THERASENSE INC
Form DEFM14A
March 01, 2004
Table of Contents

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement
x Definitive Proxy Statement
¨ Confidential, For Use of the Commission Only (as permitted by Rule14a-6(e)(2))
¨ Definitive Additional Materials
¨ Soliciting Material Under Rule 14a-12

THERASENSE, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

¨ 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:

---

x Fee paid previously with preliminary materials.

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

---

(2) Form, Schedule or Registration Statement No.:

---

(3) Filing Party:

(4) Date Filed:

Table of Contents

Dear Stockholder:

The board of directors of TheraSense, Inc. has approved a merger combining Abbott Laboratories and TheraSense.

If the merger is completed, holders of TheraSense s common stock will receive $27.00 in cash, without interest, for each share of TheraSense s common stock they own.

Stockholders of TheraSense will be asked, at a special meeting of TheraSense s stockholders, to approve and adopt the merger agreement and the merger. The board of directors has approved and declared the merger, the merger agreement and the transactions contemplated by the merger agreement advisable, and has declared that it is in the best interests of TheraSense s stockholders that TheraSense enter into the merger agreement and consummate the merger on the terms and conditions set forth in the merger agreement. **The board of directors recommends that TheraSense s stockholders vote FOR approval and adoption of the merger agreement and the merger.**

The time, date and place of the special meeting to consider and vote upon a proposal to approve and adopt the merger agreement and the merger are as follows:

10:00 a.m. local time, April 5, 2004

Waterfront Plaza Hotel

10 Washington Street

Jack London Square

Oakland, California 94607

The proxy statement attached to this letter provides you with information about the proposed merger and the special meeting of TheraSense s stockholders. We encourage you to read the entire proxy statement carefully. You may also obtain more information about TheraSense from documents we have filed with the Securities and Exchange Commission.

YOUR VOTE IS IMPORTANT REGARDLESS OF THE NUMBER OF SHARES OF THE COMPANY S COMMON STOCK YOU OWN. BECAUSE APPROVAL AND ADOPTION OF THE MERGER AGREEMENT AND THE MERGER REQUIRES THE AFFIRMATIVE VOTE OF THE HOLDERS OF A MAJORITY OF OUR ISSUED AND OUTSTANDING SHARES OF COMMON STOCK ENTITLED TO VOTE THEREON, A FAILURE TO VOTE WILL COUNT AS A VOTE AGAINST THE MERGER. ACCORDINGLY, YOU ARE REQUESTED TO PROMPTLY VOTE YOUR SHARES BY COMPLETING, SIGNING AND DATING THE ENCLOSED PROXY CARD AND RETURNING IT IN THE ENVELOPE PROVIDED, WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING.

Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

Thank you for your cooperation and continued support.

Very truly yours,

W. Mark Lortz

Chairman, President and Chief Executive Officer

THIS PROXY STATEMENT IS DATED MARCH 1, 2004,

AND IS FIRST BEING MAILED TO STOCKHOLDERS ON OR ABOUT MARCH 1, 2004.

Table of Contents

THERASENSE, INC.

1360 SOUTH LOOP ROAD

ALAMEDA, CALIFORNIA 94502

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD APRIL 5, 2004

To the stockholders of TheraSense, Inc.:

A special meeting of stockholders of TheraSense, Inc., a Delaware corporation, will be held on April 5, 2004, at 10:00 a.m., local time, at the Waterfront Plaza Hotel, 10 Washington Street, Jack London Square, Oakland, California 94607, for the following purposes:

1. To consider and vote on a proposal to approve and adopt the Agreement and Plan of Merger dated as of January 12, 2004, by and among the Company, Abbott Laboratories and Corvette Acquisition Corp., a wholly-owned subsidiary of Abbott, and the merger contemplated thereby, pursuant to which, upon the merger becoming effective, each share of common stock, par value $0.001 per share, of TheraSense, Inc. will be converted into the right to receive $27.00 in cash, without interest; and

2. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Only stockholders of record on February 29, 2004, are entitled to notice of and to vote at the special meeting and at any adjournment or postponement of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person. To assure your representation at the meeting in case you cannot attend, however, you are urged to vote your shares by marking, signing, dating and returning the enclosed proxy card as promptly as possible in the postage prepaid envelope enclosed for that purpose. Any stockholder attending the special meeting may vote in person even if he or she has returned a proxy card.

Holders of TheraSense s common stock have the right to dissent from the merger and obtain payment in cash of the fair value of their common stock as appraised by the Delaware Court of Chancery under applicable provisions of Delaware law. This amount could be more, the same or less than the value a stockholder would be entitled to receive under the terms of the merger agreement. In order to perfect and exercise their appraisal rights, stockholders must give written demand for appraisal of their shares before the taking of the vote on the merger at the special meeting and must not vote in favor of the merger. A copy of the applicable Delaware statutory provisions is included as Annex D to the accompanying proxy statement, and a summary of these provisions can be found under Dissenters Rights of Appraisal in the accompanying proxy statement.

The approval and adoption of the merger agreement and the merger requires the approval of the holders of a majority of the outstanding shares of the Company s common stock entitled to vote thereon. **Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return the enclosed proxy and thus ensure that your shares will be represented at the special meeting if you are unable to attend.** If you sign, date and mail your proxy card without indicating how you wish to vote, your vote will be counted as a vote in favor of approval and adoption of the merger agreement and the merger. If you fail to return your proxy card, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the special meeting and will effectively be counted as a vote against approval and adoption of the merger agreement and the merger. If you do attend the special meeting and wish to vote in person, you may withdraw your proxy and vote in person.

By order of the board of directors,

Robert D. Brownell

Vice President, General Counsel and Secretary

Table of Contents

TABLE OF CONTENTS

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE MERGER

Q: What is the proposed transaction?

A: The proposed transaction is the acquisition of TheraSense, Inc. (**TheraSense** or the **Company**) by Abbott Laboratories (**Abbott**) pursuant to an Agreement and Plan of Merger (the **merger agreement**) dated as of January 12, 2004 among TheraSense, Abbott and Corvette Acquisition Corp., a wholly-owned subsidiary of Abbott (**merger sub**). Once the merger agreement has been approved and adopted by TheraSense s stockholders and the other closing conditions under the merger agreement have been satisfied or waived, merger sub will merge with and into TheraSense. TheraSense will be the surviving corporation in the merger (the **surviving corporation**) and will become a wholly-owned subsidiary of Abbott.

Q: What will TheraSense s stockholders receive in the merger?

A: Upon completion of the merger, TheraSense s stockholders will receive $27.00 in cash, without interest, for each share of our common stock that they own. For example, if you own 100 shares of our common stock, you will receive $2,700.00 in cash in exchange for your TheraSense shares.

Q: Where and when is the special meeting?

A: The special meeting will take place at the Waterfront Plaza Hotel, 10 Washington Street, Jack London Square, Oakland, California 94607, on April 5, 2004, at 10:00 a.m. local time.

Q: What vote of our stockholders is required to approve and adopt the merger agreement and the merger?

A: For us to complete the merger, stockholders holding at least a majority of the shares of our common stock outstanding at the close of business on the record date must vote FOR the approval and adoption of the merger agreement and the merger.

Q: How does the TheraSense board of directors recommend that I vote?

A: Our board of directors unanimously recommends that our stockholders vote FOR the proposal to approve and adopt the merger agreement and the merger. You should read *The Merger The Company s Reasons for the Merger* for a discussion of the factors that our board of directors considered in deciding to recommend the approval and adoption of the merger agreement and the merger.

Q: What do I need to do now?

A: We urge you to read this proxy statement carefully, including its annexes, and to consider how the merger affects you. Then just mail your completed, dated and signed proxy card in the enclosed return envelope as soon as possible so that your shares can be voted at the special meeting of our stockholders.

Q: What happens if I do not return a proxy card?

A: Because the required vote of our stockholders is based upon the number of outstanding shares of our common stock, rather than upon the shares actually voted, the failure to return your proxy card will have the same effect as voting against the merger.

Q: If my shares are held in street name by my broker, will my broker vote my shares for me?

A: Yes, but only if you provide instructions to your broker on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Without such instructions, your shares will not be voted, which will have the same effect as voting against the merger. See *The Special Meeting of the Company s Stockholders Voting by Proxy* .

Table of Contents

Q: May I vote in person?

A; Yes. If your shares are not held in street name through a broker, you may attend the special meeting of our stockholders and vote your shares in person, rather than signing and returning your proxy card. If your shares are held in street name , you must first get a proxy card from your broker in order to attend the special meeting and vote.

Q: Am I entitled to appraisal rights?

A: Yes. Under the General Corporation Law of the State of Delaware, holders of our common stock who do not vote in favor of approving and adopting the merger agreement and the merger will have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they submit a written demand for an appraisal prior to the vote on the approval and adoption of the merger agreement and the merger and they comply with the Delaware law procedures explained in this proxy statement.

Q: Is the merger expected to be taxable to me?

A: Generally, yes. The receipt of $27.00 in cash for each share of our common stock pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. For U.S. federal income tax purposes, generally you will recognize gain or loss as a result of the merger measured by the difference, if any, between $27.00 per share and your adjusted tax basis in that share. You should read *The Merger Material United States Federal Income Tax Consequences* for a more complete discussion of the federal income tax consequences of the merger. Tax matters can be complicated and the tax consequences of the merger to you will depend on your particular tax situation. You should also consult your tax advisor on the tax consequences of the merger to you.

Q: When do you expect the merger to be completed?

A: We are working toward completing the merger as quickly as possible, and we anticipate that it will be completed in the second quarter of 2004. In order to complete the merger, we must obtain stockholder approval and satisfy a number of other closing conditions under the merger agreement. See *The Merger Agreement General* and *The Merger Agreement Conditions to the Merger* .

Q: Should I send in my stock certificates now?

A: No. Shortly after the merger is completed, you will receive a letter of transmittal with instructions informing you how to send in your stock certificates to Abbott s paying agent in order to receive the merger consideration. You should use the letter of transmittal to exchange stock certificates for the merger consideration to which you are entitled as a result of the merger. DO NOT SEND ANY STOCK CERTIFICATES WITH YOUR PROXY.

Q: Who can help answer my other questions?

A: If you have more questions about the merger, you should contact our proxy solicitation agent:

The Altman Group

1275 Valley Brook Avenue

Lyndhurst, New Jersey 07071

Telephone: (800) 249-7179

Fax: (201) 460-0050

Table of Contents

SUMMARY

This summary does not contain all of the information that is important to you. You should carefully read the entire proxy statement to fully understand the merger. The merger agreement is attached as Annex A to this proxy statement. We encourage you to read the merger agreement because it is the legal document that governs the merger.

The Proposed Transaction

Stockholder Vote. You are being asked to vote to approve and adopt a merger agreement with respect to a merger in which the Company will be acquired by Abbott.

Price for Your Stock. Upon completion of the merger, you will receive $27.00 in cash, without interest, for each of your shares of the Company s common stock.

The Acquiror. Abbott, an Illinois corporation, is engaged in the discovery, development, manufacture and sale of a broad and diversified line of health care products.

Board Recommendation

The Company s board of directors, by the unanimous vote of the directors, has determined that the merger agreement is advisable, has approved and adopted the merger agreement and the merger and unanimously recommends that the Company s stockholders vote FOR approval and adoption of the merger agreement and the merger. See *The Merger Recommendation of the Company s Board of Directors* .

Reasons for the Merger

Our board of directors carefully considered the terms of the proposed transaction and approved the merger based on a number of factors, including the following:

the merger consideration of $27.00 per share in cash was higher than any price at which the Company s common stock has ever traded and represents a 33.0% premium to the closing price of $20.30 on January 12, 2004, the last trading day prior to the public announcement of the execution of the merger agreement;

a review of the Company s financial condition, results of operations and business and earnings prospects in remaining independent and the potential for alternative transactions;

the financial presentation of Piper Jaffray & Co. (**Piper Jaffray**) on January 12, 2004, and the written opinion of Piper Jaffray delivered to the board of directors as of the same date, to the effect that, as of that date and based upon and subject to the matters and assumptions stated in the opinion, the merger consideration was fair, from a financial point of view, to the Company s stockholders;

the terms of the merger agreement and the stockholder agreement, including the termination fee payable under the merger agreement and the ability of the Company and the board of directors to respond to a superior proposal;

the likelihood of closing in light of the limited closing conditions contained in the merger agreement;

compensation and benefits to our employees, including the extent to which the interests of our directors and executive officers in the merger may differ from those of our stockholders; and

taxability of the merger to TheraSense stockholders and our stockholders lack of participation in future growth as a result of receiving cash for their stock.

See *The Merger The Company s Reasons for the Merger* .

Table of Contents

Fairness Opinion

Piper Jaffray delivered to the Company s board of directors its written opinion, dated January 12, 2004, to the effect that, as of that date and based upon and subject to the matters and assumptions stated in that opinion, the merger consideration of $27.00 in cash per share was fair from a financial point of view to the Company s stockholders. See *The Merger Fairness Opinion Delivered to the Company s Board of Directors* .

The full text of Piper Jaffray s written opinion, which sets forth the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement. We urge you to read it carefully in its entirety. **Piper Jaffray s opinion is directed to our board of directors and relates only to the fairness of the merger consideration from a financial point of view as of the date of the opinion. The opinion does not address any other aspect of the proposed transaction and is not a recommendation as to how any of our stockholders should vote with respect to the merger agreement or the merger.**

Stockholder Agreement

As a condition to its entering into the merger agreement, Abbott required certain of our stockholders to enter into a stockholder agreement under which they have agreed to vote in favor of approval and adoption of the merger agreement and related matters, and against any competing transaction or proposal or any proposal or transaction that could reasonably be expected to prevent or impede the completion of the merger. The stockholder agreement terminates upon the earlier of the effective time of the merger and the termination of the merger agreement in accordance with its terms. As of the record date, the parties to the stockholder agreement held an aggregate of 6,256,163 shares of the Company s common stock, representing approximately 14.7% of the votes eligible to be cast at the special meeting. See *The Merger Stockholder Agreement* and the stockholder agreement attached as Annex B to this proxy statement.

Material United States Federal Income Tax Consequences

The merger will be a taxable transaction to you. For United States federal income tax purposes, your receipt of cash in exchange for your shares of the Company s common stock generally may cause you to recognize a gain or loss measured by the difference, if any, between the cash you receive in the merger and your tax basis in your shares of the Company s common stock. You should consult your own tax advisor for a full understanding of how the merger will affect your taxes. See *The Merger Material United States Federal Income Tax Consequences* .

The Special Meeting of the Company s Stockholders

Place, Date and Time. The special meeting will be held at 10:00 A.M., local time, on April 5, 2004 at the Waterfront Plaza Hotel, 10 Washington Street, Jack London Square, Oakland, California 94607.

What Vote is Required for Approval and Adoption of the Merger Agreement and the Merger. The approval and adoption of the merger agreement and the merger requires the approval of the holders of a majority of the outstanding shares of the Company s common stock entitled to vote at the special meeting. The failure to vote has the same effect as a vote against approval and adoption of the merger agreement and the merger. Stockholders who together own approximately 14.7% of the outstanding shares of the Company s common stock have already agreed to vote in favor of approval and adoption of the merger agreement and the merger. See *The*

Merger Stockholder Agreement .

Who Can Vote at the Meeting. You can vote at the special meeting all of the shares of the Company s common stock you own of record as of February 29, 2004, which is the record date for the special meeting. If you own shares that are registered in someone else s name, for example, a broker, you need to direct that person to vote those shares or obtain an authorization from them and vote the shares yourself at the meeting. As of February 29, 2004, there were 42,509,491 shares of the Company s common stock outstanding held by approximately 147 holders of record.

Table of Contents

Procedure for Voting. You can vote shares you hold of record by attending the special meeting and voting in person or by mailing the enclosed proxy card. If your shares are held in street name by your broker, you should instruct your broker on how to vote your shares using the instructions provided by your broker. If you do not instruct your broker to vote your shares, your shares will not be voted, which will have the same effect as a vote AGAINST approval and adoption of the merger agreement and the merger. See *The Special Meeting of the Company s Stockholders* .

How to Revoke Your Proxy. You may revoke your proxy at any time before the vote is taken at the meeting. To revoke your proxy, you must either advise the Company s Secretary in writing, deliver a proxy dated after the date of the proxy you wish to revoke, or attend the meeting and vote your shares in person. Merely attending the special meeting will not constitute revocation of your proxy. If you have instructed your broker to vote your shares, you must follow the directions provided by your broker to change these instructions.

Dissenters Rights of Appraisal

Delaware law provides you with appraisal rights in the merger. This means that if you are not satisfied with the amount you are receiving in the merger, you are entitled to have the value of your shares determined by the Delaware Court of Chancery and to receive payment based on that valuation. The ultimate amount you receive as a dissenting stockholder in an appraisal proceeding may be more or less than, or the same as, the amount you would have received under the merger agreement.

To exercise your appraisal rights, you must deliver a written objection to the merger to the Company at or before the special meeting and you must not vote in favor of approval and adoption of the merger agreement and the merger. Your failure to follow exactly the procedures specified under Delaware law will result in the loss of your appraisal rights. See *Dissenters Rights of Appraisal* .

The Company s Stock Price

Shares of the Company s common stock are listed on The Nasdaq National Stock Market (**NASDAQ**) under the trading symbol THER . On January 12, 2004, which was the last trading day before we announced the merger, the Company s common stock closed at $20.30 per share. On February 27, 2004, which was the last practicable trading day before this proxy statement was printed, the Company s common stock closed at $26.81 per share. See *Market Price of the Company s Common Stock* .

When the Merger Will be Completed

We are working to complete the merger as soon as possible. We anticipate completing the merger in the second quarter of 2004, subject to receipt of stockholder approval and satisfaction of other requirements, including the conditions described below. See *The Merger Agreement General* .

Non-Solicitation of Other Offers

The merger agreement contains restrictions on our ability to solicit or engage in discussions or negotiations with a third party regarding a proposal to acquire a significant interest in our Company. Notwithstanding these restrictions, under certain limited circumstances, our board of directors may respond to an unsolicited written bona fide proposal for an alternative acquisition or terminate the merger agreement and enter into an acquisition agreement with respect to a superior proposal. See *The Merger Agreement No Solicitation of Other Offers* .

Conditions to Completing the Merger

Our and Abbott s respective obligations to effect the merger are subject to the satisfaction or waiver of a number of conditions, including the following:

approval and adoption of the merger agreement and the merger by stockholders holding at least a majority of the shares of our common stock;

Table of Contents

expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and expiration or termination of all applicable waiting periods (or the receipt of any required approvals) under pre-merger notification requirements in Germany and Ireland; and

the absence of any applicable law, court order, injunction or other legal restraint prohibiting the merger.

Abbott will not be obligated to effect the merger unless the following conditions have been satisfied or waived:

the Company s representations and warranties set forth in the merger agreement must be true and correct (disregarding any qualifications as to materiality or any company material adverse effect), in each case as of the date of the merger agreement and as of the closing date of the merger (or, if applicable, as of an earlier date), with only such exceptions as would not individually or in the aggregate have a company material adverse effect;

the Company must have performed in all material respects all of its obligations under the merger agreement;

the Company must have delivered to Abbott a certificate dated as of the closing date of the merger and signed by its Chief Executive Officer certifying that the conditions in the two preceding sentences have been satisfied;

the absence of any governmental litigation seeking to block the merger, seeking to obtain material damages from the Company, Abbott or merger sub, seeking to impose any limitations on Abbott s ownership of the Company or its common stock, seeking to prohibit Abbott from effectively controlling the business or operations of the Company or that is reasonably likely to have a company material adverse effect; and

the absence of any event that has had a company material adverse effect.

The Company will not be obligated to effect the merger unless the following conditions have been satisfied or waived:

Abbott s representations and warranties set forth in the merger agreement must be true and correct (disregarding any qualifications as to materiality or material adverse effect), in each case as of the date of the merger agreement and as of the closing date of the merger (or, if applicable, as of an earlier date), with only such exceptions as would materially impair Abbott s ability to perform its obligations under the merger agreement or would prevent or materially delay the closing of the merger;

Abbott must have performed in all material respects all of its obligations under the merger agreement; and

Abbott must have delivered to the Company a certificate dated as of the closing date of the merger and signed by its Chief Executive Officer or Chief Financial Officer certifying that the conditions in the two preceding sentences have been satisfied.

Either the Company or Abbott could choose to waive a condition to its obligation to complete the merger even though that condition has not been satisfied. See *The Merger Agreement Conditions to the Merger* .

Termination of the Merger Agreement

Abbott and TheraSense can terminate the merger agreement under certain circumstances, including:

by mutual written consent of Abbott and us;

by either Abbott or us, if the merger has not been completed by September 30, 2004 for any reason, provided, however, that this right to terminate the merger agreement will not be available to a party

Table of Contents

whose failure to fulfill in any material respect its obligations under the merger agreement caused or resulted in the failure of the merger to be completed by September 30, 2004;

by either Abbott or us, if there is any final court order, injunction or other legal restraint prohibiting the merger;

by either Abbott or us, if our stockholders do not approve and adopt the merger agreement and the merger at the special meeting;

by either Abbott or us, if the other party has breached any of its representations, warranties, covenants or obligations contained in the merger agreement, which breach would result in the failure to satisfy any of the conditions to the merger related to truth and correctness of the breaching party s representations and warranties or performance of the breaching party s obligations under the merger agreement and which breach has not been, or is incapable of being, cured within 30 days after written notice;

by Abbott, if our board of directors or any of its committees takes, or resolves to take, any action:

withdrawing or modifying in a manner adverse to Abbott or merger sub its recommendation of the merger agreement or the merger, or failing within 10 business days to reconfirm such recommendation if requested by Abbott; or

approving or recommending any alternative acquisition proposal, or failing to recommend against, or taking a neutral position with respect to, a tender or exchange offer related to an alternative acquisition proposal.

by Abbott, if we violate our non-solicitation obligations under the merger agreement;

by Abbott, if there has been a company material adverse effect that cannot be cured; and

by us, if prior to our stockholders approving and adopting the merger agreement and the merger, we receive a superior proposal and:

our board of directors determines in good faith after consultation with outside legal counsel that such termination is required by its fiduciary obligations under Delaware law;

before exercising our termination right, we send Abbott a written notice advising it that our board of directors has received a superior proposal and stating that our board of directors intends to withdraw its recommendation of the merger agreement and the merger;

we wait until after the fourth business day following Abbott s receipt of such written notice and Abbott has not during that time proposed adjustments to the terms and conditions of the merger agreement that would make it as financially favorable to us as the superior proposal; and

we pay a $44,500,000 termination fee concurrently with termination of the merger agreement.

See *The Merger Agreement Termination of the Merger Agreement* and *The Merger Agreement Termination Fee; Expenses* .

Termination Fee

We have agreed to pay Abbott a termination fee of $44,500,000 if the merger agreement is terminated:

by Abbott, in the event that:

our board of directors or any of its committees withdraws or modifies in a manner adverse to Abbott or merger sub its recommendation of the merger agreement or the merger, fails within 10 business days to reconfirm such recommendation if requested by Abbott, or resolves to take any such action;

our board or any of its committees approves or recommends any alternative acquisition proposal, fails to recommend against, or takes a neutral position with respect to, a tender or exchange offer related to an alternative acquisition proposal, or resolves to take any such action; or

Table of Contents

we violate our non-solicitation obligations under the merger agreement;

by us, in accordance with the terms of the merger agreement after our receipt of a superior proposal;

by any party, following a failure by us to hold the special meeting in violation of our obligations under the merger agreement, if within twelve months following termination of the merger agreement we either consummate an alternative acquisition or enter into an agreement providing for an alternative acquisition that is subsequently consummated; and

by any party, in the event that prior to the special meeting a proposal for an alternative acquisition is publicly announced and our stockholders do not vote to approve and adopt the merger agreement and the merger at the special meeting, if within twelve months following termination of the merger agreement we either consummate an alternative acquisition or enter into an agreement providing for an alternative acquisition that is subsequently consummated.

See *The Merger Agreement Termination Fee; Expenses* .

Employee Benefits Matters; Stock Options

The merger agreement contains a number of provisions relating to the benefits that our employees will receive in connection with and following the merger. In particular, under the merger agreement:

Abbott has agreed to provide our employees who continue to be employed by Abbott or the surviving corporation following the merger with compensation and benefits substantially comparable in the aggregate to those of similarly situated employees of Abbott, subject to certain limitations with respect to benefit accruals and Abbott s retiree health plans; and

we have agreed to cause the vested and unvested stock options held by our directors, executive officers, employees and consultants to be cashed out in connection with the merger, meaning that holders of those stock options will receive cash payments for each share underlying their options equal to the excess of $27.00 per share over the exercise price per share of their options, subject to any required withholding of taxes.

See *The Merger Agreement Additional Agreements Employee Benefits Matters* .