

DEPOMED INC
Form DFAN14A
November 09, 2015

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

SCHEDULE 14A

(RULE 14a-101)

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

DEPOMED, INC.

(Name of Registrant as Specified in Its Charter)

HORIZON PHARMA PUBLIC LIMITED COMPANY

HORIZON PHARMA, INC.

(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:

(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:

Filed pursuant to Rule 14a-12

of the Securities Exchange Act of 1934, as amended

Filing by: Horizon Pharma Public Limited Company

Subject Company: Depomed, Inc.

SEC File No. of Depomed, Inc.: 001-13111

Horizon Pharma plc (Horizon Pharma) has filed a preliminary proxy statement with the Securities and Exchange Commission (the SEC) and accompanying WHITE proxy card in connection with the removal and bylaw amendments special meeting of shareholders of Depomed, Inc. (Depomed).

This Schedule 14A filing consists of an investor presentation released by Horizon Pharma on November 9, 2015.

Forward-Looking Statements

This communication contains forward-looking statements, including, but not limited to, statements related to Horizon Pharma's strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, expected impact and potential benefits from recent and future transactions, development programs and clinical plans, and other statements that are not historical facts. These forward-looking statements are based on Horizon Pharma's current expectations and inherently involve significant risks and uncertainties. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks related to Horizon Pharma's ability to complete any future acquisitions on anticipated terms; risks associated with business combination transactions, such as the risk that the businesses will not be integrated successfully, that such integration may be more difficult, time-consuming or costly than expected or that the expected benefits of any acquisition will not be realized; risks related to future opportunities and plans for Horizon Pharma and/or the combined company, including, without limitation, uncertainty of the expected financial performance and results of Horizon Pharma and/or the combined company following completion of any acquisition; disruption from any future acquisition, making it more difficult to conduct business as usual or maintain relationships with customers, employees or suppliers; and the possibility that if the combined company does not achieve the perceived benefits of any future acquisition as rapidly or to the extent anticipated by financial analysts or investors, the market price of Horizon Pharma's shares could decline, as well as other risks related to Horizon Pharma's business, including the ability to grow sales and revenues from existing medicines and its ability to increase sales of its existing medicines; Horizon Pharma's ability to successfully execute its commercial strategy and achieve projected financial results for 2015, 2016 and other long-term financial metrics; the fact that past financial or operating results are not a guarantee of future results; competition, including potential generic competition; the ability to protect intellectual property and defend patents; regulatory obligations and oversight, including potential changes in healthcare laws and regulations; the availability of coverage and adequate reimbursement and pricing from government and third-party payers and risks relating to the success of Horizon's patient support program; risks associated with clinical development and

regulatory approvals, including the anticipated timing of initiating and completing studies and filing for and obtaining regulatory approvals, whether data from clinical studies will support regulatory approval, and whether clinical results will be consistent with data from animal models; and those risks detailed from time-to-time under the caption Risk Factors and elsewhere in Horizon Pharma's and Depomed's respective filings and reports with the SEC, including in their respective Annual Report on Form 10-K for the year ended December 31, 2014, and subsequent quarterly reports on Form 10-Q. Horizon Pharma undertakes no duty or obligation to update any forward-looking statements contained in this communication as a result of new information, except as required by applicable law or regulation.

Additional Information

This communication does not constitute an offer to buy or solicitation of any offer to sell or vote securities and is for informational purposes only. It relates to the offer commenced by Horizon Pharma to exchange each issued and outstanding share of Depomed common stock for 0.95 Horizon ordinary shares. The 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 Pharma has filed with the SEC. This communication also relates to a solicitation by Horizon Pharma of Depomed's shareholders to (i) call two special shareholder meetings (the Special Meetings) to consider the principal proposals described in the Special Meetings Solicitation Statement (as defined below) and (ii) vote in favor of the principal proposals described in the Special Meetings Proxy Statements (as defined below) if the two special shareholder meetings are called and held. This communication also relates to a solicitation by Horizon Pharma of its shareholders to vote in favor of the principal proposals described in the Extraordinary General Meeting Proxy Statement (as defined below). On September 8, 2015, Horizon Pharma filed a definitive solicitation statement and accompanying WHITE and BLUE proxy cards with the SEC with respect to the solicitation of proxies to call two related special meetings of shareholders (including any amendments and supplements, the Special Meetings Solicitation Statement). On October 13, 2015, Horizon Pharma also filed two preliminary proxy statements and accompanying WHITE and BLUE proxy cards for the two related special meetings of shareholders with the SEC with respect to the solicitation of proxies to vote in favor of the proposals described in the Special Meetings Solicitation Statement (including any amendments and supplements, the Special Meetings Proxy Statements). On October 15, 2015, Horizon Pharma filed a definitive proxy statement and accompanying proxy card for the extraordinary general meeting of Horizon Pharma shareholders (the Extraordinary General Meeting) with the SEC with respect to the solicitation of proxies to vote in favor of the proposals described therein (including any amendments and supplements, the Extraordinary General Meeting Proxy Statement). Subject to further developments, Horizon Pharma may file one or more further supplements to the Special Meetings Solicitation Statement, one or more amendments and supplements to the Special Meetings Proxy Statements, one or more amendments and supplements to the Extraordinary General Meeting Proxy Statement and additional solicitation statements and/or proxy statements or other documents with the SEC in connection with the Special Meetings and/or the Extraordinary General Meeting, and Horizon Pharma (and, if a negotiated transaction is agreed upon, Depomed) may file one or more registration statements, prospectuses, proxy statements,

Exchange Offer Documents or other documents with the SEC in connection with the offer or any other proposed transaction involving Horizon Pharma and Depomed. This communication is not a substitute for any solicitation statement, proxy statement or other document filed with the SEC in connection with the Special Meetings, the Extraordinary General Meeting or any registration statement, prospectus, proxy statement, Exchange Offer Documents or other documents Horizon Pharma and/or Depomed may file with the SEC in connection with the offer or any other proposed transaction involving Horizon Pharma and Depomed.

If your shares are held by a bank, broker or other nominee, you are considered the beneficial owner of shares held in street name. Only your broker or other nominee, as the holder of record of your shares, may submit a WHITE proxy card and/or a BLUE proxy card to join us in calling the Special Meetings, a WHITE proxy card and/or a BLUE proxy card to vote in favor of the proposals described in the Special Meetings Proxy Statements or a proxy card to vote in favor of the proposals described in the Extraordinary General Meeting Proxy Statement, as applicable, and your bank, broker or other nominee may do so only with your specific instructions to do so. YOUR BANK, BROKER OR OTHER NOMINEE HAS PROVIDED YOU WITH A SINGLE VOTING INSTRUCTION FORM FOR PURPOSES OF VOTING ON THE MATTERS SET FORTH IN BOTH THE WHITE PROXY CARD AND THE BLUE PROXY CARD ACCOMPANYING THE SPECIAL MEETINGS SOLICITATION STATEMENT. PLEASE READ AND FOLLOW SUCH SINGLE VOTING INSTRUCTION FORM CAREFULLY IF YOU WISH TO JOIN US IN CALLING ONE OR BOTH OF THE SPECIAL MEETINGS. PLEASE NOTE THAT THE SINGLE VOTING INSTRUCTION FORM PERMITS BENEFICIAL OWNERS TO ABSTAIN FROM VOTING ON THE MATTERS SET FORTH ON THE WHITE AND BLUE PROXY CARDS ACCOMPANYING THE SPECIAL MEETINGS SOLICITATION STATEMENT; IF YOU, AS A BENEFICIAL OWNER SO ABSTAIN ON EITHER OR BOTH PROXY CARDS ACCOMPANYING THE SPECIAL MEETINGS SOLICITATION STATEMENT, YOUR ABSTENTION WILL RESULT IN YOUR SHARES NOT BEING COUNTED TOWARDS OUR OBTAINING THE SPECIAL MEETING PERCENTAGE FOR CALLING THE APPLICABLE SPECIAL MEETING.

INVESTORS AND SECURITY HOLDERS OF HORIZON PHARMA AND DEPOMED ARE URGED TO READ CAREFULLY THE SPECIAL MEETINGS SOLICITATION STATEMENT (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS), THE WHITE AND BLUE PROXY CARDS ACCOMPANYING THE SPECIAL MEETINGS SOLICITATION STATEMENT, THE SPECIAL MEETINGS PROXY STATEMENTS (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS), THE WHITE AND BLUE PROXY CARDS ACCOMPANYING THE SPECIAL MEETINGS PROXY STATEMENTS, THE EXTRAORDINARY GENERAL MEETING PROXY STATEMENT (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS), THE PROXY CARD ACCOMPANYING THE EXTRAORDINARY GENERAL MEETING PROXY STATEMENT AND OTHER SOLICITATION STATEMENTS, PROXY STATEMENTS AND DOCUMENTS FILED WITH THE SEC IN CONNECTION WITH THE SPECIAL MEETINGS AND THE EXTRAORDINARY GENERAL MEETING AND THE EXCHANGE OFFER DOCUMENTS (INCLUDING ANY AMENDMENTS AND SUPPLEMENTS) AND ANY OTHER REGISTRATION STATEMENTS, PROSPECTUSES, PROXY STATEMENTS AND OTHER

DOCUMENTS FILED WITH THE SEC IN CONNECTION WITH THE OFFER OR ANY OTHER PROPOSED TRANSACTION INVOLVING HORIZON PHARMA AND DEPOMED WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT HORIZON PHARMA, DEPOMED, THE SPECIAL MEETINGS, THE OFFER OR ANY OTHER PROPOSED TRANSACTION INVOLVING HORIZON PHARMA AND DEPOMED, AS APPLICABLE.

Investors and security holders may obtain free copies of the Special Meetings Solicitation Statement, the Special Meetings Proxy Statements, the Extraordinary General Meeting Proxy Statement, the Exchange Offer Documents and any other related documents (when they are available) filed with the SEC at the SEC's web site at www.sec.gov or by directing a request to Horizon Pharma's Investor Relations department at Horizon Pharma, Inc., Attention: Investor Relations, 520 Lake Cook Road, Suite 520, Deerfield, IL 60015 or to Horizon Pharma's Investor Relations department at 224-383-3400 or by email to investor-relations@horizonpharma.com. Investors and security holders may obtain free copies of the documents filed with the SEC on Horizon Pharma's website at www.horizonpharma.com under the heading "Investors" and then under the heading "SEC Filings".

Special Note Regarding Litigation

As described in the Special Meetings Solicitation Statement, the Special Meetings Proxy Statements and the Extraordinary General Meeting Proxy Statement, Horizon Pharma is currently challenging Depomed's bylaw-mandated process for calling a special meeting of shareholders as contrary to California law in a judicial proceeding seeking to protect Depomed shareholders' franchise rights. With that judicial challenge pending, the Special Meetings Solicitation Statement and accompanying WHITE and BLUE proxy cards that have been distributed to Depomed shareholders and the Special Meetings Proxy Statements and accompanying WHITE and BLUE proxy cards that will be distributed to Depomed shareholders reflect Horizon Pharma's good faith effort to nevertheless comply with what we believe is an onerous process for calling a special meeting of shareholders imposed by the Depomed board of directors. The Superior Court of the State of California, County of Santa Clara, where our judicial challenge is pending, calendared for November 5, 2015 a hearing on a preliminary injunction motion by a subsidiary of Horizon Pharma to enjoin, among other things, the enforcement of Depomed's bylaws that mandate what we believe to be the onerous process for calling a special meeting of shareholders. The Court subsequently continued the hearing from November 5, 2015 to November 19, 2015. On that same date, the Court is also scheduled to hold a hearing on a preliminary injunction motion by Depomed for its claims against Horizon Pharma and its subsidiary.

Certain Information Regarding Participants

Horizon Pharma and/or Depomed and their respective directors, executive officers and certain other employees and the Horizon Pharma nominees may be deemed participants in the solicitations of proxies in connection with the requests to call the Special Meetings, to vote in favor of the principal proposals described in the Special Meetings Proxy Statements if the Special Meetings are called and held and to vote in favor of the principal proposals described in the Extraordinary General Meeting Proxy Statement. You can find information about Horizon

Pharma's directors, executive officers and such certain other employees and any individuals Horizon Pharma is seeking to nominate for election to the Depomed board of directors, as described in the Special Meetings Solicitation Statement and the Special Meetings Proxy Statements, in Horizon Pharma's Annual Report on Form 10-K for the year ended December 31, 2014, which was filed with the SEC on February 27, 2015, Horizon Pharma's definitive proxy statement filed with the SEC on May 6, 2015, Horizon Pharma's Current Report on Form 8-K/A filed with the SEC on July 27, 2015, the Special Meetings Solicitation Statement, the Special Meetings Proxy Statements and the Extraordinary General Meeting Proxy Statement and in such other solicitation statements, proxy statements or other documents that would be filed with the SEC in connection with the Special Meetings. You can find information about Depomed's directors, executive officers and its employees who are participants in such solicitation in Depomed's definitive proxy statement filed with the SEC on April 16, 2015, Depomed's definitive revocation statement filed with the SEC on September 30, 2015 and as may be supplemented from time to time, the Special Meetings Solicitation Statement, the Special Meetings Proxy Statements and in such other solicitation statements, proxy statements or other documents that would be filed with the SEC in connection with the Special Meetings. These documents are available free of charge at the SEC's web site at www.sec.gov and, with respect to Horizon Pharma, from Investor Relations at Horizon Pharma as described above. Additional information regarding the interests of such potential participants is included in the Special Meetings Solicitation Statement, the Special Meetings Proxy Statements and the Extraordinary General Meeting Proxy Statement and will be included in one or more registration statements, proxy statements or other documents filed with the SEC if and when they become available.

