

BIOSANTE PHARMACEUTICALS INC
Form PRE 14A
June 21, 2013
Table of Contents

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material under §240.14a-12

BioSante Pharmaceuticals, Inc.
(Name of Registrant as Specified In Its Charter)

Not Applicable
(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: |
- 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

**BIOSANTE
PHARMACEUTICALS, INC.**

**210 Main Street West
Baudette, Minnesota 56623**

, 2013

Dear Stockholders:

We are pleased to invite you to join us for the BioSante Pharmaceuticals, Inc. Special Meeting of Stockholders to be held on _____, 2013, at _____, local time, at _____. Details about the meeting and the matters to be acted on at the meeting are presented in the Notice of Special Meeting of Stockholders and proxy statement that follow.

It is important that your shares be represented at the meeting, regardless of the number of shares you hold. Accordingly, please exercise your right to vote by completing, signing, dating and returning your proxy card. On behalf of BioSante's Board of Directors and management, it is my pleasure to express our appreciation for your continued support.

Sincerely,

Arthur S. Przybyl
President and Chief Executive Officer

Your vote is important. Please exercise your right to vote as soon as possible by completing, signing, dating and returning your proxy card. By doing so, you may save us the expense of additional solicitation.

Table of Contents

**BIOSANTE
PHARMACEUTICALS, INC.**

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON _____, 2013

To the Stockholders of BioSante Pharmaceuticals, Inc.:

A Special Meeting of Stockholders of BioSante Pharmaceuticals, Inc., a Delaware corporation, will be held on _____, _____, 2013, at _____, local time, at _____, for the following purposes:

1. To consider and vote upon a proposal to approve an amendment to BioSante's Restated Certificate of Incorporation to effect a reverse split of BioSante's common stock and class C special stock at the discretion of the Board of Directors at a specific ratio within a range from 1-for-4 to 1-for-7 and simultaneously with the reverse split, reduce proportionally the number of authorized shares of common stock, class C special stock and blank check preferred stock, and to authorize the Board of Directors to determine, in its discretion, the timing of the amendment and the specific ratio of the reverse stock split.
2. To consider and vote upon a proposal to approve an amendment to BioSante's Restated Certificate of Incorporation to change the name of the company to ANI Pharmaceuticals, Inc.
3. To ratify the selection by the Audit Committee of EisnerAmper LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013.
4. To consider and vote upon a proposal to approve an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of Proposals No. 1 or 2.
5. To transact such other business as may properly come before the meeting or any adjournment of the meeting.

Only stockholders of record at the close of business on _____, 2013 will be entitled to notice of, and to vote at, the meeting and any adjournments thereof. A stockholder list will be available at BioSante's corporate office beginning _____, 2013 during normal business hours for examination by any stockholder registered on BioSante's stock ledger as of the record date for any purpose germane to the Special Meeting.

By Order of the Board of Directors,

Charlotte C. Arnold
Vice President, Chief Financial Officer and Secretary

, 2013

Baudette, Minnesota

Table of Contents

TABLE OF CONTENTS

<u>PROXY STATEMENT FOR SPECIAL MEETING OF STOCKHOLDERS</u>	2013	1
<u>IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS</u>		1
<u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>		1
<u>GENERAL INFORMATION ABOUT THE SPECIAL MEETING AND VOTING</u>		2
<u>Date, Time, Place and Purposes of Meeting</u>		2
<u>Who Can Vote</u>		2
<u>How You Can Vote</u>		2
<u>How the Board of Directors Recommends that You Vote</u>		3
<u>How You May Revoke or Change Your Vote</u>		3
<u>Quorum Requirement</u>		3
<u>Vote Required</u>		4
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>		5
<u>PROPOSAL NO. 1 APPROVAL OF AMENDMENT TO RESTATED CERTIFICATE OF INCORPORATION TO EFFECT A REVERSE SPLIT OF COMMON STOCK AND CLASS C SPECIAL STOCK AT THE DISCRETION OF THE BOARD OF DIRECTORS AND REDUCE PROPORTIONALLY THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK, CLASS C SPECIAL STOCK AND BLANK CHECK PREFERRED STOCK</u>		10
<u>Summary</u>		10
<u>Reasons for the Reverse Stock Split</u>		11
<u>Increased Investor Interest</u>		11
<u>Effects of the Reverse Stock Split</u>		12
<u>Procedures for Effecting the Reverse Stock Split and Filing the Reverse Stock Split Amendment</u>		14
<u>Fractional Shares</u>		15
<u>Exchange of Pre-Split Shares for Post-Split Shares</u>		15
<u>Accounting Matters</u>		16
<u>Material United States Federal Income Tax Consequences of the Reverse Stock Split</u>		16
<u>Tax Consequences of the Reverse Stock Split Generally</u>		17
<u>Cash Received Instead of a Fractional Share</u>		17
<u>No Appraisal Rights</u>		18
<u>Board Discretion to Implement the Reverse Stock Split</u>		18
<u>Board Recommendation</u>		18
<u>PROPOSAL NO. 2 AMENDMENT TO CERTIFICATE OF INCORPORATION TO CHANGE OUR NAME</u>		19
<u>General</u>		19
<u>Reason for Proposed Amendment</u>		19
<u>Effect of Proposed Amendment</u>		19
<u>Required Approval</u>		20
<u>Board of Directors Recommendation</u>		20

Table of Contents

<u>PROPOSAL 3 RATIFICATION OF SELECTION OF EISNERAMPER LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	21
<u>General</u>	21
<u>Board Recommendation</u>	21
<u>PROPOSAL NO. 4 ADJOURNMENT OF SPECIAL MEETING, IF NECESSARY, TO SOLICIT ADDITIONAL PROXIES IF THERE ARE INSUFFICIENT VOTES IN FAVOR OF PROPOSAL NOS. 1 OR 2</u>	22
<u>General</u>	22
<u>Board Recommendation</u>	22
<u>OTHER MATTERS</u>	23
<u>Householding of Special Meeting Materials</u>	23
<u>Proxy Solicitation Costs</u>	24
<u>Other Business</u>	24
<u>APPENDIX A FORM OF CERTIFICATE OF AMENDMENT OF THE RESTATED CERTIFICATE OF INCORPORATION OF BIOSANTE PHARMACEUTICALS, INC.</u>	25

Table of Contents

**BIOSANTE
PHARMACEUTICALS, INC.**

**PROXY STATEMENT FOR
SPECIAL MEETING OF STOCKHOLDERS**

, 2013

The Board of Directors of BioSante Pharmaceuticals, Inc. is soliciting your proxy for use at a Special Meeting of Stockholders to be held on _____, 2013. The Board of Directors expects to send this proxy statement and a form of proxy to stockholders on or about _____.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS

Our proxy statement and annual report to stockholders, which includes our annual report on Form 10-K, are available at www.biosantepharma.com.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This proxy statement contains forward-looking statements of BioSante within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements contained herein regarding BioSante, other than statements of historical fact, may be forward-looking statements under the provisions of such Act. Statements that include words such as expect, believe, will, may, might, anticipate, continue, plan, estimate, should, can, likely, could, predict, project, forecast, potential, possible or the negative of these words or other words or expressions may identify forward-looking statements. These forward-looking statements are found at various places throughout this proxy statement and relate to a variety of matters, including but not limited to:

- the expected benefits of and potential value created by the proposed merger for the stockholders of BioSante and ANI; and
- the expected benefits of the reverse stock split, including BioSante's ability to maintain listing of its common stock on the NASDAQ Global Market, and the potential increase in investor interest.

These statements are subject to risks and uncertainties, including the risks described in this proxy statement, BioSante's annual report on Form 10-K for the year ended December 31, 2012 and BioSante's proxy statement/prospectus filed on May 8, 2013, that could cause actual results to differ materially from those expressed in, or implied or projected by, the forward-looking information and statements in this proxy statement. Forward-looking statements are not guarantees of performance. These statements are based upon the current beliefs and expectations

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form PRE 14A

of management of BioSante and are subject to a number of factors that could cause actual outcomes and results to be materially different from those projected or anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements which speak only as of the date hereof. Except to the extent required by applicable law or regulation, BioSante does not undertake any obligation to update or publish revised forward-looking statements to reflect events or circumstances after the date hereof or the date of the forward-looking statements or to reflect the occurrence of unanticipated events.

Table of Contents

GENERAL INFORMATION ABOUT THE SPECIAL MEETING AND VOTING

Date, Time, Place and Purposes of Meeting

A Special Meeting of Stockholders of BioSante Pharmaceuticals, Inc. will be held on _____, _____, 2013, at _____, local time, at _____ for the purposes set forth in the Notice of Special Meeting of Stockholders.

Who Can Vote

Stockholders of record at the close of business on _____, 2013 will be entitled to notice of and to vote at the meeting or any adjournment of the Special Meeting. As of that date, there were _____ shares of our common stock and _____ shares of our class C special stock outstanding. No shares of preferred stock were outstanding as of that date. Each share of our common stock and class C special stock is entitled to one vote on each matter to be voted on at the Special Meeting. Stockholders are not entitled to cumulate voting rights.

How You Can Vote

Your vote is important. Whether you hold shares directly as a stockholder of record or beneficially in street name (through a broker, bank or other nominee), you may vote your shares without attending the Special Meeting. You may vote by granting a proxy or, for shares held in street name, by submitting voting instructions to your broker or nominee.

If you are a stockholder whose shares are registered in your name, you may vote your shares in person at the meeting or by completing, signing, dating and mailing the enclosed proxy card in the envelope provided if you received a paper copy of these proxy materials.

If your shares are held in street name, you may receive a separate voting instruction form or you may need to contact your broker, bank or other nominee.

Please see your proxy card or the information your bank, broker or other holder of record provided to you for more information on your options for voting.

If you return your signed proxy card before the Special Meeting, the named proxies will vote your shares as you direct.

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form PRE 14A

For Proposal No. 1 Approval of Amendment to Restated Certificate of Incorporation to Effect a Reverse Split of Common Stock and Class C Special Stock at the Discretion of the Board of Directors and Reduce Proportionally the Number of Authorized Shares of Common Stock, Class C Special Stock and Blank Check Preferred Stock, Proposal No. 2 Approval of Amendment to Restated Certificate of Incorporation to Change Our Name, Proposal No. 3 Ratification of Selection of EisnerAmper LLP as our Independent Registered Public Accounting Firm, and Proposal No. 4 Adjournment of Special Meeting, if Necessary, to Solicit Additional Proxies if There are Insufficient Votes in Favor of Proposals No. 1 or 2, you may:

- Vote **FOR** the proposal,
- Vote **AGAINST** the proposal or
- **ABSTAIN** from voting on the proposal.

If you send in your proxy card, but you do not specify how you want to vote your shares, the proxies will vote your shares FOR Proposal No. 1 Approval of Amendment to Restated Certificate of Incorporation to Effect a Reverse Split of Common Stock and Class C Special Stock at the Discretion of the Board of Directors and Reduce Proportionally the

Table of Contents

Number of Authorized Shares of Common Stock, Class C Special Stock and Blank Check Preferred Stock, FOR Proposal No. 2 Approval of Amendment to Restated Certificate of Incorporation to Change Our Name, FOR Proposal No. 3 Ratification of Selection of EisnerAmper LLP as our Independent Registered Public Accounting Firm, and FOR Proposal No. 4 Adjournment of Special Meeting, if Necessary, to Solicit Additional Proxies if There are Insufficient Votes in Favor of Proposals No. 1 or 2.

How the Board of Directors Recommends that You Vote

The Board of Directors recommends that you vote:

FOR Proposal No. 1 Approval of Amendment to Restated Certificate of Incorporation to Effect a Reverse Split of Common Stock and Class C Special Stock at the Discretion of the Board of Directors and Reduce Proportionally the Number of Authorized Shares of Common Stock, Class C Special Stock and Blank Check Preferred Stock;

FOR Proposal No. 2 Approval of Amendment to Restated Certificate of Incorporation to Change Our Name;

FOR Proposal No. 3 Ratification of Selection of EisnerAmper LLP as our Independent Registered Public Accounting Firm; and

FOR Proposal No. 4 Adjournment of Special Meeting, if Necessary, to Solicit Additional Proxies if There are Insufficient Votes in Favor of Proposals No. 1 or 2.

How You May Revoke or Change Your Vote

If you are a stockholder whose shares are registered in your name, you may revoke your proxy at any time before it is voted by one of the following methods:

- Submitting another proper proxy with a more recent date than that of the proxy first given by completing, signing, dating and returning a proxy card to us;
- Sending written notice of revocation to our Corporate Secretary; or
- Attending the Special Meeting and voting by ballot.

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form PRE 14A

If you hold your shares through a broker, bank or other nominee, you may revoke your proxy by following instructions your broker, bank or other nominee provides.

Quorum Requirement

The presence at the Special Meeting, in person or by proxy, of the holders of one-third () shares) of the outstanding shares of our common stock and class C special stock as of the record date will constitute a quorum for the transaction of business at the Special Meeting. In general, shares of our common stock and shares of our class C special stock represented by a properly signed and returned proxy card will be counted as shares present and entitled to vote at the Special Meeting for purposes of determining a quorum. Shares represented by proxies marked Abstain are counted in determining whether a quorum is present, as are broker non-votes. A broker non-vote is a proxy returned by a broker on behalf of its beneficial owner customer that is not voted on a particular matter because voting instructions have not been received by the broker from the customer, and the broker does not have discretionary authority to vote on behalf of such customer on such matter. If there is not a quorum, a majority of the shares present at the Special Meeting may adjourn the Special Meeting to a later date as discussed below under Discretionary Voting.

Table of Contents

Vote Required

Assuming a quorum is represented at the Special Meeting, either in person or by proxy, the following vote is required for each of the following matters:

Proposal No. 1 Approval of Amendment to Restated Certificate of Incorporation to Effect a Reverse Split of Common Stock and Class C Special Stock at the Discretion of the Board of Directors and Reduce Proportionally the Number of Authorized Shares of Common Stock, Class C Special Stock and Blank Check Preferred Stock requires the affirmative vote of a majority of the outstanding shares of our common stock and class C special stock, voting together as a single class, and entitled to vote.

Proposal No. 2 Approval of Amendment to Restated Certificate of Incorporation to Change Our Name requires the affirmative vote of a majority of the outstanding shares of our common stock and class C special stock, voting together as a single class, and entitled to vote.

Proposal No. 3 Ratification of Selection of EisnerAmper LLP as our Independent Registered Public Accounting Firm requires the affirmative vote of a majority of our common stock and class C special stock, present in person or by proxy, voting together as a single class and entitled to vote.

Proposal No. 4 Adjournment of Special Meeting, if Necessary, to Solicit Additional Proxies if There are Insufficient Votes in Favor of Proposals Nos. 1 or 2 requires the affirmative vote of a majority of our common stock and class C special stock, present in person or by proxy, voting together as a single class and entitled to vote.

If your shares are held in street name and you do not indicate how you wish to vote, your broker is permitted to exercise its discretion to vote your shares on certain routine matters, but is not permitted to exercise its discretion on non-routine matters. None of the proposals above, other than Proposal No. 3, are routine matters. Accordingly, if you do not direct your broker how to vote for Proposals 1, 2 or 4, your broker may not exercise discretion and may not vote your shares on that proposal.

Broker non-votes are not considered to be shares entitled to vote at the meeting. As such, a broker non-vote will not be counted as a vote For or Against Proposals 3 or 4, but will count as a vote Against Proposals 1 or 2. Proxies marked Abstain will be counted in determining the total number of shares entitled to vote on each of the proposals and will have the effect of a vote Against a proposal.

Table of Contents

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information as of June 20, 2013 with respect to the beneficial ownership of each class of our capital stock for:

- each person known by us to beneficially own more than five percent of any class of our voting securities;
- each of our directors;
- each of our executive officers; and
- all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned, subject to community property laws where applicable.

The number of shares beneficially owned by a person includes shares subject to options and warrants held by that person that are currently exercisable or that become exercisable within 60 days of June 20, 2013. Percentage calculations assume, for each person and group, that all shares that may be acquired by such person or group pursuant to options and warrants currently exercisable or that become exercisable within 60 days of June 20, 2013 are outstanding for the purpose of computing the percentage of capital stock of the Company owned by such person or group. However, such unissued shares of capital stock are not deemed to be outstanding for calculating the percentage of capital stock owned by any other person. Except as otherwise indicated and subject to the voting agreements described under the section entitled "Voting and Other Ancillary Agreements" in the proxy statement/prospectus filed by us with the SEC on May 8, 2013, which description is incorporated by reference herein, we believe that the beneficial owners of capital stock listed in the table below have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to community property laws where applicable. Unless otherwise indicated in the notes below, the address for each of the stockholders in the table below is c/o BioSante Pharmaceuticals, Inc., 210 Main Street West, Baudette, Minnesota 56623.

Table of Contents

Shares Beneficially Owned

Name of Beneficial Owner	Common Stock Owners		Class C Special Stock		Common Stock and Common Stock Equivalents	Percentage of Total Voting Power
	Number	%	Number	%		
<i>5% Stock Owners</i>						