

CEPHALON INC
Form SC TO-C
April 21, 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)

Alison S. Ressler, Esq.

Keith A. Pagnani, Esq.

Sullivan & Cromwell LLP

125 Broad Street

New York, NY 10004

(212) 558-4000

(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

o 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: _____

o 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:

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

o issuer tender offer subject to Rule 13e-4.

Edgar Filing: CEPHALON INC - Form SC TO-C

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:

International Headquarters
7150 Mississauga Road
Mississauga, Ontario L5N 8M5
Phone: 905.286.3000
Fax: 905.286.3050

April 21, 2011

To our fellow Cephalon Stockholders,

Valeant recently announced an all-cash offer to acquire Cephalon for at least \$73 per share. This price represents a 29% premium to Cephalon's 30-day trading average on the day we announced our offer, and we are prepared to increase it modestly, if we are permitted to conduct due diligence and the results of such due diligence demonstrate greater value than is supported by Cephalon's public filings.

**YOU, THE STOCKHOLDERS, SHOULD HAVE THE RIGHT TO CHOOSE
BETWEEN OUR CASH OFFER OF AT LEAST \$73 AND AN UNCERTAIN FUTURE**

Unfortunately, Cephalon's Board is unwilling to engage with us and has rejected our offer in favor of an uncertain standalone strategy. They are pursuing this strategy even though:

Cephalon had an average share price of \$57 for the month prior to Valeant's offer and the median Wall Street analyst future price target was then only \$60;

Cephalon's share price has declined over the past five years;

Third parties believe that Cephalon is facing even tougher times ahead Recent Wall Street analyst (IBES) median estimates project a 42% decline in earnings per share from 2011 to 2013;

68% of Wall Street analysts gave Cephalon a Sell or Hold rating prior to Valeant's offer;

Cephalon has, in large part, based its future on developing novel drugs even though it has not successfully developed a major novel product since 1998 and despite multiple recent pipeline failures;

Since Valeant's offer, analysts have come out in support of the transaction, describing our offer as an attractive exit (Oppenheimer & Co Inc., March 30, 2011), fair (Stifel Nicolaus, March 31, 2011), and an immediate and unmatched premium (Lazard Capital Markets, April 5, 2011);

If we are not permitted to conduct due diligence, Cephalon stockholders will lose the potential opportunity to have us modestly increase our offer; and

If a transaction is not completed, the Cephalon share price would likely be significantly adversely affected.

CEPHALON'S BOARD REFUSES TO LET YOU CHOOSE

Valeant would still prefer to conduct due diligence and negotiate a friendly transaction with Cephalon, but the current Cephalon Board has rejected our attempts. In addition, Cephalon has structural impediments that prevent the

consummation of our offer, including a poison pill that was put in place without stockholder approval. The Cephalon Board could eliminate these impediments, but has thus far been unwilling to do so.

WE EXPECT OUR NOMINEES TO MAXIMIZE VALUE FOR CEPHALON STOCKHOLDERS

We have begun a consent solicitation process to request that Cephalon stockholders take action to replace the current Cephalon Board with the eight highly-qualified and well-respected professionals we have nominated for election to the Cephalon Board. We believe our nominees have the right experience, skills and qualifications to effectively maximize value for, and properly represent, the interests of Cephalon's stockholders and will be committed to exploring all of the options to maximize value, consistent with their fiduciary responsibilities. Those options will potentially include:

Providing access to due diligence to, and negotiating with, us with a view to achieving a higher offer;

Conducting an efficient auction process while our offer is open;

Negotiating a merger agreement with us, which could include a go-shop provision so as to allow Cephalon's Board to determine if there is a bidder willing to pay a higher price.

We expect the nominees to fully discharge their fiduciary obligations and, if the nominees elected constitute a majority of Cephalon's Board, we would be willing to keep our offer open for a reasonable period of time while the new Cephalon Board explores Cephalon's options.

COMPLETE AND RETURN THE GOLD CONSENT CARD BEFORE MAY 12

THIS IS YOUR CHANCE TO RECEIVE AT LEAST \$73 PER SHARE IN CASH. If you want the opportunity to accept our offer, we urge you to complete, sign, date and return the GOLD card today. If we do not receive consents from holders of greater than 50% of the outstanding shares of common stock by May 12, 2011, we intend to withdraw our offer and pursue other opportunities.

Sincerely,

J. Michael Pearson
Chairman and Chief Executive Officer
Valeant Pharmaceuticals International, Inc.

* * *

Forward-looking Statements

Certain statements made in this communication may constitute forward-looking statements of Valeant, including, but not limited to, statements regarding our offer to purchase Cephalon, financing related to the proposed transaction, our consent solicitation process or our intention to commence a tender offer, our opportunities and our plans should we acquire Cephalon, the effect of the proposed transaction on financial results, and certain financial projections.

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 variations or similar expressions. Forward-looking statements are based upon the current expectations and beliefs of management of Valeant 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 Valeant's most recent annual or quarterly report filed with the Securities and Exchange Commission (SEC) and Canadian Securities Administrators (CSA) and other risks and uncertainties as discussed from time to time in Valeant's filings with the SEC and the CSA, which disclosures 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 communication or to reflect actual outcomes except as required by securities laws. You are advised, however, to consult any further disclosures we make on related subjects in our filings with the SEC and the CSA.

Certain Information Concerning Participants In 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. This communication accompanies a copy of the definitive consent solicitation statement filed by Valeant with the SEC on the date hereof. 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 ALSO 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, IRVINE, CALIFORNIA, 92618, ATTENTION: CORPORATE SECRETARY. It includes 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.

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 and its consent solicitation, Valeant will file relevant materials, which may include a tender offer statement and/or other documents, with the SEC. ALL INVESTORS AND SECURITY HOLDERS OF CEPHALON ARE URGED TO READ ANY SUCH DOCUMENTS FILED WITH THE SEC BY VALEANT CAREFULLY AND IN THEIR ENTIRETY, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. 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 definitive consent solicitation statement.