

RIBAPHARM INC
Form SC 14D9
June 23, 2003
Table of Contents

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

SCHEDULE 14D-9

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

RIBAPHARM INC.

(Name of Subject Company)

RIBAPHARM INC.

(Name of Person(s) Filing Statement)

Common Stock, par value \$.01 per share

(Title of Class of Securities)

Common Stock: 762537108

(CUSIP Number of Class of Securities)

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Daniel J. Paracka

Chairman of the Board

Ribapharm Inc.

3300 Hyland Avenue

Costa Mesa, California 92626

(714) 427-6236

With Copies to:

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**(Name, Address and Telephone Number of Person Authorized to Receive Notice and
Communications on Behalf of the Person(s) Filing Statement)**

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

	Page
ITEM 1. <u>SUBJECT COMPANY INFORMATION</u>	1
ITEM 2. <u>IDENTITY AND BACKGROUND OF FILING PERSON</u>	1
ITEM 3. <u>PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS</u>	2
ITEM 4. <u>THE SOLICITATION OR RECOMMENDATION</u>	11
ITEM 5. <u>PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED</u>	18
ITEM 6. <u>INTEREST IN SECURITIES OF THE SUBJECT COMPANY</u>	18
ITEM 7. <u>PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS</u>	19
ITEM 8. <u>ADDITIONAL INFORMATION TO BE FURNISHED</u>	19
ITEM 9. <u>EXHIBITS</u>	23

Table of Contents

ITEM 1. SUBJECT COMPANY INFORMATION

The name of the subject company is Ribapharm Inc., a Delaware corporation (the **Company** or **Ribapharm**). The address of Ribapharm's principal executive offices is 3300 Hyland Avenue, Costa Mesa, California 92626. Ribapharm's telephone number at that location is (714) 427-6236.

The title of the class of equity securities to which this Solicitation/Recommendation Statement on Schedule 14D-9 (this **Statement**) relates is Ribapharm's common stock, par value \$.01 per share (the **Shares** or the **Common Stock**). As of June 20, 2003, there were 150,000,703 shares of Common Stock outstanding.

ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON

This Statement is being filed by the subject company, Ribapharm Inc. Ribapharm's name, address and business telephone number are set forth in Item 1 above. Ribapharm's website address is www.ribapharm.com. The information on Ribapharm's website should not be considered part of this Statement.

This Statement relates to the tender offer by Rx Acquisition Corporation, a Delaware corporation (**Purchaser**), and a wholly-owned subsidiary of ICN Pharmaceuticals, Inc., a Delaware corporation (**ICN**), to purchase all of the outstanding Shares which are not currently owned by ICN and its subsidiaries (the **Publicly Held Shares**), at a purchase price of \$5.60 per Share (the **Offer Price**), net to the seller in cash, without interest thereon, upon the terms and subject to the conditions set forth in Purchaser's Offer to Purchase, dated June 10, 2003 (the **Offer to Purchase**), and in the related Letter of Transmittal (which together with the Offer to Purchase and any amendments or supplements thereto collectively constitute the **Offer**). Purchaser filed a Tender Offer Statement on Schedule TO (the **Schedule TO**) with the Securities and Exchange Commission (**SEC**) on June 10, 2003, and subsequently amended the Schedule TO with Amendment No. 1 to Schedule TO filed with the SEC on June 13, 2003 and Amendment No. 2 to Schedule TO filed with the SEC on June 16, 2003.

The Offer is conditioned upon, among other things, there being validly tendered and not withdrawn (i) a majority of the outstanding Shares other than Shares owned by ICN, its subsidiaries, executive officers and directors, or the executive officers and directors of the Company (the **Minimum Condition**) and (ii) a sufficient number of Shares which, together with Shares owned by ICN, equal at least 90% of the outstanding Shares on a fully diluted basis, including all Shares which the Company may be required to issue pursuant to warrants, options and other obligations outstanding on the expiration date of the Offer (the **90% Condition**). Based on the Schedule TO, as of June 10, 2003, ICN owned in the aggregate 120,100,000 Shares, representing approximately 80.1% of the issued and outstanding Shares. Approximately 14,938,251 Shares must be tendered in order to satisfy the Minimum Condition, and according to the Offer, the Minimum Condition is non-waivable, while the 90% Condition and the other conditions in the Offer may be waived, in whole or in part, at any time and from time to time in the sole discretion of ICN or Purchaser.

If the Offer is completed and the 90% Condition is met, ICN currently intends to effect a short-form merger (the **Merger**) of Purchaser with Ribapharm as soon as possible after completion of the Offer, in which case all Shares that are not purchased in the Offer would be exchanged for an amount in cash per share equal to the Offer Price. In such event, stockholders of Ribapharm who have not tendered their Shares in the Offer would not be required to vote in the Merger.

ICN's principal executive offices, as set forth on its Schedule TO, are located at 3300 Hyland Avenue, Costa Mesa, California 92626 and its business phone is (714) 545-0100.

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With respect to all information described herein as contained in the Offer to Purchase and the Schedule TO, including information concerning ICN or its affiliates, officers or directors or actions or events with respect to any of them, Ribapharm takes no responsibility for the accuracy or completeness of such information or for any failure by ICN to disclose events or circumstances that may have occurred and may affect the significance, completeness or accuracy of any such information.

Table of Contents

ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS

Except as described in this Statement (including in the Exhibits hereto) or incorporated herein by reference, to Ribapharm's knowledge, as of the date hereof there are no material agreements, arrangements or understandings, and no actual or potential conflicts of interest between Ribapharm or its affiliates and (i) Ribapharm's executive officers, directors or affiliates or (ii) ICN or any of its respective executive officers, directors or affiliates.

**CERTAIN ARRANGEMENTS BETWEEN THE COMPANY AND
ITS EXECUTIVE OFFICERS, DIRECTORS AND AFFILIATES**

Employment Agreements

In January 2003, Ribapharm entered into a two-year employment agreement with Kim D. Lamon, M.D., Ph.D., pursuant to which Dr. Lamon has been engaged as Ribapharm's President and Chief Executive Officer. Ribapharm is obligated to pay Dr. Lamon an annual base salary of \$425,000 or such greater amount as the Board of Directors of Ribapharm (the Ribapharm Board or the Board) may approve from time to time. Under the terms of the employment agreement, Dr. Lamon also received a signing bonus in the amount of \$400,000. Dr. Lamon is obligated to repay the signing bonus if he terminates his employment with Ribapharm without good cause (as defined in the employment agreement) or if Ribapharm terminates his employment for cause (as defined in the employment agreement) prior to January 2005. Dr. Lamon is eligible for an annual performance bonus of between 80% and 160% of his base salary based on certain performance targets, except that the bonus for fiscal year 2003 has been guaranteed at \$340,000. In accordance with the terms of his employment agreement, Dr. Lamon received a stock option to purchase 1,000,000 shares of Common Stock for an exercise price of \$4.65 per share, which vests 25% on each of the first four anniversaries of his start date. Ribapharm is also obligated to reimburse Dr. Lamon for all costs incurred in maintaining his existing residence, through January 2004, plus a gross-up of such amounts to the extent they are not deductible by Dr. Lamon in connection with his personal income taxes.

If Dr. Lamon's employment is terminated by Ribapharm without cause or by Dr. Lamon for good reason, or if Ribapharm does not renew the agreement after the end of its then current term, then Dr. Lamon will be entitled to receive a payment equal to two times the sum of the base salary plus the average of the annual cash bonus received over the prior two fiscal years (the Lamon Bonus Amount); provided, that Dr. Lamon shall only be entitled to such payments if he agrees not to compete with Ribapharm or engage in certain other prohibited activities for a period of one year following his termination. If Dr. Lamon's employment is terminated as a result of his death or disability, then he or his beneficiaries shall receive a pro rated bonus for the year of termination, and his initial stock option shall immediately vest in full. If Dr. Lamon's employment is terminated by Ribapharm without cause or by Dr. Lamon for good reason within 12 months following a change in control, he shall be entitled to (i) life insurance, disability, health benefits and, if Ribapharm adopts an excess retirement plan which covers him, a retirement benefit for the lesser of two years or until his 65th birthday, (ii) an amount equal to three times the sum of the base salary plus the Lamon Bonus Amount and (iii) immediate vesting of all of his outstanding stock options. Ribapharm is also obligated to reimburse Dr. Lamon for any excise tax imposed on compensation or benefits payable to him in connection with a change in control. For purposes of the foregoing, change in control is defined as: (i) the acquisition by any person of 30% or more of Ribapharm's combined voting power; (ii) the failure of the incumbent Ribapharm Board to constitute two-thirds of the Ribapharm Board (unless the new directors were approved by two-thirds of the incumbent Ribapharm Board); and (iii) approval by the stockholders of an agreement to sell all or substantially all of the Company's assets or a merger or consolidation where the existing stockholders do not own more than 70% of the outstanding voting securities; provided, that none of the events in (i), (ii) or (iii) shall constitute a change in control if ICN holds a majority of Ribapharm's outstanding voting securities. In addition, change in control is defined as (iv) a liquidation or dissolution of ICN; (v) the failure of ICN's incumbent board of directors to constitute two-thirds of the ICN board of directors (unless the new directors were approved by two-thirds of the incumbent board of

Table of Contents

directors); and (vi) approval by the stockholders of an agreement to sell all or substantially all of ICN's assets or a merger or consolidation where the existing stockholders of ICN do not own more than 70% of the outstanding voting securities of the surviving corporation, provided, that none of the events in (iv), (v) or (vi) shall constitute a change in control if ICN does not hold a majority of the Ribapharm's outstanding voting securities. The Company believes that neither the acquisition of Ribapharm Common Stock by ICN in accordance with the terms of the Offer nor the consummation of the Merger will constitute a change in control under the terms of Dr. Lamon's employment agreement.

In January 2003, Ribapharm entered into two-year employment agreements with each of Messrs. Deutsch and Comer (each, an Executive) pursuant to which Messrs. Deutsch and Comer have been engaged as Ribapharm's Vice President and General Counsel, and Vice President and Chief Financial Officer, respectively. Ribapharm is obligated to pay Messrs. Deutsch and Comer \$225,000 and \$185,000, respectively, or in each case, such greater amount as the Ribapharm Board may approve from time to time. Each Executive is eligible for an annual performance bonus of between 40% and 80% of his base salary. In accordance with the terms of the employment agreements, each Executive received a stock option to purchase 200,000 shares of Common Stock for an exercise price of \$4.65 per share, which vests 25% on each of the first four anniversaries of his start date.

If an Executive's employment is terminated by Ribapharm without cause (as defined in the employment agreements) or by the Executive for good reason, or if Ribapharm does not renew the agreement after the end of its then current term, then such Executive will be entitled to receive a payment equal to one-half the sum of the applicable base salary plus the average of the annual cash bonus received by such Executive over the prior two fiscal years (the Executive Bonus Amount); provided, that the Executive shall only be entitled to such payments if he agrees not to compete with Ribapharm and engage in certain other prohibited activities for a period of one year following his termination. If an Executive's employment is terminated as a result of his death or disability, then he or his beneficiaries shall receive a pro rated bonus for the year of termination, and his initial stock option shall immediately vest in full. If an Executive's employment is terminated by Ribapharm without cause or by Executive for good reason within 12 months following a change in control, he shall be entitled to (i) life insurance, disability, health benefits and, if Ribapharm adopts an excess retirement plan which covers him, a retirement benefit for the lesser of 6 months or until his 65th birthday, (ii) an amount equal to the sum of the applicable base salary plus the Executive Bonus Amount and (iii) immediate vesting of all of his outstanding stock options. For purposes of the foregoing, change in control is defined as: (i) the acquisition by any person of 30% or more of Ribapharm's combined voting power; (ii) the failure of the incumbent Ribapharm Board to constitute two-thirds of the Ribapharm Board (unless the new directors were approved by two-thirds of the incumbent Ribapharm Board); (iii) approval by the stockholders of an agreement to sell all or substantially all of Ribapharm's assets or a merger or consolidation where the existing stockholders do not own more than 70% of the outstanding voting securities; and (iv) liquidation or dissolution of ICN so long as ICN holds a majority of the Company's outstanding voting securities; provided, that none of the events described in (i), (ii) or (iii) shall constitute a change in control if ICN holds a majority of Ribapharm's outstanding voting securities. The Company believes that neither the acquisition of Ribapharm Common Stock by ICN in accordance with the terms of the Offer nor the consummation of the Merger will constitute a change in control under the terms of the employment agreements with Messrs. Deutsch and Comer.

The employment agreements of each of Dr. Lamon and Messrs. Deutsch and Comer also provide that if ICN acquires (i) additional shares of Common Stock of Ribapharm or other securities of Ribapharm which results in ICN holding 90% or more of the outstanding capital stock of ICN or (ii) all or substantially all of Ribapharm's assets (each, an Acquisition), then Ribapharm shall exercise reasonable efforts so that the unexercised portion of the stock options, if any, outstanding as of the closing date of such transaction shall be converted into stock options (the Converted Options) to purchase such number of shares of common stock of ICN, par value \$.01 per share, under ICN's Amended and Restated 1998 Stock Option Plan (the ICN Plan) determined by multiplying the number of outstanding unexercised options by an exchange ratio defined in the agreements. The exercise price of the Converted Options shall be established by multiplying the applicable exercise price of the

Table of Contents

outstanding unexercised option being converted by a similar exchange ratio. The Converted Options will contain substantially similar terms as the stock options, if any, including vesting, as of the closing date.

The employment agreements of each of Dr. Lamon and Messrs. Deutsch and Comer are included as Exhibits (e)(10), (e)(11) and (e)(12) to this Statement.

Compensation of Directors

The Company has adopted the 2002 Amended and Restated Non-employee Director Retainer Fee Plan (the **Director Plan**). The Director Plan is intended to further the growth, development and financial success of the Company by strengthening its ability to attract and retain experienced and knowledgeable non-employee directors. Pursuant to the Director Plan, directors who are not also employees of the Company receive a quarterly fee of \$7,500 payable at the end of each calendar quarter. Prior to February 2003, the Director Plan provided that such directors received one-half of their fees in cash and one-half in Common Stock, and were entitled to elect to receive such fees in varying portions of cash or Common Stock. If the fee is paid in Common Stock, the number of shares paid to the director is determined by dividing the amount of the fee by the fair market value of the Common Stock on the payment date. Shares were fully vested upon issuance. In February 2003, the Board amended the Director Plan to provide that all fees would be paid in cash. The Chairman of the Board and each Committee chairman also receive an additional \$1,000 per quarter. Each non-employee director also receives \$1,000 for each board and committee meeting attended, and reimbursement of reasonable expenses incurred to attend board and committee meetings.

The Option Plan (as defined below) provides for each new non-employee director to receive options (the **Initial Options**) to purchase 15,000 shares of Common Stock upon his initial election to the Board, and for each non-employee director to receive options (the **Annual Options**) to purchase 15,000 shares after each annual stockholder meeting at which the director is re-elected by the stockholders. Options are granted at the fair market value of the Common Stock on the date of grant. Options have ten year terms, and vest in four equal parts beginning one year following the date of grant and on each subsequent anniversary of the date of grant, but may not be exercised before the First Exercise Date.

Messrs. Paracka, Costa, Pieczynski and Boron received Initial Options on January 23, 2003, at an exercise price of \$6.45 per share. Dr. Dimitriadis received Initial Options to purchase 15,000 shares of Common Stock on February 21, 2003 at an exercise price of \$4.65 per share. In addition, each non-employee director received Annual Options on May 27, 2003 at an exercise price of \$4.95 per share.

Indemnification of Executive Officers and Directors

The Amended and Restated Certificate of Incorporation of Ribapharm (the **Charter**) contains customary indemnification rights for its officers and directors and provides that, to the fullest extent permitted under the Delaware General Corporation Law (**DGCL**), no director of Ribapharm will be personally liable to Ribapharm or its stockholders for monetary damages for a breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to Ribapharm or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. The Amended and Restated Bylaws of Ribapharm (the **Bylaws**) provide that Ribapharm will, to the fullest extent permitted under the DGCL, indemnify its officers and directors against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was a director or officer of Ribapharm. The Charter and Bylaws are included as Exhibits (e)(8) and (e)(9) to this Statement and are incorporated by reference herein. Ribapharm also maintains an insurance policy covering its officers and directors to cover any claims made against them for wrongful acts that they may

otherwise be required to pay or for which Ribapharm is required to indemnify them, subject to certain exclusions.

Table of Contents

Ribapharm has also entered into indemnification agreements with its officers and directors. The indemnification agreements provide that Ribapharm will advance expenses (including attorneys' fees) in addition to the rights listed above. The form of the indemnification agreement is included as Exhibit (e)(13) to this Statement.

Stock Option Plan

Under Ribapharm's 2002 Stock Option and Award Plan, as amended (the "Option Plan"), options vest immediately upon a change in control (as such term is defined in the Option Plan). However, vested options may not be exercised until the earliest of (i) the completion of a spin-off of Ribapharm by ICN (if at all), (ii) the date on which ICN abandons the spin-off or becomes ineligible under U.S. tax laws to effect the spin-off of Ribapharm on a tax-free basis, and (iii) September 30, 2003 (the "First Exercise Date"). Notwithstanding the foregoing, but subject to the restrictions relating to the First Exercise Date, the Compensation Committee of the Ribapharm Board may accelerate the vesting and/or exercisability of options at any time.

The acquisition of Ribapharm Common Stock by ICN in accordance with the terms of the Offer will not constitute a change in control under the terms of the Option Plan. However, to the extent the Offer is successfully completed and ICN completes the Merger, the Company believes that such Merger will trigger a change in control that will vest all of the outstanding stock options, other than those held by the Company's three executive officers (whose vesting is governed by the employment agreements described above).

In the event of a merger or consolidation of the Company, all Ribapharm option holders can elect any of the following: (i) to receive, with respect to each option to purchase Ribapharm Common Stock, options to purchase shares of the common stock of the surviving corporation, (ii) to have their stock options treated in the manner provided for in the merger transaction, or (iii) to receive, with respect to each option to purchase Ribapharm Common Stock, the right to receive the same number and kind of consideration that a holder of a share of Common Stock was entitled to receive in the transaction.

Interests of Certain Persons in the Offer and the Merger

Certain directors and the executive officers of Ribapharm may have actual or potential conflicts of interest in connection with the Offer, as summarized herein.

Officers and directors of Ribapharm who own Shares and tender such Shares will receive the Offer Price on the same terms as set forth in the Offer. As of June 20, 2003, the members of the Ribapharm Board and executive officers of Ribapharm owned, in the aggregate, 24,203 Shares and 1,575,000 options, which will become vested and exercisable upon the terms and conditions as discussed above.

Dr. Lamon, the President and Chief Executive Officer of Ribapharm since January 2003, served as a director of ICN from August 1, 2002 until May 22, 2003 and, consequently, from January 2003 through May 2003, he received compensation from both Ribapharm and ICN. Since becoming employed by Ribapharm in January 2003, Dr. Lamon excused himself from all portions of ICN board meetings having to do with matters concerning Ribapharm. Dr. Lamon (together with SciPharma Consulting LLC of which he is president) received an aggregate of \$58,750 in director's fees for the period during which Dr. Lamon was a director of ICN. In addition, Dr. Lamon holds a stock option to purchase 11,250 shares of ICN's common stock for an exercise price of \$10.50 per share under the ICN Plan, issued in connection with his initial election as a director of ICN in August 2002.

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From August 2002 through January 2003, Mel D. Deutsch, Esq., Ribapharm's Vice President, General Counsel and Secretary, provided consulting services to ICN, which included reviews of regulatory matters and disposals of certain business segments.

Table of Contents

Roberts A. Smith, Ph.D., was the Senior Vice President of Research and Development of ICN from 1999 through early 2000, and served as a director of ICN from 1960 until May 30, 2001. Dr. Smith was also President of Viratek, Inc., and Vice-President of Research and Development of SPI Pharmaceuticals, Inc., both past subsidiaries of ICN, through 1992. He has been a director of Ribapharm since August 2000. Dr. Smith currently holds 15,599 shares of ICN common stock and stock options to purchase 22,500, 8,478 and 42,393 shares of ICN common stock for per share exercise prices of \$46.25, \$11.50 and \$11.79, respectively. During 2002, Dr. Smith received approximately \$2 million as payment from ICN for the surrender of stock options to purchase ICN common stock. In December 2002, ICN entered into an indemnification agreement with Dr. Smith in connection with ICN's action to remove certain directors of the Company.

Other than Dr. Smith and Dr. Lamon, no director or executive officer of Ribapharm holds an equity interest in ICN. However, each of the directors and executive officers of Ribapharm also owns Shares of, or holds options to purchase the Shares of, Ribapharm. See Annex A hereto for a listing of the Shares and options to purchase Shares held by the directors and executive officers of Ribapharm.

As of June 20, 2003, ICN owned 120,100,000 shares of Common Stock, representing approximately 80.1% of Ribapharm's outstanding Common Stock and overall voting power of Ribapharm's outstanding capital stock. As a result of its stock ownership of Ribapharm, ICN is able to (i) control the outcome of actions requiring a vote of Ribapharm's stockholders and (ii) elect a majority of directors on the Ribapharm Board and therefore control the appointment of Ribapharm's management. Accordingly, ICN has substantial influence over Ribapharm's business strategy, including decisions relating to the pursuit of transactions, commercial opportunities and agreements with strategic partners. According to the Offer, none of the directors and officers of ICN and Purchaser hold any Shares.

The Ribapharm Board recognizes the potential for conflicts of interest created by the relationships between Ribapharm and ICN discussed above. For this reason, the role of management in the evaluation of Ribapharm's strategic options and the consideration of the Offer was limited. In addition, no member of the Ribapharm Board is an officer of Ribapharm (except that in accordance with the Bylaws, the position of the Chairman of the Board is an officer of the Company), or affiliated with ICN, and the Ribapharm Board believes itself to be, and is, independent of ICN and its affiliates. Thus no special committee was formed for the purposes of evaluating the Offer and/or negotiating with Purchaser and ICN. A committee of the board was appointed on June 2, 2003 for the purposes of facilitating communication among the Ribapharm Board and its advisors (the Project Diamond Committee); however, the power to negotiate and evaluate any proposal currently remains with the full board. Because of his past relationship with ICN, Dr. Smith excused himself from all Board meetings and portions thereof, with respect to the Board's deliberations on its recommendation regarding the Offer.

TRANSACTIONS WITH ICN

Until April 17, 2002, Ribapharm had been a wholly owned subsidiary of ICN. On April 17, 2002, ICN completed an underwritten public offering (the IPO) of 29,900,000 shares of Ribapharm Common Stock, representing 19.93% of Ribapharm's 150,000,703 shares of Common Stock. In contemplation of the IPO, Ribapharm and ICN entered into a number of agreements for the purpose of defining their relationship after the IPO, which are described briefly below.

Contribution of Assets

In anticipation of the IPO, ICN contributed certain assets to Ribapharm, including: (i) ICN's right, title and interest under its July 28, 1995 ribavirin license agreement (the Schering-Plough License) with Schering-Plough, Ltd. (Schering-Plough); (ii) all the chemical compounds contained in ICN's chemical compound library, along with all associated records, journals and data; (iii) all intellectual property rights, including all patents, copyrights and trademarks, related to Ribapharm's business, including all intellectual property rights

Table of Contents

held by ICN at the time of contribution in ribavirin and excluding existing approved indications for use other than as contemplated in the Schering-Plough License, Tiazole, Adenazole, Levovirin, Viramidine and the chemical compounds in ICN's nucleoside analog library; and (iv) all of the equipment and furniture contained in, and personnel employed in, Ribapharm's research and development organization in its Costa Mesa, California facility.

ICN Guarantee

In connection with ICN's assignment by way of contribution to Ribapharm of its rights and obligations under (i) the Schering-Plough License, and (ii) a license agreement with Metabasis Therapeutics, Inc., dated October 1, 2001, ICN irrevocably guaranteed the prompt and full performance as and when due of each of ICN's obligations under such agreements assigned by way of contribution to Ribapharm. ICN's guarantee is an absolute, unconditional and continuing guarantee of payment and performance and not of collection.

Schering-Plough Rights

On November 14, 2000, ICN, Ribapharm and Schering-Plough entered into an agreement (the "November Agreement") that provides Schering-Plough and an affiliate with certain rights to license various products ICN and Ribapharm may develop. Under the terms of the November Agreement, Schering-Plough has the option to exclusively license on a worldwide basis up to three compounds that ICN or Ribapharm may develop for the treatment of Hepatitis C on terms specified in the November Agreement. The option does not apply to Levovirin or Viramidine. The option is exercisable as to a particular compound at any time prior to the start of Phase II clinical studies for that compound. Once it exercises the option with respect to a compound, Schering-Plough is required to take over all developmental costs and responsibility for regulatory approval for that compound. Royalties for such compounds are pre-determined and stated in the November Agreement.

Pursuant to the November Agreement, ICN and Ribapharm also granted Schering-Plough the right of first/last refusal to license compounds relating to the treatment of infectious diseases (other than Hepatitis C) or cancer or other oncology indications as well as the right of first/last refusal with respect to Levovirin and Viramidine (collectively, "Refusal Rights"). ICN and Ribapharm must notify Schering-Plough if they intend to offer a license or other rights with respect to any of these compounds to a third party. Then, at Schering-Plough's request, ICN or Ribapharm, as the case may be, must negotiate in good faith on an exclusive basis the terms of a mutually acceptable exclusive worldwide license or other form of agreement. If ICN or Ribapharm cannot reach an agreement with Schering-Plough, they are permitted to negotiate a license agreement or other arrangement with a third party. Prior to entering into any final arrangement with the third party, ICN or Ribapharm, as the case may be, must offer substantially similar terms to Schering-Plough, which terms Schering-Plough has the right to match.

If Schering-Plough does not exercise its option or Refusal Rights as to a particular compound, ICN or Ribapharm may continue to develop that compound or license that compound to other third parties. The November Agreement will terminate at the later of 12 years from the date of the agreement or the termination of the Schering-Plough License.

To date, Schering-Plough has not licensed any products (other than ribavirin) from ICN or Ribapharm under the November Agreement.

Affiliation and Distribution Agreement

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Prior to completing the IPO, Ribapharm and ICN entered into an Affiliation and Distribution Agreement which (i) imposes certain restrictions on Ribapharm's ability to issue capital stock or take any other actions that

Table of Contents

would prevent ICN from being able to spin off its interest in Ribapharm on a tax-free basis, and (ii) restricts Ribapharm from taking actions that would limit ICN's ability to sell, pledge or otherwise dispose of its shares of Common Stock or would limit the rights of any transferee of ICN as a holder of the Common Stock, or limit the legal rights of, or deny any benefits to, ICN as a Ribapharm stockholder in a manner not applicable to Ribapharm stockholders generally. These restrictions are effective until the earlier of the completion of a tax-free spin-off of ICN's interest in Ribapharm, September 30, 2003 or the date that ICN gives Ribapharm notice of its intention to abandon a tax-free spin-off. Furthermore, these restrictions will no longer apply to Ribapharm if ICN takes any action that would cause ICN not to own at least 80% of the outstanding Shares, or ICN becomes ineligible under U.S. tax laws from being able to effect a spin-off on a tax-free basis.

Pursuant to the Affiliation and Distribution Agreement, Ribapharm has agreed to provide ICN its financial information, consult with ICN regarding the timing and content of its earnings releases and cooperate fully with ICN in connection with its public filings with the SEC, and to engage PricewaterhouseCoopers LLP as its accountants unless such engagement is otherwise prohibited by law. ICN agreed that, for so long as it is a majority stockholder of Ribapharm, it will observe any fiduciary obligations that it may have under applicable law to Ribapharm's other stockholders. In addition, Ribapharm and ICN agreed to indemnify each other against certain liabilities.

The Affiliation and Distribution Agreement also provides that ICN and Ribapharm have joint control over the management and direction of all disputes with third parties related to Ribapharm's rights to ribavirin.

The Affiliation and Distribution Agreement also sets forth the terms of a revolving credit facility pursuant to which ICN agreed to provide working capital to Ribapharm, as discussed more fully below.

Line of Credit

At the time of the IPO, ICN agreed to provide Ribapharm with working capital financing which Ribapharm could draw upon until August 31, 2002. As of December 31, 2002, Ribapharm had an outstanding borrowing of \$35,000,000 from ICN under the credit facility, payable on or before December 31, 2003, which was required to fund the initial operations of Ribapharm after the IPO. Interest is charged based upon LIBOR (1.37% at December 31, 2002) plus 200 basis points. Under an amendment to the Affiliation and Distribution Agreement dated March 28, 2003, Ribapharm may make draws against the line of credit, if needed, to the extent of cumulative repayments made by Ribapharm, up to a maximum available credit limit of \$35,000,000. As part of such amendment, the expiration date of the line of credit was amended to be the earlier of December 29, 2005 or the date on which ICN ceases to be the beneficial owner of at least 80% of the issued and outstanding common stock of Ribapharm. Additionally, it was Ribapharm's desire, and ICN agreed as a condition to the amendment, for Ribapharm to repay ICN on the date of the amendment the aggregate outstanding principal balance and related accrued interest, without being required to comply with a prior notice obligation. Accordingly, on March 28, 2003, Ribapharm repaid principal and interest in the amounts of \$35,000,000 and \$984,000, respectively. As of June 20, 2003, Ribapharm did not have any indebtedness outstanding under the line of credit.

Management Services Agreement

Ribapharm and ICN entered into a Management Services Agreement which requires ICN to provide administrative and corporate support services to Ribapharm on a transitional basis, including human resource, legal, accounting, treasury, tax, and information services. ICN charges Ribapharm for these services at its cost, and allocates the costs of third-party expenses on a good faith basis. In addition, Ribapharm makes available several of its employees to ICN for the provision of certain services, including Dr. Lamon and Mr. Deutsch. ICN reimburses Ribapharm for these services in the form of a credit under the amounts owing to ICN by Ribapharm under the Management Services Agreement. Ribapharm and ICN have agreed to indemnify and hold harmless each other and their respective affiliates from any claims, damages and

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expenses arising out of the services rendered under the Management Services Agreement. The agreement commenced on the date of the IPO and will

Table of Contents

continue until December 31, 2003. Ribapharm may terminate one or more of the services provided under the agreement upon 30 days' notice. The obligation to provide legal services automatically terminates once ICN's stock ownership in Ribapharm is less than 50%.

Confidentiality Agreement

Ribapharm and ICN entered into a Confidentiality Agreement with respect to confidential and proprietary information, intellectual property and other information which they agreed to keep (and to cause their affiliates to keep) confidential, and not to use for any unauthorized purpose. Confidential information includes (i) unpublished technology and know-how; (ii) unpublished patent applications; and (iii) other confidential or proprietary technical and business information. Confidential information does not include any information that (i) is already known to the other party from a third-party source; (ii) is or becomes publicly known; (iii) is received from a third party without violation of any obligations of confidentiality and/or use restrictions owed by such third party; (iv) is independently developed by employees or consultants of the party receiving the information; or (v) is approved for release by the prior written authorization of disclosing party.

Registration Rights Agreement

Prior to completing the IPO, Ribapharm has granted to ICN certain demand and piggyback registration rights relating to the shares of Common Stock held by ICN under a Registration Rights Agreement entered into April 8, 2002 by and between ICN and Ribapharm. These rights generally become effective when and if ICN informs Ribapharm that it no longer intends to proceed with or complete the possible spin-off, but in no event earlier than September 30, 2003. Ribapharm has agreed to pay all registration expenses incurred in connection with the exercise by ICN of its rights under the agreement, other than the underwriting commission, and to reimburse ICN for the reasonable fees and disbursements of its outside counsel retained in connection with any registration. The agreement also imposes customary indemnification and contribution obligations on the parties.

Tax Sharing Agreement

Ribapharm continues to be included in ICN's consolidated federal income tax group, and its federal income tax liability is included in ICN's consolidated federal income tax liability. Ribapharm and ICN entered into a tax sharing agreement (the Tax Sharing Agreement) pursuant to which the tax amounts to be paid or received by Ribapharm with respect to ICN's federal consolidated returns are determined as though Ribapharm and ICN file separate federal income tax returns. Also, Ribapharm calculates its state and local income taxes taking into account ICN's worldwide apportionment schedule, where applicable. Under the terms of the Tax Sharing Agreement, ICN is not required to pay for the use of Ribapharm's tax attributes that come into existence until Ribapharm would otherwise be able to utilize these attributes.

Ribapharm will be included in ICN's consolidated group for federal income tax purposes for so long as ICN beneficially owns at least 80% of the combined voting power and value of Ribapharm's outstanding capital stock. Each member of a consolidated group is jointly and severally liable for the federal income tax liability of each other member of the consolidated group. Accordingly, although the Tax Sharing Agreement allocates tax liabilities between the parties during the period in which Ribapharm is included in ICN's consolidated group, Ribapharm could be liable in the event that any federal tax liability is incurred, but not paid, by any other member of ICN's consolidated group. As long as Ribapharm is a member of ICN's consolidated group for federal income tax purposes, ICN will control decisions related to the payment of taxes.

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Under the Tax Sharing Agreement, Ribapharm has made cash payments to ICN of approximately \$35.8 million and \$42.2 million in 2002 and 2003, respectively.

Lease

Ribapharm leases from ICN approximately 62,444 square feet of its Costa Mesa, California headquarters building pursuant to a lease agreement between Ribapharm and ICN dated April 8, 2002 (the Lease). The

Table of Contents

Lease has an initial term of five years, which Ribapharm can renew at its option for an additional five years. Ribapharm pays ICN rent of \$416,667 per month, or \$5 million per year, which rent will be adjusted annually based on the Orange County, California consumer price index. Ribapharm also pays ICN a pro rata portion of facility and central service costs which include utilities, security, parking, building maintenance, cleaning services, insurance premiums and other facility costs.

Intercompany Transactions

Simultaneous with the consummation of the IPO, advances due Ribapharm from ICN of \$222,240,000 were treated similar to a dividend and recorded by Ribapharm as a reduction of its retained earnings. Ribapharm was not repaid any of the advances due from ICN upon completion of the IPO. The costs of certain shared services (including legal, finance, corporate development, information systems and corporate office expenses) have been allocated between ICN and Ribapharm. For periods prior to April 17, 2002, these costs were allocated to Ribapharm on bases that were considered by Ribapharm's then management to reflect most fairly or reasonably the utilization of services provided to or the benefit obtained by Ribapharm, such as the square footage, headcount, or actual utilization. For the periods subsequent to April 17, 2002, these costs were allocated in accordance with the terms of the Management Services Agreement described above. Costs associated with certain government investigations are allocated based on a joint responsibility approach such that 50% of the costs, including any reserve for settlement, are allocated to each of ICN and Company.

Note Obligations

In July 2001, ICN completed an offering of \$525,000,000 of 6½% convertible subordinated notes due 2008 (the "Notes"). In July and August 2002, ICN repurchased \$59,410,000 in principal amount of the Notes. The Notes, as they relate specifically to ICN's obligation, are convertible into ICN's common stock at a conversion rate of 29.1924 shares per \$1,000 principal amount of Notes, subject to adjustment. Upon completion of the IPO on April 17, 2002, Ribapharm became jointly and severally liable for the principal and interest obligations under the Notes. Under an agreement between Ribapharm and ICN originally entered into on July 18, 2001, and amended and restated on April 8, 2002 (the "Interdebtor Agreement"), ICN has agreed to make all interest and principal payments related to the Notes. However, notwithstanding the Interdebtor Agreement, to which the holders of the Notes are not parties, Ribapharm remains liable to the holders of the Notes and Ribapharm is responsible for these payments to the extent ICN defaults under that agreement and does not make these payments. In that event, Ribapharm would have a claim against ICN for any payments ICN does not make. Ribapharm can only amend this agreement, in a manner adverse to it, with the approval of holders of a majority of its outstanding Shares, excluding Shares held by ICN. In the event of a spin-off of Ribapharm, the Notes will be convertible into common stock of both Ribapharm and ICN. The converting note holders would receive ICN's common stock and the number of shares of Ribapharm's Common Stock the note holders would have received had the Notes been converted immediately prior to such spin-off. If the spin-off had occurred as of December 31, 2002, and assuming 84,066,259 shares of ICN common stock were outstanding at December 31, 2002, the Notes would have been convertible into the equivalent of approximately 19,417,563 shares of common stock, which would be issuable by Ribapharm.

ICN and Ribapharm entered into a registration rights agreement on July 18, 2001 (the "2001 Registration Rights Agreement") with UBS Warburg LLC that sets forth the terms and conditions upon which ICN and Ribapharm are required to effect registrations in connection with the Notes. ICN and Ribapharm filed with the SEC, as applicable, registration statements to cover resales of Transfer Restricted Securities (as defined in the 2001 Registration Rights Agreement) by the holders thereof. ICN and Ribapharm will also use their reasonable best efforts to cause any registration statement filed pursuant to the 2001 Registration Rights Agreement with respect to which they are a registrant to remain effective until all of the Notes, and shares of common stock of Ribapharm or ICN into which the Notes are convertible, as applicable, cease to be Transfer Restricted Securities.

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The parties to the 2001 Registration Rights Agreement have agreed to customary indemnification and contribution provisions. ICN and Ribapharm have agreed to jointly and severally bear all fees and expenses

Table of Contents

incurred by them in connection with the performance of their obligations under certain provisions of the 2001 Registration Rights Agreement.

Roche Patent Dispute Settlement

On January 6, 2003, Ribapharm, ICN and F. Hoffmann-La Roche, Ltd. (Roche) reached agreement on a settlement regarding pending patent disputes over Roche s combination anti-viral product containing Roche s version of ribavirin, known as Copegus. The companies agreed to cease all legal actions worldwide between them regarding ribavirin. Under the settlement, Roche will continue to register and commercialize Copegus globally. The terms of this settlement agreement include a license by Ribapharm of ribavirin to Roche. The license authorizes Roche to make or have made and to sell Copegus under Ribapharm s patents. Roche must pay royalty fees to Ribapharm on all sales of Copegus for use in combination therapy with interferon alpha or pegylated interferon alpha-2b beginning in 2003. No royalties under the Roche agreement were earned by, or paid to, Ribapharm in fiscal year 2002.

Settlement Agreement

On January 22, 2003, Ribapharm, ICN, Robert O Leary, Robert A. Smith and certain officers and former directors of Ribapharm entered into a Settlement Agreement and Mutual Release (Settlement Agreement) dismissing certain litigation among the parties. Under the terms of the Settlement Agreement, Johnson Y.N. Lau, Roger D. Loomis, and Thomas Stankovich (collectively, the Former Executives) released Ribapharm and ICN from claims related to their employment, except for claims related to certain provisions of their employment agreements which survived termination; rights under stock option agreements with either Ribapharm or ICN; and other specified rights. The Former Executives also received severance payments they were entitled to under their employment agreements. As contemplated by their employment agreements, each Former Executive is eligible to continue to receive certain benefits after termination of employment, and all options to purchase shares of Ribapharm or ICN common stock held by the Former Executives vested and will become exercisable for the original terms of the options, subject to certain restrictions on the exercisability of options to purchase Shares. Ribapharm remains obligated to make additional cash payments covering excise taxes payable by the Former Executives under Section 4999 of the Internal Revenue Code in connection with such payments.

ITEM 4. THE SOLICITATION OR RECOMMENDATION

Solicitation/Recommendation

After careful consideration, including a thorough review of the Offer with Ribapharm s financial and legal advisors, at its June 20, 2003 meeting, the Ribapharm Board determined that the Offer is inadequate and not in the best interests of the Company or the holders of the Publicly Held Shares. At its June 20, 2003 meeting, the Ribapharm Board also adopted a stockholder rights plan (the Rights Plan), declared a dividend distribution of new preferred stock purchase rights thereunder, and declined to recommend the Offer to the Company s stockholders.

ACCORDINGLY, THE RIBAPHARM BOARD RECOMMENDS THAT THE STOCKHOLDERS OF RIBAPHARM REJECT THE OFFER AND NOT TENDER THEIR SHARES PURSUANT TO THE OFFER. Copies of a letter to the stockholders of Ribapharm and a press release communicating the recommendation are included as Exhibits (a)(1) and (a)(2) to this Statement, and are incorporated by reference herein.

Background of the Transaction

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Set out below is a summary of certain events that led to the Offer.

In April 2002, ICN completed the sale, through the IPO, of 29,900,000 shares of Ribapharm common stock, representing 19.93% of the total number of Ribapharm outstanding common stock of 150,000,000 shares. In

Table of Contents

connection with the IPO, ICN and Ribapharm entered into the intercompany agreements discussed in Item 3 of this Statement, the section entitled "Transactions with ICN," for the purposes of dividing assets and resources.

Also in connection with the IPO and as part of its restructuring plan that included the IPO, ICN announced that it would consider distributing its remaining interest in Ribapharm to ICN's stockholders in a tax-free spin-off no later than six months after completion of the IPO.

In June 2002, ICN announced that its Board of Directors (the "ICN Board") was reviewing certain strategic decisions, including the decision to distribute its remaining interest in Ribapharm to ICN's stockholders in a tax-free spin-off. ICN stated that it was doing so in light of changed circumstances and market conditions. In July 2002, ICN announced that the Internal Revenue Service issued to ICN a private letter ruling that distribution of its retained interest in Ribapharm to ICN's stockholders would qualify as a tax-free spin-off.

In May and June 2002, significant changes were made in the composition of the board of directors and leadership of ICN. At the May 29, 2002 ICN Annual Meeting of Stockholders, three new directors were elected to the ICN Board of Directors. On June 18, 2002, Mr. Milan Panic, ICN's former Chief Executive Officer and Chairman of the Board, resigned with immediate effect from his positions as Chairman and Chief Executive Officer of ICN, and from all other positions he held as a director or officer of ICN's affiliates, effective June 30, 2002, although he remained a director of ICN until May 22, 2003. The ICN Board appointed Robert W. O'Leary to the position of interim Chief Executive Officer and as Chairman of the Board, effective June 19, 2002. On November 7, 2002, Mr. O'Leary was appointed to the position of Chief Executive Officer and Chairman of the Board.

In the fall and winter of 2002, a series of disagreements arose among the ICN Board and ICN's management on the one hand, and the then current Ribapharm Board of Directors and Ribapharm's management on the other hand. These disagreements resulted in litigation and in December 2002, ICN, as the majority stockholder of Ribapharm, acting by written consent, to remove all of the Ribapharm directors then in office with the exception of Dr. Roberts A. Smith, which action took effect on January 22, 2003. On January 22, 2003, in connection with the settlement of litigation between ICN and the former directors of Ribapharm, Dr. Johnson Y.N. Lau, who was then the Chairman, President and Chief Executive Officer of Ribapharm, resigned as an officer and director of Ribapharm.

On January 23, 2003, Dr. Smith, the then sole remaining director of Ribapharm, appointed Daniel J. Paracka, Santo J. Costa, Esq., Gregory F. Boron and James J. Pieczynski to serve as directors. Mr. Paracka was selected to serve as Chairman of the Ribapharm Board. The Ribapharm Board then appointed Ribapharm's current executive officers. On February 21, 2003, the Ribapharm Board selected Andre Dimitradis, Ph.D. to serve as a director of Ribapharm. Each of Ribapharm's current directors was duly elected at Ribapharm's Annual Meeting of Stockholders held in May 2003.

In April and May 2003, the Ribapharm Board, after taking into consideration such factors as ICN's public disclosures that it was reconsidering the tax-free spin-off of its remaining interest in Ribapharm to the ICN stockholders, and the fact that certain contractual restrictions on Ribapharm's operating and strategic flexibility that were designed to benefit ICN (as discussed under Item 3 of this Statement, the section entitled "Transactions with ICN Affiliation and Distribution Agreement") expire September 30, 2003, engaged in a series of discussions with Ribapharm's management and legal advisors regarding Ribapharm's strategic alternatives. In light of these discussions, the Ribapharm Board determined that it was prudent to engage a financial advisor to help the Ribapharm Board assess such strategic alternatives. After a series of interviews with various investment banking firms, on May 23, 2003, the Ribapharm Board selected Morgan Stanley & Co. Incorporated ("Morgan Stanley") for the purpose of advising the Ribapharm Board with respect to Ribapharm's strategic alternatives. Morgan Stanley was formally retained in an engagement letter dated as of May 30, 2003.

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On June 1, 2003, ICN informed Dr. Lamon, Ribapharm's President and Chief Executive Officer, and the Ribapharm Board that it intended to publicly announce a proposal to commence a tender offer for the Publicly

Table of Contents

Held Shares. Each member of the Ribapharm Board and Dr. Lamon received a letter from ICN regarding the foregoing, a copy of which is attached hereto as Exhibit (e)(1).

On June 2, 2003, ICN filed a Schedule TO-C with the SEC and issued a press release announcing its intent to commence, within seven to ten days, a tender offer for the Publicly Held Shares at a price of \$5.60 per share. On the same day, the Ribapharm Board met telephonically with certain officers of the Company and representatives of Morgan Stanley and Paul, Hastings, Janofsky & Walker LLP (Paul Hastings), legal counsel to the Board, to discuss the anticipated tender offer by ICN. The Ribapharm Board appointed Gregory F. Boron, Daniel J. Paracka and James J. Pieczynski to a committee of the Ribapharm Board charged with facilitating communication between the Ribapharm Board and its legal and financial advisors (the Project Diamond Committee). The Ribapharm Board also discussed aspects regarding the anticipated tender offer, including the tender offer rules and other applicable legal requirements. Following the meeting, Ribapharm issued a press release and filed a copy of the press release under cover of Schedule 14D-9 with the SEC announcing that Ribapharm had received the letter from ICN regarding ICN s intention to commence the tender offer, announcing Ribapharm s engagement of Morgan Stanley as its financial advisor and requesting that Ribapharm s stockholders refrain from acting on the proposed tender offer until the Ribapharm Board had sufficient time to analyze the proposed tender offer and make a recommendation.

Also on June 2, 2003, four complaints were filed by Ribapharm stockholders in the Delaware Chancery Court opposing the proposed tender offer. On June 3, 2003, an additional complaint was filed by a Ribapharm stockholder in the Superior Court of California, Orange County. In the weeks that followed, two other complaints were filed. All of the complaints filed in connection with the Offer are referred to as the Stockholder Actions . See Item 8 of this Statement, Additional Information to be Furnished, for a further description of the Stockholder Actions.

On June 3, 2003, Paul Hastings contacted the Delaware firm of Young Conaway Stargatt & Taylor, LLP (Young Conaway), and arranged for Young Conaway to be engaged by Ribapharm and certain members of the Ribapharm Board for the dual purposes of acting as special Delaware counsel with respect to the Offer and to represent Ribapharm and certain members of the Ribapharm Board in the Delaware Stockholder Actions.

On June 5, 2003, a telephonic meeting of the Project Diamond Committee was held, attended by representatives of Paul Hastings, Young Conaway and Morgan Stanley, during which the Project Diamond Committee received an update regarding the status of the Stockholder Actions, and Morgan Stanley updated the Project Diamond Committee on Morgan Stanley s progress with regard to its financial analysis of Ribapharm. The Project Diamond Committee and its legal and financial advisors also discussed the process by which the Ribapharm Board would thoroughly and deliberately consider the proposed tender offer, and the advisability of requesting that ICN delay the commencement of the offer. As a result, on June 6, 2003, Mr. Paracka, as Chairman and on behalf of the Ribapharm Board, delivered a letter to Robert W. O Leary, Chairman and Chief Executive Officer of ICN, requesting that ICN delay the commencement of its proposed tender offer until on or after June 23, 2003.

On June 7, 2003, Mr. O Leary sent a letter to the Ribapharm Board denying the request to delay the commencement of the proposed tender offer and stating that ICN intended to commence its proposed tender offer on or after June 10, 2003.

On June 8, 2003, the Project Diamond Committee met telephonically with representatives of Paul Hastings, Young Conaway and Morgan Stanley to further consider and discuss the proposed tender offer and to discuss various tactical considerations and alternative actions available to the Company in connection with the anticipated tender offer. On the same day, the Ribapharm Board met telephonically with members of Ribapharm s executive management, and representatives of Paul Hastings, Young Conaway and Morgan Stanley, to discuss further developments regarding the proposed tender offer, including ICN s reply to Ribapharm s request that ICN delay the commencement of the proposed tender offer. The Ribapharm Board remained of the

Table of Contents

opinion that it would be in the best interests of Ribapharm's stockholders if ICN delayed the commencement of its proposed tender offer. The Ribapharm Board also received an update regarding the status of the Stockholder Actions, Morgan Stanley updated the Ribapharm Board on further progress with respect to its financial analysis of Ribapharm, and the Board discussed actions the Board could take in response to ICN's proposed tender offer. The Ribapharm Board also determined that it would be appropriate to exclude members of Ribapharm's management and Dr. Smith from all Board deliberations in response to the proposed ICN tender offer, although it reserved the right to invite the participation by any such persons at Board meetings for the purpose of providing information with respect to Ribapharm's business and prospects.

On June 9, 2003, Mr. Paracka, as Chairman and on behalf of the Ribapharm Board, delivered a letter to Mr. O'Leary reiterating Ribapharm's request that ICN delay the commencement of its proposed tender offer until on or after June 23, 2003. ICN responded, denying the request for additional time and reaffirming its intention to commence its proposed tender offer in the timeframe announced, but stating that it would be willing to consider the appropriateness of extending the expiration date of the tender offer for a reasonable period.

On June 10, 2003, ICN commenced the Offer and issued a press release announcing such commencement. On the same day, a telephonic meeting of the Ribapharm Board was held, without Ribapharm management or Dr. Smith present but with representatives of Paul Hastings, Young Conaway and Morgan Stanley present, during which representatives of Morgan Stanley made an initial presentation to the directors concerning aspects of Morgan Stanley's analysis concerning Ribapharm and the Offer, and the Board's advisors reviewed for the Board the financial and legal terms and conditions of the Offer. The Ribapharm Board also received an initial presentation by its legal advisors regarding the advantages and disadvantages of various actions it might take in response to the Offer and received a report regarding the status of the Stockholder Actions. The Ribapharm Board also issued a press release urging the Company's stockholders to take no action with respect to the Offer until the Ribapharm Board had issued its recommendation.

On June 11, 2003, a complaint was filed by Steven Silverberg against ICN, Ribapharm, and Ribapharm's directors in the Delaware Chancery Court seeking a preliminary injunction against the Offer and expedited discovery. At a conference with the Court on June 16, the Court scheduled a hearing for June 25 to determine whether a preliminary injunction hearing should occur. At that time, the Court tentatively established July 11 as the date for a preliminary injunction hearing if the Court should later determine that such a hearing is appropriate.

On June 13, 2003, Mr. Paracka, as Chairman and on behalf of the Ribapharm Board sent a letter to Mr. O'Leary requesting that ICN extend its Offer period in the belief that an extension of the expiration date of the Offer would be in the best interests of Ribapharm's stockholders other than ICN and its affiliates (the "Public Stockholders"). On June 13, 2003, ICN issued a press release announcing that it would accommodate the request of the Ribapharm Board and extended the expiration date of the Offer to July 22, 2003.

On June 15, 2003, the Ribapharm Board (except Dr. Smith, with respect to portions of the meeting) met telephonically with representatives of Paul Hastings, Young Conaway, and Morgan Stanley to further consider and discuss the Offer. At the request of the Ribapharm Board, members of Ribapharm's executive management and Dr. Smith and representatives of an independent industry consultant also attended the portion of the meeting during which representatives of Morgan Stanley presented management's forecasts, and management discussed with the Ribapharm Board and its advisors Ribapharm's business, results of operations and prospects, including Ribapharm's technologies, products and intellectual property. The Board's legal advisors reviewed and discussed the principal terms of the Offer and presented the Ribapharm Board with a report regarding the status of the Stockholder Actions and other issues relating to the Offer. At this meeting, the Ribapharm Board also considered and reviewed with its legal and financial advisors the feasibility and desirability of exploring various alternatives and actions it might take in response to the Offer.

On June 18, 2003, the Ribapharm Board (except Dr. Smith, with respect to portions of the meeting) met via videoconference and teleconference with representatives of Paul Hastings, Young Conaway, and Morgan Stanley

Table of Contents

and, for a portion of the meeting, with Dr. Smith and members of Ribapharm's executive management. At this meeting, Morgan Stanley's representatives presented and discussed Morgan Stanley's financial analysis regarding the Offer. The Board's legal advisors reviewed and discussed legal issues regarding the adoption of the Rights Plan as well as the directors' duties and responsibilities in relation to the Offer and the Rights Plan.

On June 20, 2003, the Ribapharm Board (except Dr. Smith) met telephonically with representatives of Paul Hastings, Young Conaway, and Morgan Stanley. At this meeting, representatives of Morgan Stanley reviewed Morgan Stanley's updated financial analysis and rendered its opinion that, as of June 20, 2003, and subject to and based on the assumptions and considerations set forth in the opinion, the \$5.60 per share, net to each seller in cash to be received by the holders of the Shares, other than ICN and its affiliates, pursuant to the Offer was inadequate from a financial point of view to such holders. In addition, representatives of Morgan Stanley made a presentation to the directors regarding the financial aspects of the Rights Plan. After a full discussion, including consultation with its financial and legal advisors, the Ribapharm Board determined that the Offer was inadequate and not in the best interests of Ribapharm's Public Stockholders, and recommended that Ribapharm's Public Stockholders reject the Offer and not tender any Shares pursuant to the Offer. The Ribapharm Board also discussed and adopted the Rights Plan to help preserve for the Public Stockholders of Ribapharm the long-term value of Ribapharm. The Ribapharm Board authorized the issuance of a press release and the filing of a recommendation statement with the SEC setting forth the recommendation of the Ribapharm Board that the public stockholders of Ribapharm reject the Offer.

On June 23, 2003, Mr. Paracka, the Chairman of the Ribapharm Board, sent the following letter to ICN:

Dear Mr. O'Leary:

Ribapharm's Board of Directors has determined that ICN's unsolicited tender offer to acquire all outstanding shares of Ribapharm's common stock not already held by ICN for \$5.60 per share is inadequate and not in the best interests of Ribapharm and its public stockholders. This determination was made after careful consideration, including, among other things, a review of the financial aspects of ICN's unsolicited tender offer with the Board's independent financial advisor, Morgan Stanley & Co. Incorporated.

Accordingly, the Ribapharm Board is recommending to Ribapharm's public stockholders that they reject ICN's unsolicited tender offer, and we are urging Ribapharm public stockholders not to tender their shares.

Ribapharm's Board also has adopted a stockholder rights plan that is intended to help preserve for Ribapharm's public stockholders Ribapharm's long-term value in the face of ICN's unsolicited tender offer and any other offer that the Board might determine to be inadequate. Ribapharm's Board is willing to consider alternatives that adequately recognize Ribapharm's true long-term value.

Sincerely,

Mr. Daniel J. Paracka,

Chairman of the Board

Ribapharm Inc.

Reasons for the Recommendation

In reaching its decision that the Offer is inadequate and not in the best interests of the Public Stockholders, the Ribapharm Board (excluding Dr. Smith who excused himself from all Board deliberations with respect to this decision) considered numerous factors in consultation with its legal and financial advisors, including but not limited to the following:

Ribapharm's Operating and Financial Condition. The Ribapharm Board took into account the information provided by the Company's management as to the current and historical financial condition and results of operations of Ribapharm, as well as the prospects and strategic objectives of Ribapharm, including

Table of Contents

the risks involved in achieving those prospects and objectives, the current and expected conditions in the general economy and in the biotechnology and pharmaceutical industries generally, the size of the Hepatitis C market, the projected growth of that market and the Company's position in that market.

Relationship with Schering-Plough. The Ribapharm Board considered the Company's licensing arrangements with Schering-Plough, including that Schering-Plough is the source of substantially all of the Company's current revenues, the settlement of litigation by Schering-Plough with generic ribavirin manufacturers in the U.S., the Company's dispute regarding Schering-Plough's indigent program and the significant marketing and legal challenges currently facing Schering-Plough. The Ribapharm Board also considered the restrictions on the Company's ability to license manufacturing and commercialization rights of certain of its pipeline products to third parties given the rights of first and last refusal contained in the Company's November 2002 agreement with Schering-Plough, but also noted that these rights do not apply to the manufacturing and commercialization of Viramidine if the Company concludes that it is in its best interests, and that of its stockholders, to commercialize Viramidine directly rather than through a licensing arrangement with a third party.

Competition. The Ribapharm Board considered the fact that ribavirin faces increasing price pressure as the result of the entry of F. Hoffman-La Roche Ltd. (Roche) into the Hepatitis C market after the recent settlement of Roche's litigation against the Company in which it had challenged the validity of the Company's ribavirin patents, particularly since Roche has initially priced its competitive product at a substantial discount to the list prices of Schering-Plough. The Ribapharm Board also considered the abbreviated new drug applications filed by three different manufacturers of generic pharmaceutical products with the FDA to market, in the U.S., generic forms of ribavirin as part of a combination therapy for the treatment of Hepatitis C, and the likelihood of success of the Company's lawsuit alleging patent infringement against all three of those companies, including the postponement of the trial date of such lawsuit until early September 2003. In connection with its review of competitive conditions, the Board also considered the size of the Hepatitis C market and the growth of that market and also considered the likely protection afforded by the Company's patent estate.

Product Pipeline. The Ribapharm Board considered the Company's current products and its products in research and development and concluded that the Offer Price does not adequately reflect the true value of the Company's currently marketed ribavirin product or its products currently under research and development, including, but not limited to, Viramidine and Hepavir B. Viramidine is a pharmaceutical drug developed to treat Hepatitis C and currently is in Phase II clinical trials in the U.S. and Hepavir B has been developed to treat Hepatitis B and currently is in Phase I trials in the U.S. and is expected to enter into Phase I clinical trials in Asia in the near future. The Board also considered the Company's technologies, intellectual property and very preliminary data showing that Viramidine may have the potential for equivalent efficacy and significantly improved safety when compared to ribavirin, as well as information prepared by management regarding the potential commercialization of Viramidine and Hepavir B.

Inadequacy Opinion of Morgan Stanley. The Ribapharm Board considered the written opinion of Morgan Stanley, dated June 20, 2003 (the Opinion), to the effect that, as of such date, the Offer Price was inadequate, from a financial point of view, to the Public Stockholders; the full text of such Opinion, which sets forth the assumptions made and the matters considered and limitations set forth by Morgan Stanley, is included as Annex B.

Protection of Long-Term Value. The Ribapharm Board considered its commitment to the long-term interests of the Company and its stockholders, and to alternatives that recognize Ribapharm's long-term value. The Ribapharm Board took into account the fact that ICN currently owns approximately 80.1% of the Company's outstanding Common Stock and recognized that any meaningful alternative transaction with a third party likely would require the consent and/or cooperation of ICN. In making its recommendation, the Ribapharm Board remained committed to protecting the best interests of Ribapharm's Public Stockholders.

Relationship of Offer Price to Certain Historical Market Prices. The Ribapharm Board considered the relationship of the Offer Price to certain historical market prices for the Shares. The Board considered

Table of Contents

the fact that the Offer Price of \$5.60 per share represents a premium of only 10.2% over the \$5.08 closing price per Share on May 30, 2003, the last trading day before the public announcement of ICN's intent to commence the Offer, and a premium of only 19.7% and 23.6%, respectively, to the average closing price of \$4.68 and \$4.53 per Share for the one-month and three-month periods, respectively, preceding May 30, 2003. The Ribapharm Board also considered the fact that in the initial public offering in April 2002, ICN sold Shares to the public at a price of \$10.00 per Share, and noted that the Offer Price represents a discount of 44% to the IPO price of \$10.00 per Share.

Relationship of Offer Price to Current Market Price. The Ribapharm Board took into account the fact that the Offer Price of \$5.60 per Share has remained below the trading prices for the Company's Shares since ICN's public announcement of its intent to commence the Offer. The closing price per Share on June 19, 2003, the trading day immediately prior to the day on which the Ribapharm Board made its determination regarding the Offer, was \$6.52, which is 16.4% above the \$5.60 per Share Offer Price.

Likely Effect on Market Prices of the Shares if the Offer is Withdrawn. The Ribapharm Board considered the possible trading prices of the Shares in the event that the Offer were to be withdrawn or rejected.

Terms and Conditions of the Offer. The Ribapharm Board considered the range and scope of the terms and conditions of the Offer. The Board considered that the implementation of the Rights Plan (as described more fully in Item 8 of this Statement, Additional Information to be Furnished) could be interpreted to have caused one of the conditions to the Offer not to be fulfilled and to enable Purchaser and ICN to terminate the Offer at any time.

Structure of Transaction; Possible Short Form Merger. The Ribapharm Board took into account that, based upon ICN's present 80.1% ownership of Ribapharm, any long-form merger proposed by ICN to acquire the remaining equity of Ribapharm would require the approval of the Ribapharm Board and would require ICN to demonstrate the entire fairness of the transaction, unless certain procedural safeguards were utilized that would allow that evidentiary burden to be shifted. In contrast, decisions of the Delaware Court of Chancery have held that a tender offer not involving the participation of the target's board of directors would not be subject to the entire fairness standard. If ICN were to acquire a sufficient number of Shares to increase its ownership of Ribapharm Common Stock to 90% or more of Ribapharm's outstanding Common Stock, ICN would be able to acquire the remaining equity of Ribapharm pursuant to a short-form merger under Section 253 of the Delaware General Corporation Law, without approval of the Ribapharm Board and without a vote of Ribapharm's stockholders. If the Offer is not successful, ICN also may make open market or privately negotiated purchases of Shares to the extent necessary in order to own at least 90% of the total outstanding Shares. In this scenario, the Ribapharm Board noted, ICN would control the timing of such transaction and would also determine the price to be paid which could be lower than the Offer Price.

The members of the Ribapharm Board evaluated the Offer in light of their knowledge of the business, financial condition and prospects of Ribapharm and the advice of its legal and financial advisors, as well as outside management consultants. In view of the variety of factors considered in connection with its evaluation of the Offer, the Ribapharm Board did not find it practicable to, and did not, quantify or otherwise attempt to assign relative weights to the factors set forth above. Rather, the Ribapharm Board reached its determination after consideration of all the factors taken as a whole. In addition, individual members of the Board may have given different weights to different factors.

The foregoing discussion of the information and factors considered by the Ribapharm Board is not intended to be exhaustive but is believed to include all material factors considered by the Ribapharm Board. Ribapharm's executive officers have not been asked to make a recommendation as to the Offer.

Table of Contents

Intent to Tender

To Ribapharm's knowledge, (i) none of its executive officers or directors presently intends to tender Shares pursuant to the Offer and (ii) none of its executive officers or directors presently intends to otherwise sell any Shares which are owned beneficially or held of record by such persons.

ITEM 5. PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED

Except as set forth in this Item 5, neither Ribapharm nor any person acting on its behalf has employed, retained or agreed to compensate any person to make solicitations or recommendations to stockholders of Ribapharm concerning the Offer.

Ribapharm entered into the Engagement Letter with Morgan Stanley, effective as of May 30, 2003, pursuant to which Ribapharm retained Morgan Stanley as its financial advisor in connection with the review and analysis of possible strategic transactions, including, but not limited to, a transaction with ICN.

Under the terms of the Engagement Letter, Ribapharm has agreed to pay Morgan Stanley an advisory fee of \$250,000, payable upon the execution of the Engagement Letter, and a completion fee based on the type of transaction completed, if any. If the transaction is a proposal by ICN to acquire the Shares, the fee is payable upon the earlier of (i) the time that Morgan Stanley renders a fairness opinion to the Ribapharm Board in support of a recommendation in favor of a proposed transaction made by the Ribapharm Board to the Company's stockholders or (ii) the consummation of a transaction in which ICN acquires over 50% of the Publicly Held Shares. The fee is calculated as 1.35% of the aggregate consideration paid for the S