

ESPERION THERAPEUTICS INC/MI  
Form SC 14D9/A  
January 21, 2004

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
-----

SCHEDULE 14D-9  
(RULE 14D-101)

SOLICITATION/RECOMMENDATION STATEMENT UNDER SECTION 14(d) (4)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
AMENDMENT NO. 2  
-----

ESPERION THERAPEUTICS, INC.  
(Name of Subject Company)

ESPERION THERAPEUTICS, INC.  
(Name of Person(s) Filing Statement)  
-----

COMMON STOCK, PAR VALUE \$0.001 PER SHARE  
(Title of Class of Securities)  
-----

29664R 10 6  
(CUSIP Number of Class of Securities)  
-----

ROGER S. NEWTON, PH.D.  
PRESIDENT AND CHIEF EXECUTIVE OFFICER  
ESPERION THERAPEUTICS, INC.  
3621 SOUTH STATE STREET  
695 KMS PLACE  
ANN ARBOR, MI 48108  
(734) 332-0506

(Name, Address and Telephone Number of Person Authorized to Receive Notices and  
Communications on Behalf of the Person(s) Filing Statement)

With a copy to:  
LINDA L. GRIGGS, ESQ.  
MORGAN, LEWIS & BOCKIUS LLP  
1111 PENNSYLVANIA AVENUE, NW  
WASHINGTON, DC 20004  
TELEPHONE: (202) 739-5245  
FACSIMILE: (202) 739-3001

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

## Edgar Filing: ESPERION THERAPEUTICS INC/MI - Form SC 14D9/A

\* Explanatory Note. Esperion Therapeutics, Inc. (the "Company") hereby amends its Solicitation/Recommendation Statement on Schedule 14D-9, filed with the SEC on January 7, 2004, as previously amended by Amendment No. 1 thereto filed on January 8, 2004. The Company is amending its Schedule 14D-9 to include two additional exhibits, and to make corrections to the Summary Compensation Table that was included in the Rule 14f-1 Information Statement attached as Annex A to the Schedule 14D-9.

### ITEM 3. PAST CONTRACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

#### (b) AGREEMENTS WITH PARENT.

The Merger Agreement. On January 16, 2004, the Company, Purchaser and Parent amended Section 7.03(d) of the Merger Agreement. A copy of the amendment is attached hereto as Exhibit (e)(12).

### ITEM 4. THE SOLICITATION OR RECOMMENDATION.

On January 13, 2004, the United States Federal District Court for the District of Connecticut issued an order, a copy of which is attached hereto as Exhibit (e)(13), approving a settlement between the Company and Durus Life Sciences Master Fund and the Sacane Group whereby the Company is to be paid \$32.2 million dollars.

### ITEM 9. EXHIBITS

| EXHIBIT NO. | DESCRIPTION   |
|-------------|---|
| (e)(12)     | Amendment to Agreement and Plan of Merger, dated as of January 16, 2004, by and among the Company, Purchaser and Parent.  |
| (e)(13)     | Stipulation of Dismissal with Prejudice of the lawsuit brought by the Company against Durus Life Sciences Master Fund, Ltd., Durus Capital Management, LLC, Durus Capital Management (N.A.), LLC, and Scott Sacane. |

ANNEX A

### EXECUTIVE COMPENSATION

#### SUMMARY COMPENSATION.

The following table presents information concerning the compensation

## Edgar Filing: ESPERION THERAPEUTICS INC/MI - Form SC 14D9/A

paid to or earned during the last three fiscal years by the Company's Chief Executive Officer and four most highly compensated executive officers. We refer to these persons as the Named Executive Officers.

### SUMMARY COMPENSATION TABLE

| NAME AND<br>PRINCIPAL POSITION<br>-----   | YEAR<br>----         | SALARY (\$)<br>-----            | BONUS (\$) (1)<br>-----        | OTHER ANNUAL<br>COMPENSATION<br>----- | SECURITIES<br>UNDERLYING<br>OPTIONS (#)<br>----- |
|---|----------------------|---------------------------------|--------------------------------|---------------------------------------|--|
| Roger S. Newton, Ph.D.<br>President,<br>Chief<br>Executive Officer                              | 2003<br>2002<br>2001 | \$325,000<br>312,500<br>250,000 | \$200,000<br>70,000<br>100,000 | --<br>--<br>--                        | 125,000<br>400,000<br>30,000                     |
| Timothy M. Mayleben<br>Chief Operating<br>Officer and Chief<br>Financial Officer                | 2003<br>2002<br>2001 | 255,000<br>236,000<br>195,000   | 200,000<br>36,000<br>48,750    | --<br>--<br>--                        | 100,000<br>250,000<br>20,000                     |
| Brian R. Krause, Ph.D.<br>Senior Vice<br>President,<br>Preclinical<br>Research and<br>Discovery | 2003<br>2002<br>2001 | 179,000<br>168,000<br>110,833   | 71,600<br>15,000<br>21,000     | --<br>--<br>--                        | 50,000<br>60,000<br>80,000                       |
| Jean-Louis H. Dasseux, Ph.D.,<br>Vice President,<br>Chemistry and<br>Technologies               | 2003<br>2002<br>2001 | 183,700<br>174,900<br>165,000   | 91,850<br>18,000<br>33,000     | --<br>35,212 (2)<br>--                | 50,000<br>70,000<br>10,000                       |
| William F. Brinkerhoff,<br>Vice President,<br>Business Development                              | 2003<br>2002<br>2001 | 166,500<br>100,615<br>--        | 83,250<br>10,000<br>--         | --<br>--<br>--                        | 50,000<br>75,000<br>--                           |

- 
- (1) Bonuses are reported in the year earned, even if actually paid in a subsequent year.
- (2) Includes \$22,500 in tuition reimbursement and \$12,712 in income and social security taxes paid by the Company in connection with the tuition.
- (3) These amounts represent the Company's matching contributions to the executive officers' 401(k) plan in the year earned, even if actually made in a subsequent year.

Edgar Filing: ESPERION THERAPEUTICS INC/MI - Form SC 14D9/A

SIGNATURE

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

By: /s/ Roger S. Newton, Ph.D.

-----  
Name: Roger S. Newton, Ph.D.

Title: President and Chief Executive Officer

Dated: January 21, 2004

EXHIBIT INDEX

| EXHIBIT NO. | DESCRIPTION   |
|-------------|---|
| (e) (12)    | Amendment to Agreement and Plan of Merger, dated as of January 16, 2004, by and among the Company, Purchaser and Parent.  |
| (e) (13)    | Stipulation of Dismissal with Prejudice of the lawsuit brought by the Company against Durus Life Sciences Master Fund, Ltd., Durus Capital Management, LLC, Durus Capital Management (N.A.), LLC, and Scott Sacane. |