

DEPOMED INC
Form PRRN14A
October 05, 2016

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of The Securities Exchange Act of 1934

(Amendment No. 1)

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 Rule
14a-12

DEPOMED, INC.
(Name of Registrant as Specified in Its Charter)

STARBOARD VALUE LP

STARBOARD VALUE AND OPPORTUNITY MASTER FUND LTD
STARBOARD VALUE AND OPPORTUNITY S LLC
STARBOARD VALUE AND OPPORTUNITY C LP
STARBOARD VALUE GP LLC

STARBOARD PRINCIPAL CO LP

STARBOARD PRINCIPAL CO GP LLC

STARBOARD VALUE R LP

STARBOARD VALUE R GP LLC

JEFFREY C. SMITH

MARK R. MITCHELL

PETER A. FELD

JOHN J. DELUCCA

JAMES P. FOGARTY

PETER A. LANKAU

GAVIN T. MOLINELLI

MARY K. PENDERGAST

ROBERT G. SAVAGE

JAMES L. TYREE
(Name of Persons(s) Filing Proxy Statement, if Other Than the Registrant)

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No fee required.

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(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

PRELIMINARY PROXY STATEMENT DATED OCTOBER 5, 2016—SUBJECT TO COMPLETION

Dear Fellow Depomed Shareholders:

Starboard Value and Opportunity Master Fund Ltd and the other participants in this solicitation (collectively, “Starboard” or “we”) beneficially own a total of 6,031,450 shares, or approximately 9.8%, of the outstanding common stock, no par value per share (the “Common Stock”), of Depomed, Inc., a California corporation (“Depomed” or the “Company”), making us one of the Company’s largest shareholders.

The holders of shares of Common Stock entitled to cast not less than 10% of the votes have validly called a special meeting of Depomed shareholders (the “Special Meeting”) pursuant to the General Corporation Law of the California Corporations Code (the “CGCL”) and the Company’s Amended and Restated Bylaws (the “Bylaws”) to vote on a set of proposals which, if approved, would have the effect of removing and replacing the Company’s Board of Directors (the “Board”). Starboard has set November 15, 2016 as the date for the Special Meeting to be held.

The upcoming Special Meeting marks a critical opportunity for shareholders at Depomed to elect a new Board that is both tremendously qualified and excited to dramatically improve the governance, oversight, and value of the Company for the benefit of all shareholders. The current Board has demonstrated a blatant disregard for the best interests of shareholders through a series of actions aimed at severely suppressing shareholder rights. This was clearly evident in the actions taken by the Board in responding to the acquisition offer by Horizon Pharma plc in 2015 and became even more evident earlier this year when the Board stealthily attempted to eliminate certain shareholder rights under the guise of a Delaware reincorporation proposal. Over the past several months, we have publicly expressed our significant concerns regarding the Board’s serious corporate governance deficiencies, questionable capital allocation decisions, and actions to stymie strategic interest in acquiring Depomed. In combination, these concerns have led us to conclude that significant and urgent change is needed at Depomed.

As shareholders, we have the ability now to ensure that our interests as the true owners of Depomed are appropriately represented and protected in the boardroom, and that the Board takes the necessary steps to help the Company’s shareholders realize maximum value for their investment. It is time for the current Board to be held accountable for its actions, and for a new board of directors to be put in place with a commitment to substantially improve Depomed for the benefit of all shareholders.

We understand that it is an extraordinary step to ask shareholders to replace an existing board of directors. However, this is not the first situation we have faced where an existing board’s egregious corporate governance practices and violations of shareholder trust made it necessary to elect a new board of directors. At Darden Restaurants, Inc. (“Darden Restaurants”), we similarly encountered a board of directors that exhibited a disregard for the best interests of shareholders. There we were successful in our effort to replace the existing board with a group of twelve world-class directors who implemented a turnaround and ultimately put Darden Restaurants on the right path towards significant shareholder value creation. Like Darden Restaurants, we are excited about the prospect of a bright future for Depomed under the direction of a newly constituted and extraordinarily capable Board. We look forward to sharing with you soon our comprehensive plan for Depomed that we believe will create significant shareholder value through the improvement of capital deployment, reinvigoration of sales force productivity, rationalization of research & development practices, correction of corporate governance deficiencies to align the Boards’ incentives with those of shareholders, and other opportunities.

We have gone to great lengths in selecting a group of director nominees and advisors who possess unique skill sets and perspectives directly relevant to Depomed's business and current challenges, including pharmaceutical operations, healthcare regulatory, finance, board governance and oversight, and mergers and acquisitions expertise. Collectively, our advisors and slate of director nominees have decades of experience serving on well-performing public company boards. Importantly, this group of nominees, if elected at the Special Meeting, together with our highly qualified advisors, is prepared to serve the shareholders of Depomed and to ensure that the interests of all shareholders are of paramount importance.

Our group of nominees and advisors include:

John J. Delucca

Mr. Delucca was CFO and EVP, Finance & Administration, of Coty, Inc., a fragrance and beauty products company, from 1998-2002. Previously, he was SVP & Treasurer of RJR Nabisco, Inc., a former American conglomerate, selling tobacco and food products, from 1993-1998.

Mr. Delucca currently serves as President of Atlantic & Gulf, Limited, LLC, an investment and consulting company.

Mr. Delucca has extensive corporate governance experience serving as a director of numerous companies, including Endo International plc, British Energy, and Enzo Biochem Inc.

James P. Fogarty

Mr. Fogarty was CEO of Orchard Brands, a multi-channel marketer of apparel and home products, from 2011 until its sale in 2015. Previously, he was President & CEO of Charming Shoppes, Inc., a former multi-brand, specialty apparel retailer, President & CEO of American Italian Pasta Company, a pasta manufacturing company, and CFO of Levi Strauss & Co., a brand-name apparel company.

Mr. Fogarty was COO of Lehman Brothers Holdings, a global financial services firm (subsequent to its Chapter 11 bankruptcy filing). He was also a Managing Director of Alvarez & Marsal, an independent global professional services firm.

Mr. Fogarty currently serves as a director of Darden Restaurants. Previously, he served as a director of Regis Corporation, Orchard Brands, Charming Shoppes, Inc., and The Warnaco Group.

Peter A. Lankau

Mr. Lankau served as President, CEO and a director of Endo Pharmaceuticals Inc., the predecessor of Endo International plc, a specialty pharmaceutical company, from 2005-2008. He previously served as Endo's President and Chief Operating Officer and as SVP, Commercial Business.

Previously, Mr. Lankau was Executive Chairman at Nautilus Neurosciences, Inc., a private neurology-focused specialty pharmaceutical company, which sold its business assets to Depomed in December 2013.

Mr. Lankau is currently a principal in Lankau Consulting LLC, which provides advisory and consulting services to pharmaceutical and biotechnology companies, as well as venture capital and private equity firms, which he founded in January 2014.

Mr. Lankau is currently Chairman of the Board of Directors of Phosphagenics Limited and a director of ANI Pharmaceuticals, Inc.

Gavin T. Molinelli

§ Mr. Molinelli is a Partner of Starboard Value LP, a New York-based investment adviser with a focused and fundamental approach to investing in publicly traded U.S. companies.

§ Mr. Molinelli was formerly on the Board of Directors of Wausau Paper Corp. and Actel Corporation.

§ Mr. Molinelli has extensive experience in best-in-class corporate governance practices and significantly improving value at underperforming companies.

Mary K. Pendergast

§ Ms. Pendergast served as Deputy Commissioner and Senior Advisor to the Commissioner at the US Food and Drug Administration (“FDA”), a federal agency of the United States Department of Health and Human Services, from 1990-1997, and as Associate Chief Counsel for Enforcement, Office of the General Counsel, at the FDA, from 1979-1990.

§ Previously, Ms. Pendergast served as Executive Vice President, Government Affairs for Elan Corporation, plc, formerly a major drugs firm based in Dublin, Ireland, from 1998-2003.

§ Ms. Pendergast is President of Pendergast Consulting, a firm that provides legal and regulatory consulting services to pharmaceutical and biotechnology companies and other entities, which Pendergast founded in 2003.

§ Ms. Pendergast currently serves as a director for ICON plc and Impax Laboratories.

Robert G. Savage (Advisor)

§ Mr. Savage held several senior positions with Johnson & Johnson, a healthcare company, from 1996-2002, including Worldwide Chairman for the Pharmaceuticals Group, Company Group Chairman responsible for the North America pharmaceuticals business, and President as well as Vice President of Sales & Marketing for Ortho-McNeil Pharmaceuticals, a Johnson & Johnson company.

§ Subsequently, Mr. Savage served as Group Vice President and President for the General Therapeutics and Inflammation Business of Pharmacia Corporation, a pharmaceutical and biotechnological company, from 2002 until the completion of its acquisition by Pfizer, Inc. in 2003.

§ Mr. Savage has served as President of Strategic Imagery, LLC, a consulting firm he founded, focused on providing in-line and portfolio strategies for major healthcare firms, since 2003.

§ Mr. Savage currently serves as a director for The Medicines Company.

Jeffrey C. Smith

§ Mr. Smith is a Managing Member, CEO, and Chief Investment Officer of Starboard Value LP, a New York-based investment adviser with a focused and fundamental approach to investing in publicly traded U.S. companies.

§ Mr. Smith currently serves as Chairman of Advance Auto Parts, Inc. and a director of Yahoo! Inc.

§ Previously, he has served as a director of Darden Restaurants (Chairman), Office Depot, Inc., Quantum Corporation, Regis Corporation, Surmodics, Inc., Zoran Corporation, Phoenix Technologies Ltd. (Chairman), Actel Corporation, S1 Corporation, Kensey Nash Corporation, and The Fresh Juice Company.

§ Mr. Smith has extensive experience in best-in-class corporate governance practices and significantly improving value at underperforming companies.

James L. Tyree (Advisor)

Mr. Tyree held numerous executive positions at Abbott Laboratories, a global healthcare company, from 2000 to § 2010, including: Corporate Vice President, Pharmaceutical and Nutritional Products Group; Senior Vice President, Global Nutrition, and Executive Vice President, Pharmaceutical Products.

§ Mr. Tyree is the co-founder and managing partner of Tyree & D'Angelo Partners (TDP), a private equity investment firm.

§ Mr. Tyree currently serves as an independent director of SonarMed, Genelux Corporation, ChemoCentryx, Inc. and Innoviva, Inc.

Mr. Tyree has extensive experience in pharmaceutical management and mergers and acquisitions, including the § acquisitions of BASF Pharmaceuticals, KOS Pharmaceuticals, Solvay Pharmaceuticals and Piramal Health Solutions consummated while at Abbott Laboratories.

In order to maintain a degree of continuity amidst the required change that we believe is desperately needed at Depomed, in the event that the current Board is entirely removed and all six (6) of our director candidates are elected at the Special Meeting, the new Board members would be willing to increase the size of the Board up to eleven (11) members over time in order to appoint not only our two (2) highly qualified advisors, Robert G. Savage and James L. Tyree (the "Advisors"), but also to add back up to three (3) incumbent directors to the Board through a two-step continuity plan. The new Board would first expand the Board to nine (9) members immediately following the Special Meeting, as is permitted under the Bylaws, to add the two (2) Advisors and one (1) incumbent director. At the same time, we also expect that the new Board would appoint up to two (2) other incumbent directors as Board observers until their subsequent election. Then, at the 2017 annual meeting of shareholders (the "2017 Annual Meeting"), we expect that the new Board would seek shareholder approval of a Bylaw amendment to increase the minimum and maximum number of directors authorized under the Bylaws in order to further increase the size of the Board to eleven (11) members. If the Bylaw amendment is approved by shareholders at the 2017 Annual Meeting, we expect that the new Board would then increase the size of the Board to eleven (11) members and add back up to two (2) other incumbent directors.

To effectuate this two-step continuity plan, we expect that our director candidates would meet with certain of the incumbent directors following the Special Meeting to determine which ones have the qualifications, experience and perspectives that will best complement the new Board members. Any decision would depend upon not only the credentials of such incumbent directors, but also upon such incumbent directors' willingness to serve on the Board together with the new directors. As a reminder, we utilized a similar continuity construct successfully at Darden Restaurants where we replaced the entire board of directors and then added back one of the prior board members.

It is critically important for shareholders to understand that the only practical way to effect any Board changes at the Special Meeting is by voting to remove the *entire* Board. This is because certain provisions under the CGCL and the Bylaws make it extremely difficult, if not virtually impracticable, to remove any fewer than all of the Company's directors. If even just one Depomed director were not removed at the Special Meeting, then a director-protecting cumulative voting provision is triggered with respect to every other director, thereby making the voting threshold required to remove any directors extraordinarily high. We therefore have little choice but to put forth the removal of directors proposal at the Special Meeting as an all-or-nothing proposal.

We urge you to carefully consider the information contained in the attached Proxy Statement and then support our efforts at the Special Meeting by signing, dating, and returning the enclosed WHITE proxy card today. The attached Proxy Statement and the enclosed WHITE proxy card are first being furnished to the shareholders on or about [_____] , 2016.

If you have any questions or require any assistance with your vote, please contact Okapi Partners LLC, which is assisting us, at its address and toll-free numbers listed below.

Thank you for your support.

/s/ Jeffrey C. Smith

Jeffrey C. Smith
Starboard Value and Opportunity Master Fund Ltd

*If you have any questions, require assistance in voting your **WHITE** Proxy Card, or need additional copies of Starboard's proxy materials, please contact Okapi Partners at the phone numbers or email listed below.*

OKAPI PARTNERS LLC

1212 Avenue of the Americas, 24th Floor

New York, NY 10036

(212) 297-0720

Shareholders Call Toll-Free at: (877) 274-8654

E-mail: info@okapipartners.com

PROXY STATEMENT
IN CONNECTION WITH
THE SPECIAL MEETING
OF DEPOMED, INC. SHAREHOLDERS

PROXY STATEMENT
OF
STARBOARD VALUE LP
AND
STARBOARD VALUE AND OPPORTUNITY MASTER FUND LTD

Starboard Value LP (“Starboard Value LP”), Starboard Value and Opportunity Master Fund Ltd (“Starboard V&O Fund”), Starboard Value and Opportunity S LLC (“Starboard S LLC”), Starboard Value and Opportunity C LP (“Starboard C LP”), Starboard Value GP LLC (“Starboard Value GP”), Starboard Principal Co LP (“Principal Co”), Starboard Principal Co GP LLC (“Principal GP”), Starboard Value R LP (“Starboard R LP”), Starboard Value R GP LLC (“Starboard R GP”), and Jeffrey C. Smith, Mark R. Mitchell, Peter A. Feld and Gavin T. Molinelli (collectively, “Starboard” or “we”) are significant shareholders of Depomed, Inc., a California corporation (“Depomed” or the “Company”), who, together with the other participants in this solicitation, beneficially own in the aggregate approximately 9.8% of the outstanding shares of common stock, no par value per share, of the Company (the “Common Stock”).

Starboard solicited proxies from Depomed shareholders to request that the Company call a special meeting of Depomed shareholders in order for Starboard to present the proposals set forth herein, the ultimate effect of which is to remove and replace the Company’s Board of Directors (the “Board”). The holders of shares of the Common Stock entitled to cast not less than 10% of the votes at a special meeting of shareholders have validly requested a special meeting of Depomed shareholders (the “Special Meeting”) under the General Corporation Law of the California Corporations Code (the “CGCL”) and the Company’s Amended and Restated Bylaws (the “Bylaws”). As the shareholder requesting the Special Meeting, Starboard has set 10:00 a.m., Pacific Daylight Time, on November 15, 2016 as the time and date for the Special Meeting to be held, and the Company has indicated that the Special Meeting will be held at the offices of Gibson, Dunn & Crutcher LLP located at 200 Park Avenue, 46th Floor, New York, NY 10166.

We are seeking to remove and replace the entire Board because we do not have any confidence in the current Board’s ability to protect the best interests of shareholders or take the necessary steps to maximize shareholder value. While we firmly believe replacement of the entire Board is warranted, we do not practically have any other option for seeking Board composition changes at the Special Meeting but to seek the removal of the entire Board. This is because certain provisions under the CGCL and the Bylaws make it extremely difficult, if not virtually impossible, to remove any fewer than all of the Company’s directors. Effectively, if even just one Depomed director were not removed at the Special Meeting, then a director-protecting cumulative voting provision is triggered with respect to every other director, thereby making the voting threshold required to remove any directors extraordinarily high and virtually impracticable.

Accordingly, we are soliciting your proxy for the Special Meeting to vote “**FOR**” the following proposals:

1. to remove from office, without cause, the six (6) members of the current Board, constituting the entire current Board, Peter D. Staple, Karen A. Dawes, Louis J. Lavigne, Jr., Samuel R. Saks, James A. Schoeneck and David B. Zenoff, as well as any person or persons elected or appointed to the Board without shareholder approval after Depomed’s 2016 Annual Meeting of Shareholders (the “2016 Annual Meeting”), and up to and including the date of

the Special Meeting, each such removal to become effective upon the election of each successor by the shareholders of the Company;

6

2. in the event that the Board is fixed at some size other than six (6) members as of the date of the Special Meeting, to amend Section 16 of the Bylaws to fix the size of the Board at six (6) members;
3. John J. Delucca, James P. Fogarty, Peter A. Lankau, Gavin T. Molinelli, Mary K. Pendergast, and Jeffrey C. Smith (each, a “Nominee” and, collectively, the “Nominees”); and
4. to repeal any amendment or provision of the Bylaws adopted and approved by the Board that changes the Bylaws in any way from the version of the Bylaws adopted and approved by the Board on July 12, 2015 through the date of the Special Meeting, and that the section of the Bylaws entitled “AMENDMENT OF BYLAWS” be amended to eliminate the power of the Board to adopt, amend or repeal the Bylaws from the date of the Special Meeting through 120 days following such date as set forth in such section of the Bylaws (Proposals 1 through 4 above are collectively referred to as the “Starboard Proposals”).

In addition, the Company included the following adjournment proposal in its proxy statement for the Special Meeting, which the Company indicated it intends to present at the Special Meeting if a quorum of shareholders is not present at the beginning of the Special Meeting:

5. to adjourn the Special Meeting if a quorum is not present at the time of the Special Meeting (Proposal 5, together with the Starboard Proposals are collectively referred to as the “Proposals”).

In order to maintain a degree of continuity amidst the required change that we believe is desperately needed at Depomed, in the event that the current Board is entirely removed and all six (6) of our director candidates are elected at the Special Meeting, the new Board members would be willing to increase the size of the Board up to eleven (11) members over time in order to appoint not only our two (2) highly qualified advisors, Robert G. Savage and James L. Tyree (the “Advisors”), but also to add back up to three (3) incumbent directors to the Board through a two-step continuity plan. The new Board would first expand the Board to nine (9) members immediately following the Special Meeting, as is permitted under the Bylaws, to add the two (2) Advisors and one (1) incumbent director. At the same time, we also expect that the new Board would appoint up to two (2) other incumbent directors as Board observers until their subsequent election. Then, at the 2017 annual meeting of shareholders (the “2017 Annual Meeting”), we expect that the new Board would seek shareholder approval of a Bylaw amendment to increase the minimum and maximum number of directors authorized under the Bylaws in order to further increase the size of the Board to eleven (11) members. If the Bylaw amendment is approved by shareholders at the 2017 Annual Meeting, we expect that the new Board would then increase the size of the Board to eleven (11) members and add back up to two (2) other incumbent directors.

To effectuate this two-step continuity plan, we expect that our director candidates would meet with certain of the incumbent directors following the Special Meeting to determine which ones have the qualifications, experience and perspectives that will best complement the new Board members. Any decision would depend upon not only the credentials of such incumbent directors, but also upon such incumbent directors’ willingness to serve on the Board together with the new directors. As a reminder, we utilized a similar continuity construct successfully at Darden Restaurants, Inc. (“Darden Restaurants”) where we replaced the entire board of directors and then added back one of the prior board members.

Please see the sections titled “Our Proposals for the Special Meeting” and “Other Proposals and Authorizations for the Special Meeting” of this Proxy Statement below for additional details regarding the Proposals. For additional details regarding our highly qualified Nominees, please see the sections of this Proxy Statement titled “Reasons for the Solicitation” and “Information Regarding the Nominees”. Please also see the section titled “Background and Past Contacts” below for additional background on Starboard’s communications with the Company.

As of the date hereof, the members of Starboard, including the Nominees, beneficially owned in the aggregate 6,031,450 shares (the “Starboard Group Shares”) of Common Stock. We intend to vote the Starboard Group Shares in favor of each of the Proposals at the Special Meeting. While we currently intend to vote all of the Starboard Group

Shares in favor of the election of all of the Nominees under Proposal 3, we reserve the right to vote the Starboard Group Shares for the election of less than all of the Nominees, up to and including the date of the Special Meeting, as we see fit, in order to achieve a Board composition that we believe is in the best interest of all shareholders.

Shareholders should understand, however, that all shares of Common Stock represented by the enclosed **WHITE** proxy card will be voted at the Special Meeting as marked and, in the absence of specific instructions, will be voted in accordance with Starboard's recommendations specified herein and in accordance with the discretion of the persons named on the **WHITE** proxy card with respect to any other matters that may be voted upon at the Special Meeting.

The Company has set the close of business on September 27, 2016 as the record date for determining shareholders entitled to notice of and to vote at the Special Meeting (the "Record Date"). The mailing address of the principal executive offices of the Company is 7999 Gateway Boulevard, Suite 300, Newark, CA 94560. Shareholders of record at the close of business on the Record Date will be entitled to vote at the Special Meeting. According to the Company, as of the Record Date, there were 61,507,774 shares of Common Stock outstanding.

We are seeking your support at the Special Meeting and asking shareholders to vote "**FOR**" each of the Proposals using one of the voting methods set forth below.

The date of this Proxy Statement is [—], 2016. This Proxy Statement and the accompanying **WHITE** Proxy Cards are first being sent or given to shareholders on or about [—], 2016.

If you hold your shares through a bank, broker or other nominee and you do not intend to vote in person at the Special Meeting, only such nominee can vote your shares, and only after receiving specific voting instructions from you. As a beneficial owner, you must instruct your broker, trustee or other representative how to vote. Your broker cannot vote your shares on your behalf without your instructions. Please contact your bank, broker or nominee and instruct them to vote a **WHITE** Proxy Card “**FOR**” each of the Proposals thereon.

If Starboard receives **WHITE** Proxy Cards that have no explicit voting instructions, Starboard intends to vote such proxies “**FOR**” each of the Proposals thereon.

Pursuant to the **WHITE** proxy cards, we are requesting authority (i) to vote for the Proposals, and (ii) to oppose and vote against any other proposals that may come before the Special Meeting.

THIS SOLICITATION IS BEING MADE BY STARBOARD AND NOT ON BEHALF OF THE BOARD OR MANAGEMENT OF THE COMPANY. WE ARE NOT AWARE OF ANY OTHER MATTERS TO BE BROUGHT BEFORE THE SPECIAL MEETING OTHER THAN AS SET FORTH IN THIS PROXY STATEMENT. SHOULD OTHER MATTERS, WHICH STARBOARD IS NOT AWARE OF A REASONABLE TIME BEFORE THIS SOLICITATION, BE BROUGHT BEFORE THE SPECIAL MEETING, THE PERSONS NAMED AS PROXIES IN THE ENCLOSED WHITE PROXY CARD WILL VOTE ON SUCH MATTERS IN OUR DISCRETION.

STARBOARD URGES YOU TO SIGN, DATE AND RETURN THE **WHITE** PROXY CARD IN FAVOR OF THE ELECTION OF THE NOMINEES.

IF YOU HAVE ALREADY SENT A PROXY CARD FURNISHED BY COMPANY MANAGEMENT OR THE BOARD, YOU MAY REVOKE THAT PROXY AND VOTE ON EACH OF THE PROPOSALS DESCRIBED IN THIS PROXY STATEMENT BY SIGNING, DATING AND RETURNING THE ENCLOSED WHITE PROXY CARD. THE LATEST DATED PROXY IS THE ONLY ONE THAT COUNTS. ANY PROXY MAY BE REVOKED AT ANY TIME PRIOR TO THE SPECIAL MEETING BY DELIVERING A WRITTEN NOTICE OF REVOCATION OR A LATER DATED PROXY FOR THE SPECIAL MEETING OR BY VOTING IN PERSON AT THE SPECIAL MEETING.

IMPORTANT

Your vote is important, no matter how few shares of Common Stock you own. Starboard urges you to sign, date, and return the enclosed WHITE proxy card today to vote FOR the Proposals on the agenda for the Special Meeting.

If your shares of Common Stock are registered in your own name, please sign and date the enclosed **WHITE** proxy card and return it to Starboard, c/o Okapi Partners LLC (“Okapi Partners”) in the enclosed postage-paid envelope today.

If your shares of Common Stock are held in a brokerage account or bank, you are considered the beneficial owner of the shares of Common Stock, and these proxy materials, together with a **WHITE** voting form, are being forwarded to you by your broker or bank. As a beneficial owner, you must instruct your broker, trustee or other representative how to vote. Your broker cannot vote your shares of Common Stock on your behalf without your instructions.

Depending upon your broker or custodian, you may be able to vote either by toll-free telephone or by the Internet. Please refer to the enclosed voting form for instructions on how to vote electronically. You may also vote by signing, dating and returning the enclosed voting form.

In addition to delivering printed versions of this Proxy Statement and the **WHITE** proxy card to all shareholders by mail, this Proxy Statement and **WHITE** proxy card are also available on the Internet. You have the ability to access and print this Proxy Statement and the **WHITE** proxy card at [www.okapivote.com/depomed]. Since only your latest dated proxy card will count, we urge you not to return any proxy card you receive from the Company. Even if you return the management proxy card marked “withhold” as a protest against the incumbent directors, it will revoke any proxy card you may have previously sent to us. So please make certain that the latest dated proxy card you return is the **WHITE** proxy card.

OKAPI PARTNERS LLC

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9

QUESTIONS AND ANSWERS REGARDING THE SPECIAL MEETING

The following are answers to some of the questions you, as a Depomed shareholder, may have with respect to Starboard's solicitation of revocable proxies for the Special Meeting. The following is not a substitute for the information contained in this Proxy Statement, and the information contained below is qualified in its entirety by reference to the more detailed descriptions and explanations contained elsewhere in this Proxy Statement. We urge you to read this Proxy Statement carefully and in its entirety.

Q: Who is making the solicitation of revocable proxies for the Special Meeting?

A: The solicitation is being made by Starboard. Please see the section titled "Certain Information Regarding the Participants" in this Proxy Statement below for additional information regarding the participants in the solicitation under SEC rules.

Q: How many shares of Common Stock does Starboard own?

A: The members of Starboard, including the Nominees, beneficially own in the aggregate 6,031,450 shares of Common Stock, representing approximately 9.8% of the Company's outstanding shares.

Q: What are we asking you to do?

A: We are asking you to vote "**FOR**" the Proposals outlined above at the Special Meeting for purposes of seeking to remove and replace the current Board. Please see the sections titled "Our Proposals for the Special Meeting" and "Other Proposals and Authorizations for the Special Meeting" of this Proxy Statement below for additional details regarding the Proposals.

Q: Why are we soliciting your vote on the Proposals?

A: As described in more detail in the "Reasons for the Solicitation" section of this Proxy Statement below, given the serious corporate governance deficiencies, questionable capital allocation decisions, and egregious actions taken by the Board aimed at limiting shareholder rights, we believe that significant change is required on the Board to ensure that Depomed is acting in the best interest of all shareholders. Accordingly, we are soliciting Depomed shareholders to consider and vote on Proposal 1 to remove the entire current Board, on Proposal 2 to fix the size of the current Board, as necessary, on Proposal 3 to elect the Nominees, and on Proposal 4 to prevent the Board from making any further changes to the Bylaws to limit shareholder rights. We are also soliciting Depomed shareholders to consider and vote on Proposal 5 to adjourn the Special Meeting, which the Company indicated it intends to present at the Special Meeting if a quorum of shareholders is not present at the beginning of the Special Meeting.

Q: Why are we seeking to remove the entire Board under Proposal 1?

A: While we firmly believe replacement of the entire Board is warranted, you should understand that we do not practically have any other option for seeking Board composition changes at the Special Meeting but to seek the removal of the entire Board. This is because certain provisions under the CGCL and the Bylaws make it extremely difficult, if not virtually impracticable, to remove any fewer than all of the Company's directors. Under these provisions, if even just one Depomed director were not to be removed at the Special Meeting, then a director-protecting cumulative voting provision is triggered with respect to every other director, thereby making the voting threshold required to remove any directors extraordinarily high and virtually impracticable.

Q: Are we taking any steps to thoughtfully address any continuity issues and alleviate any concerns you may have about the risk of unintended consequences?

A: Yes. In order to maintain a degree of continuity amidst the required change that we believe is desperately needed at Depomed, in the event that the current Board is entirely removed and all six (6) of our Nominees are elected at the Special Meeting, the new Board members would be willing to increase the size of the Board up to eleven (11) members over time in order to appoint not only our two (2) highly qualified Advisors, Robert G. Savage and James L. Tyree, but also to add back up to three (3) incumbent directors to the Board through a two-step continuity plan. The new Board would first expand the Board to nine (9) members immediately following the Special Meeting, as is permitted under the Bylaws, to add the two (2) Advisors and one (1) incumbent director. At the same time, we also expect that the new Board would appoint up to two (2) other incumbent directors as Board observers until their subsequent election. Then, at the 2017 Annual Meeting, we expect that the new Board would seek shareholder approval of a Bylaw amendment to increase the minimum and maximum number of directors authorized under the Bylaws in order to further increase the size of the Board to eleven (11) members. If the Bylaw amendment is approved by shareholders at the 2017 Annual Meeting, we expect that the new Board would then increase the size of the Board to eleven (11) members and add back up to two (2) other incumbent directors.

To effectuate this two-step continuity plan, we expect that our director candidates would meet with certain of the incumbent directors following the Special Meeting to determine which ones have the qualifications, experience and perspectives that will best complement the new Board members. Any decision would depend upon not only the credentials of such incumbent directors, but also upon such incumbent directors' willingness to serve on the Board together with the new directors. As a reminder, we utilized a similar continuity construct successfully at Darden Restaurants where we replaced the entire board of directors and then added back one of the prior board members.

Q: Is the purpose of the Special Meeting for us to advocate for a particular transaction, or any transaction at all?

A: No. We are not currently advocating for any one particular transaction, or any transaction at all, but we firmly believe that Board change is necessary to best represent the interests of all shareholders as it relates to the ongoing business and any potential transaction opportunities in the future. Given the current Board's history of actions, we do not believe you can take the risk that the Board further impairs your shareholder rights.

Q: When and where is the Special Meeting to be held?

A: As the shareholder requesting the Special Meeting, Starboard has set 10:00 a.m., Pacific Daylight Time, on November 15, 2016 as the time and date for the Special Meeting to be held, and the Company has indicated that the Special Meeting will be held at the offices of Gibson, Dunn & Crutcher LLP located at 200 Park Avenue, 46th Floor, New York, NY 10166.

Q: What effect might passage of the Proposals at the Special Meeting and/or the election of any Nominees have under the change in control provisions of the Company's publicly filed agreements?

A: Please see the section titled "Certain Effects Related to This Solicitation" of this Proxy Statement for discussion of such possible effects.

Q: Who can vote at the Special Meeting?

A: Only holders of record at the close of business on the Record Date will be entitled to vote in person or by proxy at the Special Meeting.

Q: What will constitute a quorum at the Special Meeting?

- A: A majority of the outstanding shares of Common Stock entitled to vote at the Special Meeting must be present in person or by proxy in order for there to be a quorum at the Special Meeting.
- Q: How many shares must be voted in favor of each of the Proposals to approve them and each Nominee to elect him or her pursuant to Proposal 3 at the Special Meeting?
- Proposals 1, 2 and 4 require the approval of a majority of the outstanding shares of Common Stock entitled to vote. Proposal 3, which is contingent upon the passage of Proposal 1, requires the approval of a majority of the shares represented and voting at the Special Meeting, assuming a quorum is present (in which shares voting affirmatively also constitute at least a majority of the required quorum). Proposal 5 requires the approval of a majority of the shares of Common Stock represented either in person or by proxy at the Special Meeting.
- A: Will there be cumulative voting with respect to the removal of directors pursuant to Proposal 1 or the election of any Nominees pursuant to Proposal 3, assuming Proposal 1 is passed at the Special Meeting?
- Q: Under Depomed's Amended and Restated Articles of Incorporation, cumulative voting with respect to director elections has been eliminated. With respect to the removal of directors, however, cumulative voting may be triggered under Section 303(a)(1) of the CGCL. As discussed in more detail under the section titled "Our Proposals for the Special Meeting" of this Proxy Statement below, Section 303(a)(1) of the CGCL provides that unless the Board is removed in its entirety, no director can be removed if the votes cast against removal would be sufficient to elect the director if voted cumulatively, and the number of directors authorized at the time of the director's most recent election were then being elected. Effectively, if shareholders vote against the removal of even just one Depomed director at the Special Meeting, then this director-protecting cumulative voting provision is triggered with respect to every director, thereby making the voting threshold required to remove any directors extraordinarily high. Accordingly, it is critically important for shareholders to understand that the only practical way to effect any Board changes at the Special Meeting is by voting to remove the entire Board.
- A: How may Depomed shareholders vote their shares?
- See the section titled "Special Meeting Voting Procedures" in this Proxy Statement below for the four ways
- A: Depomed shareholders may vote at the Special Meeting: by promptly mailing in the **WHITE** Proxy Card, by telephone, via the Internet and by attending the Special Meeting and voting in person.
- Q: How will my shares be voted if the enclosed **WHITE** Proxy Card is signed and returned but no specific voting direction is given?
- A: If you are a holder of record of shares of Common Stock and properly sign and return the enclosed **WHITE** Proxy Card, but do not specify how to vote, Starboard intends to vote such proxies "**FOR**" each of the Proposals thereon.
- Q: Aside from voting authority on the Proposals, may the enclosed **WHITE** Proxy Card, if signed and returned, grant Starboard any other authority in respect of my shares of Common Stock?
- A: Yes. Pursuant to the **WHITE** Proxy Cards, we are also requesting discretionary authority to oppose and vote against any proposals other than the Proposals that may come before the Special Meeting.

Q: If my shares of Common Stock are held in “street name” by my broker or other nominee, will my broker or other nominee vote my shares with respect to any of the Proposals?

A: No, your broker or other nominee will not vote your shares of Common Stock on your behalf on any of the Proposals unless you provide instructions on how to vote.

Without your instructions, your street name shares will not be voted in favor of the Proposals, which will have the same effect as voting “AGAINST” each of the Proposals. Accordingly, it is critical that you promptly give instructions to your broker or other nominee to vote on the Proposals.

Starboard urges you to confirm in writing your instructions to your broker or other nominee as soon as possible and provide a copy of those instructions to Starboard c/o Okapi Partners LLC, our proxy solicitor (“Okapi”), at 1212 Avenue of the Americas, 24th Floor, New York, NY 10036, so that Starboard will be aware of all instructions given and can attempt to ensure that those instructions are followed.

Q: What effect will an abstention have on the vote on the Proposals?

A: Abstentions will have the effect of a vote “AGAINST” each of the Proposals.

Q: How may WHITE Proxy Cards be revoked?

Company shareholders who execute and deliver **WHITE** Proxy Cards solicited on behalf of Starboard in connection with the Proposals at the Special Meeting will be permitted to revoke such proxies at any time before the proxy is exercised at the Special Meeting by:

delivering an instrument revoking the earlier proxy card, or a duly executed later-dated proxy card for the same shares, including a Company-furnished proxy card, to Okapi at 1212 Avenue of the Americas, 24th Floor, New York, NY 10036;

filing with the Company’s Corporate Secretary prior to the Special Meeting either a notice of revocation or a duly executed later dated proxy for the same shares, including a Company-furnished proxy card;

if you have voted by telephone or through the Internet, calling the same toll-free number or by accessing the same web site and following the instructions provided on the **WHITE** Proxy Card; or

voting in person at the Special Meeting.

Please note that if your shares of Common Stock are held in street name by a broker or other nominee, you must follow the instructions set forth in the instruction cards to revoke your earlier vote.

Q: Who is paying for the solicitation of proxies for the Special Meeting?

A: The entire expense of preparing and mailing this Proxy Statement and any other soliciting material and the total expenditures relating to the solicitation of proxies for approval of the Proposals at the Special Meeting will be borne by Starboard.

14

BACKGROUND AND PAST CONTACTS

The following is a chronology of events leading up to this Proxy Statement:

During 2015, Depomed took a series of shareholder-unfriendly steps to frustrate the attempts of Horizon Pharma plc (“Horizon”) to negotiate an acquisition of Depomed. Specifically, in July of 2015, in response to an unsolicited proposal from Horizon to acquire all of the outstanding shares of Depomed in an all-stock transaction, the Board (i) unilaterally adopted a poison pill with a 10% trigger threshold (the “Poison Pill”) and (ii) amended and restated the Bylaws to make it significantly more difficult and time-consuming for Depomed shareholders to call a special meeting of shareholders.

On April 5, 2016, Depomed filed a preliminary proxy statement with the Securities and Exchange Commission (the “SEC”) in connection with the 2016 Annual Meeting, which included a proposal to reincorporate the Company in Delaware (the “Reincorporation Proposal”).

On April 7, 2016, Starboard filed a Schedule 13D with the SEC disclosing combined beneficial and economic ownership interest in approximately 9.8% of the outstanding shares of Common Stock. In the Schedule 13D, Starboard stated that it was extremely troubled by the fact that management and the Board were seeking to further entrench themselves and further suppress shareholder rights under the guise of the Reincorporation Proposal. Starboard also questioned why Depomed failed to disclose important features of the Reincorporation Proposal that would severely limit certain shareholder rights in the section of the preliminary proxy that detailed the specifics of the Reincorporation Proposal and instead included these provisions in appendices at the end of the preliminary proxy. On April 8, 2016, Starboard delivered a letter to Jim Schoeneck, President and Chief Executive Officer of the Company, expressing significant concerns regarding what it deems as serious corporate governance deficiencies, questionable capital allocation decisions, and egregious actions by the Board to stymie strategic interest. In the letter, Starboard also confirmed that it would shortly commence the process to call a Special Meeting to preserve Starboard’s rights to seek the removal and replacement of the current Board.

On April 8, 2016, Starboard submitted to Depomed the documentation required under the Bylaws to request that the Board set a record date for determining the shareholders entitled to call a special meeting (the “Initial Record Date Request Notice”), to begin the process for calling the Special Meeting to consider the following proposals: (i) to remove from office the six (6) members of the current Board, as well as any person appointed to the Board without shareholder approval up to and including the date of the Special Meeting; (ii) to fix the number of members of the Board at six (6); (iii) if the current Board is removed, to submit Peter A. Feld, James P. Fogarty, Mark R. Mitchell, Gavin T. Molinelli, Jeffrey C. Smith and Patrick Sullivan for election to the Board by shareholders to fill the existing vacancies; and (iv) to repeal any amendment or provision of the Bylaws adopted by the Board that changes the Bylaws, and to amend the Bylaws to eliminate the power of the Board to adopt, amend or repeal the Bylaws from the date of the Special Meeting through 120 days following the date thereof.

On April 12, 2016, Starboard filed an amendment to its Schedule 13D with the SEC disclosing combined beneficial and economic ownership interest in approximately 9.9% of the outstanding shares of Common Stock.

On April 14, 2016, Depomed issued a press release announcing its decision not to pursue the Reincorporation Proposal.

On April 15, 2016, Starboard issued the following public statement in response to Depomed's decision to withdraw its Reincorporation Proposal:

"We read with great interest Depomed's announcement yesterday that it has decided to withdraw its Delaware Reincorporation Proposal that was purposefully designed to entrench the Board. We remain highly concerned by Depomed's continued apparent willingness to mislead shareholders about its true intentions with regard to the Reincorporation Proposal. To be abundantly clear, the Reincorporation Proposal was an attempt by the Depomed Board to further suppress shareholder rights under the guise of a benign Delaware reincorporation.

After we highlighted Depomed's true, hidden agenda, with many of the material provisions buried in two appendices, the Board realized that it had no choice but to abandon its Reincorporation Proposal. Yet, in its announcement yesterday, rather than be forthright about its reasons for withdrawing the Proposal, Depomed alluded to removing the Proposal only to avoid 'a costly and distracting proxy contest'. To insinuate that the reason it withdrew the Reincorporation Proposal was to avoid a proxy contest is completely disingenuous.

Based upon the Board's actions over the past year, and reinforced by this recent, entrenchment attempt, we remain convinced that meaningful Board change is required at Depomed. We acquired our position in Depomed because we believe that the Company is substantially undervalued and opportunities exist to create significant value for shareholders. There has been no change to our intention to vigorously continue our pursuit of replacing the existing Board with a slate of experienced, diverse, and independent director candidates that we believe will better serve the Company and better protect the rights and best interests of all shareholders. We look forward to sharing more details with shareholders in the coming weeks regarding our views on the Company and opportunities for value creation."

On April 25, 2016, Depomed issued a press release to announce that it has established the close of business on April 26, 2016 as the record date to determine shareholders entitled to request the Special Meeting proposed by Starboard. Depomed also sent a letter to Starboard on April 25, 2016 stating, among other things, that it has amended its Shareholder Rights Plan to purportedly allow Starboard to immediately submit its request for a proposed Special Meeting without conducting a public solicitation.

On April 29, 2016, counsel for Depomed sent an email to counsel for Starboard reiterating the contents of Depomed's April 25th letter, including Depomed's one-time waiver to not set a new Request Record Date if Starboard were to modify its slate of proposed nominees.

On May 26, 2016, Starboard issued a press release and delivered a letter to Depomed shareholders announcing that it intends to recommence the process for calling the Special Meeting for removing and replacing the Board with a modified slate of six highly qualified director nominees.

On May 26, 2016, Starboard withdrew its Initial Record Date Request Notice and Special Meeting proposals and delivered a new record date request notice (the "Record Date Request Notice") and Special Meeting proposals to Depomed.

On May 26, 2016, Starboard filed its preliminary solicitation statement with the SEC in connection with its solicitation of written requests from Depomed shareholders to call the Special Meeting (the "Special Meeting Request Preliminary Solicitation Statement").

On May 31, 2016, Starboard filed an amendment to its Schedule 13D with the SEC disclosing its delivery of the Record Date Request Notice to Depomed and its modified slate of six highly qualified director nominees.

On June 6, 2016, Starboard filed Amendment No. 1 to its Special Meeting Request Preliminary Solicitation Statement.

On June 23, 2016, Depomed issued a press release announcing that it has set August 19, 2016 as the record date for determining shareholders entitled to submit written requests to call the Special Meeting (the "Request Record Date") and proposing to hold a special meeting called by its Board on October 28, 2016 that Depomed explained is intended to occur after resolution of the Company's ongoing NUCYNTA® patent litigation, which is expected no later than September 30, 2016.

On July 26, 2016, Starboard issued a press release and delivered a letter to Depomed shareholders announcing that it has appointed two exceptionally qualified former pharmaceutical executives as Advisors, Robert G. Savage and James L. Tyree, to assist in its solicitation efforts to call the Special Meeting. Starboard explained in the letter that given the extensive requirements under the Bylaws for calling the Special Meeting, the addition of any new nominees to its slate would effectively require it to submit a new record date request notice to Depomed, thereby restarting the clock under the Bylaws for the Special Meeting. Starboard also stated that if it is successful in removing and replacing the Board at the Special Meeting, Messrs. Savage and Tyree would be invited to join the Board and that the new Board would be willing to increase the size of the Board to nine members (currently there are six members; adding the Advisors would expand the Board to eight members) and add back one incumbent director in order to maintain a degree of continuity amidst the required change that Starboard believes is needed at the Company. In the letter, Starboard also announced that it will proceed with its original solicitation to call the Special Meeting by going through the procedures required under the Bylaws by soliciting the Special Meeting Percentage given the Board's inconsistent responses to Starboard's two record date request notices in order to ensure that shareholders have their voices heard and to prevent the Company from any further attempts to manipulate Starboard's Special Meeting process. Starboard explained in the letter that initially, the Board responded promptly to Starboard's Initial Record Date Request Notice by setting a record date of April 26, 2016, or less than three weeks later, but then delayed its response to Starboard's new Record Date Request Notice by setting a record date of August 19, 2016, or close to three months after Starboard's delivery of the Record Date Request Notice, which is almost the full extent the Board is permitted to delay such an action under the Bylaws and in stark contrast to Jim Schoeneck's commentary to shareholders on April 25, 2016 that "the selection of an early meeting date is in the best interest of Depomed and its shareholders." Starboard stated that it sees the Board's rationale of basing the prolonged meeting date on the NUCYNTA litigation as a classic "bait-and-switch" as there was no mention of delaying the Special Meeting until the outcome of the pending NUCYNTA patent litigation upon Starboard's first placeholder nomination.

On July 27, 2016, Starboard filed an amendment to its Schedule 13D with the SEC disclosing its delivery of the July 26th letter to Depomed shareholders and its appointment of the Advisors to assist in its efforts to call the Special Meeting given the Advisors significant industry knowledge and experience.

On August 15, 2016, Starboard filed Amendment No. 2 to the Special Meeting Request Preliminary Solicitation Statement.

On August 17, 2016, Depomed delivered a letter to Starboard informing Starboard that Depomed would waive the information requirements under the Bylaws for any shareholders requesting the Special Meeting, other than Starboard and its affiliates.

On August 18, 2016, Starboard filed Amendment No. 3 to the Special Meeting Request Preliminary Solicitation Statement.

On August 19, 2016, Starboard filed the Special Meeting Request Definitive Solicitation Statement.

On September 7, 2016, Depomed notified Broadridge Financial Solutions of a September 27, 2016 record date for the Special Meeting.

On September 16, 2016, Starboard delivered the Special Meeting Request and accompanying WHITE request cards from the holders of shares of Common Stock entitled to cast not less than 10% of the votes at the Special Meeting in accordance with the Bylaws requesting that the Special Meeting be called for November 15, 2016 at 10:00 a.m., Pacific Daylight Time.

On September 19, 2016, Starboard delivered a letter to Depomed shareholders and issued a press release announcing that it has delivered to Depomed more than the required consents to call the Special Meeting and has set November 15, 2016 as the date for the Special Meeting. In the letter, Starboard reiterated its steadfast belief that a new Board is required to represent the best interests of shareholders given a series of shareholder-unfriendly actions by the Board over the past two years. Starboard also stated that based on recent press reports, it appears that Depomed may have hired bankers to explore a sale of the Company and that as previously publicly outlined by Starboard, it believes Depomed would be extremely attractive to numerous potential acquirers, and while there exists an opportunity to significantly improve operations at the Company, an outright sale may be the best option for unlocking shareholder value. Starboard further stated that it remains extremely concerned that any potential sale process may not be undertaken with genuine intent, and therefore believes it is necessary for directors proposed by Starboard to be involved in any sale process at the Board level to ensure that the Board is representing the best interests of shareholders and that value is maximized. In addition, Starboard outlined a continuity plan in the letter for expanding the Board to eleven members to add back up to three incumbent directors in addition to Starboard's two highly qualified Advisors if it is successful in replacing the Board at the Special Meeting.

On September 19, 2016, the Company informed Starboard that in accordance with Starboard's Special Meeting Request Form and accompanying WHITE request cards, the Special Meeting will be held on November 15, 2016 at 10:00 a.m., local time, and that the Record Date for the Special Meeting is the close of business on September 27, 2016.