DERMA SCIENCES, INC.
Form SC 14D9
January 25, 2017
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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION STATEMENT

UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934

DERMA SCIENCES, INC.

(Name of Subject Company)

DERMA SCIENCES, INC.

(Name of Persons Filing Statement)

Common Stock, par value $0.01

Series A Convertible Preferred Stock, par value $0.01

Series B Convertible Preferred Stock, par value $0.01

(Title of Class of Securities)

249827502

(CUSIP Number of Class of Securities)

John E. Yetter

Derma Sciences, Inc.

214 Carnegie Center, Suite 300

Princeton, NJ 08540

(609) 514-4744

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

Copies to:

Todd E. Mason, Esq.

Thompson Hine LLP

335 Madison Avenue

12th Floor

New York, New York 10017

(212) 344-5680

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

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ITEM 1. SUBJECT COMPANY INFORMATION

Name and Address

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits and annexes attached hereto, this Schedule 14D-9) relates is Derma Sciences, Inc. a Delaware corporation (Derma or the Company). The address of the Company s principal executive offices is 214 Carnegie Center, Suite 300, Princeton, New Jersey, 08540, and its telephone number is (609) 514-4744.

Securities

The title of each class of equity securities to which this Schedule 14D-9 relates is the Company s common stock, par value $0.01 per share (the Company Shares), the Company s Series A Convertible Preferred Stock, par value $0.01 per share (the Series A Preferred Stock), and the Company s Series B Convertible Preferred Stock, par value $0.01 per share (the Series B Preferred Stock, and together with the Series A Preferred Stock, the Company Preferred Stock, and further together with the Company Shares, the Shares). As of January 23, 2017, there were (1) 28,338,012 Company Shares outstanding (excluding Company Shares issuable pursuant to outstanding stock options and Company Shares underlying restricted stock units), (2) 18,598 shares of Series A Preferred Stock outstanding, (3) 54,734 shares of Series B Preferred Stock outstanding, (4) 1,358,395 Company Shares issuable pursuant to outstanding stock options (the Company Options) with an exercise price less than the Company Share Offer Price (as defined in *Item 2. Identity and Background of Filing Person Tender Offer* below), and (5) 339,300 Company Shares underlying restricted stock units (the Company RSUs).

ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON

Name and Address

The name, business address and business telephone number of Derma, which is both the person filing this Schedule 14D-9 and the subject company, are set forth above in *Item 1. Subject Company Information Name and Address* of this Schedule 14D-9.

Tender Offer

This Schedule 14D-9 relates to a tender offer (the Offer) by Integra Derma, Inc., a Delaware corporation (Purchaser) and an indirect, wholly-owned subsidiary of Integra LifeSciences Holdings Corporation, a Delaware corporation (Parent), to purchase:

all outstanding Company Shares, at a price of $7.00 per Company Share (the Company Share Offer Price);

all outstanding shares of the Series A Preferred Stock, at a price of $32.00 per share of Series A Preferred Stock, which is equal to the liquidation preference per share of Series A Preferred Stock established pursuant to the certificate of incorporation of the Company (the Series A Offer Price); and

all outstanding shares of the Series B Preferred Stock, at price of $48.00 per share of Series B Preferred Stock, which is equal to the liquidation preference per share of Series B Preferred Stock established pursuant to the certificate of incorporation of the Company (the Series B Offer Price and, together with the Company Share Offer Price and the Series A Offer Price, as applicable, the Offer Price),

in each case, net to the seller thereof in cash, without interest thereon and subject to any withholding of taxes required by applicable law, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated January 25, 2017 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (as amended or supplemented from time to time, the Letter of Transmittal, which, together with the Offer to Purchase, constitute the Offer Documents).

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The Offer is described in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time, and together with the exhibits thereto, the Schedule TO), filed by Parent and Purchaser with the U.S. Securities and Exchange Commission (the SEC) on January 25, 2017. Copies of the Offer to Purchase and form of Letter of Transmittal are filed as Exhibits (a)(1)(A) and (a)(1)(B) hereto, respectively, and are incorporated herein by reference. The Offer Documents are being mailed to the Company s stockholders together with this Schedule 14D-9.

The Offer is being made pursuant to an Agreement and Plan of Merger (as it may be amended or supplemented, the Merger Agreement), dated January 10, 2017, by and among the Company, Parent, and Purchaser. The Merger Agreement provides that, among other matters, after the completion of the Offer and the satisfaction or waiver of certain conditions set forth in the Merger Agreement, Purchaser will merge with and into the Company (the Merger), with the Company continuing as the surviving corporation in the Merger (the Surviving Corporation) and as an indirect, wholly-owned subsidiary of Parent. Because the Merger will be effected under Section 251(h) of the General Corporation Law of the State of Delaware (DGCL), upon the satisfaction of the conditions to the Offer and the successful consummation of the Offer, no stockholder vote will be required to consummate the Merger. As a result of, and at the effective time of the Merger (the Effective Time), each Company Share or share of Company Preferred Stock not purchased in the Offer (other than (i) any Company Shares or shares of Company Preferred Stock for which the holder has properly demanded the appraisal of such shares pursuant to the DGCL, (ii) any Company Shares held by the Company as treasury stock, or (iii) any Company Shares held directly by Parent or Purchaser or any direct or indirect wholly owned subsidiary of the Company or Parent) will be converted into the right to receive a cash amount, without interest, subject to any withholding of taxes required by applicable law, equal to the applicable Offer Price for such Company Shares and shares of Company Preferred Stock, as applicable. The treatment of equity awards under the Company s benefit plans, including stock options, is discussed below in *Item 3. Past Contacts, Transactions, Negotiations and Agreements Arrangements between the Company and its Executive Officers and Directors* of this Schedule 14D-9. A copy of the Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

The obligation of Purchaser to purchase Shares tendered in the Offer is subject to the satisfaction or waiver of a number of conditions set forth in the Merger Agreement, including: (i) that there have been validly tendered in the Offer (in the aggregate) and not validly withdrawn prior to the expiration of the Offer (1) that number of Company Shares and shares of Company Preferred Stock that, together with the number of Company Shares and shares of Company Preferred Stock (if any) then owned by Parent, equals at least a majority in voting power of the Shares then issued and outstanding, voting together as a single class, (2) that number of shares of Series A Preferred Stock that, together with the number of shares of Series A Preferred Stock (if any) then owned by Parent, equals at least a majority of the shares of Series A Preferred Stock then issued and outstanding, and (3) that number of shares of Series B Preferred Stock that, together with the number of shares of Series B Preferred Stock (if any) then owned by Parent, equals at least a majority of the shares of Series B Preferred Stock then issued and outstanding (items (1)-(3) of subparagraph (i) being, collectively, the Minimum Condition), (ii) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act) and (iii) those other conditions set forth in Annex I to the Merger Agreement and further summarized in Section 14 of the Offer to Purchase. As of the close of business on January 23, 2017, the Minimum Condition would be satisfied if (x) an aggregate of 14,205,673 Shares (including both Company Shares and shares of Company Preferred Stock), (y) 9,300 shares of Series A Preferred Stock, and (z) 27,368 shares of Series B Preferred Stock were validly tendered and not properly withdrawn in the Offer.

Unless extended, the Offer will expire at 12:00 midnight, New York City time, on Wednesday, February 22, 2017 (the Expiration Date). The Merger Agreement contains provisions to govern the circumstances in which Purchaser is required or permitted to extend the Offer. Purchaser is required to extend the Offer (i) for any period required by applicable law or applicable rules, regulations, interpretations or positions of the SEC and its staff with respect

thereto, and (ii) for one or more periods of up to ten (10) business days each until, and including, July 15, 2017 (the Outside Date), if at the Expiration Date any of the conditions of the Offer have not been

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satisfied. Purchaser is not required to extend the Offer beyond the Outside Date. Subject to certain conditions, either Parent or the Company may terminate the Merger Agreement if the Offer has not yet been completed on or prior to the Outside Date.

As set forth in the Schedule TO, the address of the principal executive office of both Parent and Purchaser is 311 Enterprise Drive, Plainsboro, New Jersey 08536. The telephone number of each entity is (609) 275-0500.

ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS, AND AGREEMENTS

Except as set forth or incorporated by reference in this Schedule 14D-9, to the knowledge of the Company, as of the date hereof, there are no material agreements, arrangements or understandings, or any actual or potential conflicts of interest between the Company or its affiliates, on the one hand, and (i) its executive officers, directors or affiliates, or (ii) Parent, Purchaser, or their respective executive officers, directors or affiliates, on the other hand. The board of directors of the Company (the Derma Board) was aware of the agreements and arrangements described in this Item 3 during its deliberations of the merits of the Merger Agreement and in determining to make the recommendation set forth in this Schedule 14D-9.

The Company s executive officers are: Stephen T. Wills, Executive Chairman and Principal Executive Officer; John E. Yetter, CPA, Executive Vice President, Finance, and Chief Financial Officer; Robert C. Cole, Group President, Traditional Wound Care and Corporate Accounts; and Frederic Eigner, Executive Vice President, Operations, and General Manager of Derma Sciences Canada Inc.

Arrangements between the Company and its Executive Officers and Directors

The Company s executive officers and the members of the Derma Board may be deemed to have interests in the Offer, the Merger, and the other transactions contemplated by the Merger Agreement (collectively, the Transactions) that may be different from, or in addition to, those of the Company s stockholders generally. These interests may create potential conflicts of interest. The Derma Board was aware of these interests and considered them, along with other matters, in evaluating and negotiating the Merger Agreement, in reaching its decision to approve the Merger Agreement and the Transactions and in recommending that the Company s stockholders accept the Offer and tender their Shares to Purchaser pursuant to the Offer Documents, as more fully discussed in *Item 4. The Solicitation or Recommendation Background of the Offer*.

For further information with respect to the arrangements between the Company and its executive officers and directors described in this Item 3, please also see *Item 8. Additional Information Golden Parachute Compensation* of this Schedule 14D-9.

Cash Payable for Outstanding Shares Pursuant to the Offer or the Merger

If the executive officers and directors of the Company who own Shares tender their Shares for purchase as part of the Offer (or hold Shares at the time of the Merger), they will receive consideration on the same terms and conditions as the other stockholders of the Company who tender their Shares for purchase as part of the Offer. As of January 23, 2017, the executive officers and directors of the Company beneficially owned, in the aggregate, 731,440 Company Shares, excluding Company Shares issuable upon the exercise of Company Options or Company RSUs.

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The following table sets forth (i) the number of Company Shares beneficially owned as of January 23, 2017, by each of the Company s executive officers and directors, excluding Company Shares issuable upon the exercise of Company Options or Company RSUs and (ii) the aggregate cash consideration that would be payable for such Company Shares based on the Company Share Offer Price. None of the Company s executive officers or directors holds any shares of Company Preferred Stock.

Name	Number of Company Shares Owned	Cash Consideration Payable in Respect of Company Shares
Stephen T. Wills	119,201	$ 834,407
Srini Conjeevaram	63,942	$ 447,594
Robert G. Moussa	63,896	$ 447,272
Brett D. Hewlett	33,750	$ 236,250
Samuel E. Navarro	12,500	$ 87,500
John E. Yetter	55,631	$ 389,417
Robert C. Cole	68,985	$ 482,895
Frederic Eigner	47,074	$ 329,518
Total	**464,979**	**$ 3,254,853**

Effect of the Merger and the Offer on Outstanding Equity Awards Held by Executive Officers and Directors of the Company

As of the filing of this Schedule 14D-9, the Company s directors and executive officers hold Company Options and Company RSUs.

Treatment of Company Options

Pursuant to the terms of the Merger Agreement, each Company Option outstanding immediately prior to the Effective Time that is vested (after taking into account any vesting acceleration provided in the Company s equity plans or the award agreement applicable to such Company Option by reason of the Merger Agreement or the Offer and the Merger) (each, a Single-Trigger Company Option) will automatically, at the Effective Time and without any required action on the part of the holder thereof, be cancelled and will entitle the holder of such Single-Trigger Company Option to receive an amount in cash equal to the product of (i) the excess, if any, of the Company Share Offer Price over the applicable exercise price per Company Share of such Single-Trigger Company Option and (ii) the number of Company Shares for which such Single-Trigger Company Option may be exercised, payable without any interest thereon and subject to any required tax withholdings. If the applicable exercise price per Company Share subject to a Single-Trigger Company Option is equal to or greater than the Company Share Offer Price, such Single-Trigger Company Option shall be cancelled at the Effective Time for no consideration.

Each Company Option outstanding immediately prior to the Effective Time that is not vested (after taking into account any vesting acceleration provided in the Company s equity plans or award agreement applicable to the Company Option by reason of the Merger Agreement or the Offer and the Merger) (each, a Double-Trigger Company Option) will automatically, at the Effective Time and without any required action on the part of the holder thereof, be converted into an option to purchase shares of Parent Common Stock (an Adjusted Option) on the same terms and conditions as were applicable to such Double-Trigger Company Option immediately prior to the Effective Time, with

the number of shares of Parent Common Stock subject to such Adjusted Option equal to the product of (i) the total number of Company Shares underlying such Double-Trigger Company Option immediately prior to the Effective Time and (ii) the Equity Award Conversion Amount (as defined below), and with the exercise price applicable to such Adjusted Option to equal the quotient obtained by dividing (i) the exercise price per Company Share applicable to such Double-Trigger Company Option immediately prior to the Effective Time by (ii) the Equity Award Conversion Amount. The Equity Award Conversion Amount means the amount obtained by dividing the Company Share Offer Price by the volume-weighted average trading price

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of the Parent Common Stock on NASDAQ for the five consecutive trading days immediately preceding the Closing Date (as defined in the Merger Agreement).

The table below sets forth, for each of the Company s executive officers and directors, the effect of the foregoing provisions of the Merger Agreement on the Single-Trigger Company Options held by each such executive officer or director, as of January 23, 2017, assuming that the Effective Time occurred on January 23, 2017, and based on the Company Share Offer Price. For Messrs. Yetter, Cole, and Eigner, in the table below, their total number of Company Shares subject to Single-Trigger Company Options for which they will receive consideration at the Effective Time pursuant to the terms of the Merger Agreement includes 24,000 performance-based Company Options. The Compensation Committee will review the performance objectives for such Company Options and determine whether such objectives have been met at its meeting in February 2017. However, for the purposes of this Schedule 14D-9, such performance-based Company Options are reflected as though the performance objectives have been satisfied in full as of the date hereof.

None of the Company s directors or executive officers holds any Double-Trigger Company Options.

Name	Number of Currently Unvested Single-Trigger Company Options[1]	Number of Currently Vested Single-Trigger Company Options[1]	Total Number of Company Shares Subject to Single-Trigger Company Options[1]	Weighted Average Exercise Price Per Single-Trigger Company Option[2]	Total Cash Consideration for Single-Trigger Company Options
Stephen T. Wills	0	33,750	33,750[3]	$ 4.55	$ 82,700[3]
Srini Conjeevaram	0	13,750	13,750[4]	$ 4.81	$ 30,050[4]
Robert G. Moussa	0	21,750	21,750[5]	$ 4.57	$ 52,850[5]
Brett D. Hewlett	0	20,000	20,000[6]	$ 5.12	$ 37,600[6]
Samuel E. Navarro	0	0	0	N/A	N/A
John E. Yetter	33,000	62,657	95,657[7]	$ 4.21	$ 266,884[7]
Robert C. Cole	33,000	62,657	95,657[8]	$ 4.21	$ 266,884[8]
Frederic Eigner	33,000	62,657	95,657[9]	$ 4.21	$ 266,884[9]
Total	**99,000**	**277,221**	**376,221**		**$ 1,003,852**

(1) These columns include only those Single-Trigger Company Options with exercise prices less than the Company Share Offer Price (collectively, the In-the-Money STCOs) and do not include any Single-Trigger Company Options with an exercise price equal to or greater than the Company Share Offer Price (collectively, the Out-of-the-Money STCOs), which Out-of-the-Money STCOs will be cancelled at the Effective Time for no consideration pursuant to the terms of the Merger Agreement. For In-the-Money STCOs, (a) the Number of Currently Unvested Single-Trigger Company Options column includes those In-the-Money STCOs that are, as of the date hereof, unvested but that will vest as a result of the Transactions and (b) the Number of Currently Vested Single-Trigger Company Options column includes those In-the-Money STCOs that are vested prior to the Transactions and are unexercised.

(2) The Weighted Average Exercise Price Per Single-Trigger Company Option column includes weighted average exercise prices only for In-the-Money STCOs.

(3) Total does not include 33,875 Out-of-the-Money STCOs held by Mr. Wills. As a result, total cash consideration reflects consideration only for those 33,750 In-the-Money STCOs held by Mr. Wills.

(4) Total does not include 15,375 Out-of-the-Money STCOs held by Mr. Conjeevaram. As a result, total cash consideration reflects consideration only for those 13,750 In-the-Money STCOs held by Mr. Conjeevaram.

(5) Total does not include 15,375 Out-of-the-Money STCOs held by Mr. Moussa. As a result, total cash consideration reflects consideration only for those 21,750 In-the-Money STCOs held by Mr. Moussa.

(6) Total does not include 11,000 Out-of-the-Money STCOs held by Mr. Hewlett. As a result, total cash consideration reflects consideration only for those 20,000 In-the-Money STCOs held by Mr. Hewlett.

(7) Total does not include 100,500 Out-of-the-Money STCOs held by Mr. Yetter. As a result, total cash consideration reflects consideration only for those 95,657 In-the-Money STCOs held by Mr. Yetter.

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(8) Total does not include 100,700 Out-of-the-Money STCOs held by Mr. Cole. As a result, total cash consideration reflects consideration only for those 95,657 In-the-Money STCOs held by Mr. Cole.

(9) Total does not include 100,200 Out-of-the-Money STCOs held by Mr. Eigner. As a result, total cash consideration reflects consideration only for those 95,657 In-the-Money STCOs held by Mr. Eigner.

Treatment of Company RSUs

Pursuant to the terms of the Merger Agreement, each Company RSU outstanding immediately prior to the Effective Time that is vested (after taking into account any vesting acceleration provided in the Company s equity plans or the award agreement applicable to such Company RSU by reason of the Merger Agreement or the Offer and the Merger) (each, a Single-Trigger Company RSU) will automatically, at the Effective Time and without any required action on the part of the holder thereof, be cancelled and will entitle the holder of such Single-Trigger Company RSU to receive an amount in cash, with respect to the Company Shares underlying such Single-Trigger Company RSU, equal to the product of (i) the Company Share Offer Price and (ii) the number of Company Shares underlying such Single-Trigger Company RSU, payable without any interest thereon and subject to any required tax withholdings.

Each Company RSU outstanding immediately prior to the Effective Time that is not vested (after taking into account any vesting acceleration provided in the Company s equity plans or award agreement applicable to the Company RSU by reason of the Merger Agreement or the Offer and the Merger) (each, a Double-Trigger Company RSU) will automatically, at the Effective Time and without any required action on the part of the holder thereof, be converted into a restricted stock unit award in respect of Parent Common Stock (an Adjusted RSU) on the same terms and conditions as were applicable to such Double-Trigger Company RSU immediately prior to the Effective Time, and relating to the number of shares of Parent Common Stock equal to the product of (i) the number of Company Shares subject to such Double-Trigger Company RSU immediately prior to the Effective Time and (ii) the Equity Award Conversion Amount.

The table below sets forth, for each of the Company s executive officers and directors, the effect of the foregoing provisions of the Merger Agreement on the Single-Trigger Company RSUs held by each such executive officer or director, as of January 23, 2017, assuming that the Effective Time occurred on January 23, 2017, and based on the Company Share Offer Price. For Messrs. Yetter, Cole, and Eigner, in the table below, their total number of Single-Trigger Company RSUs for which they will receive consideration at the Effective Time pursuant to the terms of the Merger Agreement includes 8,000 performance-based Company RSUs each. The Compensation Committee will review the performance objectives for such Company RSUs and determine whether such objectives have been met at its meeting in February 2017. However, for the purposes of this Schedule 14D-9, such performance-based Company RSUs are reflected as though the performance objectives have been satisfied in full as of the date hereof.

None of the Company s directors or executive officers holds any Double-Trigger Company RSUs.

Name	Number of Single-Trigger Company RSUs		Cash Consideration for Single-Trigger Company RSUs
Stephen T. Wills	27,500	$	192,500
Srini Conjeevaram	17,500	$	122,500
Robert G. Moussa	17,500	$	122,500
Brett D. Hewlett	17,500	$	122,500
Samuel E. Navarro	25,000	$	175,000
John E. Yetter	8,000	$	56,000
Robert C. Cole	8,000	$	56,000

Frederic Eigner	8,000	$	56,000
Total	**129,000**	**$**	**903,000**

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Employment Arrangements

Messrs. Yetter, Cole, and Eigner are each entitled to certain severance benefits pursuant to their respective employment agreements, the terms of which are described below. For more information regarding specific severance/termination payments due to each of Messrs. Yetter, Cole, and Eigner, see *Item 8. Additional Information Golden Parachute Compensation.*

John E. Yetter, CPA

The Company employs Mr. Yetter as its Executive Vice President, Finance, and Chief Financial Officer, pursuant to an employment agreement, dated March 7, 2012 (as amended effective as of December 20, 2012, March 31, 2013 and March 9, 2015), and expiring March 31, 2017, providing for an annual base salary and incentive compensation in the discretion of the Derma Board. The agreement further provides that, upon the Company s failure to renew the agreement or termination of employment, each without cause (each, a Severance Event), Mr. Yetter is entitled to (i) payment of severance compensation in the amount of one-year s base salary, to be paid in twelve equal monthly installments, (ii) at the Company s expense, the same health care benefits provided to the Company s active employees for twelve months following such Severance Event, and (iii) an extension of the period to exercise any options to purchase securities of the Company to the earlier to occur of (a) the expiration thereof, as set forth in the option instrument, or (b) the tenth anniversary of the original grant date of the option instrument (an Option Exercise Extension). Mr. Yetter s receipt of severance benefits and an Option Exercise Extension under his employment agreement is further conditioned upon his release of any claims against the Company. Mr. Yetter s employment agreement also contains a provision (the Claw-Back Provision) relating to the Company s claw-back policy, under which the Company will require the reimbursement of any incentive compensation paid to the executive officers of the Company if the payment was predicated upon financial results that were subsequently the subject of a restatement.

Robert C. Cole

The Company employs Mr. Cole as its Group President, Traditional Wound Care and Corporate Accounts, pursuant to an employment agreement, dated March 7, 2012 (as amended effective as of December 20, 2012, March 31, 2013, and March 9, 2015), and expiring March 31, 2017, providing for an annual base salary and incentive compensation in the discretion of the Derma Board. The agreement further provides that, upon a Severance Event, Mr. Cole is entitled to (i) payment of severance compensation in the amount of one-year s base salary, to be paid in twelve equal monthly installments, (ii) at the Company s expense, the same health care benefits provided to the Company s active employees for twelve months following such Severance Event and (iii) an Option Exercise Extension. Mr. Cole s receipt of severance benefits and an Option Exercise Extension under his employment agreement is further conditioned upon his release of any claims against the Company. Mr. Cole s employment agreement also contains a Claw-Back Provision.

Frederic Eigner

The Company employs Mr. Eigner as its Executive Vice President, Operations, and General Manager of Derma Sciences Canada Inc. (Derma Canada), pursuant to an employment agreement, dated March 12, 2012 (as amended effective as of December 20, 2012, March 31, 2013 and March 9, 2015), and expiring March 31, 2017, providing for an annual base salary and incentive compensation in the discretion of the Board of Directors. The agreement further provides that, upon a Severance Event, Mr. Eigner is entitled to (i) payment of severance compensation in the amount of the greater of (a) one-year s base salary, to be paid in twelve equal monthly installments and (b) the amount specified by the laws of Ontario, Canada, to be paid in monthly installments, (ii) at Derma Canada s expense, for twelve months following such Severance Event, the health care benefits required by the laws of Ontario, Canada, and reimbursement for the cost of health care benefits obtained by Mr. Eigner to the extent comparable benefits and cost

coverage is provided to Derma Canada s active employees and (iii) an Option Exercise Extension. Mr. Eigner s receipt of severance benefits and an Option Exercise

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Extension under his employment agreement is further conditioned upon his release of any claims against the Company. Mr. Eigner s employment agreement also contains a Claw-Back Provision.

The foregoing summaries and descriptions do not purport to be complete and are qualified in their entirety by reference to the respective employment agreement (and related amendments) with each of Messrs. Yetter, Cole, and Eigner, which are filed as Exhibits (e)(9) through (e)(20) hereto and are incorporated herein by reference.

Transaction and Retention Arrangements

Prior to the Effective Time, the Company is permitted to approve and enter into cash-based transaction and/or retention bonus arrangements with employees of the Company and its Subsidiaries. No such individual transaction or retention bonuses have been paid as of the date of this Schedule 14D-9.

If and when such transaction or retention bonuses are awarded, they will be subject to the following terms: (1) the maximum aggregate amount allocable to Mr. Wills will be up to $1,200,000 less the amount of an expected $200,000 bonus to be paid in February 2017 to Mr. Wills in respect of services provided during 2016; (2) the maximum aggregate amount allocable to the executive and management team of the Company, other than Mr. Wills, for retention bonuses will be $750,000; (3) the maximum aggregate amount allocable to the direct sales representatives and related support personnel of the Company and its Subsidiaries (as defined in the Merger Agreement) will be $288,000; and (4) the individual employees eligible to receive any such bonus, the amount of such bonus allocated to any individual employee, and the terms and conditions applicable to any individual employee s bonus will be subject to the prior written consent of Parent.

Employee Matters Following Closing

Pursuant to the Merger Agreement, Parent has agreed that for a period from the Effective Time until December 31, 2017, Parent will provide, or cause the Parent Subsidiaries (as defined in the Merger Agreement) to provide, to each Continuing Employee (a) base compensation that is not less favorable than the base compensation provided to such Continuing Employee immediately prior to the Effective Time and (b) benefits (including target annual cash bonus opportunities but excluding equity or equity-linked compensation and benefits under defined benefit plans) to each Continuing Employee that, taken as a whole, have a value that is substantially similar in the aggregate as such benefits provided to similarly-situated employees of Parent and the Parent Subsidiaries, or provided to such Continuing Employee immediately prior to the Effective Time, as determined by Parent in its discretion.

The foregoing summary of employee benefits matters does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) hereto and incorporated by reference herein.

Section 16 Matters

Pursuant to the Merger Agreement, the Company will take all reasonable steps as may be required to cause any dispositions of Company Shares (including derivative securities with respect to Company Shares) resulting from the Transactions by each director or officer of the Company who is subject to the reporting requirements of Section 16(a) of the Exchange Act to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Rule 14d-10(d) Matters

Pursuant to the terms of the Merger Agreement, prior to the acceptance for payment of Shares validly tendered pursuant to the Offer (the Acceptance Time), the Compensation Committee will approve each agreement,

arrangement, or understanding entered into by the Company with any of its officers, directors or employees pursuant to which compensation, severance or other benefits is paid to such officer, director or employee as an employment compensation, severance or other employee benefit arrangement within the meaning of Rule

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14d-10(d)(1) under the Exchange Act, and otherwise will take all necessary and appropriate actions to satisfy the requirements of the non-exclusive safe harbor set forth in Rule 14d-10(d) under the Exchange Act.

Director Bonuses

Prior to the Effective Time, the Company is permitted to grant a cash bonus to each member of the Derma Board, not to exceed $450,000 in the aggregate, 50% of which will be paid upon the Effective Time. No such individual bonuses have been paid as of the date of this Schedule 14D-9.

Indemnification of Directors and Officers; Insurance

The Merger Agreement provides that all rights to indemnification existing in favor of the present and former directors and officers of the Company or its subsidiaries (the Acquired Companies) for their actions and omissions occurring prior to the Effective Time, as provided in the certificate of incorporation, bylaws and other charter and organizational documents of the applicable Acquired Companies (as in effect as of the date of the Merger Agreement) and as provided in specified indemnification agreements between the Acquired Companies and such persons, if any, shall survive the Merger and shall be observed by the Surviving Corporation and its subsidiaries to the fullest extent available under Delaware law for a period of six years from the Effective Time, and any claim made requesting indemnification pursuant to such indemnification rights within such six-year period shall continue to be subject to the Merger Agreement and the indemnification rights provided under the Merger Agreement until disposition of such claim even if such disposition occurs after the expiration of the six-year period.

The Merger Agreement also provides that, from the Effective Time until the sixth anniversary of the Effective Time, Parent will maintain, for events occurring prior to the Closing Date (as defined in the Merger Agreement), directors and officers liability insurance (D&O Insurance) that is substantially equivalent to and in any event not less favorable in the aggregate than the existing D&O Insurance of the Company, or, if substantially equivalent D&O Insurance coverage is unavailable, then the best available D&O Insurance coverage then available. The requirement can also be satisfied if prepaid six-year tail policies have been obtained prior to the Effective Time. However, in no event shall Parent be required to pay an annual premium for the D&O Insurance in excess of 200% of the last annual premium paid by the Company prior to January 10, 2017.

Arrangements between the Company and its Affiliates

Letter Agreement with the Galen Partnerships

In connection with the Merger Agreement, Galen Partners III, L.P., Galen Partners International III, L.P. and Galen Employee Fund III, L.P. (collectively, the Galen Partnerships) entered into a letter agreement, dated as of January 9, 2017, with the Company (the Letter Agreement). Pursuant to the Letter Agreement, the Galen Partnerships, in their capacity as holders of shares of both Series A Preferred Stock and Series B Preferred Stock, provided consent to the Merger (effective immediately after the execution and delivery of the Merger Agreement) and agreed to tender their shares of Preferred Stock pursuant to the Offer. The Galen Partnerships collectively hold 15,627 outstanding shares of Series A Preferred Stock, representing approximately 84.03% of the total shares of Series A Preferred Stock outstanding on January 23, 2017 and 52,085 outstanding shares of Series B Preferred Stock, representing approximately 95.16% of the total shares of Series B Preferred Stock outstanding on January 23, 2017. The shares of Company Preferred Stock held by the Galen Partnerships represent approximately 0.24% of the total voting power of the Company Shares and shares of Company Preferred Stock, voting together as a single class, on January 23, 2017.

The foregoing summary and description of the Letter Agreement does not purport to be complete and is qualified in its entirety by reference to the Letter Agreement, which is filed as Exhibit (e)(23) hereto and is incorporated herein by reference.

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Arrangements with Parent and Purchaser and their Affiliates

Merger Agreement

On January 10, 2017, Derma, Parent, and Purchaser entered into the Merger Agreement. The summary of the material provisions of the Merger Agreement contained in Section 13 of the Offer to Purchase and the description of the conditions of the Offer contained in Section 14 of the Offer to Purchase are incorporated herein by reference. Such summary and description are qualified in their entirety by reference to the full text of the Merger Agreement.

The foregoing summary of the material terms of the Merger Agreement and the descriptions of the conditions to the Offer contained in the Offer to Purchase and incorporated herein by reference do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, which is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

Letter from Parent

On January 10, 2017, Parent delivered to the Company a letter (the Parent Letter) pursuant to which Parent stated that its management would recommend to the Compensation Committee of the Board of Directors of Parent (the Parent Compensation Committee) that the Parent Compensation Committee approve the grant of equity or equity-linked incentive awards in respect of the common stock of Parent (Parent Common Stock) to those employees of the Company who are employed by the Company and its Subsidiaries (as defined in the Merger Agreement) immediately prior to the Effective Time, and who remain employed by Parent or the Parent Subsidiaries (each, a Continuing Employee), provided that such awards may be granted in cash in certain countries. The maximum aggregate grant date fair value of such awards is not to exceed $1,664,000.

The foregoing summary and description of the Parent Letter do not purport to be complete and are qualified in their entirety by reference to the full text of the Parent Letter, which is filed as Exhibit (e)(2) and is incorporated herein by reference.

Confidentiality Agreement

The Company and Parent entered into a confidentiality agreement, dated October 13, 2016 (the Confidentiality Agreement), to evaluate a potential negotiated transaction that resulted in the Offer. Pursuant to the Confidentiality Agreement, subject to certain customary exceptions, Parent agreed to keep confidential all non-public information furnished by the Company or its representatives to Parent or its representatives. Parent also agreed that the non-public information furnished to Parent would be used only for the purpose of evaluating or consummating the potential transaction that resulted in the Offer. If requested by the Company, Parent is required to promptly, at its own election, either return to the Company or destroy all copies of the non-public information furnished to Parent and its representatives under the confidentiality agreement, and also to destroy any analyses or compilations prepared by Parent or its representatives to the extent it contains non-public information of the Company. In addition, Parent agreed, subject to certain customary exceptions, to keep confidential the fact that any non-public information was made available to Parent and its representatives, and that any discussions of a potential negotiated transaction were taking place.

The Confidentiality Agreement includes a standstill provision. Under the standstill provision, Parent agreed that, among other things and for a period of one year from the date of the Confidentiality Agreement, neither Parent nor its representatives would, without the Company s prior consent:

effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or cause or participate in or in any way assist, facilitate or encourage any other person to effect or seek offer or propose (whether publicly or otherwise) to effect or participate in (i) any acquisition of securities (or beneficial ownership thereof), or rights or options to acquire securities (or beneficial

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ownership thereof), or any assets, indebtedness or businesses of the Company or any of its subsidiaries or affiliates, (ii) any tender or exchange offer, merger or other business combination involving the Company, any of the subsidiaries or affiliates or assets of the Company or the subsidiaries or affiliates constituting a significant portion of the consolidated assets of the Company and its subsidiaries or affiliates, (iii) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to the Company or any of its subsidiaries or affiliates, or (iv) any solicitation of proxies (as such terms are used in the proxy rules of the SEC);

form, join or in any way participate in a group (as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) with respect to the Company or otherwise act in concert with any person in respect of any securities;

otherwise act, alone or in concert with others, to seek representation on or to control or influence the management, Derma Board or policies of the Company or to obtain representation on the Derma Board;

take any action which would or would reasonably be expected to force the Company to make a public announcement regarding any of the types of matters set forth in the first bullet, above;

disclose any intention, plan or arrangement prohibited by, or inconsistent with, the foregoing; or

enter into any discussions or arrangements with any third party with respect to the foregoing.

Notwithstanding the foregoing, the standstill does not prevent Parent from exercising its rights under the Merger Agreement, including its right with respect to a Superior Proposal (as defined in the Merger Agreement).

The foregoing summary and description of the Confidentiality Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Confidentiality Agreement, which is filed as Exhibit (e)(3) and is incorporated herein by reference.

ITEM 4. THE SOLICITATION OR RECOMMENDATION

Recommendation of the Derma Board

At a meeting held on January 10, 2017, after careful consideration and in consultation with the Company s financial and legal advisors, the Derma Board, among other things: (i) approved and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, upon the terms and subject to the conditions set forth therein, (ii) determined that the Merger Agreement and the Offer and the Merger are fair to, and in the best interests of, the Company and its stockholders, (iii) determined that the Merger should be effected as soon as practicable following the Acceptance Time, without a vote of the Company s stockholders pursuant to Section 251(h) of the DGCL, and (iv) recommended that the Company s stockholders accept the Offer and tender their Shares pursuant to the Offer. The Derma Board then authorized the Company to execute and deliver the Merger Agreement.

Accordingly, and for other reasons described in more detail below, the Derma Board hereby recommends that all of the Company s stockholders accept the Offer and tender their Shares to Purchaser in response to the Offer.

A copy of the press release issued by the Company, dated January 10, 2017, announcing the Merger Agreement, the Offer, and the Merger, is filed as Exhibit (a)(1)(H) to this Schedule 14D-9 and is incorporated herein by reference.

Background of the Offer

Members of the Derma Board and members of the Company s senior management periodically review and assess the Company s operations, financial performance, industry conditions, regulatory developments and potential

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strategic initiatives with the goal of increasing stockholder value. These reviews and assessments include discussions of potential strategic alternatives, including growing the Company s business organically and independently developing and marketing its products, as well as potential business combinations, partnerships, acquisitions, divestitures and licensing alternatives. In connection with these reviews and assessments, the Derma Board and members of the Company s senior management have periodically received advice from financial and legal advisors, including Greenhill & Co., LLC (Greenhill) and Thompson Hine LLP (Thompson Hine).

On January 14, 2015, the Company s former chief executive officer, Mr. Edward J. Quilty, met with Mr. Peter J. Arduini, Parent s President and Chief Executive Officer, and Mr. Glenn G. Coleman, Parent s Corporate Vice President, Chief Financial Officer and Principal Accounting Officer, at a health care industry conference in San Francisco, California to discuss the Company s operations, financial performance and business strategies. The parties did not discuss a potential business combination or other strategic transaction at this meeting.

During the third quarter of 2015, the Company began exploring potential strategic alternatives and as part of that process, during the fourth quarter of 2015, the Company engaged Greenhill to assist the Company in evaluating a range of potential strategic alternatives. As more fully described below, from the third quarter of 2015 through December 9, 2016, the Company entered into confidentiality agreements with ten potential strategic partners and began preliminary discussions with those parties. None of these agreements currently restrict the applicable third party from making a proposal to acquire the Company. Discussions with two of the potential strategic partners did not advance beyond conducting preliminary meetings and high-level due diligence. The Company continued discussions with the eight remaining potential strategic parties, and the non-binding indications of interest are described below.

On November 19, 2015, Mr. Quilty called Mr. Arduini and asked if Parent would be interested in exploring a potential business combination or other strategic transaction involving the Company. Mr. Arduini indicated that Parent had just completed another strategic transaction and Parent s interest was less than it might have been previously, but that Mr. Arduini would be willing to meet with Mr. Quilty to discuss further. The parties tentatively scheduled an in-person meeting to be held in late December 2015, but the meeting was cancelled by the Company following public announcement that Mr. Quilty was no longer serving as the Company s chief executive officer.

On April 19, 2016, the Company received a non-binding indication of interest from a company with common stock listed on NASDAQ (referred to herein as Party A) to engage in a zero-premium, stock-for-stock business combination transaction with the Company whereby the Company s stockholders would hold shares representing 81% of the equity of the combined entity and Party A s stockholders would hold shares representing 19% of the equity of the combined entity.

On April 21, 2016, the Company received a non-binding proposal from another company with common stock listed on NASDAQ (referred to herein as Party B) for an acquisition of the Company by Party B with the consideration payable in shares of Party B s common stock reflecting an implied price of $4.13 to $4.31 per share.

On May 5, 2016, a private company (referred to as Party E) provided a preliminary verbal non-binding proposal for a stock-for-stock merger of Party E, a private company, with and into the Company, a public company, which reflected an implied valuation of the Company at $3.50 to $3.65 per share.

On May 6, 2016, the Company received a non-binding proposal from a private company (referred to herein as Party C) for an acquisition of the Company by Party C for $4.50 per Company Share in cash. In mid-May, after review of the proposal by the Derma Board, the Derma Board determined that it was not interested in selling the Company at the price proposed by Party C.

On May 9, 2016, the Company received a non-binding proposal from a company with its common stock listed on the London Stock Exchange (referred to as Party D) for an acquisition of the Company structured as a share

exchange with an exchange ratio reflecting a 35% premium to the then current equity value of the Company (on a cash free and debt free basis) with an implied equity valuation of the Company at $114.3 million.

On May 18, 2016, the Derma Board along with Greenhill discussed the potential strategic transaction opportunities and the preliminary interest expressed by several third parties in exploring a potential transaction with the Company, including Party A, Party B, Party C, Party D, and Party E. The Derma Board also discussed the Company s business, prospects, and strategic direction. The Derma Board directed the Company s management to continue preliminary discussions with these parties to see if improved proposals would materialize.

During the second and third quarters of 2016, members of the Company s senior management and representatives from Greenhill continued to participate in discussions with Party A, Party B, Party C, Party D, and Party E, including conducting due diligence, attending meetings, and reviewing financial and other operational information. The discussions with Party A, Party B and Party C did not result in improved proposals. After consultation with the Derma Board, it was determined that the terms of the preliminary proposals did not represent an appropriate valuation for the Company and were not acceptable to the Derma Board. Accordingly, the Company stopped discussions with these parties and focused instead on the discussions with Party D and Party E.

On June 17, 2016, the Company received a revised non-binding proposal from Party D, which reflected an acquisition of the Company at a share price of $4.70 per Company Share, reflecting a premium of 38% to the Company s then equity value (and a 17.5% premium to the most recent closing price per Company Share) and had been increased from Party D s prior indication of interest that reflected a 35% premium. Subsequently, the Derma Board determined not to continue to pursue discussions with Party D due to the valuation of the Company proposed by Party D.

On August 30, 2016, the Company delivered a non-binding indication of interest to Party E, reflecting a stock-for-stock reverse merger of Party E with and into the Company, with the Company s stockholders to own 24% of the combined entity and Party E s stockholders to own 76% of the combined entity. The Company continued to negotiate a potential transaction with Party E from September 2016 until early December 2016.

On September 23, 2016, Stephen T. Wills, the Company s Executive Chairman and Principal Executive Officer, received a call from Richard D. Gorelick, Parent s General Counsel, indicating that Mr. Arduini would like to schedule a time to talk with Mr. Wills about a potential transaction. There was no discussion of price or other key transaction terms on this call. Subsequently, on October 1, 2016, Mr. Arduini called Mr. Wills and stated that Parent would like to engage in discussions with the Company about a potential transaction, and the parties discussed the Company s operations, financial performance and business strategies. Messrs. Arduini and Wills spoke again on October 10, 2016, during which Mr. Arduini proposed that the parties enter into a confidentiality agreement to continue discussions. On October 11, 2016, Maria Platsis, Parent s Senior Vice President of Corporate Development, called Mr. Wills to indicate that she would send a form confidentiality agreement to him, which Ms. Platsis forwarded to the Company later that day.

On October 13, 2016, the Company and Parent entered into the Confidentiality Agreement.

On October 13, 2016, the Company also entered into a confidentiality agreement with a company with common stock listed on NASDAQ (referred to as Party F). Party F had expressed a preliminary interest in a merger with the Company where the consideration would be payable in shares of stock.

On October 18, 2016, Party E provided a revised response to the Company s proposal, sent on August 30, 2016, and the Company continued to discuss a potential transaction with Party E, which continued to reflect a reverse merger with Party E, a private company, merging with and into the Company. The revised proposal indicated that

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the Company s stockholders would own 25% of the combined entity and Party E s stockholders would own 75% of the combined entity, with warrants to be granted to both parties stockholders that would be exercisable depending on the post-closing performance of the combined entity.

On October 27, 2016, the Derma Board, including representatives from Greenhill, held a meeting to discuss several business development opportunities and strategic transaction alternatives available to the Company, including potential transactions involving Party E, Party F, Parent, and a private company referred to herein as Party G that had approached the Company to explore transaction opportunities. Members of the Company s management planned to meet with representatives from Party F, Party G and Parent during the next two weeks.

On October 28, 2016, members of the senior management teams of Parent and the Company and their respective financial advisors met in person in Princeton, New Jersey for preliminary discussions regarding a potential transaction. At this meeting, the Company s senior management made a presentation to Parent regarding the Company s operations, financial performance and prospects, and business strategies.

On November 1, 2016, the Company received a non-binding letter of intent from Party E, which reflected a stock-for-stock reverse merger of Party E with and into the Company, with warrants to be provided to Party E s stockholders that would be exercisable upon the achievement of certain revenue targets post-closing and warrants to be provided to the Company s stockholders that would be exercisable in the event that certain revenue targets were not met post-closing. The proposed transaction would result in the former stockholders of the Company owning 25% of the shares of the combined entity and the former shareholders of Party E owning 75% of the shares of the combined entity (subject to adjustment based on the exercise of the warrants). The proposal contemplated an implied equity valuation of the Company of between $140.7 million to $171.0 million (based on a variety of assumptions, including how the post-closing entity would trade, and depending on whether the thresholds for the exercise of the warrants were achieved by the post-closing entity). Party E also requested exclusivity from the Company in connection with delivery its non-binding letter of intent.

In early November, the Company decided to no longer pursue discussions with Party F or Party G as the discussions with Party F and Party G had not progressed beyond a preliminary indication of interest. The Company instead focused on the continued discussions with Party E and Parent.

On November 14, 2016, Mr. Coleman and Ms. Platsis met with Mr. Wills in Yardl