

WANEY ARJUN C
Form SC 13D/A
December 31, 2003

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**UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION**

Washington, D.C. 20549

SCHEDULE 13D/A
Under the Securities Exchange Act of 1934
(Amendment No. 2)*

Akorn, Inc.

(Name of Issuer)

Common Stock

(Title of Class of Securities)

009728106

(CUSIP Number)

G. Edward Arledge, 11988 El Camino Real, Suite 200, San Diego, CA 92130 (858) 720-6300

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

October 7, 2003

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. []

Note: Six copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d-1(a) for other parties to whom copies are to be sent.

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* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 009728106

1. **Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).**
Arjun C. Waney

2. **Check the Appropriate Box if a Member of a Group (See Instructions)**

(a)

(b)

3. **SEC Use Only**

4. **Source of Funds (See Instructions)**

PF

5. **Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)**

6. **Citizenship or Place of Organization**

United States

7. **Sole Voting Power**
506,000

Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With

8. **Shared Voting Power**
5,336,166

9. **Sole Dispositive Power**
506,000

10. **Shared Dispositive Power**
5,336,166

11. **Aggregate Amount Beneficially Owned by Each Reporting Person**
5,842,166

12. **Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)**

13. **Percent of Class Represented by Amount in Row (11)**
24.7% (But see Item 5(b))

14. **Type of Reporting Person (See Instructions)**
IN

CUSIP No. 009728106

1. **Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).**
 Judith D. Waney

2. **Check the Appropriate Box if a Member of a Group (See Instructions)**

(a)

(b)

3. **SEC Use Only**

4. **Source of Funds (See Instructions)**

PF

5. **Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)**

6. **Citizenship or Place of Organization**

United States

7. **Sole Voting Power**

**Number of
 Shares
 Beneficially
 Owned by
 Each
 Reporting
 Person With**

8. **Shared Voting Power**
 3,798,933

9. **Sole Dispositive Power**

10. **Shared Dispositive Power**
 3,798,933

11. **Aggregate Amount Beneficially Owned by Each Reporting Person**
 3,798,933

12. **Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)**

13. **Percent of Class Represented by Amount in Row (11)**
 16.1% (But see Item 5(b))

14. **Type of Reporting Person (See Instructions)**
 IN

CUSIP No. 009728106

1. **Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).**
Argent Fund Management Ltd.

2. **Check the Appropriate Box if a Member of a Group (See Instructions)**

(a)

(b)

3. **SEC Use Only**

4. **Source of Funds (See Instructions)**

WC

5. **Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)**

6. **Citizenship or Place of Organization**

United Kingdom

7. **Sole Voting Power**

**Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With**

8. **Shared Voting Power**
908,833

9. **Sole Dispositive Power**

10. **Shared Dispositive Power**
908,833

11. **Aggregate Amount Beneficially Owned by Each Reporting Person**

908,833

12. **Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)**

13. **Percent of Class Represented by Amount in Row (11)**

4.4% (But see Item 5(b))

14. **Type of Reporting Person (See Instructions)**

CO

CUSIP No. 009728106

1. **Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).**
First Winchester Investments Ltd.

2. **Check the Appropriate Box if a Member of a Group (See Instructions)**

(a)

(b)

3. **SEC Use Only**

4. **Source of Funds (See Instructions)**

WC

5. **Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)**

6. **Citizenship or Place of Organization**

British Virgin Islands

7. **Sole Voting Power**

**Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With**

8. **Shared Voting Power**
628,400

9. **Sole Dispositive Power**

10. **Shared Dispositive Power**
628,400

11. **Aggregate Amount Beneficially Owned by Each Reporting Person**

628,400

12. **Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)**

13. **Percent of Class Represented by Amount in Row (11)**

3.1% (But see Item 5(b))

14. **Type of Reporting Person (See Instructions)**

CO

Item 1.

Security and Issuer

This Amendment No. 2 (Amendment) amends and supplements the Schedule 13D dated August 22, 2003, as amended by Amendment No. 1 thereto dated October 17, 2003, and relates to shares of the Common Stock (the Shares) of Akorn, Inc., a Louisiana corporation (the Issuer). The principal executive offices of the Issuer are located at 2500 Millbrook Drive, Buffalo Grove, Illinois 60089.

Item 2.

Identity and Background

(a) This Amendment is filed by Arjun C. Waney, a United States citizen (Mr. Waney); Judith D. Waney, a United States citizen (Mrs. Waney) and together with Mr. Waney, Mr. and Mrs. Waney); Argent Fund Management Ltd., a United Kingdom corporation (Argent); and First Winchester Investments Ltd., a British Virgin Islands corporation (First Winchester). Collectively, Mr. Waney, Mrs. Waney, Argent and First Winchester are referred to as the Reporting Persons, or individually as a Reporting Person.

(b) Mr. and Mrs. Waney s address is 46 Lowndes Square, London, SW1X 9JU, U.K. Argent s address is 67 Cheval Place, London SW7 1HP, U.K. First Winchester s address is 8 Church Street, St. Helier, Jersey JE4 0SG, Channel Islands.

(c) Mr. Waney s principal occupation is as Chairman and Managing Director of Argent. Mrs. Waney s principal occupation is as a home maker.

(d)-(e) During the last five years, none of the Reporting Persons has been (i) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) Mr. and Mrs. Waney are United States citizens. Argent is a United Kingdom corporation. First Winchester is a British Virgin Islands corporation.

Item 3.

Source and Amount of Funds or Other Consideration

Mr. and Mrs. Waney s Shares reported herein were acquired with personal funds. Argent s and First Winchester s Shares reported herein were acquired with working capital.

Item 4.

Purpose of Transaction

Issuer completed a recapitalization (the Transaction) on October 7, 2003. The purpose of the Transaction was to reduce Issuer s outstanding senior bank debt and provide Issuer with additional working capital.

In connection with the Transaction, Issuer filed that certain Articles of Amendment to Articles of Incorporation (Articles of Amendment) a copy of which is attached hereto, with the Louisiana Secretary of State on October 6, 2003. The Articles of Amendment designate and set forth the rights, preferences and privileges of the Series A 6% Participating Convertible Preferred Stock, par value \$1.00 per share (the Series A Preferred Stock), including, without limitation, the following:

The Series A Preferred accrues dividends at a rate of 6.0% per annum, which rate is fully cumulative, accrues daily and compounds quarterly, provided that in the event stockholder approval authorizing sufficient Shares to be authorized and reserved for conversion of all of the Series A Preferred Stock and warrants issued in connection with the Transaction (Stockholder Approval) has not been received by October 7, 2004, such rate is to increase to 10.0% until Stockholder Approval has been received and sufficient Shares are authorized and reserved. Subject to certain limitations, on October 31, 2011, Issuer is to redeem all shares of Series A Preferred Stock for an amount per share equal to \$100, as may be adjusted from time to time as set forth in the Articles of Amendment, (the Stated Value) plus all accrued but unpaid dividends on such share (Redemption Price). If Issuer does not have sufficient funds to redeem all such shares, any shares of Series A Preferred not redeemed will accrue dividends at a rate of 10.0% per annum until redeemed. Shares of Series A Preferred Stock shall have liquidation rights in preference over junior securities, including Shares and have certain antidilution protections. Holders of Series A Preferred Stock have full voting rights, with each holder entitled to a number of votes equal to the number of Shares into which its shares can be converted. Holders of Series A Preferred Stock and Shares shall vote together as a single class on all matters submitted to a shareholder vote, except in cases where a separate vote of the holders of Series A Preferred Stock is required by law or by the Articles of Amendment. Issuer shall not take certain actions, including (i) issuing Series A Preferred Stock, securities senior or on par with the Series A Preferred Stock, (ii) amending Issuer's Articles of Incorporation or Bylaws to alter the rights of the Series A Preferred Stock, (iii) effect a change of control or (iv) effect a reverse split of the Series A Preferred Stock, without the approval of the holders of 50.1% of the Series A Preferred Stock. The Series A Preferred Stock is convertible at any time into a number of Shares equal to the quotient obtained by dividing (x) the Stated Value plus any accrued but unpaid dividends by (y) \$0.75, as such numbers may be adjusted from time to time pursuant to the terms of the Articles of Amendment. Provided that Stockholder Approval has been received and sufficient Shares are authorized and reserved for conversion all shares of Series A Preferred Stock shall convert to Shares on the earlier to occur of (a) October 8, 2006 and (b) the date on which the closing price per Share for at least 20 consecutive trading days immediately preceding such date exceeds \$4.00 per Share.

Mr. Waney continues to believe that it may be advisable for the Issuer to supplement or make changes to its management personnel and/or board of directors in order to most effectively meet the challenges facing the Issuer. Mr. Waney has previously held discussions, and intends to have further discussions with the Issuer, its officers, directors and/or other shareholders regarding potential supplements or changes to the Issuer's current management and board of directors. On November 6, 2003, Mr. Waney was elected to the board of directors.

The Shares and the warrants acquired by the Reporting Persons in the Transaction were acquired for investment. The Reporting Persons intend to continually review the Issuer's business affairs, financial position and future prospects, as well as conditions in the securities markets and general economic and industry conditions. Based on such evaluation and review and other factors, the Reporting Persons may in the future take such actions with respect to investment in the Issuer as is deemed appropriate in light of the circumstances existing from time to time. Such actions may involve the purchase of additional Shares, or alternatively, may involve the sale of all or a portion of the Shares held by the Reporting Persons in the open market or in privately negotiated transactions to one or more purchasers. No Reporting Person has made a determination regarding a maximum or minimum number of Shares which it may hold at any point in time.

Except to the extent the foregoing may be deemed a plan or proposal, none of the Reporting Persons has any plans or proposals which relate to, or could result in, any of the matters referred to in paragraphs (a) through (j), inclusive, of the instructions to Item 4 of Schedule 13D. The Reporting Persons may, at any time and from time to time, review or reconsider their position and/or change their purpose and/or formulate plans or proposals with respect thereto.

The Reporting Persons reserve the right to change his, her or its intentions with respect to all matters referred to in this Item 4.

Item 5. Interest in Securities of the Issuer

(a) Amount beneficially owned: Mr. Waney may be deemed to beneficially own 5,842,166 Shares, which constitutes approximately 24.7% of the outstanding Shares, due to the following:

1. 908,833 Shares are held by Argent, including 2,672 shares of Series A Preferred Stock currently convertible into 356,266 Shares at \$0.75 per Share, 89,067 warrants currently exercisable to purchase Shares at an exercise price of \$1.00 per Share and 5,000 warrants currently exercisable to purchase Shares at an exercise price of \$1.10 per Share. Mr. Waney serves as Chairman and Managing Director and owns 52% of Argent.

2. 628,400 Shares are held by First Winchester, which operates as an equity fund for investors unrelated to Mr. Waney and whose investments are directed by Argent.

3. 506,000 Shares are held by Mr. Waney through Individual Retirement Accounts maintained in the United States.

4. 3,798,933 Shares are held jointly by Mr. Waney and Mrs Waney, including 20,000 Series A Preferred Stock currently convertible into 2,666,666 Shares at \$0.75 per Share, 666,667 warrants currently exercisable to purchase Shares at an exercise price of \$1.00 per Share and 140,000 warrants currently exercisable to purchase Shares at an exercise price of \$1.10 per Share.

(b) The information set forth in Rows 7 through 13 of the cover pages hereto for each Reporting Person is incorporated herein by reference. The percentage amount set forth in Row 13 for all cover pages filed herewith, and of Item 5(a) above, is calculated based upon the 19,729,759 Shares outstanding as of June 30, 2003 as reported by the Issuer in its Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 14, 2003, but excludes an aggregate of (i) 234,500 shares of Series A Preferred Stock currently convertible into 31,266,660 Shares at \$0.75 per Share, (ii) 7,816,666 warrants currently exercisable to purchase Shares at an exercise price of \$1.00 per Share, and (iii) 1,091,714 warrants currently exercisable to purchase Shares at an exercise price of \$1.10 per Share, issued to Purchasers other than Mr. Waney and Argent in the Transaction.

(c) Reporting Persons acquired Shares in the Transaction as follows. On September 25, 2003, The Northern Trust Company, an Illinois banking corporation (Northern Trust), the certain purchasers identified therein, including Mr. Waney and Argent (collectively, the Purchasers), Issuer and Akorn (New Jersey), Inc., an Illinois corporation (Akorn New Jersey), entered into an Assignment and Assumption Agreement (the Assignment and Assumption Agreement) whereby the Purchasers agreed to purchase and assume all of Northern Trust 's interest (the Assigned Interests) in and to all of Northern Trust 's rights and obligations under the Credit Agreement dated as of September 15, 1999, as amended, (the Credit Agreement) between Issuer and Akorn New Jersey, as borrowers, and Northern Trust, as lender. Simultaneously with the execution of the Assignment and Assumption Agreement, Issuer entered into a Preferred Stock and Note Purchase Agreement (the Purchase Agreement)

with the Purchasers to redeem from the Purchasers the Assigned Interests in exchange for (a) an aggregate of 257,172 shares of Issuer's Series A Preferred Stock currently convertible into 34,289,592 Shares at \$0.75 per Share, (b) warrants currently exercisable to purchase an aggregate of 8,572,400 Shares at an exercise price of \$1.00 per Share, (c) \$5,473,862 in cash, and (d) an aggregate principal amount of approximately \$2,767,139.03 in subordinated promissory notes (the Purchased Notes) issued to certain Purchasers, including Mr. Waney and Argent, at a rate of prime plus 1.7%. Pursuant to the Purchase Agreement and certain warrant agreements dated October 7, 2003 between Issuer and each of Mr. Waney and Argent, Mr. Waney acquired 20,000 shares of Series A Preferred Stock currently convertible into 2,666,666 Shares at \$0.75 per Share and warrants currently exercisable to purchase an aggregate of 666,667 Shares at an exercise price of \$1.00 per Share and Argent acquired 2,672 shares of Series A Preferred Stock currently convertible into 450,333 at \$0.75 per Share Shares and warrants currently exercisable to purchase an aggregate of 89,067 Shares at an exercise price of \$1.00 per Share. Warrants issued in the Transaction have cashless exercise and certain antidilution protection.

The Purchased Notes issued to Mr. Waney and Argent, respectively, are in the principal amounts of \$600,000, and \$50,000, accrue interest at a rate of prime plus 1.75% and are due and payable on April 7, 2006. As additional incentive to purchase the Purchased Notes, Issuer granted the Purchasers acquiring the Purchased Notes, including Mr. Waney and Argent, an aggregate of 276,714 warrants currently exercisable to purchase Shares at an exercise price of \$1.10 per Share. Pursuant to the terms of certain note warrant agreements dated October 7, 2003 between Issuer and each of Mr. Waney and Argent, each of Mr. Waney and Argent received warrants currently exercisable to purchase 60,000 and 5,000 Shares, respectively, at an exercise price of \$1.10 per Share. Issuer and Akorn New Jersey also entered into a Credit Facility dated October 7, 2003 (Credit Facility) with LaSalle Bank National Association (LaSalle Bank) to provide for new senior secured debt to Issuer. As a condition of entering into the Credit Facility, certain Purchasers, including Mr. Waney, executed guarantees in favor of LaSalle Bank on behalf of Issuer. In exchange for entering into such guarantees Issuer (i) issued an aggregate of 960,000 warrants currently exercisable to purchase Shares at an exercise price of \$1.10 per Share to such Purchasers and (ii) agreed to issue certain additional warrants to such Purchasers equal to 0.08 multiplied by the principal dollar amount of Issuer's indebtedness then guaranteed by such Purchasers under the Credit Facility on each anniversary of the date of the consummation of the Transaction. Pursuant to a guaranty warrant agreement dated October 7, 2003 between Issuer and Mr. Waney, Mr. Waney received warrants to purchase 80,000 Shares currently exercisable at an exercise price of \$1.10 per Share, and Issuer has agreed to issue Mr. Waney, on each anniversary of the date of the consummation of the Transaction, warrants to purchase an additional number of Shares equal to 0.08 multiplied by the principal dollar amount of the Issuer's indebtedness then guaranteed by Mr. Waney under the Credit Facility.

As part of the Transaction, Issuer and the Purchasers also entered into a Registration Rights Agreement dated October 7, 2003 (the Registration Rights Agreement) pursuant to which Purchasers were granted certain registration rights in connection with the Series A Preferred Stock and warrants issued in connection with the Transaction, including three (3) demand registrations for holders of more than 5,000,000 Shares, incidental or piggy-back registrations upon a registration by Issuer on Form S-1, S-2 or S-3 and shelf registration rights. Issuer further agreed not to enter into any new agreement with more preferential registration rights.

This Amendment highlights selected terms of the Transaction and does not contain all of the information regarding the Transaction.

(d) As noted above, 628,400 Shares are held by First Winchester, which operates as an equity fund for investors unrelated to the Reporting Persons.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer
Not applicable.

Item 7. Material to Be Filed as Exhibits
The Following have been filed as Exhibits to this Amendment:

(a) Articles of Amendment to Articles of Incorporation of Issuer filed with the Secretary of State of Louisiana on October 6, 2003. (Filed with the Securities and Exchange Commission on October 17, 2003 on Form 13D/A of Mr. Waney as Exhibit 99.a and incorporated herein by reference.)

(b) Agreement dated December 31, 2003 between Mr. Waney and Mrs. Waney.

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

December 31, 2003

Date

/s/ Arjun C. Waney

Signature

Arjun C. Waney

Name/Title