

KING PHARMACEUTICALS INC
Form SC TO-T/A
September 30, 2008

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
SCHEDULE TO/A
(Rule 14d-100)
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR
13(e)(1) OF THE SECURITIES EXCHANGE ACT OF 1934
(Amendment No. 1)
ALPHARMA INC.**

(Name of Subject Company (Issuer))

ALBERT ACQUISITION CORP.

KING PHARMACEUTICALS, INC.

(Names of Filing Persons (Offerors))

Class A Common Stock, Par Value \$0.20 Per Share

(Title of Class of Securities)

020813101

(CUSIP Number of Class of Securities)

Brian A. Markison

Chairman, President and Chief Executive Officer

King Pharmaceuticals, Inc.

501 Fifth Street

Bristol, Tennessee 37620

Telephone: (423) 989-8000

(Name, Address and Telephone Number of Person

Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

Morton A. Pierce, Esq.

Ivan J. Present, Esq.

Chang-Do Gong, Esq.

Dewey & LeBoeuf LLP

1301 Avenue of the Americas

New York, New York 10019

Telephone: (212) 259-8000

CALCULATION OF FILING FEE

Transaction Valuation*

\$1,858,657,815

Amount of Filing Fee**

\$73,046

* For purposes of calculating the amount of filing fee only. Based on the offer to purchase up to 50,233,995 shares of Class A Common Stock, par value \$0.20 per share (Class A Common Stock), of Alharma Inc., including the associated preferred stock purchase rights, at a purchase price of \$37.00 per share net to the seller in cash, without interest and subject to any required withholding of taxes. Such number of shares consists of (i) 41,763,544 shares of Class A Common Stock issued and outstanding as of July 27, 2008 as reported in Alharma Inc. s Form 10-Q for the quarter

ended June 30,
2008 (the
Alpharma Form
10-Q),
(ii) 2,105,436
shares of
Class A
Common Stock
that may be
issued before
the expiration of
the offer
pursuant to the
exercise of
stock options
based on the
total number of
stock options
outstanding as
of June 30, 2008
as reported in
the Alpharma
Form 10-Q,
(iii) 2,302,921
shares of
Class A
Common Stock
that may be
issued before
the expiration of
the offer
pursuant to the
conversion of
Alpharma Inc. s
2.125%
Convertible
Senior Notes
due 2027 as
reported in the
Alpharma Form
10-Q and
Alpharma s other
publicly filed
documents and
(iv) a maximum
of 4,062,094
shares of Class
A Common
Stock that may
be issued
pursuant to the

exercise of warrants as reported in the Alparma Form 10-Q and Alparma s other publicly filed documents.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, by multiplying the transaction value by 0.00003930.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$73,046.00

Form or Registration No.: SC TO-T

Filing Parties: Albert Acquisition Corp.
King Pharmaceuticals, Inc.

Date Filed: September 12, 2008

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

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

This Amendment No. 1 to Schedule TO (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on September 12, 2008 (the Schedule TO) by King Pharmaceuticals, Inc., a Tennessee corporation (King), and Albert Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of King (Purchaser), relating to the offer by Purchaser to purchase (1) all issued and outstanding shares of Class A Common Stock, par value \$0.20 per share (the Shares), of Alharma Inc., a Delaware corporation (Alharma), and (2) the associated rights to purchase shares of Series B Junior Participating Preferred Stock, par value \$1.00 per share, of Alharma (the Rights), at a price of \$37.00 per Share (and associated Right, if applicable), net to the seller in cash, without interest and subject to any required withholding of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase (the Offer to Purchase) dated September 12, 2008, and in the related Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the Offer). This Amendment is being filed on behalf of King and Purchaser.

The information set forth in the Offer to Purchase, including Schedule I thereto, is hereby incorporated by reference in answer to Items 1 through 9 and Item 11 of this Amendment, except as otherwise set forth below. This Amendment should be read together with the Schedule TO.

ITEMS 1 THROUGH 9 AND ITEM 11

The Offer to Purchase is hereby amended as follows:

1. In the Summary Term Sheet the paragraph under the question What does Alharma's Board of Directors think of this offer? is hereby amended and restated in its entirety to read as follows:

Alharma's Board of Directors rejected an earlier proposal by King to acquire all outstanding Shares for \$33.00 per Share in cash and a subsequent proposal by King to acquire all the outstanding Shares for \$37.00 per share in cash and declined to negotiate a mutually acceptable merger agreement with us. On September 26, 2008, Alharma issued a press release and filed a solicitation/recommendation statement on Schedule 14D-9 with the Securities and Exchange Commission in connection with the offer, announcing its Board of Directors' recommendation that Alharma's stockholders reject the offer and not tender Shares in the offer. See Section 10 Background of the Offer.

2. The following paragraphs are hereby added at the end of Section 10 Background of the Offer:

On September 26, 2008 Alharma issued a press release and filed a Solicitation/Recommendation Statement on Schedule 14D-9 relating to the Offer (the Alharma 14D-9) with the SEC, announcing its Board of Directors' recommendation that Alharma's stockholders reject the Offer and not tender Shares in the Offer.

On September 26, 2008, King issued a press release in response to the Alharma press release and the Alharma 14D-9.

The full text of the press release King issued on September 26, 2008 is filed as Exhibit (a)(5)(C) hereto.

3. The second paragraph in *Antitrust* under Section 15 Certain Legal Matters; Antitrust; Other Foreign Approvals; State Takeover Statutes is hereby amended and restated in its entirety to read as follows:

A Notification and Report Form with respect to the Offer was filed by King under the HSR Act on August 27, 2008. At the expiration of the FTC's initial review period, on September 26, 2008 King received a Request for Additional Information and Documentary Material (a Second Request) from the FTC in connection with the FTC's review of the Offer. The effect of the Second Request is to extend the waiting period imposed by the HSR Act until 10 days after King has substantially complied with such request, unless that period is extended voluntarily by King or terminated sooner by the FTC. King intends to cooperate fully with the FTC in connection with the Second Request. The waiting period will not be

affected by the failure of Alpharma (as opposed to King) either to file a Notification and Report form or to comply with any request for additional information or materials issued by the FTC or the Antitrust Division.

ITEM 12. EXHIBITS.

Item 12 of the Schedule TO is hereby amended and supplemented to add the following exhibit:

(a)(5)(C) Press release issued by King Pharmaceuticals, Inc. dated September 26, 2008.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I hereby certify as of September 30, 2008 that the information set forth in this statement is true, complete and correct.

ALBERT ACQUISITION CORP.

By: /s/ Brian A. Markison
Name: Brian A. Markison
Title: Chairman, President and Chief
Executive Officer

KING PHARMACEUTICALS, INC.

By: /s/ Brian A. Markison
Name: Brian A. Markison
Title: Chairman, President and Chief
Executive Officer

EXHIBIT INDEX

Exhibit

No.	Description
(a)(1)(A)	Offer to Purchase, dated September 12, 2008.*
(a)(1)(B)	Letter of Transmittal.*
(a)(1)(C)	Notice of Guaranteed Delivery.*
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees.*
(a)(1)(E)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.*
(a)(1)(F)	Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*
(a)(1)(G)	Summary Advertisement published on September 12, 2008.*
(a)(5)(A)	Press release issued by King Pharmaceuticals, Inc., dated September 12, 2008, announcing the commencement of the Offer.*
(a)(5)(B)	Complaint by King Pharmaceuticals, Inc. against Alpharma Inc. and its directors, filed in the Court of Chancery of the State of Delaware on September 12, 2008.*
(a)(5)(C)	Press release issued by King Pharmaceuticals, Inc., dated September 26, 2008.
(b)(1)	Commitment Letter, dated as of September 11, 2008, among King Pharmaceuticals, Inc., Credit Suisse, Credit Suisse Securities (USA) LLC, Wachovia Bank, National Association and Wachovia Capital Markets, LLC.*
(c)	Not applicable.
(d)	Not applicable.
(e)	Not applicable.
(f)	Not applicable.
(g)	Not applicable.
(h)	Not applicable.

* Previously filed.