the accompanying proxy statement/prospectus and recommends that you vote FOR the adoption of the Merger Agreement and the approval of the Merger, FOR the approval, on an advisory basis, of certain compensatory arrangements between Horizon and its named executive officers relating to the Merger contemplated by the Merger Agreement, FOR the approval of the Horizon Pharma Public Limited Company 2014 Equity Incentive Plan, FOR the approval of the Horizon Pharma Public Limited Company 2014 Non-Employee Equity Plan, FOR the approval of the Horizon Pharma Public Limited Company 2014 Employee Stock Purchase Plan and FOR the approval of the adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes at the time of the Special Meeting to adopt the Merger Agreement and approve the Merger.

Whether or not you plan to attend the Special Meeting, it is important that your shares be represented and voted. Please take a moment now to vote your shares by internet, toll-free telephone call or by signing and dating the enclosed proxy card and returning it in the pre-addressed, postage-paid envelope provided.

Horizon looks forward to seeing you on September 18, 2014, and urges you to vote as soon as possible.

Sincerely,

Timothy P. Walbert

Chairman of the Board, President and

Chief Executive Officer

This proxy statement/prospectus refers to important business and financial information about Horizon that is not included in or delivered with this proxy statement/prospectus. Such information is available without charge to Horizon stockholders upon written or oral request at the following address: Horizon Pharma, Inc., Attn: Investor Relations, 520 Lake Cook Road, Suite 520, Deerfield, IL 60015, or by telephone at (224) 383-3000. **To obtain timely delivery, Horizon stockholders must request the information no later than five business days before the date of the Horizon special meeting, or no later than September 11, 2014.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this proxy statement/prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

For the avoidance of doubt, this proxy statement/prospectus is not intended to be and is not a prospectus for the purposes of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 of Ireland (the 2005 Act), the Prospectus (Directive 2003/71/EC) Regulations 2005 of Ireland or the Prospectus Rules issued under the 2005 Act, and the Central Bank of Ireland has not approved this document.

This proxy statement/prospectus is dated August 7, 2014, and is first being mailed to the Horizon stockholders on or about August 11, 2014.

Table of Contents

HORIZON PHARMA, INC.

520 Lake Cook Road, Suite 520

Deerfield, Illinois 60015

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON SEPTEMBER 18, 2014

Dear Stockholder:

Horizon will be holding the Special Meeting of Stockholders of Horizon Pharma, Inc., on Thursday, September 18, 2014, beginning promptly at 8:00 a.m., Central Time, at Horizon's corporate office, located at 520 Lake Cook Road, Suite 520, Deerfield, IL 60015. You are being asked to vote on the following matters:

1. To adopt the Merger Agreement and approve the Merger.
2. To approve, on an advisory basis, certain compensatory arrangements between Horizon and its named executive officers relating to the Merger contemplated by the Merger Agreement.
3. To approve the Horizon Pharma Public Limited Company 2014 Equity Incentive Plan.
4. To approve the Horizon Pharma Public Limited Company 2014 Non-Employee Equity Plan.
5. To approve the Horizon Pharma Public Limited Company 2014 Employee Stock Purchase Plan.
6. To approve the adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes at the time of the Special Meeting to adopt the Merger Agreement and approve the Merger.
7. To conduct any other business properly brought before the meeting.

Only stockholders of record at the close of business on July 30, 2014, the record date for the Special Meeting, are entitled to notice of the Special Meeting and to vote at the Special Meeting or any adjournment or postponement thereof. On or about August 11, 2014, Horizon will mail proxy materials to our common stockholders. Horizon asks that you review the proxy statement/prospectus carefully and complete, sign, date and return the enclosed proxy card in the envelope provided or vote over the internet or by telephone as instructed in these materials, as promptly as possible in order to ensure your representation at the meeting. A return envelope (which is postage prepaid if mailed in the United States) will be provided for your convenience. Even if you have voted by proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain a proxy issued in your name from that record holder.

Important Notice Regarding the Availability of Proxy Materials for the Stockholders Meeting to Be Held on Thursday, September 18, 2014, at 8:00 a.m., Central Time, at 520 Lake Cook Road, Suite 520, Deerfield, IL 60015.

The Proxy Statement/Prospectus and Annual Report to stockholders

are available at www.envisionreports.com/hznp.

By Order of the Board of Directors

Robert J. De Vaere

Secretary

Deerfield, Illinois

August 7, 2014

Table of Contents**TABLE OF CONTENTS**

	Page
<u>QUESTIONS AND ANSWERS ABOUT THE PROPOSED TRANSACTIONS AND THE HORIZON SPECIAL MEETING OF STOCKHOLDERS AND VOTING</u>	1
<u>SUMMARY</u>	13
<u>The Companies</u>	13
<u>The Reorganization and the Merger</u>	14
<u>Post-Merger Management of New Horizon</u>	14
<u>Horizon's Reasons for the Merger</u>	14
<u>Recommendations of Horizon's Board of Directors</u>	15
<u>Opinion of Horizon's Financial Advisor</u>	15
<u>The Special Meeting of Horizon Stockholders</u>	16
<u>Interests of Certain Persons in the Merger</u>	17
<u>Certain U.S. Federal Tax Consequences of the Merger to U.S. Stockholders</u>	18
<u>No Appraisal Rights</u>	18
<u>Regulatory Approvals Required</u>	18
<u>Listing of New Horizon Ordinary Shares on NASDAQ</u>	19
<u>Conditions to the Completion of the Merger</u>	19
<u>Termination of the Merger Agreement</u>	19
<u>Accounting Treatment of the Merger</u>	19
<u>Restrictions on Resales</u>	19
<u>Comparison of the Rights of Holders of Horizon Common Stock and New Horizon Ordinary Shares</u>	19
<u>RISK FACTORS</u>	20
<u>Risks Related to the Proposed Transactions</u>	20
<u>Risks Related to the Businesses of New Horizon</u>	24
<u>Risks Related to the Financial Condition of New Horizon</u>	30
<u>Risks Related to the New Horizon Ordinary Shares</u>	32
<u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	36
<u>THE REORGANIZATION AND THE MERGER</u>	37
<u>The Reorganization of Vidara</u>	37
<u>The Merger</u>	37
<u>Background of the Transaction</u>	38
<u>Horizon's Reasons for the Merger and Recommendation of Horizon's Board of Directors</u>	45
<u>Vidara and Horizon Unaudited Prospective Financial Information</u>	47
<u>Horizon's Vidara Projections</u>	49

<u>Horizon Projections</u>	50
<u>Opinion of Horizon's Financial Advisor</u>	50
<u>Interests of Certain Persons in the Merger</u>	58
<u>Security Ownership of Certain Beneficial Owners and Management</u>	66
<u>Principal Shareholders Following the Merger</u>	69
<u>Regulatory Approvals Required</u>	71

Table of Contents

	Page
<u>Accounting Treatment of the Merger</u>	72
<u>Restrictions on Resales</u>	72
<u>CERTAIN TAX CONSEQUENCES OF THE MERGER</u>	73
<u>U.S. Federal Income Tax Considerations</u>	73
<u>Tax Consequences of the Merger to Horizon and New Horizon</u>	74
<u>Tax Consequences of the Merger to U.S. Holders</u>	75
<u>Tax Consequences to U.S. Holders of Holding New Horizon Ordinary Shares or Convertible Notes</u>	76
<u>Gain or Loss on Dispositions of New Horizon Ordinary Shares or Convertible Notes by U.S. Holders</u>	77
<u>Medicare Tax</u>	78
<u>Information Reporting and Backup Withholding</u>	78
<u>Irish Tax Considerations</u>	79
<u>NO APPRAISAL RIGHTS</u>	87
<u>LISTING OF NEW HORIZON ORDINARY SHARES ON NASDAQ</u>	87
<u>VOTE REQUIRED TO ADOPT THE MERGER AGREEMENT; BOARD RECOMMENDATION</u>	87
<u>THE COMPANIES</u>	88
<u>Horizon Pharma, Inc.</u>	88
<u>Vidara Therapeutics International plc</u>	88
<u>Hamilton Holdings (USA), Inc.</u>	89
<u>Hamilton Merger Sub, Inc.</u>	89
<u>TRANSACTION AGREEMENT AND PLAN OF MERGER</u>	90
<u>The Reorganization of Vidara</u>	90
<u>The Merger; Closing of the Merger</u>	90
<u>Merger Consideration to Horizon Stockholders</u>	91
<u>Merger Sub Capital Stock</u>	91
<u>Payment of Estimated Cash Consideration</u>	91
<u>Treatment of Horizon Stock Options and Other Equity-Based Awards</u>	91
<u>Treatment of Horizon Warrants</u>	92
<u>Governing Documents Following the Merger</u>	92
<u>Exchange of Stock Certificates Following the Merger</u>	92
<u>Representations and Warranties</u>	93
<u>Material Adverse Effect</u>	95
<u>Covenants</u>	96
<u>Employee Benefits</u>	105
<u>Officers and Directors upon Completion of the Merger</u>	106
<u>Conditions to the Completion of the Merger</u>	106
<u>No Survival of Representations and Warranties or Post-Closing Indemnification</u>	109

<u>Termination of the Merger Agreement</u>	109
<u>Obligations in Event of Termination</u>	110
<u>Expenses and Termination Fees</u>	110

Table of Contents

	Page
<u>Amendment and Waiver</u>	111
<u>OTHER RELATED AGREEMENTS</u>	112
<u>The Voting Agreements</u>	112
<u>Temporary Escrow Agreement</u>	113
<u>Registration Rights Agreement</u>	113
<u>Commitment Letter</u>	114
<u>STOCKHOLDER ADVISORY VOTE ON CERTAIN COMPENSATORY ARRANGEMENTS</u>	117
<u>Background; Stockholder Resolution</u>	117
<u>Required Vote; Board Recommendation</u>	117
<u>APPROVAL OF 2014 EQUITY INCENTIVE PLAN</u>	118
<u>Reasons to Approve the 2014 Plan</u>	119
<u>Overhang</u>	120
<u>Burn Rate</u>	120
<u>Forecasted Utilization Rates</u>	121
<u>Forecasted Overhang and Burn Rate</u>	122
<u>Note Regarding Forecasts and Forward-Looking Statements</u>	122
<u>The 2014 Plan Combines Compensation and Governance Best Practices</u>	123
<u>Description of the 2014 Plan</u>	123
<u>U.S. Federal Income Tax Information</u>	131
<u>New Plan Benefits</u>	133
<u>Required Vote and Board Recommendation</u>	134
<u>APPROVAL OF 2014 NON-EMPLOYEE EQUITY PLAN</u>	135
<u>Reasons to Approve the Non-Employee Plan</u>	135
<u>Historical Information Regarding Prior Places, Overhang, Total Ordinary Shares Outstanding at the Merger Effective Time, Burn Rate and Forecasted Burn Rate</u>	136
<u>Forecasted Utilization Rates</u>	136
<u>Note Regarding Forecasts and Forward-Looking Statements</u>	136
<u>The Non-Employee Plan Combines Compensation and Governance Best Practices</u>	137
<u>Description of the Non-Employee Plan</u>	138
<u>U.S. Federal Income Tax Information</u>	144
<u>New Plan Benefits</u>	145
<u>Required Vote and Board Recommendation</u>	145
<u>APPROVAL OF THE 2014 EMPLOYEE STOCK PURCHASE PLAN</u>	146
<u>Reasons to Approve the 2014 ESPP</u>	146
<u>Stock Subject to the 2014 ESPP and Total New Horizon Ordinary Shares Outstanding at the Effective Time</u>	147
<u>Forecasted Utilization Rates</u>	147
<u>Note Regarding Forecasts and Forward-Looking Statements</u>	147

<u>Description of the 2014 ESPP</u>	148
<u>U.S. Federal Income Tax Information</u>	151
<u>New Plan Benefits</u>	152

Table of Contents

	Page
<u>Plan Benefits</u>	153
<u>Required Vote and Board Recommendation</u>	153
<u>POSSIBLE ADJOURNMENT OF THE HORIZON SPECIAL MEETING</u>	154
<u>SELECTED HISTORICAL FINANCIAL DATA OF HORIZON</u>	155
<u>SELECTED HISTORICAL FINANCIAL DATA OF VIDARA AND THE ACTIMMUNE BUSINESS OF INTERMUNE</u>	156
<u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF VIDARA</u>	158
<u>Overview</u>	158
<u>Principal Revenue and Expense Items</u>	159
<u>Critical Accounting Policies and Significant Estimates</u>	160
<u>Results of Operations</u>	163
<u>Liquidity and Capital Resources</u>	166
<u>Contractual Obligations</u>	169
<u>Off-Balance Sheet Arrangements</u>	169
<u>Provisions</u>	170
<u>Quantitative and Qualitative Disclosures about Market Risk</u>	170
<u>UNAUDITED PRO FORMA COMBINED FINANCIAL INFORMATION</u>	171
<u>COMPARATIVE HISTORICAL AND UNAUDITED PRO FORMA PER SHARE DATA</u>	189
<u>THE BUSINESS OF HORIZON</u>	190
<u>THE BUSINESS OF VIDARA</u>	191
<u>Overview</u>	191
<u>History of Vidara and Acquisition and Growth of ACTIMMUNE</u>	191
<u>Sales and Marketing</u>	193
<u>Customers and Distribution</u>	193
<u>Competition</u>	194
<u>Manufacturing</u>	194
<u>Research and Development</u>	195
<u>Government Regulation</u>	196
<u>Reimbursement</u>	199
<u>Compliance</u>	200
<u>Patents and Proprietary Rights</u>	200
<u>Employees</u>	201
<u>Properties</u>	201
<u>Legal Proceedings</u>	201
<u>MANAGEMENT AND OTHER INFORMATION OF NEW HORIZON</u>	202
<u>Directors of New Horizon</u>	202

<u>Director Independence</u>	204
<u>Board Committees</u>	204
<u>Senior Management of New Horizon</u>	205

Table of Contents

	Page
<u>EXECUTIVE COMPENSATION</u>	208
<u>Compensation Discussion and Analysis</u>	208
<u>2013 Performance Highlights and Executive Summary</u>	208
<u>Non-Employee Director Compensation</u>	224
<u>Limitation of Liability and Indemnification</u>	224
<u>Certain Relationships and Related Transactions</u>	225
<u>Compensation Committee Interlocks and Insider Participation</u>	228
<u>Compensation Committee Report</u>	228
<u>CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS</u>	229
<u>Policy and Procedures for Review of Related Party Transactions of New Horizon</u>	229
<u>Certain Transactions With or Involving Horizon's Related Persons</u>	229
<u>Certain Transactions With or Involving Vidara's Related Persons</u>	229
<u>DESCRIPTION OF NEW HORIZON WARRANTS</u>	230
<u>DESCRIPTION OF NEW HORIZON ORDINARY SHARES</u>	233
<u>Capital Structure</u>	233
<u>Preemption Rights, Share Warrants and Share Options</u>	234
<u>Dividends</u>	235
<u>Share Repurchases, Redemptions and Conversions</u>	236
<u>Lien on Shares, Calls on Shares and Forfeiture of Shares</u>	237
<u>Consolidation and Division; Subdivision</u>	237
<u>Reduction of Share Capital</u>	237
<u>Annual Meetings of Shareholders</u>	237
<u>Extraordinary General Meetings of Shareholders</u>	238
<u>Quorum for General Meetings</u>	238
<u>Voting</u>	238
<u>Variation of Rights Attaching to a Class or Series of Shares</u>	239
<u>Inspection of Books and Records</u>	239
<u>Acquisitions</u>	240
<u>Appraisal Rights</u>	240
<u>Disclosure of Interests in Shares</u>	240
<u>Anti-Takeover Provisions</u>	241
<u>Corporate Governance</u>	243
<u>Legal Name; Formation; Fiscal Year; Registered Office</u>	245
<u>Duration; Dissolution; Rights upon Liquidation</u>	245
<u>Uncertificated Shares</u>	245
<u>Stock Exchange Listing</u>	245

<u>No Sinking Fund</u>	245
<u>No Liability for Further Calls or Assessments</u>	245
<u>Transfer and Registration of Shares</u>	246

Table of Contents

	Page
<u>COMPARISON OF THE RIGHTS OF HOLDERS OF HORIZON COMMON STOCK AND NEW HORIZON ORDINARY SHARES</u>	247
<u>LEGAL MATTERS</u>	259
<u>EXPERTS</u>	260
<u>ENFORCEABILITY OF CIVIL LIABILITIES</u>	261
<u>SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u>	262
<u>HOUSEHOLDING OF PROXY STATEMENT/PROSPECTUS</u>	262
<u>OTHER MATTERS</u>	263
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	264
<u>INDEX TO COMBINED FINANCIAL STATEMENTS OF VIDARA THERAPEUTICS INTERNATIONAL LIMITED AND SUBSIDIARIES AND VIDARA THERAPEUTICS, INC.</u>	F-1
<u>INDEX TO FINANCIAL STATEMENTS OF THE ACTIMMUNE® PRODUCT LINE OF INTERMUNE, INC.</u>	F-31
ANNEXES	