

BIOSANTE PHARMACEUTICALS INC

Form S-4

December 11, 2012

Use these links to rapidly review the document

[TABLE OF CONTENTS](#)

[INDEX TO BIOSANTE'S FINANCIAL STATEMENTS](#)

[INDEX TO ANI'S FINANCIAL STATEMENTS](#)

[TABLE OF CONTENTS](#)

[Table of Contents](#)

As filed with the Securities and Exchange Commission on December 11, 2012

Registration No.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form S-4

REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

BIOSANTE PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

2386
(Primary Standard Industrial
Classification Code Number)
111 Barclay Boulevard
Lincolnshire, Illinois 60069
(847) 478-0500

58-2301143
(I.R.S. Employer
Identification Number)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Stephen M. Simes
Vice Chairman, President and Chief Executive Officer
BioSante Pharmaceuticals, Inc.
111 Barclay Boulevard
Lincolnshire, Illinois 60069
(847) 478-0500

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Bruce A. Machmeier, Esq.
Amy E. Culbert, Esq.
Oppenheimer Wolff & Donnelly LLP
Campbell Mithun Tower Suite 2000
222 South Ninth Street
Minneapolis, Minnesota 55402

Paul A. Gajer, Esq.
Jane A. Meyer, Esq.
Roland S. Chase, Esq.
SNR Denton US LLP
1221 Avenue of the Americas
New York, New York 10020-1089

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

(612) 607-7000

(212) 768-6700

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement and the effective time of the merger of ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc., a Delaware corporation, with and into BioSante Pharmaceuticals, Inc., a Delaware corporation, as described in the Agreement and Plan of Merger dated as of October 3, 2012, as amended, and as attached as Annex A to the joint proxy statement/prospectus forming part of this registration statement.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
 (Do not check if a smaller reporting company)

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered(1)	Amount to be registered(2)	Proposed maximum offering price per share	Proposed maximum aggregate offering price(3)	Amount of registration fee(4)
Common stock, par value \$0.0001 per share	43,642,714	N/A	\$99,501.69	\$13.58

(1) This registration statement relates to shares of common stock, par value \$0.0001 per share, of BioSante Pharmaceuticals, Inc., a Delaware corporation (BioSante), issuable to holders of capital stock, each with a par value of \$0.10 per share, of ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc., a Delaware corporation (ANI), pursuant to the agreement and plan of merger, dated as of October 3, 2012, between BioSante and ANI, as amended.

(2) Based on the estimated maximum number of shares of BioSante common stock to be issued in connection with the transactions contemplated by the merger agreement, calculated as the product obtained by multiplying (a) 1.763 times (b) the sum of: (i) 24,422,240, the number of shares of BioSante common stock issued and outstanding as of December 10, 2012; and (ii) 332,561, which is the product of .32 and the number of shares of BioSante common stock issuable upon the exercise of warrants issued by BioSante in August 2012. The maximum number of shares of BioSante common stock to be issued is based on BioSante having \$0 of net cash (as defined in the merger agreement), although under the terms of the merger agreement, ANI is not obligated to complete the transaction if BioSante's net cash is less than \$17.0 million. It is expected that all shares of BioSante common stock, including the securities covered by this registration statement, will be reclassified and combined by a reverse stock split into a lesser amount of BioSante common stock, and the amount of undistributed common stock deemed to be covered by this registration statement shall be proportionately reduced.

(3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(f) of the Securities Act. BioSante common stock is being offered in exchange for shares of capital stock of ANI, each with a par value of \$0.10 per share. ANI is a private company and no market exists for its securities and ANI has an accumulated capital deficit; therefore, pursuant to Rule 457(f)(2) under the Securities Act of 1933, as amended, the proposed maximum aggregate offering price is one-third of the aggregate par value of ANI's capital stock being acquired in the proposed merger, which is calculated by multiplying one-third of the product of the par value of \$0.10 per share with 2,985,051, the maximum number of shares of ANI capital stock that can be exchanged in the merger (computed as of December 10, 2012, the latest practicable date prior to the date of filing this registration statement, and inclusive of (i) all shares of ANI capital stock issuable upon conversion of any securities convertible into or exercisable or exchangeable for shares of

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

ANI capital stock and (ii) all shares of ANI series D preferred stock issuable pursuant to transaction bonus agreements with ANI's executive officers, assuming BioSante's net cash is \$0.).

(4)

Determined in accordance with Section 6(b) of the Securities Act at a rate equal to \$136.40 per \$1,000,000 of the proposed maximum aggregate offering price.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this joint proxy statement/prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This joint proxy statement/prospectus is not an offer to sell and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY COPY SUBJECT TO COMPLETION, DATED DECEMBER 11, 2012

PROPOSED MERGER YOUR VOTE IS VERY IMPORTANT

To our Stockholders:

On October 3, 2012, BioSante Pharmaceuticals, Inc. (BioSante) and ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc. (ANI), entered into a merger agreement pursuant to which ANI will merge with and into BioSante, with BioSante continuing as the surviving company. The boards of directors of BioSante and ANI have approved unanimously the merger agreement and the merger and believe that the merger of the two companies will create more value than either company could achieve individually. The combined company that will result from the merger will be a fully integrated specialty pharmaceutical company focused on developing, manufacturing and marketing branded and generic prescription pharmaceuticals.

Pursuant to the terms of the merger agreement, upon completion of the merger, ANI stockholders will have the right to receive, for each share of ANI capital stock they hold, that number of shares of BioSante common stock, if any, as determined pursuant to the exchange ratios described in the merger agreement and the provisions of ANI's certificate of incorporation. Following completion of the merger, the current ANI stockholders are expected to own approximately 53 percent of the outstanding shares of common stock of the combined company, and the current BioSante stockholders are expected to own approximately 47 percent of the outstanding shares of common stock of the combined company. The exchange ratios are subject to potential adjustment as described in the merger agreement depending upon the amount of "net cash" of BioSante as of a determination date prior to the closing date of the merger, but in no event will the current ANI stockholders own less than 50.1 percent (or the current BioSante stockholders own more than 49.9 percent) of the outstanding shares of common stock of the combined company. If the merger had been completed on [], 2012, the record date for the BioSante special meeting, an aggregate of approximately 27.9 million shares of BioSante common stock would have been issuable to ANI stockholders upon completion of the merger (as determined prior to an anticipated reverse stock split of BioSante common stock), assuming BioSante's net cash is \$18.0 million as of the determination date.

BioSante common stock is listed on The NASDAQ Global Market and trades under the symbol "BPAX". On [], 2012, the latest practicable date before the printing of this joint proxy statement/prospectus, the closing sale price of BioSante common stock was \$[] per share. ANI is a privately held specialty pharmaceutical company. Following completion of the merger, the combined company is expected to be renamed "ANI Pharmaceuticals, Inc." and to change its trading symbol on The NASDAQ Global Market. ANI has reserved the symbol "ANIP" for this purpose.

This joint proxy statement/prospectus provides you with detailed information about the special meetings of stockholders of BioSante and ANI to consider the merger and related business. **Your vote is very important.** Whether or not you plan to attend your respective company's special meeting of stockholders, please submit your proxy as soon as possible to make sure that your shares are represented at the applicable meeting. In addition to being a proxy statement for both BioSante and ANI, this document is also a prospectus to be used by BioSante when issuing BioSante common stock to ANI stockholders in connection with the merger. BioSante and ANI encourage you to read the entire document carefully. **Please pay particular attention to the section entitled "Risk Factors" beginning on page 38 for a discussion of the risks related to the merger, the combined company following completion of the merger, and the business and operations of each of BioSante and ANI.**

BioSante and ANI are excited about the opportunities that the proposed merger brings to both BioSante and ANI stockholders and thank you for your consideration and continued support.

Stephen M. Simes
Vice Chairman, President and
Chief Executive Officer
BioSante Pharmaceuticals, Inc.

Arthur S. Przybyl
President and Chief Executive Officer
ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the BioSante common stock to be issued pursuant to the merger or determined if the information in this joint proxy statement/prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.

This joint proxy statement/prospectus is dated [], 2012 and is first being mailed or otherwise delivered to stockholders of BioSante and ANI on or about [], 2012.

Table of Contents

REFERENCES TO ADDITIONAL INFORMATION

This joint proxy statement/prospectus forms a part of a registration statement on Form S-4 filed by BioSante Pharmaceuticals, Inc. with the Securities and Exchange Commission (SEC). It constitutes a prospectus of BioSante under Section 5 of the Securities Act of 1933, as amended (the Securities Act), and the rules and regulations thereunder, with respect to the shares of BioSante common stock to be issued to holders of capital stock of ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc. in the merger. In addition, it constitutes a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and the rules and regulations thereunder, and a notice of meeting with respect to the BioSante special meeting of stockholders. It also constitutes a proxy statement of ANI and a notice of meeting with respect to the ANI special meeting of stockholders.

BioSante has supplied all information contained in this joint proxy statement/prospectus relating to BioSante and ANI has supplied all information contained in this joint proxy statement/prospectus relating to ANI.

If you would like to request documents from BioSante or ANI, please send a request by telephone or email to either BioSante or ANI at the following address:

BioSante Pharmaceuticals, Inc.
111 Barclay Boulevard
Lincolnshire, Illinois 60069
Attention: Investor Relations
Tel: (847) 478-0500 ext. 120
Email: info@biosantepharma.com

ANIP Acquisition Company d/b/a
ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, Minnesota 56623
Attention: Investor Relations
Tel: (218) 634.3500
Email: arthur.przybyl@anipharmaceuticals.com

If you would like to request documents, please do so by [], 2012 in order to receive them before the special meetings. See "Where You Can Find More Information" beginning on page 300.

Table of Contents

BioSante Pharmaceuticals, Inc.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS To Be Held On [], 2013

Dear BioSante Stockholder:

A special meeting of the stockholders of BioSante Pharmaceuticals, Inc. will be held on [], 2013 at [] a.m., local time, at BioSante's corporate office located at 111 Barclay Boulevard, Lincolnshire, Illinois 60069, for the following purposes:

1. To consider and vote upon a proposal to adopt the agreement and plan of merger dated as of October 3, 2012 between BioSante and ANI, as amended, a copy of which is attached as Annex A to the joint proxy statement/prospectus accompanying this notice, and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock in the merger.
2. To consider and vote upon a proposal to approve an amendment to BioSante's certificate of incorporation to effect a reverse split of BioSante common stock and BioSante class C special stock at the discretion of BioSante and ANI at a ratio of either one-for-two, one-for-three, one-for-four or one-for-five.
3. To consider and vote upon a proposal to approve an amendment to BioSante's certificate of incorporation to change the name of BioSante from "BioSante Pharmaceuticals, Inc." to "ANI Pharmaceuticals, Inc."
4. To consider and vote upon a proposal to approve, on an advisory (non-binding) basis, the compensation payable to certain executive officers of BioSante under existing arrangements in connection with the merger.
5. To consider and vote upon a proposal to approve an adjournment of the BioSante special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of BioSante Proposals No. 1, 2 and/or 3.

Stockholders also will consider and act on any other matters as may properly come before the special meeting or any adjournment or postponement thereof, including any procedural matters incident to the conduct of the special meeting.

The board of directors of BioSante has fixed [], 2012 as the record date for the determination of BioSante stockholders entitled to notice of, and to vote at, the BioSante special meeting or any adjournments or postponements of the BioSante special meeting. Only holders of record of BioSante common stock and BioSante class C special stock at the close of business on the BioSante record date are entitled to notice of, and to vote at, the BioSante special meeting. At the close of business on the record date, BioSante had 24,422,240 shares of common stock and 65,211 shares of BioSante class C special stock outstanding and entitled to vote.

Your vote is important. The affirmative vote of holders of a majority of the BioSante common stock and BioSante class C special stock, voting together as a single class, having voting power outstanding on the record date for the BioSante special meeting is required for approval of BioSante Proposals No. 1, 2 and 3. The affirmative vote of holders of a majority of the BioSante common stock and BioSante class C special stock, voting together as a single class, present in person or represented by proxy at the BioSante special meeting, is required for approval of BioSante Proposals No. 4 and 5. Please also note that the approval of BioSante Proposal No. 1 is not conditioned upon the approval of BioSante Proposals No. 2, 3, 4 or 5; however, the approval of BioSante Proposals No. 2 and 3 is

Table of Contents

conditioned upon the approval of BioSante Proposal No. 1 by the BioSante stockholders and the approval of the corresponding proposal by the ANI stockholders.

Even if you plan to attend the BioSante special meeting in person, BioSante requests that you complete, sign and return the enclosed proxy card and thus ensure that your shares will be represented at the BioSante special meeting if you are unable to attend. If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of BioSante Proposals No. 1 through 5. If you fail to return your proxy card, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the BioSante special meeting and will count as a vote against BioSante Proposals No. 1 through 3. If you do attend the BioSante special meeting and wish to vote in person, you may withdraw your proxy and vote in person.

The BioSante board of directors has determined that the merger agreement and the transactions contemplated by it, including the merger and the issuance of shares of BioSante common stock in the merger, are advisable and in the best interests of BioSante and its stockholders. The BioSante board of directors unanimously has approved and adopted the merger agreement and the transactions contemplated by it, including the merger and the issuance of shares of BioSante common stock in the merger, and recommends that BioSante stockholders vote "FOR" the adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock in the merger, and "FOR" the other merger related proposals.

By Order of the Board of Directors,

Phillip B. Donenberg
*Senior Vice President, Finance,
Chief Financial Officer and Secretary*

[] [], 2012
Lincolnshire, Illinois

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR BIOSANTE'S SPECIAL MEETING
TO BE HELD ON [] 2013**

The accompanying joint proxy statement/prospectus is available at www.proxyvote.com/BioSante.

Table of Contents

ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc.

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
To Be Held On [], 2013**

Dear ANI Stockholder:

A special meeting of the stockholders of ANI will be held on [], 2013 at [] a.m., local time, at the offices of MVP Capital Partners located at 259 N. Radnor-Chester Road, Suite 130, Radnor, Pennsylvania 19087, for the following purposes:

1. To consider and vote upon a proposal to adopt the agreement and plan of merger dated as of October 3, 2012 between BioSante and ANI, as amended, a copy of which is attached as Annex A to the joint proxy statement/prospectus accompanying this notice, and the transactions contemplated thereby, including the merger.
2. To consider and vote upon a proposal to approve an adjournment of the ANI special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of ANI Proposal No. 1.

Stockholders also will consider and act on any other matters as may properly come before the special meeting or any adjournment or postponement thereof, including any procedural matters incident to the conduct of the special meeting.

The board of directors of ANI has fixed [], 2012 as the record date for the determination of ANI stockholders entitled to notice of, and to vote at, the ANI special meeting or any adjournments or postponements of the ANI special meeting. Only holders of record of ANI capital stock at the close of business on the ANI record date are entitled to notice of, and to vote at, the ANI special meeting. At the close of business on the record date, ANI had 2,375,312 shares of series D convertible preferred stock, 34,810 shares of series C convertible preferred stock, 78,491 shares of series B convertible preferred stock, 102,774 shares of series A convertible preferred stock and 23,613 shares of common stock outstanding and entitled to vote.

Your vote is important. The affirmative vote of holders of a majority of the shares of ANI common stock, calculated on an as-converted basis and voting together as a single class, and 65 percent of the shares of ANI series D convertible preferred stock having voting power outstanding on the record date for the ANI special meeting is required for approval of ANI Proposal No. 1. The affirmative vote of holders of a majority of ANI common stock, calculated on an as-converted basis, present in person or represented by proxy at the ANI special meeting is required for approval of ANI Proposal No. 2.

Even if you plan to attend the ANI special meeting in person, ANI requests that you complete, sign and return the enclosed proxy card and thus ensure that your shares will be represented at the ANI special meeting if you are unable to attend. If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of ANI Proposals No. 1 and 2. If you fail to return your proxy card, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the ANI special meeting and will count as a vote against ANI Proposal No. 1. If you do attend the ANI special meeting and wish to vote in person, you may withdraw your proxy and vote in person.

The ANI board of directors has determined that the merger agreement and the transactions contemplated by it, including the merger, are advisable and in the best interests of ANI and its stockholders. The ANI board of directors has unanimously approved and adopted the merger

Table of Contents

agreement and the transactions contemplated by it, including the merger, and recommends that ANI stockholders vote "FOR" the adoption of the merger agreement and the transactions contemplated thereby, including the merger, and "FOR" the adjournment of the ANI special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of ANI Proposal No. 1.

By Order of the Board of Directors,

Charlotte C. Arnold
Vice President and Chief Financial Officer

Baudette, Minnesota
[] [], 2012

Table of Contents

TABLE OF CONTENTS

	Page
<u>QUESTIONS AND ANSWERS ABOUT THE MERGER</u>	<u>1</u>
<u>QUESTIONS AND ANSWERS FOR BIOSANTE STOCKHOLDERS ABOUT THE BIOSANTE SPECIAL MEETING</u>	<u>6</u>
<u>QUESTIONS AND ANSWERS FOR ANI STOCKHOLDERS ABOUT THE ANI SPECIAL MEETING</u>	<u>12</u>
<u>SUMMARY</u>	<u>16</u>
<u>The Companies</u>	<u>16</u>
<u>Summary of the Merger</u>	<u>17</u>
<u>Reasons for the Merger</u>	<u>17</u>
<u>Opinion of Oppenheimer & Co. Inc.</u>	<u>18</u>
<u>Risk Factors</u>	<u>18</u>
<u>Merger Consideration and Adjustment</u>	<u>19</u>
<u>Treatment of ANI Stock Options and Warrants</u>	<u>21</u>
<u>Treatment of BioSante Stock Options, Warrants and Convertible Senior Notes</u>	<u>21</u>
<u>Management of the Combined Company Following the Merger</u>	<u>21</u>
<u>Interests of BioSante's Directors and Officers in the Merger</u>	<u>22</u>
<u>Interests of ANI's Directors and Officers in the Merger</u>	<u>23</u>
<u>Conditions to Completion of the Merger</u>	<u>24</u>
<u>No Solicitation</u>	<u>25</u>
<u>Termination of the Merger Agreement</u>	<u>25</u>
<u>Termination Fees and Expenses</u>	<u>26</u>
<u>Vote Required</u>	<u>27</u>
<u>Voting Agreements</u>	<u>27</u>
<u>Material U.S. Federal Income Tax Consequences of the Merger</u>	<u>28</u>
<u>Regulatory Approvals</u>	<u>28</u>
<u>Anticipated Accounting Treatment</u>	<u>29</u>
<u>Appraisal Rights</u>	<u>29</u>
<u>Comparison of Stockholder Rights</u>	<u>29</u>
<u>Contingent Value Rights</u>	<u>29</u>
<u>SELECTED HISTORICAL FINANCIAL INFORMATION AND UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION AND DATA</u>	<u>30</u>
<u>Selected Historical Financial Data of BioSante</u>	<u>30</u>
<u>Selected Historical Financial Data of ANI</u>	<u>31</u>
<u>Summary Unaudited Pro Forma Condensed Combined Financial Data of BioSante and ANI</u>	<u>32</u>
<u>COMPARATIVE HISTORICAL AND UNAUDITED PRO FORMA PER SHARE DATA</u>	<u>34</u>
<u>MARKET PRICE AND DIVIDEND INFORMATION</u>	<u>35</u>
<u>BioSante</u>	<u>35</u>
<u>ANI</u>	<u>37</u>
<u>RISK FACTORS</u>	<u>38</u>
<u>Risks Related to the Merger</u>	<u>38</u>
<u>Risks Related to the Combined Company if the Merger is Completed</u>	<u>46</u>
<u>Risks Related to BioSante</u>	<u>50</u>
<u>Risks Related to ANI</u>	<u>77</u>
<u>CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS</u>	<u>91</u>

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

	Page
<u>THE SPECIAL MEETING OF BIOSANTE STOCKHOLDERS</u>	<u>92</u>
<u>General</u>	<u>92</u>
<u>Date, Time and Place</u>	<u>92</u>
<u>Purposes of the BioSante Special Meeting</u>	<u>92</u>
<u>Recommendations of the BioSante Board of Directors</u>	<u>92</u>
<u>Record Date and Voting Power</u>	<u>93</u>
<u>Voting and Revocation of Proxies</u>	<u>93</u>
<u>Quorum and Required Vote</u>	<u>94</u>
<u>Solicitation of Proxies</u>	<u>95</u>
<u>Delivery of Proxy Materials to Households Where Two or More Stockholders Reside</u>	<u>95</u>
<u>Other Matters</u>	<u>95</u>
<u>MATTERS BEING SUBMITTED TO A VOTE OF BIOSANTE STOCKHOLDERS</u>	<u>96</u>
<u>BioSante Proposal No. 1 Adoption of Agreement and Plan of Merger and the Transactions Contemplated Thereby, including the Merger and the Issuance of Shares of BioSante Common Stock in the Merger</u>	<u>96</u>
<u>BioSante Proposal No. 2 Approval of Amendment to BioSante's Certificate of Incorporation to Effect a Reverse Split of BioSante Common Stock and Class C Special Meeting at the Discretion of BioSante and ANI at a Ratio of Either One-for-Two, One-for-Three, One-for-Four or One-for-Five.</u>	<u>97</u>
<u>BioSante Proposal No. 3 Approval of Amendment to BioSante's Certificate of Incorporation to Change Corporate Name</u>	<u>108</u>
<u>BioSante Proposal No. 4 Advisory Vote on Golden Parachute Compensation</u>	<u>109</u>
<u>BioSante Proposal No. 5 Approval of Possible Adjournment of the BioSante Special Meeting</u>	<u>110</u>
<u>THE SPECIAL MEETING OF ANI STOCKHOLDERS</u>	<u>111</u>
<u>General</u>	<u>111</u>
<u>Date, Time and Place</u>	<u>111</u>
<u>Purposes of the ANI Special Meeting</u>	<u>111</u>
<u>Recommendations of the ANI Board of Directors</u>	<u>111</u>
<u>Record Date and Voting Power</u>	<u>111</u>
<u>Voting and Revocation of Proxies</u>	<u>112</u>
<u>Quorum and Required Vote</u>	<u>112</u>
<u>Solicitation of Proxies</u>	<u>113</u>
<u>Other Matters</u>	<u>113</u>
<u>MATTERS BEING SUBMITTED TO A VOTE OF ANI STOCKHOLDERS</u>	<u>114</u>
<u>ANI Proposal No. 1 Adoption of Agreement and Plan of Merger and the Transactions Contemplated Thereby, Including the Merger</u>	<u>114</u>
<u>ANI Proposal No. 2 Approval of Possible Adjournment of the ANI Special Meeting</u>	<u>115</u>
<u>THE MERGER</u>	<u>116</u>
<u>General</u>	<u>116</u>
<u>Background of the Merger</u>	<u>116</u>
<u>BioSante Reasons for the Merger</u>	<u>128</u>
<u>ANI Reasons for the Merger</u>	<u>132</u>
<u>Opinion of Oppenheimer & Co. Inc.</u>	<u>134</u>
<u>Certain Financial Forecasts of ANI Used in Connection with the Merger</u>	<u>141</u>
<u>Interests of BioSante's Directors and Officers in the Merger</u>	<u>143</u>
<u>Interests of ANI's Directors and Officers in the Merger</u>	<u>148</u>
<u>Regulatory Approvals</u>	<u>150</u>
<u>NASDAQ Listing of BioSante Common Stock</u>	<u>150</u>

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

	Page
<u>Restrictions on Sales of BioSante Common Stock Received by ANI Stockholders in the Merger</u>	151
<u>Material U.S. Federal Income Tax Consequences of the Merger</u>	151
<u>Anticipated Accounting Treatment</u>	151
<u>Appraisal Rights</u>	152
<u>THE MERGER AGREEMENT</u>	
	156
<u>Structure of the Merger</u>	156
<u>Completion of the Merger</u>	156
<u>Merger Consideration and Adjustment</u>	156
<u>Determination of BioSante's Net Cash</u>	158
<u>Treatment of ANI Stock Options and Warrants</u>	159
<u>Conditions to Completion of the Merger</u>	159
<u>No Solicitation</u>	160
<u>Meetings of Stockholders; Change in Board Recommendation</u>	162
<u>Covenants; Conduct of Business Pending the Merger</u>	162
<u>Other Agreements</u>	163
<u>Termination</u>	164
<u>Termination Fees and Expenses</u>	165
<u>Representations and Warranties</u>	166
<u>Amendments</u>	167
<u>VOTING AND OTHER ANCILLARY AGREEMENTS</u>	
	168
<u>ANI Voting Agreements</u>	168
<u>BioSante Voting Agreements</u>	168
<u>Lock-Up Agreements</u>	169
<u>CONTINGENT VALUE RIGHTS</u>	
	170
<u>General</u>	170
<u>Contingent Value Rights Agreement</u>	170
<u>Material Terms of the CVRs</u>	170
<u>Discretion of BioSante to Issue CVRs</u>	171
<u>MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER</u>	
	172
<u>BIOSANTE'S BUSINESS</u>	
	175
<u>Overview</u>	175
<u>Description of BioSante's Female Sexual Health, Menopause, Contraception and Male Hypogonadism Products</u>	177
<u>Description of BioSante's GVAX Cancer Vaccines and Other Technologies</u>	182
<u>Sales and Marketing</u>	183
<u>Research and Product Development</u>	183
<u>Manufacturing</u>	183
<u>Patents, Licenses and Proprietary Rights</u>	183
<u>Competition</u>	185
<u>Governmental Regulation</u>	186
<u>Employees</u>	191
<u>Properties</u>	191
<u>Legal Proceedings</u>	191
<u>Available Information</u>	192
<u>BIOSANTE'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	
	193
<u>Business Overview</u>	193

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

	Page
<u>Proposed Merger with ANI</u>	<u>193</u>
<u>Financial Overview</u>	<u>196</u>
<u>Financial Overview</u>	<u>198</u>
<u>Results of Operations</u>	<u>200</u>
<u>Liquidity and Capital Resources</u>	<u>203</u>
<u>Critical Accounting Policies</u>	<u>208</u>
<u>Recently Issued Accounting Pronouncements</u>	<u>209</u>
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>210</u>
<u>ANI'S BUSINESS</u>	
	<u>211</u>
<u>Overview</u>	<u>211</u>
<u>Operations</u>	<u>211</u>
<u>Mission and Strategy</u>	<u>212</u>
<u>Government Regulation</u>	<u>212</u>
<u>Research and Development</u>	<u>217</u>
<u>Patents, Trademarks and Licenses</u>	<u>217</u>
<u>Customers</u>	<u>218</u>
<u>Markets</u>	<u>218</u>
<u>Marketing and Distribution</u>	<u>219</u>
<u>Competition</u>	<u>220</u>
<u>Product Liability</u>	<u>220</u>
<u>Suppliers and Raw Materials</u>	<u>221</u>
<u>Employees</u>	<u>221</u>
<u>ANI'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	
	<u>222</u>
<u>Overview</u>	<u>222</u>
<u>Recent Developments</u>	<u>223</u>
<u>Critical Accounting Policies and the Use of Estimates</u>	<u>223</u>
<u>Recently Issued Accounting Standards</u>	<u>225</u>
<u>General</u>	<u>226</u>
<u>Results of Operations for the Nine Months Ended September 30, 2012 and 2011</u>	<u>227</u>
<u>Results of Operations for the Years Ended December 31, 2011 and 2010</u>	<u>231</u>
<u>Liquidity and Capital Resources</u>	<u>234</u>
<u>Off-Balance Sheet Arrangements</u>	<u>238</u>
<u>UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION</u>	
	<u>239</u>
<u>MANAGEMENT OF THE COMBINED COMPANY FOLLOWING THE MERGER</u>	
	<u>250</u>
<u>Directors and Executive Officers of the Combined Company Following the Merger</u>	<u>250</u>
<u>Director Independence</u>	<u>253</u>
<u>Board Committees of the Combined Company</u>	<u>254</u>
<u>Certain Relationships and Related Transactions</u>	<u>256</u>
<u>Director Compensation</u>	<u>262</u>
<u>Executive Compensation</u>	<u>265</u>
<u>Compensation Committee Interlocks and Insider Participation</u>	<u>273</u>
<u>PRINCIPAL STOCKHOLDERS OF BIOSANTE</u>	
	<u>274</u>
<u>PRINCIPAL STOCKHOLDERS OF ANI</u>	
	<u>276</u>
<u>PRINCIPAL STOCKHOLDERS OF COMBINED COMPANY</u>	
	<u>280</u>
<u>DESCRIPTION OF BIOSANTE CAPITAL STOCK</u>	
	<u>282</u>
<u>Authorized and Outstanding Capital Stock</u>	<u>282</u>

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

	Page
<u>Common Stock</u>	<u>282</u>
<u>Class C Special Stock</u>	<u>283</u>
<u>Preferred Stock</u>	<u>283</u>
<u>Anti-Takeover Effects of Provisions of BioSante's Certificate of Incorporation and Bylaws and Delaware Law</u>	<u>283</u>
<u>Limitation of Liability and Indemnification</u>	<u>285</u>
<u>Listing of BioSante Common Stock</u>	<u>285</u>
<u>Transfer Agent and Registrar</u>	<u>285</u>
<u>COMPARISON OF RIGHTS OF HOLDERS OF BIOSANTE STOCK AND ANI STOCK</u>	<u>286</u>
<u>LEGAL MATTERS</u>	<u>299</u>
<u>EXPERTS</u>	<u>299</u>
<u>FUTURE BIOSANTE STOCKHOLDER PROPOSALS AND DIRECTOR NOMINATIONS</u>	<u>299</u>
<u>BioSante Stockholder Proposals</u>	<u>299</u>
<u>BioSante Director Nominations</u>	<u>299</u>
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	<u>300</u>
<u>INDEX TO BIOSANTE'S FINANCIAL STATEMENTS</u>	<u>F-1</u>
<u>INDEX TO ANI'S FINANCIAL STATEMENTS</u>	<u>F-47</u>
<u>ANNEXES</u>	
<u>Annex A Agreement and Plan of Merger, As Amended</u>	<u>A-1</u>
<u>Annex B Form of Voting Agreement Between BioSante and Certain Stockholders of ANI</u>	<u>B-1</u>
<u>Annex C Voting Agreement Between BioSante and Meridian Venture Partners II, L.P.</u>	<u>C-1</u>
<u>Annex D Form of Voting Agreement Between ANI and Directors and Officers of BioSante</u>	<u>D-1</u>
<u>Annex E Form of Lock-Up Agreement</u>	<u>E-1</u>
<u>Annex F Form of Contingent Value Rights Agreement</u>	<u>F-1</u>
<u>Annex G Opinion of Oppenheimer & Co. Inc</u>	<u>G-1</u>
<u>Annex H Section 262 of the Delaware General Corporation Law</u>	<u>H-1</u>
<u>Annex I Proposed Amendment to BioSante's Certificate of Incorporation to Effect a Reverse Split of Common Stock and Class C Special Stock at the Discretion of BioSante and ANI</u>	<u>I-1</u>
<u>Annex J Proposed Amendment to BioSante's Certificate of Incorporation to Change Corporate Name</u>	<u>J-1</u>

References to "*BioSante*" and "*ANI*" in this joint proxy statement/prospectus refer to BioSante Pharmaceuticals, Inc. and ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc., respectively. References to the "combined company" refer to BioSante, as the surviving entity after the merger and incorporating the merged business of ANI. Except as otherwise noted, references to "*we*," "*us*" or "*our*" refer to both BioSante and ANI. References to the "*merger agreement*" refer to that certain agreement and plan of merger dated as of October 3, 2012 between BioSante and ANI, as amended from time to time.

Except as otherwise noted, references to "*BioSante common stock*" refer to shares of common stock, par value \$0.0001 per share, of BioSante, and references to "*BioSante class C special stock*" refer to shares of class C special stock, par value of \$0.0001 per share, of BioSante. Except as otherwise noted, references to "*BioSante capital stock*" refer to shares of BioSante common stock and BioSante class C special stock. References to the *BioSante stockholders* refer to holders of shares of BioSante common stock and/or shares of BioSante class C special stock. All BioSante share and per share

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

numbers have been adjusted retroactively to reflect the one-for-six reverse stock split effected on June 1, 2012.

Except as otherwise noted, references to "*ANI series D preferred stock*," "*ANI series C preferred stock*," "*ANI series B preferred stock*," "*ANI series A preferred stock*" and "*ANI common stock*" refer to shares of series D convertible preferred stock, par value \$0.10 per share, of ANI, series C convertible preferred stock, par value \$0.10 per share, of ANI, series B convertible preferred stock, par value \$0.10 per share, of ANI, series A convertible preferred stock, par value \$0.10 per share, of ANI, and common stock, par value \$0.10 per share, of ANI, respectively, and references to "*ANI preferred stock*" refer to shares of ANI series D preferred stock, ANI series C preferred stock, ANI series B preferred stock and ANI series A preferred stock, collectively. Except as otherwise noted, references to "*ANI capital stock*" refer to shares of ANI preferred stock and ANI common stock. References to the *ANI stockholders* refer to holders of shares of ANI capital stock. All ANI share and per share numbers have been adjusted retroactively to reflect the one-for-ten reverse stock split effected on January 28, 2011.

BioSante owns or has rights to various trademarks, trade names or service marks, including *BioSante*[®], *LibiGel*[®], *GVAX*, *The Pill-Plus* and *Elestrin*. ANI owns or has rights to various trademarks, trade names or service marks, including *Cortenema*[®] and *Reglan*[®]. This joint proxy statement/prospectus also contains trademarks, trade names and service marks of others.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE MERGER

The following section provides answers to frequently asked questions about the merger. This section, however, only provides summary information. These questions and answers may not address all issues that may be important to you as a BioSante or ANI stockholder. You should read carefully the entire joint proxy statement/prospectus, including each of the annexes.

Q: What is the merger?

A: BioSante and ANI have entered into an agreement and plan of merger, which is referred to in this joint proxy statement/prospectus as the merger agreement, that contains the terms and conditions of the proposed merger of BioSante and ANI. If the merger is completed, ANI will merge with and into BioSante, with BioSante continuing as the surviving company. This transaction is referred to as the merger.

Q: Why are BioSante and ANI proposing to effect the merger?

A: BioSante and ANI both believe that the merger of the two companies will be able to create more value than either company could achieve individually. The combined company that will result from the merger will be a fully integrated specialty branded and generic pharmaceutical company focused on developing, manufacturing and marketing branded and generic prescription pharmaceuticals. For a more complete description of the reasons for the merger, see the sections entitled "The Merger BioSante Reasons for the Merger" beginning on page 128 and "The Merger ANI Reasons for the Merger" beginning on page 132.

Q: What will ANI stockholders receive in the merger?

A: Upon completion of the merger, ANI stockholders will have the right to receive, for each share of ANI capital stock they hold, that number of shares of BioSante common stock, if any, as determined pursuant to the exchange ratios described in the merger agreement and the provisions of ANI's certificate of incorporation. See the section entitled "The Merger Agreement Merger Consideration and Adjustment" beginning on page 156. The exchange ratios are subject to potential adjustment as described in the merger agreement, depending upon the amount of "net cash" of BioSante, as defined in the merger agreement, and generally consisting of BioSante's cash and cash equivalents less certain expenses and liabilities, as of a determination date prior to the closing date of the merger, and thus will not be determined until that time. Upon completion of the merger, ANI stockholders are expected to receive shares of BioSante common stock representing an aggregate of approximately 53 percent of the outstanding shares of common stock of the combined company, but in no event will the current ANI stockholders own less than 50.1 percent (or the current BioSante stockholders own more than 49.9 percent) of the outstanding shares of common stock of the combined company, assuming BioSante's net cash is \$18.0 million as of the determination date.

Pursuant to the terms of ANI's certificate of incorporation, (i) before any amounts are paid to the holders of shares of any other series of ANI preferred stock or ANI common stock, the holders of shares of ANI series D preferred stock are entitled to receive an amount per share equal to \$30.00 plus all declared but unpaid dividends; (ii) before any amounts are paid to the holders of shares of ANI series B preferred stock, ANI series A preferred stock or ANI common stock, the holders of shares of ANI series C preferred stock are entitled to receive an amount per share equal to \$110.00 plus all declared but unpaid dividends; (iii) before any amounts are paid to the holders of shares of ANI series A preferred stock or ANI common stock, the holders of shares of ANI series B preferred stock are entitled to receive an amount per share equal to \$110.00 plus all declared but unpaid dividends; (iv) before any amounts are paid to the holders of shares of ANI

Table of Contents

common stock, the holders of shares of ANI series A preferred stock are entitled to receive an amount per share equal to \$100.00 plus all declared but unpaid dividends; and (v) after payments have been made to all holders of ANI preferred stock, the remaining assets of ANI will be distributed ratably to the holders of ANI common stock, including holders of ANI series C preferred stock, ANI series B preferred stock and ANI series A preferred stock who elect to convert into BioSante common stock in lieu of receiving the stated dollar preference amounts described above, and ANI series D preferred stock. The stated value of each series of ANI preferred stock set forth above is subject to adjustment as provided in ANI's certificate of incorporation. The exchange ratios in the merger agreement reflect these preferential payments. **As a result of such provisions, it is likely that holders of shares of ANI series A preferred stock, ANI series B preferred stock, ANI series C preferred stock or ANI common stock will not receive any shares of BioSante common stock in connection with the merger.**

For illustrative purposes only, if the merger had been completed on October 3, 2012, the date of the merger agreement, and assuming BioSante's net cash as of such date was \$18.0 million, the exchange ratio (without giving effect to the proposed reverse stock split of BioSante common stock and BioSante class C special stock described elsewhere in this joint proxy statement/prospectus) for the ANI series D preferred stock (including shares that would have been issued to certain executive officers of ANI immediately prior to completion of the merger) would have been approximately 10.3502 shares of BioSante common stock for each share of ANI series D preferred stock and the exchange ratio (without giving effect to the proposed reverse stock split described elsewhere in this joint proxy statement/prospectus) for the ANI series C preferred stock, ANI series B preferred stock, ANI series A preferred stock and ANI common stock would have been zero. Therefore, if the merger had been completed on such date and you owned 1,000 shares of ANI series D preferred stock as of such date, you would have had the right to receive 10,350 shares of BioSante common stock in exchange for your shares of ANI series D preferred stock. If you owned 1,000 shares of ANI series C preferred stock, ANI series B preferred stock, ANI series A preferred stock or ANI common stock as of such date, you would have had the right to receive no shares of BioSante common stock for such shares of ANI series C preferred stock, ANI series B preferred stock, ANI series A preferred stock or ANI common stock.

No fractional shares of BioSante common stock will be issued to ANI stockholders in connection with the merger. Instead, ANI stockholders will be entitled to receive cash in lieu of any fractional shares of BioSante common stock that they otherwise would be entitled to receive in connection with the merger.

For a more complete discussion of what ANI stockholders will receive in connection with the merger, see the sections entitled "The Merger Agreement Merger Consideration and Adjustment" beginning on page 156.

Q:
How will BioSante stockholders be affected by the merger?

A:
The merger will have no effect on the number of shares of BioSante common stock or BioSante class C special stock held by BioSante stockholders as of immediately prior to completion of the merger (subject to any changes in outstanding shares of BioSante common stock and BioSante class C special stock as a result of the reverse stock split described elsewhere in this joint proxy statement/prospectus). However, it is expected that upon completion of the merger shares of BioSante common stock will represent only an aggregate of approximately 47 percent of the outstanding shares of common stock of the combined company, assuming BioSante's net cash is \$18.0 million as of the determination date. If BioSante's net cash is higher than \$18.0 million as of the determination date, then shares of BioSante common stock will represent a higher percentage, but no more than 49.9 percent, of the outstanding shares of common stock of the combined company. If BioSante's net cash is less than \$18.0 million as of the determination date, then shares

Table of Contents

of BioSante common stock will represent a lower percentage of the outstanding shares of common stock of the combined company. One of the conditions to ANI's obligations to complete the merger is BioSante's net cash as of the closing date being no less than \$17.0 million as calculated and as adjusted pursuant to the provisions of the merger agreement.

For illustrative purposes only, if you are a BioSante stockholder and hold five percent of the outstanding shares of BioSante common stock immediately prior to completion of the merger and do not also hold any shares of ANI capital stock, then upon completion of the merger, you will hold an aggregate of approximately 2.35 percent of the outstanding shares of common stock of the combined company immediately following completion of the merger, assuming BioSante's net cash is \$18.0 million as of the determination date, and approximately 2.32 percent of the outstanding shares of common stock of the combined company immediately following completion of the merger, assuming BioSante's net cash is \$17.0 million as of the determination date.

Q:
Can the value of the transaction change between now and the time the merger is completed?

A:
Yes. The market value of BioSante common stock can change between now and the time the merger is completed and the exchange ratios are subject to adjustment based on BioSante's net cash. The exchange ratios will not change, however, if the market value of BioSante common stock changes. Therefore, the market value of the total transaction, and of the BioSante common stock to be issued to ANI stockholders in the merger, will increase or decrease as the market value of BioSante common stock increases or decreases. In addition, the market value of the total transaction may change as a result of an adjustment of the exchange ratios triggered by a change in BioSante's net cash between now and the net cash determination date.

Q:
Who will be the directors and executive officers of the combined company following the merger?

A:
Following the merger, the board of directors of the combined company will be as follows:

Name	Current Principal Affiliation
Robert E. Brown, Jr.	ANI
Tracy L. Marshbanks, Ph.D.	ANI
Thomas A. Penn	ANI
Arthur S. Przybyl	ANI
Robert Schrepfer	ANI
Fred Holubow	BioSante
Ross Mangano	BioSante

Robert E. Brown, Jr., ANI's chairman of the board, will be chairman of the board of the combined company.

Following the merger, the executive officers of the combined company will be the current executive officers of ANI, who are as follows:

Name	Position
Arthur S. Przybyl	President and Chief Executive Officer
Charlotte C. Arnold	Vice President and Chief Financial Officer
James G. Marken	Vice President, Operations
Robert J. Jamnick	Vice President, Quality and Product Development

Table of Contents

Q: What are the conditions to the completion of the merger?

A: The obligations of each of BioSante and ANI to consummate the merger are subject to the satisfaction or waiver (if permissible) at or before the effective time of the merger of the following conditions:

the adoption by the requisite vote of BioSante stockholders of the merger agreement, including the merger and the issuance of shares of BioSante common stock pursuant to the merger agreement, and approval by the requisite vote of BioSante stockholders of the amendments to BioSante's certificate of incorporation to effect the reverse stock split and change the company's corporate name;

the adoption of the merger agreement, including the merger, by the requisite vote of ANI stockholders;

the absence of any legal prohibition to completing the merger;

the effectiveness of, and the absence of any stop order with respect to, the registration statement on Form S-4 of which this joint proxy statement/prospectus forms a part;

the continued listing of BioSante's common stock on The NASDAQ Global Market and the approval for listing on The NASDAQ Global Market or The NASDAQ Capital Market of the shares of BioSante common stock issuable in the merger; and

the receipt of legal opinions from BioSante's and ANI's outside counsel that the merger will qualify as a reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended.

In addition, each party's obligation to complete the merger is further subject to the satisfaction or waiver (if permissible) by that party of the following additional conditions:

the representations and warranties of the other party in the merger agreement being true and correct in all material respects, in each case as of the date of the merger agreement and as of the effective time of the merger, or, if such representations and warranties address matters as of a particular date, then as of that particular date;

the other party to the merger agreement having performed or complied in all material respects with all agreements and covenants required to be performed or complied with by it at or before the closing of the merger;

the other party having delivered a certificate signed by a duly authorized officer certifying to the satisfaction of such party of the above conditions in the merger agreement; and

no material adverse effect on the other party shall have occurred and be continuing since the date of the merger agreement. In addition, the obligation of ANI to complete the merger is further subject to the satisfaction or waiver at or before the effective time of the merger of the following additional conditions:

BioSante's net cash as of the closing being no less than \$17.0 million, as calculated and as adjusted pursuant to the provisions of the merger agreement; and

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

no new legal proceeding having been instituted against BioSante by any stockholder or holder of BioSante's convertible senior notes that has not been settled prior to the closing.

Q:

What will happen to BioSante or ANI if, for any reason, the merger does not close?

A:

BioSante and ANI have invested significant time and incurred, and expect to continue to incur, significant expenses related to the proposed merger. In the event the merger does not close, each

Table of Contents

of BioSante and ANI will review all alternatives then available to it. Failure to complete the merger could result in other adverse effects, as discussed in "Risk Factors Risks Related to the Merger" beginning on page 38.

Q:

When do BioSante and ANI expect the merger to be completed?

A:

The merger will be completed upon the filing of a certificate of merger with the Secretary of State of the State of Delaware, but such filing only will be made upon the satisfaction or waiver (if permissible) of the conditions specified in the merger agreement, including receipt of the necessary approvals of BioSante and ANI stockholders at their respective special meetings and other customary closing conditions. It is possible that factors outside the control of BioSante and ANI could result in the merger not being completed or being completed later than expected. Although the exact timing of completion of the merger cannot be predicted with certainty, BioSante and ANI currently anticipate completing the merger in the first quarter of 2013.

Table of Contents

**QUESTIONS AND ANSWERS FOR BIOSANTE STOCKHOLDERS
ABOUT THE BIOSANTE SPECIAL MEETING**

The following section provides answers to frequently asked questions about the BioSante special meeting of stockholders. This section, however, only provides summary information. These questions and answers may not address all issues that may be important to you as a BioSante stockholder. You should read carefully the entire joint proxy statement/prospectus, including each of the annexes.

Q: What proposals will be voted on at the BioSante special meeting?

A: The following proposals will be voted on at the BioSante special meeting:

The first proposal to be voted upon is whether to adopt the merger agreement, a copy of which is attached as Annex A to this joint proxy statement/prospectus, and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock in the merger. See "Matters Being Submitted to a Vote of BioSante Stockholders BioSante Proposal No. 1 Adoption of Agreement and Plan of Merger and the Transactions Contemplated Thereby, including the Merger and the Issuance of Shares of BioSante Common Stock in the Merger," "The Merger" and "The Merger Agreement" beginning on pages 96, 116 and 156, respectively, for a more detailed description of the transaction.

The second proposal to be voted upon is whether to approve an amendment to BioSante's certificate of incorporation to effect a reverse split of BioSante common stock and BioSante class C special stock at the discretion of BioSante and ANI at a ratio of either one-for-two, one-for-three, one-for-four or one-for-five. See "Matters Being Submitted to a Vote of BioSante Stockholders BioSante Proposal No. 2 Approval of Amendment to BioSante's Certificate of Incorporation to Effect Reverse Split of BioSante Common Stock and Class C Special Stock at the Discretion of BioSante and ANI at a Ratio of Either One-for-Two, One-for-Three, One-for-Four or One-for-Five" beginning on page 97 for a more detailed description of the proposed amendment.

The third proposal to be voted upon is whether to approve an amendment to BioSante's certificate of incorporation to change the name of BioSante in connection with the merger to "ANI Pharmaceuticals, Inc." See "Matters Being Submitted to a Vote of BioSante Stockholders BioSante Proposal No. 3 Approval of Amendment to BioSante's Certificate of Incorporation to Change Corporate Name" beginning on page 108 for a more detailed description of the proposed amendment.

The fourth proposal to be voted upon is whether to approve, on an advisory (non-binding) basis, the compensation payable to certain executive officers of BioSante under existing arrangements in connection with the merger. See "Matters Being Submitted to a Vote of BioSante Stockholders BioSante Proposal No. 4 Advisory Vote on Golden Parachute Compensation" beginning on page 109 for a more detailed description of the advisory vote.

The fifth proposal to be voted upon is whether to adjourn the BioSante special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the first, second and third proposals. See "Matters Being Submitted to a Vote of BioSante Stockholders BioSante Proposal No. 5 Approval of Possible Adjournment of the BioSante Special Meeting" beginning on page 110 for a more detailed description of the possible adjournment.

Q: What risks should I consider before I vote on the proposed merger transaction and other merger related proposals?

A: You should review the section entitled "Risk Factors" beginning on page 38.

Table of Contents

Q: How does the BioSante board of directors recommend that BioSante stockholders vote?

A: After careful consideration, the BioSante board of directors unanimously has approved the merger agreement, including the merger and the issuance of shares of BioSante common stock in the merger, and each of the proposals described in this joint proxy statement/prospectus that BioSante stockholders are being asked to consider, and has determined that they are advisable, fair to and in the best interests of BioSante stockholders. Accordingly, the BioSante board of directors unanimously recommends that BioSante stockholders vote "**FOR**" each such proposal.

Q: Why is the proposal to amend BioSante's charter to effect the reverse stock split included in this joint proxy statement/prospectus and is it necessary for the completion of the merger?

A: It is expected that immediately prior to the effective time of the merger, BioSante will effect a reverse split of the BioSante common stock and BioSante class C special stock at a ratio of either one-for-two, one-for-three, one-for-four or one-for-five (with the exact ratio to be determined by BioSante and ANI immediately prior to completion of the merger). The reverse stock split is intended to ensure that the listing rules of The NASDAQ Stock Market are satisfied in connection with the issuance of shares of BioSante common stock in the merger. Under the listing rules of The NASDAQ Stock Market, the combined company must file an initial listing application in connection with the merger and comply with the initial listing rules of the applicable NASDAQ market to continue to be listed on such market following the merger. BioSante common stock is required to be listed on The NASDAQ Global Market or The NASDAQ Capital Market as a condition to closing the merger. The initial listing rules of The NASDAQ Global Market and The NASDAQ Capital Market require a company to have, among other things, a \$4.00 per share minimum bid price. Because the current per share price of BioSante common stock is less than \$4.00, the reverse stock split is necessary to meet the minimum bid listing requirement.

Q: Why is the proposal to amend BioSante's charter to effect the change in BioSante's corporate name included in this joint proxy statement/prospectus and is it necessary for the completion of the merger?

A: Both BioSante and ANI believe that the change in the corporate name of BioSante from "BioSante Pharmaceuticals, Inc." to "ANI Pharmaceuticals, Inc." will allow for recognition of the combined company's business following completion of the merger. The current name will no longer accurately reflect the business of the combined company and the mission of the combined company subsequent to the completion of the merger. The approval of the amendment to BioSante's certificate of incorporation to effect the change in corporate name by the BioSante stockholders is a condition to closing the merger.

Q: Can I dissent and require appraisal of my shares?

A: No. Under the Delaware General Corporation Law, BioSante stockholders will not have appraisal rights in connection with the merger or any of the other proposals described in this joint proxy statement/prospectus that the BioSante stockholders are being asked to consider. See "The Merger Appraisal Rights" beginning on page 152.

Q: When and where is the BioSante special meeting?

A: The BioSante special meeting of stockholders will be held on [], 2013 at [] a.m., local time, at BioSante's corporate offices located at 111 Barclay Boulevard, Lincolnshire, Illinois 60069 to consider and vote on the proposals related to the merger agreement and the transactions contemplated by it. For additional information relating to the BioSante special meeting, please see the section entitled "The Special Meeting of BioSante Stockholders" beginning on page 92.

Table of Contents

Q: Who is soliciting my proxy?

A: This proxy is being solicited by the BioSante board of directors.

Q: What do I do now?

A: BioSante urges you to read carefully and consider this joint proxy statement/prospectus, including its annexes, and consider how the proposed merger affects you.

In order for your shares to be represented at the BioSante special meeting:

you can vote by telephone or through the Internet by following the instructions included on the enclosed proxy card;

you can indicate on the enclosed proxy card how you would like to vote and sign and return the proxy card in the accompanying pre-addressed postage paid envelope; or

you can attend the BioSante special meeting in person.

If you hold your shares in "street name," please refer to the enclosed proxy card or the information forwarded by your bank, broker or other holder of record to see what options are available to you.

Q: Who is entitled to vote at the BioSante special meeting?

A: Holders of record of BioSante common stock and BioSante class C special stock at the close of business on [], 2012 are entitled to notice of and to vote at the BioSante special meeting. As of [], 2012, 24,422,240 shares of BioSante common stock were issued and outstanding and entitled to vote and 65,211 shares of BioSante class C special stock were issued and outstanding and entitled to vote.

Q: What is the difference between holding shares as a stockholder of record and as a beneficial owner?

A: If your shares are registered directly in your name with BioSante's transfer agent, Computershare Trust Company, N.A., you are considered, with respect to those shares, the "stockholder of record." These proxy materials are sent to you by mail directly by BioSante.

If your shares are held in a stock brokerage account or by a bank or other holder of record, you are considered the "beneficial owner" of shares held in street name. These proxy materials are forwarded to you by your broker, bank or other holder of record who is considered, with respect to those shares, the stockholder of record. As the beneficial owner, you have the right to direct your broker, bank or other holder of record on how to vote your shares held in your account.

Q: If I am a stockholder of record of BioSante capital stock, how do I vote?

A: You may vote by proxy over the Internet by visiting the website established for that purpose at <https://www.proxyvote.com> and following the instructions (please note you must type an "s" after http), or you may vote by mail or by telephone. Alternatively, if you are a stockholder of record, you may vote in person at the BioSante special meeting. You will receive a ballot when you arrive.

Q: If I am a beneficial owner of shares held in street name, how do I vote?

A: You may vote by proxy over the Internet by visiting the website established for that purpose at <https://www.proxyvote.com> and following the instructions (please note you must type an "s" after http), or you may vote by mail or by telephone. If you are a beneficial owner of shares held in street name and you wish to vote in person at the BioSante special meeting, you must obtain a valid proxy from the organization that holds your shares.

Table of Contents

Q: What can I do if I change my mind after I vote my shares?

A: A stockholder of record may revoke its proxy at any time before it is used on the date of the BioSante special meeting by delivering to the corporate secretary of BioSante:

written notice of revocation,

a duly executed proxy bearing a later date or time than that of the previously submitted proxy, or

a later dated vote by Internet or telephone, or a ballot cast in person at the BioSante special meeting.

If you are a beneficial owner of BioSante capital stock, you may submit new voting instructions by contacting your bank, broker or other holder of record. You also may vote in person if you obtain a legal proxy as described in the answer to the previous question. All shares that have been properly voted and not revoked will be voted at the BioSante special meeting.

Q: What shares are included on the proxy card?

A: If you are a stockholder of record of BioSante capital stock, you will receive only one proxy card for all the shares of BioSante capital stock you hold in certificate form and in book-entry form.

If you are a beneficial owner of BioSante capital stock, you will receive voting instructions, and information regarding consolidation of your vote, from your bank, broker or other holder of record.

Q: What are the voting requirements to approve each of the proposals that will be voted on at the BioSante special meeting?

A:

Proposal

Adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock in the merger

Vote Required

Majority of the outstanding shares of BioSante common stock and BioSante class C special stock, voting together as a single class, and entitled to vote

Approval of amendment to effect reverse split of BioSante common stock and BioSante class C special stock at the discretion of BioSante and ANI at a ratio of either one-for-two, one-for-three, one-for-four or one-for-five

Majority of the outstanding shares of BioSante common stock and BioSante class C special stock, voting together as a single class, and entitled to vote

Approval of amendment to effect change of corporate name to "ANI Pharmaceuticals, Inc."

Majority of the outstanding shares of BioSante common stock and BioSante class C special stock, voting together as a single class, and entitled to vote

Approval, on an advisory (non-binding) basis, of the compensation payable to certain executive officers of BioSante under existing arrangements in connection with the merger

Majority of the shares of BioSante common stock and BioSante class C special stock present in person or represented by proxy, voting together as a single class, and entitled to vote when a quorum is present

Approval of adjournment of the BioSante special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the first

Majority of the shares of BioSante common stock and BioSante class C special stock present in person or represented by proxy, voting together as a single class, and entitled to vote when a quorum is present

three proposals

In connection with the execution of the merger agreement, all of BioSante's directors, executive officers and affiliated entities, who collectively held approximately two percent of the outstanding shares of BioSante capital stock as of October 3, 2012, entered into a voting agreement with ANI,

Table of Contents

pursuant to which each such BioSante stockholder agreed to vote all of their shares of BioSante capital stock in favor of adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock, in favor of the two charter amendments, and against certain transactions or certain actions that would delay, prevent or nullify the merger or the transactions contemplated thereby. As of the record date for the BioSante special meeting, the shares of BioSante capital stock owned by all of BioSante's directors, executive officers and affiliated entities and thus subject to the voting agreements constituted approximately two percent of the total outstanding voting power of BioSante on that date.

See the section entitled "Voting and Other Ancillary Agreements BioSante Voting Agreements" beginning on page 168 for more information regarding these voting agreements.

Q:
What constitutes a quorum at the BioSante special meeting?

A:
The presence at the BioSante special meeting, either in person or by proxy, of the holders of one-third of the outstanding shares of BioSante common stock and BioSante class C special stock entitled to vote shall constitute a quorum for the transaction of business. Abstentions and broker non-votes are counted as present and entitled to vote for purposes of determining a quorum. A "broker non-vote" occurs when a bank, broker or other holder of record holding shares for a beneficial owner does not vote on a particular proposal because that holder does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner.

Q:
Could other matters be decided at the BioSante special meeting?

A:
As of the date of the printing of this joint proxy statement/prospectus, neither BioSante nor ANI knew of any matters to be raised at the BioSante special meeting other than those referred to in this joint proxy statement/prospectus. If other matters are properly presented at the BioSante special meeting for consideration, the proxy committee appointed by the BioSante board of directors (the persons named in your proxy card if you are a BioSante stockholder of record) will have the discretion to vote on those matters for you.

Q:
Who will count the vote?

A:
An officer of BioSante or a designee will tabulate the votes and act as inspector of the election.

Q:
Who is paying for this proxy solicitation?

A:
BioSante will bear the cost of soliciting proxies, including the printing, mailing and filing of this joint proxy statement/prospectus, the proxy card and any additional information furnished to BioSante stockholders. BioSante has engaged Phoenix Advisory Partners, a proxy solicitation firm, to solicit proxies from BioSante stockholders. Arrangements also will be made with brokerage firms and other custodians, nominees and fiduciaries who are record holders of BioSante common stock for the forwarding of solicitation materials to the beneficial owners of BioSante common stock. BioSante will reimburse these brokers, custodians, nominees and fiduciaries for the reasonable out-of-pocket expenses they incur in connection with the forwarding of solicitation materials.

Table of Contents

Q: Whom should I call with questions?

A: If you have additional questions, you should contact:

BioSante Pharmaceuticals, Inc.
111 Barclay Boulevard
Lincolnshire, Illinois 60069
Attention: Investor Relations
Phone Number: (847) 478-0500, ext. 120
Email Address: info@biosantepharma.com

If you would like additional copies of this joint proxy statement/prospectus, you should contact:

AST Phoenix Advisors
110 Wall Street, 27th Floor
New York, New York 10005
Telephone: (877) 478-5038
Email Address: info@phoenixadvisorsast.com

Table of Contents

**QUESTIONS AND ANSWERS FOR ANI STOCKHOLDERS
ABOUT THE ANI SPECIAL MEETING**

The following section provides answers to frequently asked questions about the ANI special meeting of stockholders. This section, however, only provides summary information. These questions and answers may not address all issues that may be important to you as an ANI stockholder. You should read carefully the entire joint proxy statement/prospectus, including each of the annexes.

Q: What proposals will be voted on at the ANI special meeting?

A: The following proposals will be voted on at the ANI special meeting:

The first proposal to be voted upon is whether to adopt the merger agreement, a copy of which is attached as Annex A to this joint proxy statement/prospectus, and the transactions contemplated thereby, including the merger. See "Matters Being Submitted to a Vote of ANI Stockholders ANI Proposal No. 1 Adoption of Agreement and Plan of Merger and the Transactions Contemplated Thereby, including the Merger," "The Merger" and "The Merger Agreement" beginning on pages 114, 116 and 156, respectively, for a more detailed description of the transaction.

The second proposal to be voted upon is whether to adjourn the ANI special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the first proposal. See "Matters Being Submitted to a Vote of ANI Stockholders ANI Proposal No. 2 Approval of Possible Adjournment of the ANI Special Meeting" beginning on page 115 for a more detailed description of the possible adjournment.

Q: What risks should I consider before I vote on the proposed merger transaction?

A: You should review the section entitled "Risk Factors" beginning on page 38.

Q: How does the ANI board of directors recommend that ANI stockholders vote?

A: After careful consideration, the ANI board of directors has unanimously approved the merger agreement, including the merger, and each of the proposals described in this joint proxy statement/prospectus that the ANI stockholders are being asked to consider, and has determined that they are advisable, fair to and in the best interests of ANI stockholders. Accordingly, the ANI board of directors unanimously recommends that ANI stockholders vote "**FOR**" each such proposal.

Q: Can I dissent and require appraisal of my shares?

A: Yes. Under the Delaware General Corporation Law, ANI stockholders will have appraisal rights in connection with the merger. See "The Merger Appraisal Rights" beginning on page 152.

Q: When and where is the ANI special meeting?

A: The ANI special meeting of stockholders will be held on [], 2013 at [], local time, at the offices of MVP Capital Partners located at 259 N. Radnor-Chester Road, Suite 130, Radnor, Pennsylvania 19087 to consider and vote on the proposals related to the merger agreement and the transactions contemplated by it. For additional information relating to the ANI special meeting, please see the section entitled "The Special Meeting of ANI Stockholders" beginning on page 111.

Q:

Who is soliciting my proxy?

A:

This proxy is being solicited by the ANI board of directors.

Table of Contents

Q: **What do I do now?**

A: ANI urges you to read carefully and consider this joint proxy statement/prospectus, including its annexes, and consider how the proposed merger affects you.

In order for your shares to be represented at the ANI special meeting:

you can indicate on the enclosed proxy card how you would like to vote and sign and return the proxy card in the accompanying pre-addressed postage paid envelope; or

you can attend the ANI special meeting in person.

Q: **Who is entitled to vote at the ANI special meeting?**

A: Every stockholder of ANI on the record date is entitled to vote at the ANI special meeting. Holders of record of ANI capital stock at the close of business on [], 2012 are entitled to notice of and to vote at the ANI special meeting. As of [], 2012, 2,375,312 shares of ANI series D preferred stock, 34,810 shares of ANI series C preferred stock, 78,491 shares of ANI series B preferred stock, 102,774 shares of ANI series A preferred stock and 23,613 shares of ANI common stock were issued and outstanding and entitled to vote.

Q: **How do I vote?**

A: You may vote by mail, or alternatively, you may vote in person at the ANI special meeting. You will receive a ballot when you arrive.

Q: **What can I do if I change my mind after I vote my shares?**

A: A stockholder of record may revoke its proxy at any time before it is used on the date of the ANI special meeting by delivering to the corporate secretary of ANI:

written notice of revocation,

a duly executed proxy bearing a later date or time than that of the previously submitted proxy, or

a later dated vote by a ballot cast in person at the ANI special meeting.

Q: **What shares are included on the proxy card?**

A: If you are a stockholder of record of ANI capital stock, you will receive only one proxy card for all the shares of ANI capital stock you hold in certificate form.

Table of Contents

Q: What are the voting requirements to approve each of the proposals that will be voted on at the ANI special meeting?

A:

Proposal	Vote Required
Adoption of the merger agreement and the transactions contemplated thereby, including the merger	Majority of the outstanding shares of ANI capital stock entitled to vote, calculated on an as-converted basis, voting as a single class, and 65 percent of the outstanding shares of ANI series D preferred stock entitled to vote
Approval of adjournment of the ANI special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement and the transactions contemplated thereby, including the merger	Majority of the shares of ANI capital stock entitled to vote, calculated on an as-converted basis, present in person or represented by proxy and voting as a single class

In connection with the execution of the merger agreement, Meridian Venture Partners II, L.P., Argentum Capital Partners II, L.P. and four funds affiliated with First Analysis Corp., who in the aggregate held approximately 85 percent of the shares of the outstanding ANI capital stock, calculated on an as-converted basis, and approximately 86 percent of the outstanding shares of the ANI series D preferred stock, as of October 3, 2012 entered into a voting agreement with BioSante, pursuant to which they agreed to vote their shares of ANI capital stock in favor of the merger, the merger agreement and the transactions contemplated by the merger agreement and against certain transactions or certain actions that would delay, prevent or nullify the merger or the transaction contemplated by the merger agreement.

As of the record date for the ANI special meeting, the shares of ANI capital stock owned by all of ANI's directors, executive officers and affiliated entities constituted approximately 92 percent of the outstanding shares of ANI capital stock, on an as-converted basis, and approximately 94 percent of the outstanding shares of the ANI series D preferred stock on that date.

See the section entitled "Voting and Other Ancillary Agreements ANI Voting Agreements" beginning on page 168 for more information regarding this and other voting agreements.

Q: What constitutes a quorum at the ANI special meeting?

A:

The presence at the ANI special meeting, either in person or by proxy, of the holders of a majority of the voting power of the issued and outstanding shares of ANI capital stock entitled to vote will constitute a quorum for the transaction of business. Abstentions are counted as present and entitled to vote for purposes of determining a quorum.

Q: Could other matters be decided at the ANI special meeting?

A:

As of the date of the printing of this joint proxy statement/prospectus, neither BioSante nor ANI knew of any matters to be raised at the ANI special meeting other than those referred to in this joint proxy statement/prospectus. If other matters are properly presented at the ANI special meeting for consideration, the proxy committee appointed by the ANI board of directors (the persons named in your proxy card) will have the discretion to vote on those matters for you.

Q: Who will count the vote?

A:

An officer of ANI or a designee will tabulate the votes and act as inspector of the election.

Table of Contents

Q: Who is paying for this proxy solicitation?

A: ANI will bear the cost of soliciting proxies, including the printing, mailing and filing of this joint proxy statement/prospectus, the proxy card and any additional information furnished to the ANI stockholders.

Q: Whom should I call with questions?

A: If you have additional questions, you should contact:

ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, Minnesota 56623
Telephone: (218) 634-3500
Investor Relations: arthur.przybyl@anipharmaceuticals.com

If you would like additional copies of this joint proxy statement/prospectus, you should contact:

AST Phoenix Advisors
110 Wall Street, 27th Floor
New York, New York 10005
Telephone: (877) 478-5038
Email Address: info@phoenixadvisorsast.com

Table of Contents

SUMMARY

This summary highlights selected information from this joint proxy statement/prospectus and may not contain all of the information that is important to you. To better understand the merger and the other proposals being considered at the special meetings, you should read this entire joint proxy statement/prospectus carefully, including the attached Annexes, and the other documents to which you are referred herein. See "Where You Can Find More Information" beginning on page 300.

The Companies

BioSante Pharmaceuticals, Inc.

BioSante Pharmaceuticals, Inc. is a specialty pharmaceutical company focused on developing products for female sexual health and oncology. The following are BioSante's products, either approved or in clinical development:

LibiGel once daily transdermal testosterone gel in Phase III development for the treatment of female sexual dysfunction, specifically hypoactive sexual desire disorder.

Male testosterone gel once daily transdermal testosterone gel approved by the U.S. Food and Drug Administration (FDA) indicated for the treatment of hypogonadism, or testosterone deficiency in men, and licensed to Teva Pharmaceuticals USA, Inc.

GVAX cancer vaccines a portfolio of cancer vaccines, four of which have been granted FDA orphan drug designation, currently in 17 Phase I and Phase II clinical trials for the treatment of various cancers.

The Pill-Plus (triple component contraceptive) once daily use of various combinations of estrogens, progestogens and androgens in Phase II development.

Elestrin once daily transdermal estradiol (estrogen) gel approved by the FDA indicated for the treatment of hot flashes associated with menopause and marketed in the U.S. by Meda Pharmaceuticals, Inc., BioSante's licensee.

BioSante's corporate offices are located at 111 Barclay Boulevard, Lincolnshire, Illinois 60069 and its telephone number is (847) 478-0500. BioSante's website is located at www.biosantepharma.com. The information contained on or connected to BioSante's website is expressly not incorporated by reference into this joint proxy statement/prospectus. Additional information about BioSante is included elsewhere in this joint proxy statement/prospectus. See the sections entitled "BioSante's Business," "BioSante's Management's Discussion and Analysis of Financial Condition and Results of Operations" and BioSante's financial statements beginning on pages 175, 193 and F-1, respectively.

ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc.

ANI is a fully integrated specialty branded and generic pharmaceutical company developing, manufacturing and marketing branded and generic prescription pharmaceuticals. In two facilities with combined manufacturing, packaging and laboratory capacity totaling 173,000 square feet, ANI manufactures oral solid dose products, as well as liquids and topicals, including narcotics and those that must be manufactured in a fully contained environment due to their potency and/or toxicity. ANI also performs contract manufacturing for other pharmaceutical companies. Over the last two years ANI has launched three new products and currently has 11 products in development. ANI's targeted areas of product development include narcotics, anti-cancers and hormones (potent compounds), and extended release niche generic prescription product opportunities.

ANI's corporate offices are located at 210 Main Street West, Baudette, Minnesota 56623, and its telephone number is (218) 634-3500. ANI's website is located at www.anipharmaceuticals.com. The

Table of Contents

information contained on or connected to ANI's website is expressly not incorporated by reference into this joint proxy statement/prospectus. Additional information about ANI is included elsewhere in this joint proxy statement/prospectus. See the sections entitled "ANI's Business," "ANI's Management's Discussion and Analysis of Financial Condition and Result of Operations" and ANI's financial statements beginning on pages 211, 222 and F-47, respectively.

Summary of the Merger

If the merger is completed, ANI will be merged with and into BioSante, with BioSante surviving the merger. A copy of the merger agreement is attached as Annex A to this joint proxy statement/prospectus. You are encouraged to read the merger agreement in its entirety because it is the legal document that governs the merger. For a more complete discussion of the merger, see the sections entitled "The Merger" and "The Merger Agreement" beginning on pages 116 and 156, respectively.

Reasons for the Merger

The combined company that will result from the merger will be a fully integrated specialty branded and generic pharmaceutical company focused on developing, manufacturing and marketing branded and generic prescription pharmaceuticals. BioSante and ANI both believe that the merger of the two companies will be able to create more value than either company could achieve individually.

Each of the boards of directors of BioSante and ANI also considered other reasons for the merger, as described herein. For example, the BioSante board of directors considered, among other reasons:

The consideration of BioSante's anticipated near- and long-term operations and performance on an independent, stand-alone basis, the substantial additional financing that would be needed to sustain such operations assuming BioSante continued its LibiGel development program or in-licensed or acquired additional technologies or product candidates, and the risk that such substantial additional financing could not be obtained on terms favorable to BioSante, or at all, in light of a volatile economy and uncertain capital markets.

The consideration of strategic alternatives to the proposed merger with ANI, including other merger transactions with other companies, continuing to operate BioSante on a stand-alone basis, in-licensing or acquiring additional technologies or product candidates and undertaking a liquidation of BioSante, and the belief that the proposed merger with ANI would permit the BioSante stockholders with a greater potential opportunity to realize a return on their investment than any other alternative reasonably available to BioSante and its stockholders.

The belief that the combination of BioSante's and ANI's businesses would create more value for the BioSante stockholders in the long-term than BioSante could create as an independent, stand-alone company, given the anticipated costs, timing and risks associated with continuing the development of LibiGel and other BioSante products in development and/or in-licensing or acquiring additional technologies or product candidates, and the uncertain capital markets, which BioSante historically has relied upon to raise additional financing to fund its product development efforts.

Historical and current information concerning ANI's business, financial performance, financial condition, operations and management and the results of a due diligence investigation of ANI conducted by BioSante's management and advisors.

The opportunity for the BioSante stockholders to participate in the potential future value of the combined company, including future potential value from ANI's established contract manufacturing operations, niche generic prescription products and products in development.

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

In addition, the ANI board of directors considered, among other reasons, the following:

That the existing BioSante product lines fit well within the ANI platform of hormone-based products.

That ANI would be able to leverage its knowledge of the hormone-based products market to further the existing BioSante product lines.

The fact that the remaining cash resources expected to be available at the closing of the merger would provide the combined company with enough capital to enable it to meet its operational needs beyond 2013.

The belief that the combination of the two businesses will result in accelerated growth and more value for the ANI stockholders than the ANI business could create on its own, given the combination of the product lines of the two companies, ANI's need for additional capital and the well-capitalized balance sheet that the combined company will have.

The belief that potential future license and other royalty fees due to BioSante for its FDA-approved male testosterone gel and other products could generate significant future cash flow for the combined company.

The belief that the combined company will have access to a greater number of capital market opportunities as a public company than ANI would have as a privately held company.

That the exchange ratios in the merger will result in the ANI stockholders owning approximately 53 percent of the outstanding shares of the combined company following the merger, assuming BioSante's net cash on the determination date is \$18.0 million.

For a more complete discussion of BioSante's and ANI's reasons for the merger, see the sections entitled "The Merger BioSante Reasons for the Merger" and "The Merger ANI Reasons for the Merger" beginning on pages 128 and 132, respectively.

Opinion of Oppenheimer & Co. Inc.

In connection with the merger, the BioSante board of directors received a written opinion, dated October 3, 2012, of BioSante's financial advisor, Oppenheimer & Co. Inc., referred to as "Oppenheimer & Co." or "BioSante's financial advisor," as to the fairness, from a financial point of view and as of the date of the opinion, to BioSante of the exchange ratios used in the merger. The full text of Oppenheimer & Co.'s written opinion, dated October 3, 2012, which describes the assumptions made, procedures followed, matters considered and limitations on the review undertaken, is attached to this joint proxy statement/prospectus as Annex G. Oppenheimer & Co.'s opinion was provided to the BioSante board of directors in connection with its evaluation of the exchange ratios from a financial point of view to BioSante and does not address any other aspect of the merger. Oppenheimer & Co.'s opinion does not address, among other things, the underlying business decision of BioSante to effect the merger, the relative merits of the merger as compared to any alternative business strategies that might exist for BioSante or the effect of any other transaction in which BioSante might engage and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to any matters relating to the merger. For a more complete discussion of Oppenheimer & Co.'s opinion, see the section entitled "The Merger Opinion of Oppenheimer & Co. Inc." beginning on page 134.

Risk Factors

Both BioSante and ANI are subject to various risks associated with their respective businesses and financial condition. In addition, the merger, as well as the possibility that the merger may not be

Table of Contents

completed, pose a number of risks to BioSante and ANI and their respective stockholders, including the following risks:

The issuance of shares of BioSante common stock to ANI stockholders in connection with the merger will dilute substantially the voting power of current BioSante stockholders.

The exchange ratios in the merger agreement depend on a variety of factors, including ANI's certificate of incorporation, BioSante's net cash and the market price of BioSante common stock, and changes in those ratios could result in dilution to the BioSante and/or ANI stockholders.

The announcement and pendency of the merger could have an adverse effect on BioSante's stock price and/or the business, financial condition, results of operations, or business prospects for BioSante and/or ANI.

Failure to complete the merger could impact negatively BioSante's and ANI's respective businesses, financial condition or results of operations or BioSante's stock price.

Some of the directors and executive officers of BioSante and ANI have interests in the merger that are different from, or in addition to, those of the other BioSante and ANI stockholders.

The merger agreement and the voting agreements contain provisions that could discourage or make it difficult for a third party to acquire BioSante or ANI prior to completion of the merger.

Completion of the merger is subject to a number of customary conditions, including, but not limited to, the approval of the merger agreement by the BioSante and ANI stockholders. If any of the conditions to the merger are not satisfied or, where waiver is permissible, not waived, the merger will not be completed.

The combined company's stock price may be volatile, and the market price of its common stock may decline in value following the merger.

In addition, BioSante, ANI and the combined company are subject to various risks associated with their respective businesses. These risks are discussed in greater detail in the section entitled "Risk Factors" beginning on page 38. BioSante and ANI both encourage you to read and consider all of these risks carefully.

Merger Consideration and Adjustment

Upon completion of the merger, ANI stockholders will have the right to receive, for each share of ANI capital stock they hold, that number of shares of BioSante common stock, if any, as determined pursuant to the exchange ratios described in the merger agreement and the provisions of ANI's certificate of incorporation. The exchange ratios are subject to potential adjustment as described in the merger agreement depending upon the amount of "net cash" of BioSante, as defined in the merger agreement and generally consisting of BioSante's cash and cash equivalents less certain expenses and liabilities, as of a determination date prior to the closing date of the merger and thus will not be determined until that time. Upon completion of the merger, ANI stockholders are expected to receive shares of BioSante common stock representing an aggregate of approximately 53 percent of the outstanding shares of common stock of the combined company, but in no event will the current ANI stockholders own less than 50.1 percent (or the current BioSante stockholders own more than 49.9 percent) of the outstanding shares of common stock of the combined company, assuming BioSante's net cash is \$18.0 million as of the determination date.

Pursuant to the terms of ANI's certificate of incorporation, before any amounts are paid to the holders of shares of any other series of ANI preferred stock or ANI common stock, the holders of shares of ANI series D preferred stock are entitled to receive an amount per share equal to \$30.00

Table of Contents

(subject to adjustment as provided in ANI's certificate of incorporation) plus all declared but unpaid dividends. The exchange ratios in the merger agreement reflect these preferential payments. **As a result of such provisions, it is likely that holders of shares of other series of ANI preferred stock or ANI common stock will not receive any shares of BioSante common stock in connection with the merger.**

The following table illustrates the percentage ownership of the combined company by BioSante's and ANI's current stockholders assuming various amounts of net cash of BioSante as of the determination date.

BioSante's Net Cash as of Determination Date Calculated Pursuant to Merger Agreement	BioSante Stockholder Ownership of Outstanding Shares of Combined Company	ANI Stockholder Ownership of Outstanding Shares of Combined Company
\$23.0 million or more	49.9%	50.1%
22.0 million	49.4%	50.6%
21.0 million	48.8%	51.2%
20.0 million	48.2%	51.8%
19.0 million	47.6%	52.4%
18.0 million	47.0%	53.0%
17.0 million	46.4%	53.6%

As described in more detail below under " Conditions to Completion of the Merger," one of the conditions to ANI's obligations to complete the merger, unless waived by ANI, is BioSante's net cash as of the closing date being no less than \$17.0 million as calculated and as adjusted pursuant to the provisions of the merger agreement.

For illustrative purposes only, if the merger had been completed on October 3, 2012, the date of the merger agreement, and assuming BioSante's net cash as of such date was \$18.0 million, the exchange ratio (without giving effect to the proposed reverse stock split of BioSante common stock and BioSante class C special stock described elsewhere in this joint proxy statement/prospectus) for the ANI series D preferred stock (including shares that would have been issued to certain executive officers of ANI immediately prior to completion of the merger) would have been approximately 10.3502 shares of BioSante common stock for each share of ANI series D preferred stock and the exchange ratio (without giving effect to the proposed reverse stock split described elsewhere in this joint proxy statement/prospectus) for the ANI series C preferred stock, ANI series B preferred stock, ANI series A preferred stock and ANI common stock would have been zero. Therefore, if the merger had been completed on such date and you owned 1,000 shares of ANI series D preferred stock as of such date, you would have had the right to receive 10,350 shares of BioSante common stock in exchange for your shares of ANI series D preferred stock. If you owned 1,000 shares of ANI series C preferred stock, ANI series B preferred stock, ANI series A preferred stock or ANI common stock as of such date, you would have had the right to receive no shares of BioSante common stock for such shares of ANI series C preferred stock, ANI series B preferred stock, ANI series A preferred stock or ANI common stock.

No fractional shares of BioSante common stock will be issued to ANI stockholders in connection with the merger. Instead, ANI stockholders will be entitled to receive cash in lieu of any fractional shares of BioSante common stock that they otherwise would be entitled to receive in connection with the merger.

BioSante will issue a press release after the final determination of the exchange ratios announcing the final exchange ratios and BioSante's net cash balance at the determination date.

There will be no adjustment to the total number of shares of BioSante common stock that ANI stockholders will be entitled to receive as a result of changes in the market price of BioSante common stock. Accordingly, the market value of the shares of BioSante common stock issued in connection with

Table of Contents

the merger will depend on the market value of the shares of BioSante common stock at the time of the merger, and could vary significantly from the market value on the date of this joint proxy statement/prospectus.

For a more complete discussion of what ANI stockholders will receive in connection with the merger and the determination of the exchange ratios, see the section entitled "The Merger Agreement Merger Consideration and Adjustment" beginning on page 156.

Treatment of ANI Stock Options and Warrants

All options and warrants to purchase shares of ANI capital stock outstanding immediately prior to the effective time of the merger will terminate and will no longer be outstanding immediately after the merger, except for certain warrants which although not cancelled in connection with the merger will not represent the right to acquire any equity or other interest in the combined company after the merger.

For a more complete discussion of the treatment of ANI stock options and warrants, see the section entitled "The Merger Treatment of ANI Stock Options and Warrants" beginning on page 159.

Treatment of BioSante Stock Options, Warrants and Convertible Senior Notes

All options and warrants to purchase shares of BioSante common stock will remain outstanding immediately after the merger, but the number of shares subject to and the exercise price applicable to such options and warrants will be adjusted to reflect the reverse stock split anticipated to take place immediately prior to the effective time of the merger. Pursuant to the terms of BioSante's equity-based compensation plans, all outstanding options to acquire shares of BioSante common stock will vest immediately and become exercisable in full upon completion of the merger. However, as a result of the anticipated reverse stock split, all such options likely will terminate unexercised since the exercise prices of such options currently range from \$2.02 to \$220.92 per share and the employment or other service of the holders of such options, other than those held by the two BioSante directors who will remain as directors of the combined company after the merger, will be terminated in connection with the merger. As of November 30, 2012, BioSante had an aggregate of 1.2 million shares of BioSante common stock reserved for issuance upon the exercise of outstanding stock options and an aggregate of 4.7 million shares of BioSante common stock reserved for issuance upon the exercise of outstanding warrants. The exercise prices of the warrants currently range from \$1.50 to \$24.00 per share.

All outstanding 3.125% convertible senior notes due May 1, 2013 of BioSante will remain outstanding immediately after the merger, but the conversion price and number of shares of BioSante common stock issuable upon any conversion of such notes will be adjusted to reflect the reverse stock split anticipated to take place immediately prior to the effective time of the merger. As of November 30, 2012, the outstanding principal amount of such notes was \$8.3 million and BioSante had an aggregate of 370,871 shares of BioSante common stock reserved for issuance upon the conversion of such notes. The conversion price of the notes is currently \$22.32 per share.

Management of the Combined Company Following the Merger

Following the merger, the board of directors of the combined company will be comprised of seven members, including two current members of the BioSante board of directors and five current members of the ANI board of directors. Robert E. Brown, Jr., ANI's chairman of the board, will be chairman of

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

the board of the combined company. Following the merger, the directors of the combined company will be as follows:

Name	Current Principal Affiliation
Robert E. Brown, Jr.	ANI
Tracy L. Marshbanks, Ph.D.	ANI
Thomas A. Penn	ANI
Arthur S. Przybyl	ANI
Robert Schrepfer	ANI
Fred Holubow	BioSante
Ross Mangano	BioSante

Following the merger, the executive officers of the combined company will be the current executive officers of ANI:

Arthur S. Przybyl President and Chief Executive Officer

Charlotte C. Arnold Vice President and Chief Financial Officer

James G. Marken Vice President, Operations

Robert J. Jamnick Vice President, Quality and Product Development

For a more complete discussion of the management of the combined company after the merger, see the section entitled "Management of the Combined Company Following the Merger" beginning on page 250.

Interests of BioSante's Directors and Officers in the Merger

In considering the recommendation of the BioSante board of directors to BioSante stockholders to vote in favor of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock in the merger, and the other matters to be acted upon by BioSante stockholders at the BioSante special meeting, BioSante stockholders should be aware that members of the BioSante board of directors and BioSante's officers have interests in the merger that may be different from, or in addition to, or conflict with, the interests of BioSante stockholders.

Interests of the BioSante directors and officers relate to:

The continuing service of each of Fred Holubow and Ross Mangano as directors of the combined company following completion of the merger and the payment of cash and equity compensation in consideration for such service, as described in more detail under "Management of the Combined Company After the Merger Director Compensation."

Change in control and severance payments and continued benefits to which BioSante's current executive officers will become entitled following completion of the merger and their anticipated termination of employment with BioSante. Assuming that the merger is completed on the date of the BioSante special meeting and the executive officers are terminated on such date, such individuals would receive approximately the amounts set forth in the table below.

Name	Cash	Perquisites/ Benefits	Total
Stephen M. Simes	\$ 1,490,100	\$ 87,949	\$ 1,578,049
Phillip B. Donenberg	770,000	74,156	844,156
Michael C. Snabes, M.D., Ph.D.	526,400	44,972	571,372

Table of Contents

The accelerated vesting of all unvested BioSante stock options held by the BioSante directors and officers, exercisable for an aggregate of 381,525 shares of BioSante common stock at exercise prices ranging from \$4.08 to \$220.92 per share, all of which options are currently out-of-the-money and likely will terminate unexercised either 90 days or one year after their termination of employment or service upon completion of the merger.

The right to continued indemnification and insurance coverage for directors and officers of BioSante pursuant to the terms of the merger agreement.

The BioSante board of directors was aware of these potential conflicts of interest and considered them, among other matters, in reaching its decision to approve the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock, and to recommend that BioSante stockholders approve the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock, and related matters. Other than full disclosure of these potential conflicts of interest, the BioSante board of directors did not take any other steps to alleviate such potential conflicts of interest since it did not consider such potential conflicts of interest to be material in connection with its decision to approve the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock.

For a more complete discussion of the interests of the directors and executive officers of BioSante in the merger, see the section entitled "The Merger Interests of BioSante's Directors and Executive Officers in the Merger" beginning on page 143.

Interests of ANI's Directors and Officers in the Merger

In considering the recommendations of the ANI board of directors to ANI stockholders to vote in favor of the merger agreement and the transactions contemplated thereby, including the merger, and the other matters to be acted upon by ANI stockholders at the ANI special meeting, ANI stockholders should be aware that members of the ANI board of directors and ANI's officers have interests in the merger that may be different from, or in addition to, or conflict with, the interests of ANI stockholders.

Interests of the ANI directors and officers relate to:

The board of directors of the combined company will be comprised of the five individuals that are current members of the ANI board of directors and two individuals that are current members of the BioSante board of directors and such directors, with the exception of Mr. Przybyl, will receive cash and equity compensation for such services, as described in more detail under "Management of the Combined Company After the Merger Director Compensation."

The fact that Robert E. Brown, Jr., ANI's chairman of the board, will continue as chairman of the board of the combined company.

The fact that the executive officers of the combined company will be the current executive officers of ANI and such officers will receive compensation for such service as described in more detail under "Management of the Combined Company After the Merger Officer Compensation."

The fact that the executive officers of ANI will receive special transaction bonus payments upon closing of the merger ranging, for each officer, from approximately \$707,705 to \$3,309,410 (assuming BioSante's net cash as of the determination date is \$18.0 million) payable in shares of ANI series D preferred stock, which shares will convert into shares of BioSante common stock in the merger, as described in more detail under "Management of the Combined Company Following the Merger Certain Relationships and Related Transactions."

Table of Contents

The fact that MVP Capital and HVC, two firms affiliated with three of ANI's directors, will receive fees of approximately \$350,000 and \$40,000, respectively, upon closing of the merger. This is in addition to unpaid amounts due under existing monitoring arrangements with ANI, which will terminate at closing and which are expected not to exceed \$120,000 for MVP Capital and \$30,000 for HVC, assuming a March 31, 2013 closing.

The right to continued indemnification and insurance coverage for directors and executive officers of ANI following completion of the merger pursuant to the terms of the merger agreement.

The ANI board of directors was aware of these potential conflicts of interest and considered them, among other matters, in reaching its decision to approve the merger agreement and the transactions contemplated thereby, including the merger, and to recommend that ANI stockholders approve the merger agreement and the transactions contemplated thereby, including the merger. Other than full disclosure of these potential conflicts of interest, the ANI board of directors did not take any other steps to alleviate such potential conflicts of interest since it did not consider such potential conflicts of interest to be material in connection with its decision to approve the merger agreement and the transactions contemplated thereby, including the merger.

For a more complete discussion of the interests of the directors and executive officers of ANI in the merger, see the section entitled "The Merger Interests of ANI's Directors and Officers in the Merger" beginning on page 148.

Conditions to Completion of the Merger

BioSante and ANI expect to complete the merger after all conditions to the merger in the merger agreement are satisfied or, if permissible, waived. BioSante and ANI currently expect to complete the merger in the first quarter of 2013. However, it is possible that factors outside of BioSante's or ANI's control could require BioSante and ANI to complete the merger at a later time or not complete it at all. The obligations of each of BioSante and ANI to complete the merger are subject to the satisfaction or waiver (if permissible) at or before the effective time of the merger of the following conditions:

The adoption by the requisite vote of BioSante stockholders of the merger agreement, including the merger and the issuance of BioSante common stock pursuant to the merger agreement, and approval by the requisite vote of BioSante stockholders of the amendments to BioSante's certificate of incorporation to effect the reverse stock split and change the company's corporate name.

The adoption of the merger agreement, including the merger, by the requisite vote of ANI stockholders.

The absence of any legal prohibition to completing the merger.

The effectiveness of, and the absence of any stop order with respect to, the registration statement on Form S-4, of which this joint proxy statement/prospectus forms a part, filed by BioSante with the SEC.

The continued listing of BioSante common stock on The NASDAQ Global Market and the approval for listing on The NASDAQ Global Market or The NASDAQ Capital Market of the shares of BioSante common stock issuable in the merger.

The receipt of legal opinions from BioSante's and ANI's outside counsel that the merger will qualify as a reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended.

Table of Contents

In addition, each party's obligation to complete the merger is further subject to the satisfaction or waiver (if permissible) by that party of the following additional conditions:

The representations and warranties of the other party in the merger agreement being true and correct in all material respects, in each case as of the date of the merger agreement and as of the effective time of the merger, or, if such representations and warranties address matters as of a particular date, then as of that particular date.

The other party to the merger agreement having performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it at or before the closing of the merger.

The other party having delivered a certificate signed by a duly authorized officer certifying to the satisfaction of such party of the above conditions in the merger agreement.

No material adverse effect on the other party shall have occurred and be continuing since the date of the merger agreement.

In addition, the obligation of ANI to complete the merger is further subject to the satisfaction or waiver at or before the effective time of the merger of the following additional conditions:

BioSante's net cash as of the closing being no less than \$17.0 million, as calculated and as adjusted pursuant to the terms of the merger agreement.

No new legal proceeding having been instituted against BioSante by any stockholder or holder of BioSante's convertible senior notes that has not been settled prior to the closing.

For a more complete discussion of the conditions to the completion of the merger, see the section entitled "The Merger Agreement Conditions to Completion of the Merger" beginning on page 159.

No Solicitation

Each of BioSante and ANI has agreed that, with certain exceptions, BioSante and ANI and their respective officers, directors, employees and advisors will not:

Solicit, initiate, encourage, facilitate or induce the making of any acquisition proposal.

Enter into, continue or otherwise participate in any discussions or negotiations regarding or otherwise facilitate or induce any effort or attempt to make or implement any acquisition proposal.

Approve, endorse or recommend any acquisition proposal.

Agree, resolve or commit to do any of the foregoing.

The merger agreement does not, however, prohibit BioSante from considering a bona fide acquisition proposal from a third party if certain specified conditions are met. For a more complete description of the prohibition on solicitations of acquisition proposals from third parties, see "The Merger Agreement No Solicitation" beginning on page 160.

Termination of the Merger Agreement

Either BioSante or ANI can terminate the merger agreement, which would prevent the merger from being consummated, under certain circumstances as set forth below:

By mutual written consent of BioSante and ANI.

By BioSante or ANI, if the merger has not been completed by May 31, 2013, subject to extension to no later than July 31, 2013 based on the date of filing of the registration statement

Edgar Filing: BIOSANTE PHARMACEUTICALS INC - Form S-4

Table of Contents

on Form S-4 of which this joint proxy statement/prospectus forms a part, except that a party whose material breach of the merger agreement resulted in the failure of the merger to occur by such date cannot seek termination for this reason.

By BioSante or ANI, if any applicable law irrevocably prohibits or makes the merger illegal or a governmental entity has issued a final and non-appealable order, decree or ruling or taken any other action that permanently restrains, enjoins or otherwise prohibits the merger, except that the right to terminate the merger agreement for this reason is not available to any party who has not used reasonable best efforts to cause such law or order to be lifted.

By BioSante or ANI, if ANI stockholders fail to adopt the merger agreement at the ANI stockholder meeting or if BioSante stockholders fail to adopt the merger agreement, including the merger and the issuance of shares of BioSante common stock pursuant to the merger, and approve the amendments to BioSante's certificate of incorporation at the BioSante stockholder meeting.

By ANI, if either of the following occur, each a "BioSante triggering event":

BioSante fails to include in this joint proxy statement/prospectus the recommendation of the BioSante board of directors to the BioSante stockholders in favor of adoption of the merger agreement, including the merger and the issuance of shares of BioSante common stock in the merger, and approval of the amendments to BioSante's certificate of incorporation.

Prior to the BioSante special meeting the BioSante board of directors has withdrawn or made a change, or publicly proposed to withdraw or make a change, in its recommendation to its stockholders to adopt the merger agreement, including the issuance of shares of BioSante common stock in the merger, and to approve the amendments to BioSante's certificate of incorporation in a manner adverse to ANI.

By BioSante, if BioSante enters into a superior proposal in accordance with the terms of the merger agreement. For a more detailed description of BioSante's ability to terminate the merger agreement in connection with a superior proposal, see the section entitled "The Merger Agreement No Solicitation".

By BioSante or ANI, if the other party has breached any of its representations, warranties, covenants or other agreements contained in the merger agreement or if any representation or warranty has become inaccurate, in either case such that the conditions to the closing of the merger would not be satisfied, provided that if such breach or inaccuracy is curable, then the merger agreement will not terminate pursuant to this provision as a result of a particular breach or inaccuracy until the expiration of a 30-day period after delivery of notice of such breach or inaccuracy if such breach has not been cured.

By ANI, if after BioSante receives an acquisition proposal, BioSante has materially breached its obligations under the merger agreement with respect to the acquisition proposal.

For a more complete discussion of the circumstances under which the merger agreement may be terminated, see the section entitled "The Merger Agreement Termination" beginning on page 164.

Termination Fees and Expenses

If the merger agreement is terminated under certain circumstances, BioSante will be required to pay ANI a termination fee of \$1.0 million. The merger agreement also provides that under specified circumstances, BioSante may be required to reimburse ANI up to \$500,000 for ANI's expenses in connection with the transaction. Any expenses paid by BioSante will be credited against the termination fee if the termination fee subsequently becomes payable by BioSante. If the merger agreement is

Table of Contents

terminated under certain circumstances, ANI will be required to pay BioSante a termination fee of \$750,000.

For a more complete discussion of termination fees and expenses, see the section entitled "The Merger Agreement Termination Fees and Expenses" beginning on page 165.

Vote Required

The affirmative vote of holders of a majority of the BioSante common stock and BioSante class C special stock, voting together as a single class, having voting power outstanding on the record date for the BioSante special meeting is required for approval of the proposal to adopt the merger agreement and the transactions contemplated thereby including the merger and the issuance of shares of BioSante common stock in the merger, and the proposals to approve the two BioSante charter amendments to effect the reverse stock split and change the corporate name. The affirmative vote of holders of a majority of the BioSante common stock and BioSante class C special stock, voting together as a single class, present in person or represented by proxy at the BioSante special meeting, is required for approval of the proposal to approve, on an advisory (non-binding) basis, the compensation payable to certain executive officers of BioSante under existing arrangements in connection with the merger and the proposal to approve an adjournment of the BioSante special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the proposal to adopt the merger agreement and the transactions contemplated thereby including the merger and the issuance of shares of BioSante common stock in the merger, and/or the proposals to approve the two BioSante charter amendments to effect the reverse stock split and change the corporate name. For a more complete discussion of the matters to be considered by the BioSante stockholders at the BioSante special meeting and the vote required to approve such matters, see the section entitled "Matters Being Submitted to a Vote of BioSante Stockholders" beginning on page 96.

The affirmative vote of holders of a majority of the shares of ANI common stock, calculated on an as-converted basis and voting together as a single class, and 65 percent of the shares of ANI series D convertible preferred stock having voting power outstanding on the record date for the ANI special meeting is required for approval of the proposal to adopt the merger agreement and the transactions contemplated thereby including the merger. The affirmative vote of holders of a majority of ANI common stock, calculated on an as-converted basis, present in person or represented by proxy at the ANI special meeting is required for approval of the proposal to approve an adjournment of the ANI special meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the proposal to adopt the merger agreement and the transactions contemplated thereby including the merger. For a more complete discussion of the matters to be considered by the ANI stockholders at the ANI special meeting and the vote required to approve such matters, see the section entitled "Matters Being Submitted to a Vote of ANI Stockholders" beginning on page 114.

Voting Agreements

In connection with the execution of the merger agreement, all of BioSante's directors, executive officers and affiliated entities, who collectively held approximately two percent of the outstanding shares of BioSante capital stock as of October 3, 2012, entered into a voting agreement with ANI, pursuant to which each such BioSante stockholder agreed to vote all of their shares of BioSante capital stock in favor of adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of BioSante common stock, in favor of the two charter amendments, and against certain transactions or certain actions that would delay, prevent or nullify the merger or the transactions contemplated thereby. As of the record date for the BioSante special meeting, the shares of BioSante capital stock owned by all of BioSante's directors, executive officers and affiliated entities and thus subject to the voting agreements constituted approximately two percent of the total outstanding voting power of BioSante on that date.

Table of Contents

In connection with the execution of the merger agreement, Meridian Venture Partners II, L.P., Argentum Capital Partners II, L.P. and four funds affiliated with First Analysis Corp., who in the aggregate held approximately 85 percent of the shares of the outstanding ANI capital stock, calculated on an as-converted basis, and approximately 86 percent of the outstanding shares of the ANI series D preferred stock, as of October 3, 2012 entered into a voting agreement with BioSante, pursuant to which they agreed to vote their shares of ANI capital stock in favor of the merger, the merger agreement and the transactions contemplated by the merger agreement and against certain transactions or certain actions that would delay, prevent or nullify the merger or the transaction contemplated by the merger agreement. As of the record date for the ANI special meeting, the shares of ANI capital stock owned by all of ANI's directors, executive officers and affiliated entities constituted approximately 92 percent of the outstanding shares of ANI capital stock, on an as-converted basis, and approximately 94 percent of the outstanding shares of the ANI series D preferred stock on that date.

For a more complete discussion of the voting agreements, see the section entitled "Voting and Other Ancillary Agreements" beginning on page 168. For a more complete discussion of the beneficial ownership of BioSante's and ANI's directors, executive officers and affiliates, see the sections entitled "Principal Stockholders of BioSante" and "Principal Stockholders of ANI" beginning on pages 274 and 276, respectively.

Material U.S. Federal Income Tax Consequences of the Merger

The merger is intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, and it is a condition to the completion of the merger that BioSante and ANI each receive a written opinion from their respective outside legal counsel regarding such qualification. As a result of the "reorganization," ANI stockholders generally will not recognize gain or loss for U.S. federal income tax purposes upon the exchange of their shares of ANI capital stock for shares of BioSante common stock in connection with the merger. However, if an ANI stockholder receives cash in lieu of a fractional share of BioSante common stock, then such stockholder generally will recognize gain or loss in an amount equal to the difference between such stockholder's adjusted tax basis in the fractional share and the amount of cash received. Moreover, an ANI stockholder who perfects appraisal rights and receives cash in exchange for such stockholder's shares of ANI capital stock will recognize gain or loss measured by the difference between the amount of cash received and such stockholder's adjusted tax basis in those shares. BioSante stockholders generally will not recognize gain or loss for U.S. federal income tax purposes as a result of the merger.

Tax matters are very complicated, and the tax consequences of the merger to a particular BioSante or ANI stockholder will depend in part on such stockholder's circumstances. Accordingly, BioSante and ANI urge you to consult your own tax advisor for a full understanding of the tax consequences of the merger to you, including the applicability and effect of federal, state, local and foreign income and other tax laws. For a more complete discussion of the material U.S. federal income tax consequences of the merger, see the section entitled "Material U.S. Federal Income Tax Consequences of the Merger" beginning on page 172.

Regulatory Approvals

Neither BioSante nor ANI is required to make any filings or to obtain any approvals or clearances from any antitrust regulatory authorities in the United States or other countries to consummate the merger. In the United States, BioSante must comply with applicable federal and state securities laws and The NASDAQ Stock Market rules and regulations in connection with the issuance of shares of BioSante common stock in the merger, including the filing with the SEC of the registration statement of which this joint proxy statement/prospectus is a part. For a more complete discussion of the regulatory approvals required in connection with the merger, see the section entitled "The Merger Regulatory Approvals" beginning on page 151.

Table of Contents

Anticipated Accounting Treatment

The merger will be accounted for as a "reverse acquisition" pursuant to which ANI will be considered the acquiring entity for accounting purposes in accordance with U.S. generally accepted accounting principles, referred to as U.S. GAAP. As such, ANI will allocate the total purchase consideration to BioSante's tangible and identifiable intangible assets and liabilities based on their relative fair values at the date of the completion of the merger. ANI's historical results of operations will replace BioSante's historical results of operations for all periods prior to the merger. After completion of the merger, the results of operations of both companies will be included in BioSante's financial statements. For a more complete discussion of the anticipated accounting treatment of the merger, see the section entitled "The Merger Anticipated Accounting Treatment" beginning on page 151.

Appraisal Rights

If the merger is completed, ANI stockholders are entitled to appraisal rights under Section 262 of the Delaware General Corporation Law. Holders of BioSante common stock and BioSante class C special stock are not entitled to appraisal rights in connection with the merger. For a more complete discussion of the appraisal rights, see the provisions of Section 262 of the Delaware General Corporation Law, attached to this joint proxy statement/prospectus as Annex H, and the section entitled "The Merger Appraisal Rights" beginning on page 152.

Comparison of Stockholder Rights

Both BioSante and ANI are incorporated under the laws of the State of Delaware; and, accordingly, the rights of the stockholders of each are currently, and will continue to be, governed by the Delaware General Corporation Law and their respective certificates of incorporation and bylaws. If the merger is completed, ANI stockholders will become stockholders of BioSante, and their rights will be governed by the Delaware General Corporation Law, the certificate of incorporation of BioSante and the bylaws of BioSante. The rights of BioSante contained in the certificate of incorporation and bylaws of BioSante differ from the rights of ANI stockholders under the certificate of incorporation and bylaws of ANI, as more fully described under the section entitled "Comparison of Rights of Holders of BioSante Stock and ANI Stock" beginning on page 286.

Contingent Value Rights

BioSante plans to issue contingent value rights (referred to as CVRs) to holders of BioSante common stock as of immediately before completion of the merger. BioSante expects that one CVR will be issued for each share of BioSante common stock outstanding as of a record date to be set at a date prior to completion of the merger. The CVRs will be non-transferable and not attached to the shares of BioSante common stock. The CVRs will be rights to receive potential cash payments in connection with a LibiGel transaction (as defined in the contingent value rights agreement) upon the terms and subject to the conditions set forth in a contingent value rights agreement to be entered into between BioSante and a rights agent. The aggregate cash payments to be received by holders of the CVRs, if any, will be equal to 66 percent of the net cash payments received by the combined company as a result of the sale, transfer, license or similar transaction relating to BioSante's LibiGel program during the 10-year period following completion of the merger, and will not exceed \$40 million in the aggregate. The form of the contingent value rights agreement is attached to this joint proxy statement/prospectus as Annex F. For a more complete discussion of the CVRs, see the section entitled "Contingent Value Rights" beginning on page 170.

Table of Contents**SELECTED HISTORICAL FINANCIAL INFORMATION AND UNAUDITED PRO FORMA
CONDENSED COMBINED FINANCIAL INFORMATION AND DATA****Selected Historical Financial Data of BioSante**

The selected financial data as of December 31, 2011 and 2010 and for the years ended December 31, 2011, 2010 and 2009 are derived from BioSante's audited financial statements included in this joint proxy statement/prospectus beginning on page F-1. The selected financial data as of December 31, 2009, 2008 and 2007 and for the years ended December 31, 2008 and 2007 are derived from BioSante's financial statements, which are not included in this joint proxy statement/prospectus. The statement of operations data for the nine months ended September 30, 2012 and 2011, as well as the balance sheet data as of September 30, 2012 and 2011 are derived from BioSante's unaudited financial statements included in this joint proxy statement/prospectus beginning on page F-32. The selected historical financial data below should be read in conjunction with "BioSante's Management's Discussion and Analysis of Financial Condition and Results of Operations" and BioSante's financial statements and related notes appearing elsewhere in this joint proxy statement/prospectus. The historical results are not necessarily indicative of results to be expected in any future period.

	Nine Months Ended September 30,			Year Ended December 31,			
	2012	2011	2011	2010	2009	2008	2007
	(in thousands, except per share data)						
Statement of Operations							
Data:							
Revenue	\$ 333	\$ 321	\$ 435	\$ 2,474	\$ 1,258	\$ 3,781	\$ 493
Expenses							
Research and development	14,454	37,481	44,182	39,706	13,681	15,790	4,751
General and administration	5,328	5,258	6,982	5,940	5,374	5,125	4,331
Acquired in-process research and development					9,000		
Excess consideration paid over fair value							