

CEPHALON INC  
Form SC TO-C  
April 11, 2011

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**SCHEDULE TO  
TENDER OFFER STATEMENT UNDER SECTION 14(D)(1) OR 13(E)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**CEPHALON, INC.**

(Name of Subject Company (Issuer))

**VALEANT PHARMACEUTICALS INTERNATIONAL, INC.**

(Names of Filing Person(s) (Offeror(s)))

**Common Stock, par value \$0.01 per Share**

(Title of Class of Securities)

**156708109**

(CUSIP Number of Class of Securities)

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(Name, address and telephone number of person authorized to receive notices and communications on behalf of the filing person)

**CALCULATION OF FILING FEE**

**Transaction Valuation**

**Amount of Filing Fee**

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

Amount

Previously Paid: \_\_\_\_\_

Filing Party: \_\_\_\_\_

Form of

Registration No. \_\_\_\_\_

Date Filed: \_\_\_\_\_

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

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

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going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

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**VALEANT PHARMACEUTICALS FILES PRESENTATION  
FOR CEPHALON STOCKHOLDERS**

**Sets May 12, 2011 Deadline for Receipt of Requisite Consents**

Mississauga, Ontario, April 11, 2011 Valeant Pharmaceuticals International, Inc. (NYSE: VRX) (TSX: VRX) today filed with the Securities and Exchange Commission a presentation in connection with its written consent solicitation to stockholders of Cephalon, Inc. (NASDAQ: CEPH) for removal of Cephalon's current Board of Directors and election of its seven nominees in their place.

Valeant compares its \$73.00 per share all-cash offer, which would deliver immediate and certain value to Cephalon stockholders, to the uncertainty of Cephalon's standalone plan, which relies on the successful commercialization of a risky pipeline portfolio. Valeant reaffirms its position that it would be willing to increase its offer price modestly if Cephalon's Board of Directors would allow Valeant to conduct due diligence and the results of such due diligence support a higher offer. However, given Cephalon's rejection of Valeant's offer and refusal to engage in discussions, completing a transaction may only be possible following the written consent solicitation with a new Board of Directors in place.

Valeant is concerned that Cephalon's stockholders are not receiving a balanced message from the current Cephalon Board of Directors regarding the company's status or Valeant's offer.

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**Cephalon's pipeline is risky and represents uncertain value.** Cephalon has not developed a major novel product through actual launch since the U.S. launch of Provigil in 1998, which had already been launched in France by another company in 1994. All of Cephalon's other large drugs, including Actiq, Treanda, Nuvigil, Fentora and Amrix, were all either already marketed or based off of marketed products. The current strategy of developing untested biotech products departs dramatically from Cephalon's historical focus of marketing products other companies have primarily developed and taken through the regulatory process.

**Cephalon is not a high-growth biotechnology company.** Provigil, which accounted for approximately 41% of its net sales in fiscal year 2010, will face generic competition next year. Based on IBES consensus equity research estimates, from 2011-2013, Cephalon's revenues and EPS are expected to fall by 20% and 42%, respectively.

**Cephalon's share price performance prior to Valeant's offer reflected its declining fundamental value.** Repeated pipeline failures and an inability to fill the impending loss of Provigil have negatively impacted Cephalon's valuation. In fact, Cephalon's 52-week high was following rumors of a sale process and dropped off sharply after Cephalon was unable to attain approval for Nuvigil for the treatment of jet lag. Concern over Cephalon's business model was demonstrated by 68% of Wall Street analysts having ratings equivalent to sell or hold prior to Valeant's offer.

**Valeant's offer represents a full and fair premium.** Valeant's \$73 per share all cash offer represents a 29% premium to Cephalon's 30-day trading average at announcement. The median premium to 30-day trading averages in all U.S. acquisitions since 2006 was 25%, and 60% of those acquisitions were completed at a premium of less than 30% to 30-day trading averages. In addition, Valeant's offer already accounts for the substantial value leakage due to change of control costs for Cephalon's convertible debt and call spread.

**Timing is critical to Valeant.** Wall Street analysts project Cephalon's earnings to decline by more than 40% after Provigil loses patent protection in 2012. Cephalon's value to Valeant erodes each day Valeant is delayed in implementing its business strategy as Provigil's patent expiration approaches.

**Cephalon's Board has presided over a loss of value for its stockholders over the last five years and Valeant believes Cephalon's current Board's incentives are not aligned with stockholders.** Over the past 5 years, Cephalon's share price has declined by a compound annual growth rate of -0.5%. The decline was even more rapid in the year leading up to Valeant's offer, with the share price declining 19%.<sup>1</sup> Additionally, Valeant believes the current Board's

<sup>1</sup> Share price calculated off of 29-Mar-2011 closing price, prior to Valeant's public offer.

interests are not fully aligned with shareholders as the Board and management own only 0.25% of basic shares outstanding, and 4 of 9 Board members hold no common shares of Cephalon at all.

**We ask that stockholders vote for the new Board slate in the consent solicitation.** The proposed Board slate is comprised of highly qualified and well-respected professionals that have the right experience, skills, and qualifications to effectively govern Cephalon at this critical juncture:

In-depth understanding of the pharmaceutical business model and pipeline valuation through executive positions and directorships at leading companies, such as GlaxoSmithKline, Quintiles, Meda and Valeant

Experience in transformative acquisitions, including Novartis / Alcon, OSI / Astellas, Valeant / Biovail and Glaxo Wellcome / SmithKline Beecham

Exceptional corporate governance record, including one winner of the National Association of Corporate Directors Lifetime Achievement Award and another former Director of the Year of the National Association for Corporate Directors

Valeant believes this vote is a referendum on whether stockholders want to pursue Valeant's offer and as such we expect the new Board will enter into negotiations and/or remove the poison pill to facilitate a tender in which the stockholders can make a decision for themselves.

We remain committed to the consent solicitation process we have outlined, said J. Michael Pearson, chairman and chief executive officer. Cephalon's stockholders own the company and should decide whether they prefer to engage in discussions for our \$73 cash offer or continue with the risks and uncertainties associated with Cephalon's research-dependent standalone strategy. We believe the choice is clear and if stockholders agree with us, we will move forward as quickly as possible. If not, we will move on.

Valeant expects to mail its consent solicitation materials to Cephalon stockholders during the week of April 18, 2011 and has set a May 12, 2011 deadline for delivery of consents.

#### **About Valeant**

Valeant Pharmaceuticals International, Inc. (NYSE: VRX) (TSX: VRX) is a multinational specialty pharmaceutical company that develops, manufactures and markets a broad range of pharmaceutical products primarily in the areas of neurology, dermatology and branded generics. More information about Valeant can be found at [www.valeant.com](http://www.valeant.com).

#### **Forward-looking Statements**

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This press release may contain forward-looking statements, including, but not limited to, statements regarding Valeant's offer to acquire Cephalon, Valeant's intent to commence a consent solicitation process and its financing of the proposed transaction. Forward-looking statements may be identified by the use of the words anticipates, expects, intends, plans, should, could, would, may, will, believes, estimates, potential, or continue and expressions. These statements are based upon the current expectations and beliefs of management and are subject to certain risks and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. These risks and uncertainties include, but are not limited to, risks and uncertainties discussed in the company's most recent annual or quarterly report filed with the Securities and Exchange Commission (SEC) and risks and uncertainties relating to the proposed merger, as detailed from time to time in Valeant's filings with the SEC and the Canadian Securities Administrators (CSA), which factors are incorporated herein by reference. Readers are cautioned not to place undue reliance on any of these forward-looking statements. Valeant undertakes no obligation to update any of these forward-looking statements to reflect events or circumstances after the date of this press release or to reflect actual outcomes.

**CERTAIN INFORMATION CONCERNING POTENTIAL PARTICIPANTS IN A SOLICITATION;  
ADDITIONAL INFORMATION AND WHERE TO FIND IT**

This communication may be deemed to be solicitation material in respect of the proposed removal of directors from, and election of directors to, the Board of Directors of Cephalon, as well as the repeal of any changes to Cephalon's Bylaws. On April 5, 2011, Valeant filed a preliminary consent solicitation statement with the SEC. THAT DOCUMENT SETS FORTH THE IDENTITY OF THE PARTICIPANTS IN THE SOLICITATION AND A DESCRIPTION OF THEIR DIRECT OR INDIRECT INTERESTS, BY SECURITY HOLDINGS, OR OTHERWISE, AND IS AVAILABLE AT THE WEB SITE MAINTAINED BY THE SEC AT WWW.SEC.GOV. OR FROM VALEANT'S WEBSITE AT WWW.VALEANT.COM UNDER THE TAB INVESTOR RELATIONS AND THEN UNDER THE HEADING SEC FILINGS, OR, FOR FREE, BY DIRECTING A REQUEST TO VALEANT, 7545 IRVINE CENTER DRIVE, CALIFORNIA, 92618, ATTENTION: CORPORATE SECRETARY. This communication does not constitute an offer to buy or solicitation of an offer to sell any securities. No tender offer for the shares of Cephalon has commenced at this time.

In connection with any tender offer or consent solicitation, Valeant will file relevant materials, which may include a tender offer statement, and a definitive consent solicitation statement and/or other documents, with the SEC. The definitive consent solicitation statement filed by Valeant with the SEC will include the form of gold consent card to be completed and delivered by each Cephalon stockholder that desires to provide written consent in connection with the consent solicitation. ALL INVESTORS AND SECURITY HOLDERS OF CEPHALON ARE URGED TO READ ANY SUCH DOCUMENTS FILED WITH THE SEC BY VALEANT

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CAREFULLY AND IN THEIR ENTIRETY, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT ANY SUCH TRANSACTION. Investors and security holders will be able to obtain free copies of documents filed with the SEC by Valeant (when they become available) in the same manner as set forth above with respect to the preliminary consent solicitation statement.

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