NUPATHE INC.
Form SC 14D9
January 23, 2014

Use these links to rapidly review the document
TABLE OF CONTENTS

Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

Solicitation/Recommendation Statement under Section 14(d)(4)
of the Securities Exchange Act of 1934

NuPathe Inc.

(Name of Subject Company)

NuPathe Inc.

(Names of Persons Filing Statement)

Common Stock, par value $0.001 per share
(Title of Class of Securities)

67059M100
(CUSIP Number of Class of Securities)

Michael F. Marino, Esq.
Senior Vice President, General Counsel and Secretary
NuPathe Inc.
7 Great Valley Parkway, Suite 300
Malvern, Pennsylvania 19355
(610) 232-0800
(Name, address and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

With copies to:

Michael N. Peterson, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, Pennsylvania 19103
(215) 963-5000

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

Table of Contents

TABLE OF CONTENTS

Table of Contents

Item 1. ***Subject Company Information***

(a)

Name and Address

The name of the subject company is NuPathe Inc., a Delaware corporation (the "Company" or "NuPathe"), and the address of the principal executive offices of the Company is 7 Great Valley Parkway, Suite 300, Malvern, Pennsylvania 19355. The telephone number for the Company's principal executive offices is (610) 232-0800.

(b)

Securities

The title of the class of equity securities to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any Exhibits or Annexes hereto, this "Statement") relates is the Company's common stock, par value $0.001 per Share (the "Shares"). As of January 17, 2014, there were 33,488,901 Shares issued and outstanding.

Item 2. ***Identity and Background of Filing Person***

(a)

Name and Address

The name, business address and business telephone number of the Company, which is the person filing this Statement, are set forth in Item 1(a) above, which information is incorporated herein by reference.

(b)

Tender Offer

This Statement relates to the tender offer by Train Merger Sub, Inc., a Delaware corporation ("Purchaser") and an indirect, wholly-owned subsidiary of Teva Pharmaceuticals Industries Ltd., an Israeli corporation ("Parent"), disclosed in a Tender Offer Statement on Schedule TO-T dated January 23, 2014 (the "Schedule TO") filed with the Securities and Exchange Commission (the "SEC"), to purchase all of the outstanding Shares at a price of $3.65 per Share, net to the seller in cash (less any required withholding taxes and without interest), plus contractual rights to receive up to an additional $3.15 per Share in contingent cash consideration payments (less any required withholding taxes) payable in the future upon achievement of certain milestones related to ZECUITY, sumatriptan iontophoretic delivery system, the Company's primary product (such aggregate consideration, the "Offer Price").

The contingent cash consideration payments are comprised of up to an aggregate of $3.15 per Share (the "Contingent Cash Consideration Payments" or "CCCPs") depending on the net sales of ZECUITY. The Contingent Cash Consideration Payments relating to ZECUITY are payable pursuant to a contingent cash consideration agreement (the "Contingent Cash Consideration Agreement") to be entered into by and among Purchaser, Parent and American Stock Transfer & Trust Company, LLC, as follows: (i) $2.15 per Share upon net sales of ZECUITY reaching at least $100,000,000 during any four consecutive calendar quarters on or prior to the sixtieth day following the ninth anniversary of the date of the first commercial sale of ZECUITY (the "Termination Date") and (ii) an additional $1.00 per Share upon net sales of ZECUITY reaching at least $300,000,000 during any four consecutive calendar quarters on or prior to the Termination Date, subject to the terms and conditions of the Contingent Cash Consideration Agreement.

The tender offer and related purchase are upon the terms and subject to the conditions set forth in the Offer to Purchase, dated January 23, 2014 (as amended or supplemented from time to time, the "Offer to Purchase") and in the related Letter of Transmittal (as amended or supplemented from time to time, the "Letter of Transmittal" and, together with the Offer to Purchase, the "Offer") filed by Parent with the SEC on January 23, 2014. Copies of the Offer to Purchase and the Letter of

Table of Contents

Transmittal are filed as Exhibits (a)(1)(A) and (a)(1)(B), respectively, hereto and are incorporated herein by reference.

The Offer is being made pursuant to the Agreement and Plan of Merger, dated as of January 17, 2014, by and among the Company, Parent and Purchaser (together with any amendments or supplements thereto, the "Merger Agreement"). The Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference. The Offer, if successful, will be followed by a merger (the "Merger") of Purchaser with and into the Company, with the Company as the surviving corporation and a wholly owned subsidiary of Parent, unless Parent elects in accordance with the Merger Agreement to change the form of the Merger to provide that Purchaser will instead be the surviving corporation (in either case, the "Surviving Corporation"), in either case pursuant to the procedure provided for under Section 251(h) of the Delaware General Corporation Law (the "DGCL") without any additional stockholder approvals. In the Merger, any Shares not tendered into the Offer, other than Shares held by the Company, Parent, Purchaser or stockholders who have validly exercised their appraisal rights under the DGCL, will be cancelled and automatically converted into the right to receive the same per share consideration paid to stockholders in the Offer. Because the Merger will be governed by Section 251(h) of the DGCL, which provides that following consummation of a successful tender offer for a public corporation, and subject to certain statutory pre-requisites, if the acquiror holds at least the percentage of stock, and of each class or series thereof, of the acquired corporation that, absent Section 251(h) of the DGCL, would be required to approve a merger for the acquired corporation under the DGCL and the certificate of incorporation of the acquired corporation, and the other stockholders receive the same consideration for their stock in the merger as was payable in the tender offer, the acquiror can effect a merger without the action of the other stockholders of the acquired corporation, no stockholder vote will be required to consummate the Merger. Pursuant to the Merger Agreement, at the effective time of the Merger (the "Effective Time"), each Share outstanding immediately prior to the Effective Time (other than (i) Shares held by the Company as treasury stock or owned by Parent or Purchaser, which will be cancelled and will cease to exist, and (ii) Shares owned by Company's stockholders who perfect their appraisal rights under the DGCL) will be converted into cash and Contingent Cash Consideration Payments equal in form and amount to the Offer Price paid in the Offer (such aggregate consideration is referred to herein as the "Merger Consideration").

As discussed below, under *Item 3 Past Contacts, Transactions, Negotiations and Agreements* certain holders of Company warrants and awards under the Company's benefit plans including options, restricted stock awards and restricted stock units, shall under certain circumstances also be entitled to receive the Merger Consideration.

The Offer to Purchase states that the principal executive offices of Parent and Purchaser are located at c/o Teva Pharmaceutical Industries Ltd., 5 Basel St., P.O. Box 3190, Petach Tikva, 49131 Israel and the telephone number at such principal executive offices is 972-3-914-8171.

Item 3. ***Past Contacts, Transactions, Negotiations and Agreements***

Except as set forth in this Item 3, Item 4 below or as incorporated by reference, there are no material agreements, arrangements or understandings and no actual or potential conflicts of interest between the Company or, to the knowledge of the Company after reasonable inquiry, its affiliates and (i) the Company's executive officers, directors or affiliates or (ii) Parent or Purchaser or their respective executive officers, directors or affiliates.

Arrangements with Purchaser and Parent

Merger Agreement

The summary of the material terms of the Merger Agreement set forth in Section 11 of the Offer to Purchase and the description of the conditions of the Offer contained in Section 11 of the Offer to

Table of Contents

Purchase are incorporated by reference herein. The summary of the Merger Agreement contained in the Offer to Purchase is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

The Merger Agreement contains representations, warranties and covenants of the parties as customary for transactions of this type. The Company has also agreed to customary covenants governing the conduct of its business, including an obligation to conduct its business and operations in the ordinary course and consistent with past practices until the earlier of the Effective Time or such time as designees of Parent first constitute a majority of the Company's board of directors (the "Company Board"). Subject to certain limited exceptions in the Merger Agreement, the Company has agreed not to solicit, initiate or participate in discussions with third parties regarding other proposals to acquire the Company and it has agreed to certain restrictions on its ability to respond to such proposals, subject to fulfillment of certain fiduciary requirements of the Company Board. The Merger Agreement also contains customary termination provisions for the Company and Parent and provides that, in connection with the termination of the Merger Agreement in connection with a competing acquisition proposal under certain specified circumstances, the Company may be required to pay Parent a termination fee of $2.5 million, except in the event of a termination in connection with a Superior Proposal (as defined in the Merger Agreement) from Endo Health Solutions Inc. ("Endo"), in which case the termination fee will be $5 million.

The Merger Agreement has been filed as an exhibit to this Statement to provide stockholders with information regarding its terms and is not intended to modify or supplement any factual disclosures about the Company in the Company's public reports filed with the SEC. The Merger Agreement and the summary of its terms contained in the Offer to Purchase filed by Purchaser with the SEC on January 23, 2014, are incorporated herein by reference, and are not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Merger Agreement were made only for the purposes of such agreement and as of specified dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by such parties. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Neither investors nor stockholders are third-party beneficiaries under the Merger Agreement. Accordingly, investors and stockholders should not rely on such representations, warranties and covenants as characterizations of the actual state of facts or circumstances described therein. Information concerning the subject matter of such representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the parties' public disclosures.

Contingent Cash Consideration Agreement

Pursuant to the Merger Agreement, prior to the closing of the Merger, Purchaser will enter into the Contingent Cash Consideration Agreement with Parent and American Stock Transfer & Trust Company, LLC (the "Paying Agent"), for the purpose of establishing the terms, policies and procedures by which the CCCPs will be paid.

In the event that Net Sales (as defined in the Contingent Cash Consideration Agreement) during any four consecutive calendar quarters are at least $100,000,000, on or prior to the Termination Date, then Purchaser will pay (through the Paying Agent) to each CCCP holder $2.15 per CCCP. In addition, in the event that Net Sales during any four consecutive calendar quarters are at least $300,000,000, on or prior to the Termination Date, then Purchaser will pay (through the Paying Agent) to each CCCP holder an additional $1.00 per CCCP.

Table of Contents

Parent has agreed to absolutely and unconditionally guarantee the performance when due of all payment obligations of Purchaser under the Contingent Cash Consideration Agreement.

The foregoing description of the Contingent Cash Consideration Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Contingent Cash Consideration Agreement, which is filed as Exhibit (e)(2) hereto and is incorporated herein by reference.

Confidentiality Agreement

The Company and Parent are parties to a Confidentiality Agreement, dated as of January 8, 2014 (the "Confidentiality Agreement"), pursuant to which, and subject to certain exceptions, each party and its subsidiaries agreed to keep strictly confidential and not to disclose non-public information of the other party delivered or made available to such party, in connection with the consideration by the parties of a potential business relationship between them, except in accordance with the terms of the Confidentiality Agreement. Pursuant to the Confidentiality Agreement, Parent also agreed that until the earlier of (i) the termination of the Agreement and Plan of Merger, dated December 15, 2013, by and among Endo, DM Merger Sub Inc. ("DM Merger Sub") and the Company (the "Endo Merger Agreement"), or (ii) nine months from the date of the Confidentiality Agreement, neither Parent nor its affiliates would take certain actions with respect to a takeover of the Company, other than making a tender offer for all of the outstanding capital stock of the Company or an offer to acquire all of the assets or capital stock of the Company. The foregoing description of the Confidentiality Agreement does not purport to be complete and is qualified in its entirety by reference to the Confidentiality Agreement, which is filed as Exhibit (e)(3) hereto and is incorporated herein by reference.

Promissory Note

Concurrently with the execution of the Merger Agreement, Teva Pharmaceuticals USA, Inc., an affiliate of Parent ("Teva USA"), made a loan to the Company in the amount of $5,000,000. The loan was evidenced by an unsecured subordinated promissory note, dated January 17, 2014, issued by the Company to Teva USA (the "Promissory Note"). The proceeds of the Promissory Note were used by the Company solely to fund the payment to Endo of the termination fee payable pursuant to the Endo Merger Agreement.

The Promissory Note accrues interest at a rate of 13.35% per annum and is due and payable upon a termination of the Merger Agreement (i) by Parent if the Company's board of directors changes or fails to reaffirm its recommendation to the Company's stockholders to tender their shares in the Offer, (ii) by the Company in order to enter into a binding agreement with respect to a Superior Proposal (as defined in the Merger Agreement), (iii) by Parent due to the Company's willful breach of the Merger Agreement, or (iv) by either Parent or the Company in the event the Offer Closing has not occurred due to a majority of outstanding Shares on a fully-diluted basis having not been tendered into the Offer. The Promissory Note is an unsecured subordinated obligation of the Company, and the Company may prepay the Promissory Note in whole or in part at any time without penalty or premium. The foregoing description of the Promissory Note does not purport to be complete and is qualified in its entirety by reference to the Promissory Note, which is filed as Exhibit (e)(4) hereto and is incorporated herein by reference.

Subordination Agreement

The Company, Teva USA and Hercules Technology Growth Capital, Inc., the Company's senior lender ("Hercules") are parties to a Subordination Agreement, dated as of January 17, 2014 (the "Subordination Agreement"), pursuant to which Teva USA agreed to subordinate (i) all of the Company's indebtedness and obligations to Teva USA, including the amount borrowed under the

Table of Contents

Promissory Note, to Hercules, and (ii) all of Teva USA's security interests, if any, in the Company's property, to Hercules' security interests in the Company's property. The foregoing description of the Subordination Agreement does not purport to be complete and is qualified in its entirety by reference to the Subordination Agreement, which is filed as Exhibit (e)(5) hereto and is incorporated herein by reference.

Arrangements with Current Executive Officers and Directors of the Company

The Company's executive officers and the members of the Company Board may be deemed to have certain interests in the transactions contemplated by the Merger Agreement that may be different from or in addition to those of the Company's stockholders generally, as described below. Those interests may create potential conflicts of interest. The Company Board was aware of those interests and considered them, among other matters, in reaching its decision to approve the Merger Agreement and related transactions.

Consideration for Shares Tendered Pursuant to the Offer

If the directors and executive officers of the Company who own Shares tender their Shares for purchase pursuant to the Offer, they will receive the same initial cash consideration and CCCPs on the same terms and conditions as the other stockholders of the Company. The directors and executive officers of the Company and their affiliates will own as of February 20, 2014, in the aggregate 10,978,786 Shares, which for purposes of this subsection excludes any Shares issuable upon exercise of stock options, restricted stock units and unvested restricted stock, and assumes no shares are transferred, sold or acquired between January 17, 2014 and February 20, 2014. If the directors, executive officers and their affiliates were to tender all of such Shares pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser, the directors, executive officers and their affiliates would receive an aggregate of $40,072,569 in cash, without interest, less any required withholding taxes, and 10,978,786 CCCPs, representing the right to receive an aggregate of $34,583,176 in cash if the milestones set forth in the Contingent Cash Consideration Agreement are achieved. For a description of the treatment of stock options, restricted stock units and unvested shares of restricted stock held by the directors and executive officers of the Company, see below under the heading *"Merger Agreement Effect of Merger on Stock Options and Other Equity Awards"*.

The Merger Agreement provides that each outstanding unexercised warrant to purchase or otherwise acquire Shares immediately prior to the closing of the Offer will, as a consequence of the closing of the Offer, only entitle the holder thereof to receive, upon exercise of such warrant, the amount by which the Offer Price exceeds the exercise price of such warrant. The Merger Agreement further provides that as a consequence of the closing of the Merger, each such warrant will automatically be assumed by the Surviving Corporation. Therefore, the holder of a warrant will not receive any consideration pursuant to the Merger until the exercise of such warrant. Because Contingent Cash Consideration Payments may be payable in the future pursuant to the Contingent Cash Consideration Agreement, holders of warrants may receive consideration at the Effective Time and/or in the future, depending on when such warrants are exercised and when and whether the aggregate cash consideration paid exceeds the exercise price of such holder's warrants. The Company has three tranches of warrants outstanding with exercise prices of $2.00, $2.79 and $7.45 per share, respectively. The following illustrates the treatment of the Company's outstanding warrants:

- if a warrant with an exercise price of $2.00 per share is exercised immediately following the closing of the Merger, the holder thereof would receive upon exercise $1.65 per share and the right to receive the full per share amount of any CCCPs that may be paid in the future;

Table of Contents

if a warrant with an exercise price of $2.79 per share is exercised immediately following the closing of the Merger, the holder thereof would receive upon exercise $0.86 per share and the right to receive the full per share amount of any CCCPs that may be paid in the future;

if a warrant with an exercise price of $7.45 per share is exercised following the closing of the Merger, the holder thereof would not receive any initial cash consideration in the Offer Price and would not receive any amounts payable pursuant to the Contingent Cash Consideration Agreement as the exercise price would be greater than the total potential amount per Share payable under the Merger Agreement (including the CCCPs).

While none of the directors or executive officers of the Company own any warrants, certain entities affiliated with directors of the Company own warrants to purchase in the aggregate 5,000,000 Shares. If all such warrants were exercised and the Shares issuable upon exercise of such warrants were tendered pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser, such affiliates would receive an aggregate of $8,250,000 in cash (after deducting payment of the warrant exercise price), without interest, less any required withholding taxes, and 5,000,000 CCCPs, representing the right to receive an aggregate of $15,750,000 in cash if the milestones set forth in the Contingent Cash Consideration Agreement are achieved.

The following table sets forth, as of February 20, 2014, the cash consideration that each executive officer, director and his or her affiliates would be entitled to receive in respect of his, her or its outstanding Shares and warrants (after deducting payment of the warrant exercise price), assuming (i) such individual were to tender all of his or her outstanding Shares (including Shares issuable upon exercise of warrants) pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser; (ii) achievement of the milestones set forth in the Contingent Cash Consideration Agreement; and (iii) that no shares or warrants owned as of January 17, 2014 are transferred or additional shares or warrants acquired prior to February 20, 2014.

Name	Number of Shares	Number of Shares Issuable Upon Exercise of Warrants	Total Consideration Payable in Respect of Shares and Warrants at the Offer Closing	Total Potential Consideration Payable in Respect of Shares and Warrants Upon Payment of CCCPs
Armando Anido				
Terri B. Sebree	176,699		$ 644,951	$ 556,602
Keith A. Goldan	18,875		$ 68,894	$ 59,456
Michael F. Marino	10,992		$ 40,121	$ 34,625
Gerald W. McLaughlin	11,771		$ 42,964	$ 37,079
Wayne P. Yetter				
Michael Cola				
James A. Datin				
William J. Federici				
Richard S. Kollender(1)	5,590,072	2,500,000	$ 24,528,763	$ 25,483,727
Robert P. Roche, Jr.	10,000		$ 36,500	$ 31,500
Brian J. Sisko(2)	5,160,377	2,500,000	$ 22,960,376	$ 24,130,188

(1) Consists of (i) 5,321,193 shares of common stock and warrants to purchase 2,500,000 shares of common stock with an exercise price of $2.00 per share owned of record by Quaker BioVentures II, L.P. and (ii) 268,879 shares of common stock owned of record by BioAdvance Ventures, L.P.

Quaker BioVentures Capital II, L.P. ("Quaker Capital II L.P.") is the general partner of Quaker BioVentures II, L.P., and Quaker BioVentures Capital II, LLC ("Quaker Capital II LLC") is the general partner of Quaker Capital II L.P. As a result of the control that Quaker Capital II L.P.

Table of Contents

exercises over Quaker BioVentures II, L.P. and the control that Quaker Capital II LLC exercises over Quaker Capital II L.P., each of Quaker Capital II L.P. and Quaker Capital II LLC may be deemed to have voting and investment control over the shares held of record by Quaker BioVentures II, L.P. Mr. Kollender is a managing member of Quaker Capital II LLC. Such shares have been included as amounts owned by Mr. Kollender due to his position with Quaker Capital II LLC and shall not be construed as an admission that Mr. Kollender is, for the purposes of Sections 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the beneficial owner of such shares.

Quaker BioAdvance Management, LP ("BioAdvance Management") is the general partner of BioAdvance Ventures, L.P., and Quaker BioVentures Management, LLC ("BioVentures Management") is the general partner of BioAdvance Management. As a result of the control that BioAdvance Management exercises over BioAdvance Ventures, L.P. and the control that BioVentures Management exercises over BioAdvance Management, each of BioAdvance Management and BioVentures Management may be deemed to have voting and investment control over the shares held of record by BioAdvance Ventures, L.P. Mr. Kollender serves in a variety of roles (including as an officer, partner and member) with BioAdvance Management and BioVentures Management, and entities affiliated therewith. Such shares have been included as amounts owned by Mr. Kollender due to his positions with the foregoing entities and shall not be construed as an admission that Mr. Kollender is, for the purposes of Sections 13(d) or 13(g) of the Exchange Act, the beneficial owner of such shares

(2)

Consists of 5,160,377 shares of common stock and warrants to purchase 2,500,000 shares of common stock with an exercise price of $2.00 per share owned of record by Safeguard Delaware, Inc., a wholly-owned subsidiary of Safeguard Scientifics, Inc. ("Safeguard"). Such shares have been included as amounts owned by Mr. Sisko due to his position with the foregoing entities and shall not be construed as an admission that Mr. Sisko is, for the purposes of Sections 13(d) or 13(g) of the Exchange Act, the beneficial owner of such shares.

Merger Agreement Effect of Merger on Stock Options and Other Equity Awards

Under the Merger Agreement, immediately prior to the Effective Time, all outstanding stock options under the Company's 2010 Omnibus Incentive Compensation Plan (including those held by the Company's executive officers and directors) will be cancelled and in consideration for such cancellation, the holders of options will be entitled to receive, at the earliest date at which the sum of (1) the $3.65 per Share cash portion of the Merger Consideration and (2) the amount per Share in cash previously paid or to be paid at such date in connection with the Contingent Cash Consideration Agreement (such sum, the "Per Share Paid Value"), exceeds the per-share exercise price under such option):

an amount in cash equal to the number of shares of common stock subject to each such option (whether vested or unvested) held by such holder multiplied by the excess, of (1) the then applicable Per Share Paid Value over (2) the per-share exercise price under such option (with such payments to be subject to any applicable tax withholding); and

the right to receive, in respect of each share of common stock subject to each such option (whether vested or unvested) held by such holder, each CCCP that, as of such date, has not yet become payable pursuant to the terms of the Contingent Cash Consideration Agreement.

Table of Contents

The following table illustrates the amounts payable to holders of options with various assumed per-share exercise prices (the exercise prices used are not indicative of the actual exercise prices of the Company's outstanding options to purchase common stock):

Exercise Price	Amount Payable at Effective Time	Amount Payable if and when First CCCP is Payable	Amount Payable if and when Second CCCP is Payable
$2.00	$ 1.65	$ 2.15	$ 1.00
$3.00	$ 0.65	$ 2.15	$ 1.00
$4.00	$ 0.00	$ 1.80	$ 1.00
$5.00	$ 0.00	$ 0.80	$ 1.00
$6.00	$ 0.00	$ 0.00	$ 0.80
$7.00	$ 0.00	$ 0.00	$ 0.00

Under the Merger Agreement, immediately before the Effective Time, all outstanding shares of restricted stock and restricted stock units ("RSUs") under the 2010 Omnibus Incentive Compensation Plan (including those held by the Company's executive officers and directors) will be cancelled and of no further force or effect and in exchange for the cancellation of each such award, the holder of such award will receive the per share Merger Consideration for each share of common stock underlying such award, whether vested or unvested (with such payment to be subject to any applicable tax withholding).

The following table sets forth, assuming the Effective Time occurs on February 21, 2014, the cash consideration that each executive officer, director and his or her affiliates would be entitled to receive in respect of his or her outstanding stock options, RSUs and unvested shares of restricted stock at the Effective Time, assuming (i) such options, RSUs and unvested shares of restricted stock are treated as described in the preceding paragraphs, (ii) achievement of the milestones set forth in the Contingent Cash Consideration Agreement and (iii) that such options, RSUs and unvested restricted shares are not forfeited, transferred or exercised or additional options, RSUs or restricted shares acquired prior to February 21, 2014.

	Number of Shares Subject to Options		Number of RSUs				
Name	Vested Options(1)	Unvested Options(2)	Vested RSUs	Unvested RSUs	Number of Unvested Restricted Shares	Total Consideration Payable in Respect of Options, RSUs and Restricted Shares at the Effective Time	Total Potential Consideration Payable in Respect of Options, RSUs and Restricted Shares Upon Payment of CCCPs
Armando Anido			641,597	628,403		$ 4,635,000	$ 4,000,500
Terri B. Sebree	151,477		47,282	118,947	12,953	$ 930,043	$ 1,041,576
Keith A. Goldan	99,704		45,722	87,387	14,082	$ 709,737	$ 777,721
Michael F. Marino			63,750	108,750	10,992	$ 669,746	$ 578,000
Gerald W. McLaughlin	85,749		45,722	87,387	11,771	$ 688,057	$ 726,481
Wayne P. Yetter	42,343	15,505		13,500		$ 77,593	$ 154,153
Michael Cola	123,309	15,505		13,500		$ 174,102	$ 400,223
James A. Datin		13,500		13,500		$ 58,185	$ 85,050
William J. Federici	49,493	15,505		13,500		$ 70,642	$ 182,415
Richard S. Kollender		13,500		13,500		$ 58,185	$ 85,050
Robert P. Roche, Jr.	93,071	15,505		13,500		$ 112,532	$ 305,651
Brian J. Sisko(3)		13,500		13,500		$ 58,185	$ 85,050

(1) Cash consideration payable at the Effective Time in respect of vested options is as follows: Ms. Sebree $276,028; Mr. Goldan $172,488; Mr. McLaughlin $159,245; Mr. Yetter $19,408; Mr. Cola $115,917; Mr. Federici $12,457; and Mr. Roche $54,347. Potential consideration payable in respect of vested options upon payment of CCCPs is Ms. Sebree $477,153; Mr. Goldan $314,068; Mr. McLaughlin $270,109; Mr. Yetter $69,103; Mr. Cola $315,173; Mr. Federici $97,365; and Mr. Roche $220,601.

(2)

Cash consideration payable at the Effective Time in respect to unvested options is as follows: Mr. Yetter $8,910; Mr. Cola $8,910; Mr. Datin $8,910; Mr. Federici $8,910; Mr. Kollender $8,910; Mr. Roche $8,910; and Mr. Sisko $,8910. Potential consideration payable in respect of unvested options upon payment of CCCPs is as

Table of Contents

follows: Mr. Yetter $42,525; Mr. Cola $42,525; Mr. Datin $42,525; Mr. Federici $42,525; Mr. Kollender $42,525; Mr. Roche $42,525; and Mr. Sisko $42,525.

(3) Mr. Sisko is an officer of Safeguard. Pursuant to Safeguard's employment practices and Safeguard's written agreements with Mr. Sisko, Safeguard may be deemed to be the beneficial owner of the stock options and restricted stock units held by Mr. Sisko.

Potential Payments Upon a Termination of Employment

The Company has entered into employment agreements (the "Employment Agreements") with each of its executive officers: Armando Anido, Chief Executive Officer, Terri B. Sebree, President, Keith A. Goldan, Senior Vice President and Chief Financial Officer, Michael F. Marino, Senior Vice President, General Counsel and Secretary, and Gerald W. McLaughlin, Senior Vice President and Chief Commercial Officer. The Employment Agreements provide certain protections to the executive officers in the event of their termination in connection with a change in control as summarized below (additional details and definitions can be found in the actual Employment Agreements and related amendments (appended in Exhibits (e)(16)-(24)), which have been filed with the SEC, and which are discussed in more detail below):

Upon a termination without "cause" or resignation for "good reason" (as defined in the Employment Agreements) within the 90 days preceding a change of control or on or within the 12 months following a change of control, each executive officer is entitled to the following severance payments and benefits:

Cash severance payments equal to the sum of (1) a multiple of the executive's annual base salary and target annual bonus as of the last day of employment as follows: 2.0x base salary and target annual bonus for Mr. Anido and 1.0x base salary and target annual bonus for Ms. Sebree and for Messrs. Goldan, Marino and McLaughlin, to be paid in accordance with regular payroll over a period of 12 months (other than Mr. Anido who is to be paid in a lump sum within 60 days of termination); and (2) pro-rata annual bonus for the year in which termination occurs;

Continued medical and dental coverage, for the executive and dependents, if applicable, at the same level in effect at the time of termination for a specified period, as follows: 18 months for Mr. Anido and 12 months for Ms. Sebree and for Messrs. Goldan, Marino and McLaughlin; and

Immediate vesting of all outstanding and unvested time-based options and other equity-based awards held by the executive at the termination date.

The above severance payments and benefits are structured to be "double trigger" benefits. In other words, a change of control by itself does not trigger the above payment or benefits. Rather, such payment and benefits are only provided if the employment of the executive is terminated without "cause" or the executive resigns for "good reason" within the 90 days preceding the change of control or on or within the 12 months following the change of control.

If all of the conditions to the Offer are satisfied in accordance with the terms of the Merger Agreement, the consummation of the Offer will constitute a "change of control" under each Employment Agreement with each of the executive officers described above. The table below describes the estimated potential payments upon termination of employment with the Company that would be payable to each of the executive officers under the terms of their respective Employment Agreements assuming such executive was terminated effective as of February 21, 2014 and provided 30 days advance notice of termination as required pursuant to their respective Employment Agreements. The amounts shown reflect only the additional payments or benefits that the executive officer would have received upon the occurrence of the triggering event listed above; they do not include the value of payments or benefits that would have been earned, or any amounts associated with equity awards that would have vested as of the Effective Time, absent the triggering event. The amounts shown in the table are

Table of Contents

estimates only as the actual amounts that may be paid upon an executive's termination of employment can only be determined at the actual time of such termination.

Name	Cash Severance(1)(2)	Other Benefits(3)
Armando Anido	$ 1,357,025	$ 42,513
Terri B. Sebree	$ 500,580	$ 17,246
Keith A. Goldan	$ 442,554	$ 28,342
Michael F. Marino	$ 429,665	$ 28,342
Gerald W. McLaughlin	$ 429,665	$ 28,342

(1) Includes salary and target bonus multiple portions of severance payments as described above.

(2) Excludes amounts executives are entitled to receive pursuant to the Employment Agreements which would have been earned absent the triggering event, including performance-based bonuses for fiscal year 2013 and pro-rata performance-based bonuses for fiscal year 2014. Such annual performance-based bonuses are determined annually by the Company's compensation committee and Company Board based on achievement of corporate and individual objectives for the relevant year in accordance with the terms of the Company's annual performance bonus plan. Set forth in the table below are the minimum, target and maximum annual performance bonuses that each executive is eligible to receive for 2013 and 2014 assuming termination of employment on February 21, 2014.

	2013 Annual Performance Bonus			2014 Pro-Rata Annual Performance Bonus		
Name	Minimum	Target	Maximum	Minimum	Target	Maximum
Armando Anido	$ 0					