

DUSA PHARMACEUTICALS INC  
Form SC14D9C  
November 08, 2012

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

**SCHEDULE 14D-9C**

**Rule 14d-101**

**SOLICITATION/RECOMMENDATION STATEMENT**

**Under Section 14(d)(4)**

**of the Securities Exchange Act of 1934**

**DUSA PHARMACEUTICALS, INC.**

**(Name of Subject Company)**

**DUSA PHARMACEUTICALS, INC.**

**(Name of Person(s) Filing Statement)**

**Common Stock, no par per share**

**(Title of Class of Securities)**

**266898105**

**(CUSIP Number of Class of Securities)**

**Robert F. Doman**

**Chief Executive Officer**

**25 Upton Drive**

**Wilmington, MA 01887**

**(978) 657-7500**

**(Name, Address and Telephone Number of Person Authorized to Receive**

**Notices and Communications on Behalf of the Person(s) Filing Statement)**

*With a copy to:*

**Nanette W. Mantell, Esq.**

**Reed Smith LLP**

**136 Main Street, Suite 250**

**Princeton, NJ 08540**

**(609) 514-8542**

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

**Contact:**

Robert F. Doman,

*President & CEO* 978.909.2216

Richard Christopher,

*VP Finance & CFO* 978.909.2211

Chad Rubin,

*Investor Relations Contact,*

*The Trout Group LLC* 646.378.2947

Cory Tromblee,

*Media Contact,*

*MacDougall Biomedical Communications* 781.235.3060

**Sun Pharma to Acquire DUSA Pharmaceuticals, Inc.**

**Contact:**

Mira Desai,

*Tel +91 22 6645 5645, Xtn 606*

*Tel Direct +91 22 66455606*

*Mobile +91 98219 23797*

*E mail [mira.desai@sunpharma.com](mailto:mira.desai@sunpharma.com)*

**Wilmington, MA and Mumbai, India November 08, 2012** Sun Pharmaceutical Industries Limited ((Reuters: SUN.BO, Bloomberg: SUNP IN, NSE: SUNPHARMA, BSE: 524715)) (together with its subsidiaries, Sun Pharma) and DUSA Pharmaceuticals, Inc. (NASDAQ GM: DUSA) today announced that they have entered into a definitive agreement under which Sun Pharma will acquire DUSA, a dermatology company focused on developing and marketing its Levulan<sup>®</sup> (aminolevulinic acid HCl) photodynamic therapy platform.

DUSA's Levulan combination therapy is approved by FDA for treatment of non-hyperkeratotic actinic keratoses or AKs of the face or scalp. Additionally, DUSA's BLU-<sup>®</sup> treatment has been approved by FDA for the treatment of moderate inflammatory acne vulgaris and general dermatological conditions. Levulan is manufactured by DUSA in its FDA approved facility at Wilmington, MA.

Under the terms of the agreement, a 100% subsidiary of Sun Pharmaceutical Industries Ltd will commence a tender offer for all of the outstanding common stock of DUSA at a price of \$8.00 per share in cash, a 38% premium to the closing price of DUSA's common stock on November 7, 2012. The transaction has a total cash value of approximately \$230 million. The transaction has been unanimously approved by the boards of directors of both companies and DUSA's board has recommended that the company's shareholders tender their shares pursuant to the tender offer.

Dilip Shanghvi, Managing Director of the Company said, "DUSA has proven technical capabilities in photodynamic skin treatments, with USFDA approved manufacturing. DUSA's business brings us an entry into dermatological treatment devices, where we see good growth opportunities."

"We believe this transaction brings significant value to DUSA shareholders and are pleased that Sun Pharma recognized the value that has been created. The entire team at DUSA has built an excellent franchise around Levulan<sup>®</sup> PDT and continues to grow its presence in the dermatology space. We are confident that Sun Pharma will build upon the solid foundation our organization

has established in the United States dermatology market to further expand access to Levulan® for patients with actinic keratoses, stated Robert Doman, President and CEO of DUSA Pharmaceuticals, Inc.

The closing of the tender offer will be subject to certain conditions, including the tender of a number of DUSA shares that represent at least a majority of the total number of DUSA's outstanding shares (assuming the exercise of all options and warrants and vesting of restricted shares), the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act and other customary conditions. Upon the completion of the tender offer, Sun Pharma will acquire all remaining shares at the same price of \$8.00 per share through a second-step merger, subject to approvals as may be necessary.

#### **Advisors**

Leerink Swann LLC acted as exclusive financial advisor and Reed Smith LLP acted as legal advisor to DUSA Pharmaceuticals.

#### **Conference Call and Audio Webcast**

As result of this development, DUSA has cancelled its quarterly earnings call and audio webcast which was originally scheduled for today, November 8<sup>th</sup>, at 8:30 am EST.

#### **About DUSA**

DUSA Pharmaceuticals, Inc. is a market leader in photodynamic therapy (PDT), marketing products to dermatologists to treat patients with minimally to moderately thick actinic keratoses (AKs) of the face or scalp. DUSA commercial brands include BLU-U®, and LEVULAN®/KERASTICK®. [www.dusapharma.com](http://www.dusapharma.com)

#### **About Sun Pharma**

Established in 1983, listed since 1994 and headquartered in India, Sun Pharma (Reuters: SUN.BO, Bloomberg: SUNP IN, NSE: SUNPHARMA, BSE: 524715) is an international, integrated, specialty pharmaceutical company. It manufactures and markets a large basket of pharmaceutical formulations as branded generics as well as generics in India, US and several other markets across the world. In India, the company is a leader in niche therapy areas of psychiatry, neurology, cardiology, diabetology, gastroenterology, orthopedics and ophthalmology. The company has strong skills in product development, process chemistry, and manufacturing of complex API, as well as dosage forms. More information about the company can be found at [www.sunpharma.com](http://www.sunpharma.com).

#### **DUSA Forward-Looking Statement**

This news release includes forward-looking statements within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. The forward-looking statements in this news release relating to management's expectations and beliefs are based on preliminary information and management assumptions. These statements relate to beliefs concerning the benefits of the transaction and expectation for action by Sun in the dermatology market. Furthermore, no assurances can be made that the holders of at least a majority of the outstanding shares of DUSA's common stock will tender their shares pursuant to the tender offer or that the other conditions of the tender offer will be met. These forward-

looking statements are subject to significant risks and uncertainties that could cause actual results to differ materially from future results, performance or achievements expressed or implied by those in the forward-looking statements made in this release.

**Important Information About the Tender Offer**

The description contained in this press release is neither an offer to purchase nor a solicitation of an offer to sell securities. The planned tender offer described in this press release has not commenced. At the time the planned tender offer is commenced, a tender offer statement on Schedule TO will be filed by Sun with the SEC, and DUSA will file a solicitation/recommendation statement on Schedule 14D-9, with respect to the planned tender offer. The tender offer statement (including an offer to purchase, a related letter of transmittal and other tender offer documents) and the solicitation/recommendation statement will contain important information that should be read carefully before making any decision to tender securities in the planned tender offer. Those materials will be made available to DUSA's shareholders at no expense to them. In addition, all of those materials (and all other tender offer documents filed with the SEC) will be made available at no charge on the SEC's website at [www.sec.gov](http://www.sec.gov).

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**SIGNATURES**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Solicitation/Recommendation Statement is true, complete and correct.

Date: November 8, 2012

DUSA PHARMACEUTICALS, INC.

/s/ Robert F. Doman  
**Name: Robert F. Doman**  
**Title: Chief Executive Officer**