BIOVERIS CORP
Form PREM14A
May 02, 2007

Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant þ
Filed by a Party other than the Registrant o
Check the appropriate box:
þ Preliminary Proxy Statement
o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
o Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to §240.14a-12

BIOVERIS CORPORATION

(Name of Registrant as Specified In Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):
o No fee required.
þ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Common Stock $0.001 par value

(2) Aggregate number of securities to which transaction applies:

28,159,502 shares of Common Stock (includes 911,700 shares of Common Stock underlying options to purchase Common Stock)

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

The filing fee was determined based upon the sum of: (a) the product of 27,247,802 shares of Common Stock and the merger consideration of $21.50 per share of Common Stock and (b) the product of options to purchase 911,700 shares of Common Stock and $14.4558 (which is the difference between $21.50 and $7.0442, the weighed average exercise price per share of the options to purchase Common Stock). In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filing fee was determined by calculating a fee of $30.70 per $1,000,000 of the aggregate value of the transaction.

(4) Proposed maximum aggregate value of transaction:

$ 599,007,096.00

(5) Total fee paid:

$ 18,390.00

o Fee paid previously with preliminary materials.

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

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Table of Contents

Preliminary Copy Subject to Completion

BIOVERIS CORPORATION
16020 Industrial Drive
Gaithersburg, Maryland 20877
(301) 869-9800

[ ], 2007

To our Stockholders:

You are cordially invited to attend a special meeting of the stockholders of BioVeris Corporation (the Company) to be held at [ ] on [ ], 2007, beginning at 10:00 a.m., local time.

At the special meeting, you will be asked to consider and vote upon a proposal to approve the Agreement and Plan of Merger (merger agreement), dated as of April 4, 2007, among the Company, Roche Holding Ltd (Roche) and Lili Acquisition Corporation (Merger Sub), an indirect, wholly-owned subsidiary of Roche.

The merger agreement provides for, among other things, the merger of Merger Sub with and into the Company, with the Company continuing as the surviving corporation after the consummation of the merger and becoming an indirect, wholly-owned subsidiary of Roche. If the merger is completed, you will be entitled to receive $21.50 in cash, without interest, for each share of our common stock you own, unless you have properly exercised your appraisal rights.

Our board of directors has unanimously approved and declared advisable the merger, the merger agreement and the transactions contemplated by the merger agreement and has unanimously declared that the merger, the merger agreement and the transactions contemplated by the merger agreement are fair to, and in the best interests of, our stockholders. **Accordingly, our board of directors recommends that our stockholders vote FOR the approval of the merger agreement.**

The proxy statement attached to this letter provides you with information about the proposed merger and the special meeting. We encourage you to read the entire proxy statement carefully because it explains the proposed merger, the documents related to the merger and other related matters, including the conditions to the completion of the merger. You may also obtain more information about the Company from documents we have filed with the Securities and Exchange Commission.

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, IT IS IMPORTANT THAT YOUR SHARES BE REPRESENTED. ACCORDINGLY, WE URGE YOU TO VOTE, SIGN, DATE AND PROMPTLY RETURN THE ENCLOSED PROXY CARD IN THE ENVELOPE PROVIDED, WHICH REQUIRES NO POSTAGE IF MAILED IN THE UNITED STATES, OR YOU MAY VOTE THROUGH THE INTERNET OR BY TELEPHONE AS DIRECTED ON THE ENCLOSED PROXY CARD. IF YOU RECEIVE MORE THAN ONE PROXY CARD BECAUSE YOU OWN SHARES THAT ARE REGISTERED DIFFERENTLY, PLEASE VOTE ALL OF YOUR SHARES SHOWN ON ALL OF YOUR PROXY CARDS.

Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

We look forward to seeing you at the special meeting.

Sincerely,

Samuel J. Wohlstadter
Chairman of the Board of Directors and Chief
Executive Officer
BioVeris Corporation

This proxy statement is dated [ ], 2007 and is first being mailed to stockholders on or about [ ], 2007.

Your vote is very important.

The merger cannot be completed unless the merger agreement is approved by the affirmative vote of the holders of a majority of the outstanding shares of our common stock and series B preferred stock, voting together as a single class, entitled to vote on the merger. If you fail to vote on the merger agreement, the effect will be the same as a vote against the approval of the merger agreement.

Table of Contents

Preliminary Copy Subject to Completion

BIOVERIS CORPORATION
16020 Industrial Drive
Gaithersburg, Maryland 20877
(301) 869-9800

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [ ], 2007

TO THE STOCKHOLDERS:

The special meeting of stockholders of BioVeris Corporation, a company incorporated under the laws of Delaware (BioVeris or the Company), will be held on [ ], 2007, 10:00 a.m., local time, at the [ ] in order to:

1. Consider and vote on a proposal to approve the Agreement and Plan of Merger, dated as of April 4, 2007, among the Company, Roche Holding Ltd and Lili Acquisition Corporation (merger agreement). A copy of the merger agreement is attached as Annex A to the accompanying proxy statement.

2. Approve the adjournment or postponement of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to approve the merger agreement.

3. Transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Only holders of record of shares of our common stock and series B preferred stock at the close of business on [ ], 2007, the record date for the special meeting, are entitled to notice of the meeting and to vote at the meeting and at any adjournment or postponement thereof. A list of stockholders will be available for inspection by stockholders of record during business hours at the Company s executive offices, 16020 Industrial Drive, Gaithersburg, Maryland 20877, for ten days prior to the date of the special meeting and will also be available at the special meeting. All stockholders of record are cordially invited to attend the special meeting in person.

Your vote is important, regardless of the number of shares of stock that you own. The approval of the merger agreement is conditioned on the affirmative vote of the holders of a majority of the outstanding shares of our common stock and series B preferred stock, voting together as a single class, that are entitled to vote at the special meeting. The proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies requires the affirmative vote of holders of a majority of the voting power present and entitled to vote.

We urge you to read the entire proxy statement carefully. Whether or not you plan to attend the special meeting, please vote by promptly completing the enclosed proxy card and then signing, dating and returning it in the postage-prepaid envelope provided so that your shares may be represented at the special meeting. Alternatively, you may vote your shares of stock through the Internet or by telephone, as indicated on the proxy card. Prior to the vote, you may revoke your proxy in the manner described in the proxy statement. Your failure to vote will have the same effect as a vote against the approval of the merger agreement.

Stockholders of the Company who do not vote in favor of the merger agreement will have the right to seek appraisal of the fair value of their shares if the merger is completed, but only if they perfect their appraisal rights by complying with all of the required procedures under Delaware law. See *Dissenters Rights of Appraisal* beginning on page [ ] of the enclosed proxy statement and Annex C to the enclosed proxy statement.

By Order of Our Board of Directors,

Samuel J. Wohlstadter
Chairman of the Board of Directors and Chief
Executive Officer

[ ], 2007

Table of Contents

TABLE OF CONTENTS

SUMMARY	2
QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER	9
CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION	12
THE PARTIES TO THE MERGER AGREEMENT	13
THE SPECIAL MEETING	13
Time, Place and Purpose of the Special Meeting	13
Record Date, Quorum and Voting Power	14
Required Vote	14
Voting by Directors and Executive Officers	14
Proxies; Revocation	15
Adjournments and Postponements	15
Questions and Additional Information	16
Expenses of Proxy Solicitation	16
THE MERGER	16
Background of the Merger	16
Reasons for the Merger	26
Recommendation of the Company s Board of Directors	31
Opinion of BioVeris Corporation s Financial Advisor	31
Financing of the Merger	37
Certain Effects of the Merger	38
Interests of Certain Persons in the Merger	38
Material U.S. Federal Income Tax Consequences of Merger	41
Government and Regulatory Approvals	43
Delisting and Deregistration of Common Stock	45
THE MERGER AGREEMENT	45
The Merger	45
Treatment of Stock, Restricted Stock Awards and Options	45
Exchange and Payment Procedures	46
Charter, Bylaws, Directors and Officers	47
Representations and Warranties	47
Conduct of Our Business Prior to Closing	49
Stockholders Meeting	51
Restrictions on Solicitations	51
Indemnification and Insurance	52
Employee Benefits	53
Agreement to use Reasonable Best Efforts	54
Roche and Merger Sub Financing	54
MSD and MST	54
Other Covenants and Agreements	54
Conditions to the Merger	55
Termination	55
Termination Fee	56
Amendment, Supplement and Waiver	56
Specific Enforcement	56

Table of Contents

Roche License Payments	57
Amendment to BioVeris Rights Plan	57
Stockholders Agreement	57
THE RELATED AGREEMENTS	57
Agreements with Samuel J. Wohlstadter	58
The Asset Transfer Agreements	58
Covenants Not to Sue	65
Supply Agreements	66
PROJECTED FINANCIAL INFORMATION	66
MARKET PRICES OF THE COMPANY COMMON STOCK	70
DISSENTERS RIGHTS OF APPRAISAL	70
ADJOURNMENT OR POSTPONEMENT OF THE SPECIAL MEETING	73
BENEFICIAL OWNERSHIP OF COMPANY COMMON STOCK	73
Beneficial Ownership Table	73
Section 16(a) Beneficial Ownership Reporting Compliance	74
SHAREHOLDER PROPOSALS	74
OTHER MATTERS	75
Other Business at Special Meeting	75
Delivery of this Proxy Statement	75
WHERE YOU CAN FIND ADDITIONAL INFORMATION	75

ANNEX A	Agreement and Plan of Merger among BioVeris Corporation, Roche Holding Ltd and Lili Acquisition Corporation, dated as of April 4, 2007
ANNEX B	Opinion of BioVeris Corporation s Financial Advisor
ANNEX C	Section 262 of Delaware General Corporation Law
ANNEX D	Amended and Restated Stockholders Agreement among Roche Holding Ltd, Samuel J. Wohlstadter and Nadine Wohlstadter, dated as of May 2, 2007
ANNEX E	Reconciliation of Non-GAAP Financial Measures

Table of Contents

SUMMARY

The following summary highlights selected information from this proxy statement. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that item in this document.

Unless we otherwise indicate or unless the context requires otherwise, all references in this document to Company, we, our, and us refer to BioVeris Corporation and its subsidiaries; all references to Roche and Parent refer to Roche Holding Ltd; all references to Merger Sub refer to Lili Acquisition Corporation; all references to merger agreement refer to the Agreement and Plan of Merger, dated as of April 4, 2007, among the Company, Roche and Merger Sub, as it may be amended from time to time, a copy of which is attached as Annex A to this document; and all references to the merger refer to the merger contemplated by the merger agreement. All other capitalized terms used but not defined in this summary have the meanings ascribed to such terms in the merger agreement.

Parties to the Merger (page [ ])

BioVeris Corporation. BioVeris Corporation is a global healthcare and biosecurity company developing proprietary technologies in diagnostics and vaccinology that is dedicated to the development and commercialization of innovative products and services for healthcare providers, their patients and their communities.

Roche. Roche Holding Ltd is a joint stock company organized under the laws of Switzerland. Roche is a holding company which, through its subsidiaries (collectively, the Roche Group), engages primarily in the development, manufacture, marketing and sales of pharmaceuticals, and diagnostics. The Roche Group is one of the world s leading research-based health care groups active in the discovery, development, manufacture and marketing of pharmaceuticals and diagnostics.

Lili Acquisition Corporation. Lili Acquisition Corporation is a Delaware corporation formed for the sole purpose of completing the merger with the Company. Merger Sub is an indirect, wholly-owned subsidiary of Roche. Merger Sub has not conducted any business other than in connection with the merger and other related transactions.

The Merger Agreement (pages [ ])

On April 4, 2007, the Company entered into a merger agreement with Roche and Merger Sub. Upon the terms and conditions of the merger agreement, Merger Sub will merge with and into the Company, with the Company as the surviving corporation. We will become an indirect, wholly-owned subsidiary of Roche. You will have no equity interest in the Company or Roche after the effective time of the merger. At the effective time of the merger, each share of our common stock, par value $0.001 per share (the Common Stock), including restricted stock awards, other than those held by the Company, Roche or Merger Sub and other than shares with respect to which appraisal rights have been properly exercised, will be cancelled and converted automatically into the right to receive $21.50 in cash, without interest and less any applicable withholding tax.

Effects of the Merger (page [ ])

If the merger is completed, you will be entitled to receive $21.50 in cash, without interest and less any applicable withholding taxes, for each share of Common Stock owned by you, unless you have exercised your statutory appraisal

rights with respect to the merger. As a result of the merger, the Company will cease to be an independent, publicly traded company. You will not own any shares of the surviving corporation.

The Special Meeting (page [ ])

The special meeting will be held on [ ], 2007 starting at 10:00 a.m., local time at [ ].

Table of Contents

Record Date and Quorum (page [ ])

Stockholders of record at the close of business on [ ] are entitled to notice of, and to vote at, the special meeting. The holders of the Common Stock and Series B Preferred Stock (Series B Preferred Stock) have one vote per share on all matters on which they are entitled to vote. On [ ], 2007 the outstanding voting securities consisted of [ ] shares of Common Stock and 1,000 shares of Series B Preferred Stock. The presence at the special meeting, in person or by proxy, of the holders of a majority of the voting interests of all shares of our Common Stock and Series B Preferred Stock will constitute a quorum for the purpose of considering the proposals.

Required Vote (page [ ])

For us to complete the merger, a simple majority of the outstanding shares of our Common Stock and Series B Preferred Stock entitled to vote at the special meeting, voting together as a single class, must vote FOR the approval of the merger agreement. Approval of the proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies requires the affirmative vote of a majority of the combined voting power of Common Stock and Series B Preferred Stock, present, in person or represented by proxy, at the special meeting and entitled to vote on the matter, whether or not a quorum is present.

Stock Ownership of Directors and Executive Officers (page [ ])

As of [ ], 2007, the record date for the special meeting, our current directors and executive officers held, in the aggregate, [ ] shares of our Common Stock (excluding options) representing approximately [ ]% of our outstanding Common Stock and 1,000 shares of our Series B Preferred Stock, representing 100% of our outstanding Series B Preferred Stock. Each of our directors and executive officers has informed us that he intends to vote all of his Common Stock or Series B Preferred Stock FOR the approval of the merger agreement.

Board Recommendation (page [ ])

After careful consideration, our board of directors, unanimously, (i) approved the merger agreement, including the merger and the other transactions contemplated thereby, (ii) determined that the terms of the merger and the other transactions contemplated by the merger agreement are advisable, fair to and in the best interests of the Company and our stockholders, (iii) recommends that our stockholders vote FOR adoption of the merger agreement and (iv) recommends that our stockholders vote FOR the approval of any proposal to adjourn or postpone the special meeting, if necessary or appropriate, to solicit additional proxies in the event that there are not sufficient votes in favor of approval of the merger agreement at the time of the special meeting.

Opinion of BioVeris Corporation s Financial Advisor (page [ ] and Annex B)

Lehman Brothers, Inc. (Lehman Brothers) delivered its opinion to our board that, as of April 4, 2007, and based upon and subject to the qualifications and assumptions set forth therein, the $21.50 in cash per share to be received by the holders of Common Stock pursuant to the merger agreement was fair from a financial point of view to such holders. The full text of the Lehman Brothers opinion dated April 4, 2007, is attached to this proxy statement as Annex B. We encourage stockholders to read Lehman Brothers opinion carefully and in its entirety. Lehman Brothers opinion was provided to our board of directors in connection with its consideration of the merger consideration and does not address any other aspect of the proposed merger and does not constitute a recommendation as to how you should vote on the merger or any matter relevant to the merger agreement.

Reasons for the Merger (page [ ])

The merger will enable our stockholders to (1) immediately realize the value of their investment in the Company through their receipt of the per share merger consideration of $21.50 in cash, representing a

Table of Contents

premium of approximately 58.1% to the $13.60 closing price of our Common Stock on NASDAQ Global Market (NASDAQ) on April 3, 2007, the last trading day before the announcement of the merger; (2) eliminate the risks and uncertainties associated with our future performance; and (3) eliminate the risks and uncertainties associated with our issues and disagreements with Roche regarding out-of-field sales.

For these reasons, and the reasons discussed under *The Merger Reasons for the Merger* beginning on page [ ], the board has determined that the merger agreement and the transactions contemplated thereby, including the merger, are advisable, substantively and procedurally fair to, and in the best interests of the Company and its stockholders.

Company Options and Restricted Stock Awards (page [ ])

In connection with the merger, each option to purchase our Common Stock outstanding immediately prior to the effective time of the merger will be fully vested and be cancelled in exchange for the right to receive a cash payment equal to the product of the number of shares subject to such option multiplied by the excess, if any, of (a) $21.50 per share over (b) the exercise price of such option, subject to applicable withholding tax. Each restricted stock award outstanding immediately prior to the effective time of the merger will be fully vested and be converted into the right to receive $21.50 in cash, without interest.

No Solicitation of Transactions (page [ ])

We have agreed that we will not:

- solicit, initiate or knowingly encourage any inquiries or the making of any takeover proposal from a third party;
- participate in any discussions or negotiations regarding any takeover proposal or furnish any information concerning the Company and its subsidiaries to any third parties in connection with a takeover proposal;
- grant any waiver or release under any standstill or similar agreement with respect to any class of our equity securities; or
- enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar instrument constituting or relating to a takeover proposal.

Notwithstanding these restrictions, the merger agreement provides that if we receive an unsolicited bona fide takeover proposal from a third party before the stockholder vote, which our board of directors determines in good faith is, or is reasonably likely to result in, a superior proposal, we may furnish non-public information to the third party making such superior proposal and engage or participate in discussions or negotiations with the third party making such superior proposal.

Conditions to the Merger (page [ ])

Conditions to Each Party s Obligations. Each party s obligations to complete the merger is subject to the satisfaction or waiver of the following conditions:

- the approval of the merger by holders of a majority of the outstanding shares of our Common Stock and Series B Preferred Stock, voting together as a single class;

the termination or expiration of the Hart-Scott-Rodino Antitrust Improvements Act waiting period and the expiration or termination of the waiting period under the German Act against Restraints of Competition of 1958, as amended, or the approval of the German Federal Cartel Office;

the completion by the United States government of its review under the Exon-Florio Amendment to the Defense Production Act of 1950, and its conclusion not to suspend or prohibit the transaction, nor to take any action which would adversely affect, in any material respect, the Company or Roche s ability to operate or control the Company;

Table of Contents

the termination, within 60 days after the effective time of the merger, of agreements whereby we, or our subsidiaries, provide administrative or support services to entities that are affiliates of any of our officers or directors; and

the absence of any injunctions or restraints prohibiting the closing of the merger.

Conditions to Roche s and Merger Sub s Obligations. The obligation of Roche and Merger Sub to complete the merger is subject to the satisfaction or waiver of the following additional conditions:

our representations and warranties must be true and correct as of the closing date as if made at and as of such time, except where the failure to be true and correct has not or would not reasonably be expected to have a material adverse effect (as defined below under *The Merger Agreement Representations and Warranties*); and

our material compliance with our obligations under the merger agreement.

Conditions to BioVeris Obligations. Our obligation to complete the merger is subject to the satisfaction or waiver of the following additional conditions:

Roche s and Merger Sub s representations and warranties must be true and correct as of the closing date as if made at and as of such time, except for such matters as would not be expected to materially delay Roche s or Merger Sub s ability to consummate the transactions contemplated by the merger agreement;

Roche s and Merger Sub s material compliance with their obligations under the merger agreement; and

the absence of any legal prohibitions or restraints against the vaccines asset transfer agreement or the ECL asset transfer agreement.

Termination of the Merger Agreement (page [ ])

The Company and Roche may agree to terminate the merger agreement without completing the merger at any time. The merger agreement may also be terminated in certain other circumstances, including:

by either the Company or Roche if:

any legal prohibitions or restraints prohibiting the merger become final and non-appealable;

the merger has not been consummated by September 30, 2007 (or, under certain circumstances, December 31, 2007); or

our stockholders do not adopt the merger agreement at the special meeting or any adjournment or postponement thereof.

by Roche if:

we materially breach or fail to perform any of our representations, warranties, covenants or agreements under the merger agreement which failure or non-performance would cause a condition to close to be unsatisfied and which cannot be cured by us prior to September 30, 2007 (or, under certain circumstances,

December 31, 2007); or

our board of directors withdraws or modifies (in a manner adverse to Roche) its recommendation that our stockholders adopt the merger agreement, or publicly recommends to stockholders a takeover proposal by a third party.

by the Company if:

Roche or Merger Sub materially breaches or fails to perform any of its representations, warranties, covenants or agreements under the merger agreement which failure or non-performance would cause a condition to close to be unsatisfied and which cannot be cured by them prior to September 30, 2007 (or, under certain circumstances, December 31, 2007); or

Table of Contents

we concurrently enter into an acquisition agreement providing for a superior proposal.

Termination Fee (page [ ])

We have agreed to pay a termination fee of $12 million to Roche if:

- we terminate the merger agreement and concurrently enter into an acquisition agreement with a third party providing for a superior proposal; or
- Roche terminates the merger agreement because our board withdraws or modifies (in a manner adverse to Roche) its recommendation to our stockholders to adopt the merger agreement or publicly recommends to our stockholders a takeover proposal by a third party.

We are also required to pay Roche the $12 million termination fee if the merger agreement is terminated by Roche or us because our stockholders do not approve the merger agreement at the stockholder s meeting, and prior to such termination, a takeover proposal by a third party was publicly announced or communicated to our board or stockholders and not terminated or withdrawn and, within six months of termination we enter into a definitive agreement or consummate a takeover proposal with a third party.

Government and Regulatory Approvals (page [ ])

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act), and the rules promulgated thereunder by the Federal Trade Commission (FTC), the merger may not be completed until the notification and report forms have been filed with the FTC and the Antitrust Division of the Department of Justice (DOJ) and the applicable waiting period has expired or been terminated. We and Roche filed notification and report forms under the HSR Act with the Antitrust Division of the DOJ and the FTC on April 13, 2007. In addition, the merger may not be completed until the expiration or termination of the waiting period under the German Act against Restraints of Competition of 1958, as amended, or we receive the approval of the merger by the German Federal Cartel Office. We are also required to notify the Italian Competition Authority of the merger, but there is no automatic bar on closing applicable under the Italian merger control regime.

The merger may also be subject to review by the governmental authorities of various other jurisdictions under the antitrust laws of those jurisdictions.

The merger will also require the completion by the United States government of its review under the Exon-Florio Amendment to the Defense Production Act of 1950. The Company and Roche plan to jointly submit a notice of the merger to the Committee on Foreign Investment in the United States (CFIUS).

Material U.S. Federal Income Tax Consequences (page [ ])

The merger will be a taxable transaction to you if you are a U.S. holder . Your receipt of cash in exchange for your Common Stock generally will cause you to recognize a gain or loss measured by the difference, if any, between the cash you receive in the merger and your adjusted tax basis in your Common Stock. Holders of Common Stock who are not U.S. holders may have different tax consequences than those described with respect to U.S. holders and are urged to consult their tax advisors regarding the tax treatment to them under U.S. and non-U.S. tax laws. You should also consult your tax advisor on the particular tax consequences of the merger to you, including the federal, state, local and/or non-U.S. tax consequences of the merger.

Interests of Certain Persons in the Merger (page [ ])

In considering the recommendation of the board of directors, you should be aware that our directors and executive officers may have interests in the merger that are different from, or in addition to, your interests as a stockholder, and that may present actual or potential conflicts of interest.

You should note that Samuel J. Wohlstadter, our chairman and chief executive officer, has entered into a separate agreement with Roche pursuant to which, among other things, Roche has agreed to purchase his

Table of Contents

Series B Preferred Stock. In addition, Mr. Wohlstadter and other members of management of the Company will be entitled to receive certain severance and change-in-control payments under the Company s termination protection program. Moreover, all outstanding options and restricted shares will become fully vested and will be cashed out in the merger.

In addition, in connection with the transaction, two newly formed entities established by Mr. Wohlstadter will purchase from the Company rights to certain intellectual property and related assets associated with our vaccines research and electrochemiluminescent (ECL) technology, and a non-exclusive limited license to use the ECL technology for certain limited purposes. These transactions with Mr. Wohlstadter were approved by a special committee of independent directors of our board or directors (the Special Committee) and by the full board of directors with Mr. Wohlstadter abstaining.

Stockholders Agreement (page [ ])

Concurrently with the execution of the merger agreement, Roche entered into a stockholders agreement (which agreement was amended and restated on May 2, 2007) with Mr. Wohlstadter and his wife, Nadine Wohlstadter, in which they agreed to vote all of their shares of our Common Stock and Series B Preferred Stock in favor of the merger agreement. Mr. and Mrs. Wohlstadter collectively own approximately 19.3% of our outstanding Common Stock (excluding shares underlying options) and Mr. Wohlstadter owns 100% of the Series B Preferred Stock.

The stockholders agreement will terminate on the earlier of:

- the effective date of the merger;
- the termination of the merger agreement in accordance with its terms; or
- our board of directors changing its recommendation that the stockholders vote in favor of the merger unrelated to a takeover proposal.

A copy of the stockholders agreement is attached as Annex D to this proxy statement.

Asset Transfer Agreements (page [ ])

In connection with the execution of the merger agreement, two private limited liability companies controlled by Mr. Wohlstadter entered into agreements with the Company on April 4, 2007 to acquire certain of our assets.

32 Mott Street Acquisition I, LLC, a Delaware limited liability company (Vaccines Newco), has entered into an agreement with us (the vaccines asset transfer agreement) to acquire certain assets related to the research, development, manufacture, production, testing, sale, distribution and use of vaccines (the vaccines business) from us in exchange for $3,859,000, paid as follows (a) $1,000,000 to be paid at closing, (b) three annual payments of $50,000 to be paid on the first three anniversaries of the closing date and (c) a final payment of $2,709,000 to be paid on the earlier of the third anniversary of closing or the receipt of certain levels of financing by Vaccines Newco.

32 Mott Street Acquisition II, LLC, a Delaware limited liability company (ECL Newco), has entered into an agreement with us (the ECL asset transfer agreement) to acquire the ECL license (as described below), certain sublicenses and certain of our non-intellectual property assets related to the research, development, manufacture, production, testing, sale, distribution and use of certain small instruments that use ECL technology that are currently under development (the ECL business) by us in exchange for $2,718,000, paid as follows (a) $1,000,000 to be paid at closing, (b) three annual payments of $50,000 to be paid on the first three anniversaries of the closing date and (c) a

final payment of $1,568,000 to be paid on the earlier of the third anniversary of closing or the receipt of certain levels of financing by ECL Newco. In addition at the closing of the ECL asset transfer agreement, ECL Newco will pay us $779,000 in connection with certain severance obligations.

The payments made in connection with the vaccines asset transfer agreement and the ECL asset transfer agreement will be made to the Company and will not affect the consideration paid to you in connection with

Table of Contents

the merger. In addition, stockholders of the Company, other than Mr. Wohlstadter and his spouse, will not have any equity interest in Vaccines Newco or ECL Newco.

The transactions contemplated by the vaccines asset transfer agreement and the ECL asset transfer agreement (the asset transfer agreements) are conditioned upon, among other things, all of the conditions to the merger agreement, except for those which can only be satisfied at the closing of the merger agreement, being satisfied. The asset transfer agreements will terminate, if, among other things, the merger agreement is terminated.

In connection with the ECL asset transfer agreement, ECL Newco will enter into a related license agreement with the Company with respect to certain ECL technology (the ECL license), pursuant to which we will grant to ECL Newco a limited non-exclusive license, subject to certain restrictions, to use our ECL technology in connection with the ECL business.

Procedure for Receiving Merger Consideration (page [ ])

As soon as practicable after the effective time of the merger, a paying agent designated by Roche, and reasonably acceptable to us, will mail a letter of transmittal and instructions to all of our stockholders of record. The letter of transmittal and instructions will tell you how to surrender your Common Stock certificates in exchange for the merger consideration, without interest. **You should not return any share certificates you hold with the enclosed proxy card, and you should not forward your stock certificates to the paying agent without a letter of transmittal.**

Market Price of Company Common Stock (page [ ])

Our Common Stock is listed on the NASDAQ under the trading symbol BIOV. The closing sale price of our Common Stock on April 3, 2007, which was the last trading day before the announcement of the execution of the merger agreement, was $13.60 per share. On [ ], 2007, which was the last trading day before the date of this proxy statement, our Common Stock closed at $[ ] per share.

Dissenters Rights of Appraisal (page [ ] and Annex C)

Under Delaware law, if you take or refrain from taking certain specific actions, you are entitled to appraisal rights in connection with the merger. You will have the right, under and in full compliance with Delaware law, to have the fair value of your shares of our Common Stock determined by the Court of Chancery of the State of Delaware. This right to appraisal is subject to a number of restrictions and technical requirements. Generally, in order to exercise your appraisal rights you must:

- send a timely written demand to us at the address set forth on page [ ] of this proxy statement for appraisal in compliance with Delaware law, which demand must be delivered to us before the stockholder vote to approve the merger set forth in this proxy statement;
- not vote in favor of the merger agreement; and
- continuously hold your Common Stock, from the date you make the demand for appraisal through the closing of the merger.

Merely voting against the merger agreement will not protect your rights to an appraisal, which requires all the steps provided under Delaware law. Requirements under Delaware law for exercising appraisal rights are described in further detail beginning on page [ ]. The relevant section of Delaware law, Section 262 of the Delaware General Corporation Law, regarding appraisal rights is reproduced and attached as Annex C to this proxy statement.

If you vote for the merger agreement, you will waive your rights to seek appraisal of your shares of Common Stock under Delaware law. This proxy statement constitutes our notice to our stockholders of the availability of appraisal rights in connection with the merger in compliance with the requirements of Section 262 of the Delaware General Corporation Law.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

The following questions and answers are intended to address briefly some commonly asked questions regarding the merger, the merger agreement and the special meeting. These questions and answers may not address all questions that may be important to you as a Company stockholder. Please refer to the Summary and the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents referred to or incorporated by reference in this proxy statement, which you should read carefully. See *Where You Can Find Additional Information beginning on page [ ].*

Q: What is the proposed transaction?

A: The proposed transaction is the acquisition of the Company by Roche pursuant to the merger agreement. Once the merger agreement has been adopted by our stockholders and other closing conditions under the merger agreement have been satisfied or waived, Merger Sub, an indirect, wholly-owned subsidiary of Roche, will merge with and into the Company. The Company will be the surviving corporation and become an indirect, wholly-owned subsidiary of Roche.

Q: What will I receive in the merger?

A: If the merger is completed, you will receive $21.50 in cash, without interest and less any required withholding taxes, for each share of our Common Stock that you own. For example, if you own 100 shares of our Common Stock, you will receive $2,150 in cash in exchange for your shares of Common Stock, less any required withholding taxes. You will not be entitled to receive shares in the surviving corporation.

Q: When and where is the special meeting?

A: The special meeting of the Company s stockholders will be held at 10:00 a.m., local time, on [ ] 2007, at [ ].

Q: What matters will I have the opportunity to vote on at the special meeting?

A: You will have the opportunity to vote:

FOR or AGAINST the approval of the merger agreement;

FOR or AGAINST the adjournment or postponement of the meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement; and

to transact such other business as may properly come before the special meeting or any adjournment or postponement th