

AVANIR PHARMACEUTICALS, INC.
Form SC 14D9/A
January 13, 2015

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

SCHEDULE 14D-9
(Amendment No. 3)
Solicitation/Recommendation Statement
Under Section 14(d)(4) of the Securities Exchange Act of 1934

AVANIR PHARMACEUTICALS, INC.
(Name of Subject Company)

AVANIR PHARMACEUTICALS, INC.
(Name of Person Filing Statement)

Common Stock, par value \$0.0001 per share
(Title of Class of Securities)

05348P401

(CUSIP Number of Class of Securities)

Keith Katkin

President and Chief Executive Officer

Avanir Pharmaceuticals, Inc.

30 Enterprise, Suite 400,

Aliso Viejo, California 92656

(949) 389-6700

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

With copies to:

Charles K. Ruck

R. Scott Shean

David M. Wheeler

Latham & Watkins LLP

650 Town Center Drive, 20th Floor

Costa Mesa, CA 92626

(714) 540-1235

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

Purpose of Amendment

This Amendment No. 3 (this Amendment) amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 of Avanir Pharmaceuticals, Inc., a Delaware corporation (the Company), filed with the Securities and Exchange Commission (the SEC) on December 12, 2014 (as amended or supplemented from time to time, the Schedule 14D-9). The Schedule 14D-9 and this Amendment relate to the tender offer by Bigarade Corporation, a Delaware corporation (Purchaser) and a wholly owned subsidiary of Otsuka Pharmaceutical Co., Ltd., a Japanese joint stock company (Parent), to purchase any and all of the issued and outstanding shares of the Company's common stock, par value \$0.0001 per share (the Shares), at a purchase price of \$17.00 per Share (the Offer Price), net to seller thereof in cash, without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 12, 2014 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, constitute the Offer). The Offer is described in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time, the Schedule TO) filed by Parent and Purchaser with the SEC on December 12, 2014. The Offer to Purchase and Form of Letter of Transmittal are filed as Exhibits (a)(1)(A) and (a)(1)(B), respectively, to the Schedule TO.

Except as otherwise set forth below, the information set forth in the Schedule 14D-9 remains unchanged and is incorporated by reference as relevant to the items in this Amendment. Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Schedule 14D-9. This Amendment is being filed to reflect certain updates as reflected below.

Item 8. Additional Information

Item 8 of the Schedule 14D-9 is hereby amended and supplemented as follows:

The Offer and withdrawal rights expired at the end of the day, 12:00 midnight, New York City time, on January 12, 2015. American Stock Transfer & Trust Company, LLC, the depository for the Offer, has advised Parent and Purchaser that, as of the expiration of the Offer, a total of 121,815,032 Shares had been validly tendered into and not validly withdrawn pursuant to the Offer (excluding Shares subject to guaranteed delivery procedures that were not validly tendered prior to the expiration date of the Offer) as of the expiration date, representing approximately 62.6% of the Shares outstanding as of such time. The number of Shares validly tendered and not properly withdrawn pursuant to the Offer constitutes a majority of all outstanding Shares and therefore satisfies the Minimum Condition (as defined in the Merger Agreement). All conditions to the Offer having been satisfied, Purchaser has accepted for payment and is promptly paying for all Shares validly tendered into and not properly withdrawn from the Offer.

As a result of its acceptance of the Shares tendered in the Offer, Purchaser acquired sufficient Shares to complete the Merger without the affirmative vote of the stockholders of the Company pursuant to Section 251(h) of the DGCL. In the Merger, each Share issued and outstanding immediately prior to the Effective Time (other than the Excluded Shares) was converted automatically into the right to receive the Offer Price. All Shares that were converted into the right to receive the Offer Price shall be canceled and cease to exist. Following the Merger, all Shares will be delisted from the NASDAQ Stock Market and deregistered under the Securities Exchange Act of 1934, as amended.

SIGNATURE

After due 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.

Avanir Pharmaceuticals, Inc.

By: /s/ Keith Katkin

Name: Keith Katkin

Title: President and Chief Executive
Officer

Dated: January 13, 2015