

INVERNESS MEDICAL INNOVATIONS INC

Form S-4

November 07, 2002

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As filed with the Securities and Exchange Commission on November 7, 2002

Registration Statement No. 333-

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**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM S-4**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**INVERNESS MEDICAL INNOVATIONS, INC.**

*(Exact name of Registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of  
Incorporation or organization)*

**2835**

*(Primary Standard Industrial  
Classification Number)*

**04-3565120**

*(I.R.S. Employer  
Identification No.)*

**51 Sawyer Road, Suite 200  
Waltham, Massachusetts 02453  
(781) 647-3900**

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

---

**Ron Zwanziger, Chairman, President and Chief Executive Officer  
Inverness Medical Innovations, Inc.**

**51 Sawyer Road, Suite 200  
Waltham, Massachusetts 02453  
(781) 647-3900**

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

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Copies to:

**Stephen W. Carr, P.C.  
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Exchange Place  
Boston, Massachusetts 02109-2881  
(617) 570-1000**

**James R. Lisbakken, Esq.  
Faith M. Wilson, Esq.  
Patrick J. Devine, Esq.  
Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, Washington 98101-3099  
(206) 583-8888**

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**Approximate date of commencement of proposed sale to the public:** As soon as possible after the effective date of this registration statement and the effective time of the merger described in 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, please check the following box.

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

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. o

### CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price(2)	Amount of registration fee(3)
Common Stock, par value \$.001 per share	2,300,511	N/A	\$21,018,726	\$1,934

- (1) Represents the estimated maximum number of shares of common stock of Inverness Medical Innovations, Inc. to be issued in connection with the merger of Ostex International, Inc. with a wholly owned subsidiary of Inverness. This registration statement also relates to an indeterminate number of shares of Inverness common stock that may be issued upon stock splits, stock dividends or similar transactions in accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act").
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and 457(f) under the Securities Act. Based upon the average of the high and low sales prices for Ostex' common stock on November 1, 2002 as reported on the Nasdaq National Market and the maximum number of shares of Ostex common stock to be acquired in the merger (assuming exercise of all outstanding options and warrants to acquire Ostex common stock).
- (3) Calculated pursuant to Rules 457(c) and 457(f) under the Securities Act.

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, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

### MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

Inverness Medical Innovations, Inc. and Ostex International, Inc. have agreed to the acquisition of Ostex by Inverness under the terms of a merger agreement. If the merger is completed, Ostex will become a wholly owned subsidiary of Inverness and its common stock will no longer be publicly traded. Each outstanding share of Ostex common stock, except for shares held by any shareholder who effectively exercises dissenters' rights to appraisal, will be converted into the right to receive a number of shares of common stock, par value \$.001 per share, of Inverness equal to a conversion ratio that will be determined immediately prior to the closing of the merger. The per share conversion ratio is designed to provide that an aggregate of approximately 2.3 million shares of Inverness common stock will be:

issued in exchange for all outstanding Ostex common stock; and

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reserved for issuance upon exercise of outstanding stock options and warrants to purchase Ostex common stock that will be assumed by Inverness in the merger.

If the effective time of the merger was \_\_\_\_\_, 2002, the most recent practicable date prior to the date of this proxy statement/prospectus, the conversion ratio would equal \_\_\_\_\_. Inverness common stock is traded on the American Stock Exchange under the trading symbol "IMA." On \_\_\_\_\_, 2002, Inverness common stock closed at \$ \_\_\_\_\_ per share.

Ostex will hold a special meeting of its shareholders to consider and vote on the merger and other related matters. The shareholders meeting will be held on \_\_\_\_\_, at \_\_\_\_\_ a.m. local time at \_\_\_\_\_ in Seattle, Washington. Whether or not you plan to attend the shareholders meeting, please take the time to vote on the proposal to be submitted at the meeting by completing and mailing the enclosed proxy card to Ostex. Your vote is important regardless of the number of shares of Ostex common stock you own.

The Ostex board of directors has unanimously adopted the merger agreement and determined that the merger is advisable and fair to, and in the best interests of, Ostex and its shareholders and unanimously recommends that you vote "FOR" the proposal described in this proxy statement/prospectus.

This proxy statement/prospectus provides you with detailed information concerning Inverness, Ostex, the merger and the proposal to be considered at the special meeting of Ostex shareholders. We encourage you to read this entire document carefully. You may also obtain more information about Inverness and Ostex from documents each company has filed with the Securities and Exchange Commission.

**You should carefully consider the discussion in the section of this proxy statement/prospectus titled "Risk Factors" beginning on page 20.**

Thomas A. Bologna  
Chairman, President and Chief Executive Officer  
Ostex International, Inc.

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

This proxy statement/prospectus is dated \_\_\_\_\_, 2002 and is first being mailed to shareholders on or about \_\_\_\_\_, 2002.

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### REFERENCES TO ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates important business and financial information about Inverness and Ostex from other documents that are not included in or delivered with this proxy statement/prospectus. This information is available to you without charge upon your written or oral request. You can obtain those documents, which are incorporated by reference in this proxy statement/prospectus, by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

**For information about Inverness:**

Inverness Medical Innovations, Inc.  
51 Sawyer Road, Suite 200  
Waltham, MA 02453  
Attn: Investor Relations  
(781) 647-3900

**If you would like to request documents, please do so by meeting.**

**For information about Ostex:**

Ostex International, Inc.  
2203 Airport Way South, Suite 400  
Seattle, WA 98134  
Attn: Investor Relations  
(206) 292-8082

**, 2002 in order to receive them before Ostex' shareholders**

See also the section of this proxy statement/prospectus titled "Where You Can Find More Information" beginning on page 122.

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Suite 400  
2203 Airport Way South  
Seattle, WA 98134

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**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**

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Dear Fellow Shareholder:

We will hold a special meeting of shareholders of Ostex International, Inc. on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m. local time, at \_\_\_\_\_, Seattle, Washington, for the following purpose:

To consider and vote upon a proposal to approve the Agreement and Plan of Merger, dated as of September 6, 2002, among Inverness Medical Innovations, Inc., Geras Acquisition Corp., a wholly owned subsidiary of Inverness, and Ostex. Under the merger agreement, Ostex will become a wholly owned subsidiary of Inverness and each outstanding share of Ostex common stock (other than shares held by any shareholder who effectively exercises dissenters' rights to appraisal) will be converted into the right to receive a number of shares of Inverness common stock based on a conversion ratio that will be determined immediately prior to the closing of the merger.

This proposal is more fully described in the attached proxy statement/prospectus, which you should read carefully. The merger agreement is included with the proxy statement/prospectus as Annex A.

We will conduct no other business at the Ostex shareholders' special meeting, except business that may be properly brought before the special meeting and that is within the purpose of the special meeting described above.

The Ostex board of directors believes the merger is advisable and fair to, and in the best interests of, Ostex and its shareholders and unanimously recommends you vote "FOR" the approval of the merger agreement.

We cannot complete the merger unless the holders of at least two-thirds of the shares of Ostex common stock outstanding on the record date vote to approve the merger agreement. Holders of Ostex common stock are entitled to assert dissenters' rights with respect to the merger under Chapter 23B.13 of the Washington Business Corporation Act, as more fully described in the attached proxy statement/prospectus.

Only holders of record of Ostex common stock at the close of business on \_\_\_\_\_, 2002, the record date for the special meeting, are entitled to vote at the special meeting or any adjournment or postponement of the special meeting.

By Order of the Board of Directors  
of Ostex International, Inc.

Thomas F. Broderick  
Secretary

Seattle, Washington

\_\_\_\_\_, 2002

**Whether or not you plan to attend the special meeting, please complete, sign and date the enclosed proxy card and mail it promptly in the postage-paid envelope provided. You can revoke your proxy at any time before it is voted by following the procedures set forth in this proxy statement/prospectus. Please do not send in your Ostex common stock certificates at this time.**

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## QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING

**Q: Why am I receiving this proxy statement/prospectus?**

A: Inverness and Ostex have agreed to the acquisition of Ostex by Inverness under the terms of a merger agreement that is described in this proxy statement/prospectus. A copy of the merger agreement is attached to this proxy statement/prospectus as Annex A.

In order for the parties to complete the merger, Ostex shareholders must vote to approve the merger agreement. Ostex will hold a special meeting of its shareholders to obtain this approval. This proxy statement/prospectus contains important information about the merger and the special meeting of Ostex shareholders, and you should read it carefully. The enclosed proxy card allows you to vote your shares by proxy without attending the special meeting.

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

A: You should carefully read and consider the information contained or incorporated by reference in this proxy statement/prospectus, including its annexes. It contains important information about Ostex and Inverness.

After you have read and considered this information, you should complete and sign your proxy card

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and return it in the enclosed return envelope as soon as possible so that your shares will be represented at the special meeting.

**Q: Why is my vote important?**

A: The merger agreement must be approved by holders of at least two-thirds of the outstanding shares of Ostex common stock. If you do not vote it will have the same effect as a vote against the approval of the merger agreement.

**Q: If my shares are held in street name by my broker, will my broker automatically vote my shares for me?**

A: No. Your broker will vote your shares only if you provide instructions to your broker on how to vote. You should fill out the voter instruction form sent to you by your broker with this proxy statement/prospectus.

**Q: Can I attend the special meeting and vote my shares in person?**

A: Yes. All shareholders are invited to attend the special meeting. Shareholders of record on \_\_\_\_\_, 2002 can vote in person at the special meeting. If your shares are held by a broker, bank or other nominee, then you are not the shareholder of record and you must bring to the special meeting a letter from the broker, bank or other nominee confirming your beneficial ownership of the shares and authorizing you to vote at the special meeting.

**Q: Can I change my vote after I have mailed my signed proxy card?**

A: You can change your vote at any time before your proxy is voted at the special meeting by:

delivering a written notice bearing a date later than the date of your proxy card to W.F. Doring & Co., Inc., Ostex' proxy solicitor, stating that you revoke your proxy;

signing and delivering to W.F. Doring a new proxy card relating to the same shares and bearing a later date; or

attending the special meeting and voting in person, although attendance at the special meeting will not, by itself, revoke a proxy.

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You should send any notice of revocation or your completed new proxy card, as the case may be, to W.F. Doring at the following address:

W.F. Doring & Co., Inc.  
150 Bay Street, 8th Floor  
Jersey City, NJ 07302

**Q: Should I send in my stock certificates now?**

A: No. If the merger is completed, you will receive written instructions for exchanging your shares of Ostex common stock for shares of Inverness common stock. In the meantime, you should retain your certificate(s) because they are still valid. Please do not send in your stock certificate(s) with your proxy.

**Q: Whom should I call with questions?**

A: You should call Ostex' proxy solicitor, W.F. Doring, at 1-888-330-5111. You also may contact Inverness or Ostex at the telephone numbers listed under "References to Additional Information" on the inside of the front cover to this proxy statement/prospectus.

## SUMMARY

This summary highlights selected information from this proxy statement/prospectus and may not contain all of the information that is important to you. To more fully understand the transaction, you should read this entire proxy statement/prospectus, including the materials attached as annexes, as well as the other documents to which we have referred you. See "Where You Can Find More Information" on page 122. The page references in parentheses will direct you to a more detailed description of each topic presented in this summary.

Unless the context otherwise requires, all references to "Inverness" in this proxy statement/prospectus refer collectively to Inverness Medical Innovations, Inc. and its subsidiaries, and their respective predecessor entities for the applicable periods, considered as a single enterprise.

## The Companies

### **Inverness Medical Innovations, Inc. (See page 46)**

Inverness develops, manufactures and markets consumer health care products, including self-test diagnostic products for the women's health market and vitamins and nutritional supplements. Inverness also manufactures and distributes a wide variety of clinical diagnostic products for use by medical and laboratory professionals.

Inverness' consumer self-test diagnostic products, which include home pregnancy detection tests and home ovulation prediction tests, allow individuals to obtain accurate information regarding various medical conditions on a confidential, nonprescription basis, without the expense, inconvenience and delay associated with physician visits or laboratory testing. The information gives individuals greater control over their health and their lives, allowing them to make informed decisions and take action to protect their health, alone or in consultation with health care professionals. Inverness' nutritional supplements also provide individuals with the ability to better manage their own health.

With its recent acquisition of Wampole, Inverness dramatically expanded its clinical diagnostics business and is now a leading U.S. provider of specialized in vitro diagnostic testing products to the medical profession. Its products are sold to hospitals, major reference testing laboratories, physician's offices and clinics through an extensive distribution network.

Inverness emphasizes technological leadership in all of its businesses and has more than 40 patents in the United States and more than 300 patents in various foreign countries.

Inverness is a Delaware corporation whose principal executive offices are located at 51 Sawyer Road, Suite 200, Waltham, MA 02453 and its telephone number is (781) 647-3900.

### **Ostex International, Inc. (See page 47)**

Ostex develops and commercializes products to make "disease management a reality," with osteoporosis being the first area of focus. Ostex' lead product, the Osteomark® NTx test, which is available in multiple test formats, incorporates breakthrough and patented technology for the management of osteoporosis. Ostex has formed collaborative relationships with leading reference laboratories and distributors and markets its Point-of-Care device primarily to pharmaceutical companies to aid in the commercialization of its Osteomark® technology.

Ostex is a Washington corporation whose principal executive offices are located at 2203 Airport Way South, Suite 400, Seattle, Washington 98134 and its telephone number is (206) 292-8082.

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### **The Special Meeting of Ostex Shareholders; Vote Required (See page 48)**

A special meeting of Ostex shareholders will be held at \_\_\_\_\_, Seattle, Washington on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m., local time to approve the merger agreement. Only those Ostex shareholders who held their shares at the close of business on the record date for the special meeting \_\_\_\_\_, 2002, will be entitled to vote on the proposal to approve the merger agreement.



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To act on the matters presented at the special meeting of shareholders, a quorum must be present at the special meeting. To approve the merger agreement, the holders of two thirds of the outstanding shares of common stock entitled to vote, must vote in favor of the approval of the merger agreement. Ostex' directors and their affiliates, who collectively owned an aggregate of approximately % of the total outstanding common stock of Ostex as of the record date for the special meeting, have entered into a voting agreement with Inverness. Under the voting agreement, Ostex' directors and their affiliates have agreed to vote, and have granted Inverness an irrevocable proxy and power of attorney to vote, all of their shares of Ostex common stock in favor of the approval of the merger agreement. A copy of the voting agreement is attached to this proxy statement/prospectus as Annex B.

The Ostex board of directors has unanimously adopted the merger agreement and determined that the merger is advisable and fair to, and in the best interests of, Ostex and its shareholders and unanimously recommends that you vote "FOR" the approval of the merger agreement.

### The Merger

#### Summary of the Transaction (See page 51)

Inverness and Ostex signed an agreement and plan of merger on September 6, 2002. The merger agreement provides for the merger of Geras Acquisition Corp., a wholly owned subsidiary of Inverness, with and into Ostex with Ostex being the surviving corporation. Ostex will survive the merger as a wholly owned subsidiary of Inverness.

The proposed merger will occur following approval of the proposal described in this proxy statement/prospectus by the shareholders of Ostex and satisfaction or waiver of all other conditions to the merger. The merger agreement is attached to this proxy statement/prospectus as Annex A. We encourage you to read the merger agreement because it is the legal document that governs the merger.

#### What the Holders of Ostex Common Stock Will Receive in the Merger (See page 76)

In the merger, each outstanding share of Ostex common stock will be converted into the right to receive a number of shares of common stock of Inverness equal to a conversion ratio that will be calculated by dividing 2.3 million by the sum of:

the total number of shares of Ostex common stock outstanding immediately prior to the effective time of the merger; and

the total number of shares of Ostex common stock subject to outstanding stock options and warrants that are to be assumed by Inverness in the merger.

Since some of the variables necessary to determine the conversion ratio will not be determined until immediately prior to the effective time of the merger, the precise conversion ratio will not be determined until that time. However, if the effective time of the merger was \_\_\_\_\_, 2002, the most recent practicable date prior to the date of this proxy statement/prospectus, the conversion ratio would equal \_\_\_\_\_. This conversion ratio would result in Inverness issuing approximately \_\_\_\_\_ shares of Inverness common stock in exchange for the outstanding Ostex common stock and reserving

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approximately \_\_\_\_\_ shares of Inverness common stock for issuance upon the exercise of the outstanding Ostex warrants and options.

No fractional shares of Inverness common stock will be issued in connection with the merger. Instead, Ostex shareholders will receive an amount of cash for any fractional shares that would otherwise be issued based on the average market price of Inverness common stock over the ten trading days prior to the closing of the merger.

#### Fairness Opinion of Ostex' Financial Advisor (See page 59)

In deciding to adopt the merger agreement and recommend its approval to Ostex shareholders, Ostex' board considered, among other things, an opinion from its financial advisor, SG Cowen Securities Corporation. On September 5, 2002, SG Cowen delivered its written opinion to Ostex' board of directors that as of that date and based on and subject to the considerations set forth in the opinion, the assumed conversion ratio of 0.1494 shares of Inverness common stock for each outstanding share of Ostex common stock was fair, from a financial point of view, to

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the holders of Ostex common stock. This opinion is described more fully in the section of this proxy statement/prospectus titled "The Merger Fairness Opinion of Ostex' Financial Advisor." In addition, the full text of this written opinion is attached to this proxy statement/prospectus as Annex E. We encourage you to read this opinion carefully in its entirety. The opinion of SG Cowen is directed to Ostex' board and is not a recommendation to any shareholder on how to vote on the merger agreement.

### **Inverness' Reasons for the Merger (See page 55)**

In reaching its decisions to approve the merger agreement and related transactions including the merger and the issuance of shares of Inverness common stock to the Ostex shareholders, Inverness' board consulted with its senior management, and considered, among other things, the following factors:

Ostex' leading-edge intellectual property rights in the field of osteoporosis testing;

the difficulties that Inverness would face in attempting to develop non-infringing technology in the field of osteoporosis testing that was comparable to Ostex';

expected synergies through the acquisition of Ostex' existing and in-process intellectual property and the elimination of redundancies;

Inverness' anticipated ability to increase sales of Ostex' existing products through the use of Inverness' marketing and distribution channels;

the complementary nature of Inverness' and Ostex' businesses and the opportunity for significant cost savings;

the business, operations, financial condition, earnings and prospects of each of Inverness and Ostex, taking into account Inverness' due diligence review of Ostex' business;

the terms and conditions of the merger agreement, voting agreement, stock option agreement and the loan agreement; and

the potential risks of the merger discussed in the section of this proxy statement/prospectus titled "Risk Factors Risks Relating to the Merger."

This discussion of the factors considered by the Inverness board of directors is described more fully in the section of this proxy statement/prospectus titled "The Merger Inverness' Reasons for the Merger." The Inverness board of directors has unanimously approved the merger agreement and related transactions including the merger and the issuance of shares of common stock to the shareholders of Ostex pursuant to the merger agreement.

### **Ostex' Reasons for the Merger; Recommendation of Ostex' Board of Directors (See page 56)**

In determining to adopt the merger agreement, approve the merger and the transactions contemplated by the merger agreement, and recommend that Ostex' shareholders approve the merger agreement, the Ostex board of directors consulted with Ostex' financial advisor, its accounting advisor, as well as its legal counsel, and considered, among other things, the following factors:

the opportunity for Ostex shareholders to receive a premium over the market price for shares of Ostex common stock existing before the public announcement of the merger;

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the ability of Ostex shareholders to continue to participate in the growth of the business conducted by Inverness and Ostex following the merger and to benefit from the potential appreciation in value of shares of Inverness common stock;

the likelihood that the merger would be completed;

the opinion of SG Cowen that, as of September 5, 2002 and subject to the considerations set forth in their opinion, the assumed conversion ratio of 0.1494 shares of Inverness common stock for each outstanding share of Ostex common stock was fair to shareholders of Ostex from a financial point of view;

the prospects of Ostex as an independent company;

the terms and conditions of the merger agreement, the stock option agreement and the loan agreement; and

the potential risks of the merger discussed in the section of this proxy statement/prospectus titled "Risk Factors Risks Relating to the Merger."

The above discussion of the factors considered by the Ostex board of directors is described more fully in the section of this proxy statement/prospectus titled "The Merger Ostex' Reasons for the Merger; Recommendation of Ostex' Board of Directors." The Ostex board of directors has unanimously adopted the merger agreement and determined that the merger is advisable and fair to, and in the best interests of, Ostex and its shareholders and unanimously recommends that you vote "FOR" the approval of the merger agreement.

### Material Federal Income Tax Consequences (See page 70)

Inverness and Ostex expect the merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. If the merger does qualify as a reorganization, no gain or loss will be recognized by Ostex, Inverness or Geras Acquisition Corp. by reason of the merger. If you are an Ostex shareholder, we expect that you generally will not recognize gain or loss on the exchange of your shares of Ostex common stock for shares of Inverness common stock, except with regard to any cash you receive instead of fractional shares. If you exercise dissenters' appraisal rights, we expect that you generally will recognize gain or loss on the receipt of payment for your shares of Ostex common stock as a result of your exercise of dissenters' appraisal rights. **Because the tax consequences of the merger may vary depending upon each Ostex shareholder's particular circumstances, we urge you to consult your own tax advisors about the federal, state, local or foreign tax consequences to you as a result of the merger.**

### Dissenters' Appraisal Rights (See page 72)

Under applicable Washington law, Ostex' shareholders have the right to dissent from the merger and to receive payment in cash for the appraised fair value of their shares of Ostex common stock. The appraised value of the shares of Ostex common stock of dissenting shareholders may be more than, less

than or equal to the value of the merger consideration. Each Ostex shareholder seeking to preserve statutory dissenters' rights must:

deliver to Ostex before the vote is taken at the special meeting written notice of such shareholder's intent to demand payment for such shareholder's Ostex common stock if the merger becomes effective;

not vote such shareholder's shares of Ostex common stock in person or by proxy in favor of the proposal to approve the merger agreement; and

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follow the statutory procedures for perfecting dissenters' rights under Washington law, which are described in the section entitled "The Merger Dissenters' Appraisal Rights."

Merely voting against the merger agreement will not preserve your dissenters' rights. Chapter 23B.13 of the Washington Business Corporation Act is reprinted in its entirety and attached to this proxy statement/prospectus as Annex F. Failure by an Ostex shareholder to precisely comply with all procedures required by Washington law may result in the loss of dissenters' rights for that shareholder.

Under the merger agreement, if the number of dissenting shares exceeds 2% of the number of shares of outstanding Ostex common stock, Inverness is not obligated to effect the merger.

### **Interests of Ostex' Directors and Officers in the Merger (See page 68)**

Ostex' directors and executive officers have interests in the merger that are different from, or in addition to, their interests as Ostex shareholders. These interests include:

the accelerated vesting of all of the officers' and directors' stock options in accordance with their terms and, if they are employees or directors of Ostex immediately prior to the effective time of the merger, the extension of the period within which they may exercise their stock options, both of which will occur at the effective time of the merger;

the severance payments to be made to Thomas A. Bologna, Chairman, President and Chief Executive Officer of Ostex, under his current employment agreement in connection with the termination of his employment after the merger;

the consulting and noncompete fees payable by Ostex to Mr. Bologna after the merger under the consulting agreement entered into in connection with the merger agreement; and

the directors' and officers' receipt of indemnification and insurance coverage with respect to acts and omissions in their capacities as officers and directors of Ostex prior to the merger.

For a more detailed discussion of these interests, see the section of this proxy statement/prospectus titled "The Merger Interests of Ostex' Directors and Officers in the Merger."

### **Treatment of Stock Options and Warrants (See page 77)**

Each option to purchase shares of Ostex common stock held by an employee or director of Ostex immediately prior to the merger and each warrant exercisable for shares of Ostex common stock outstanding immediately prior to the merger will be assumed by Inverness. At the effective time of the merger:

each assumed option will fully vest in accordance with its terms;

each assumed option will be amended to provide that it will be exercisable for its entire remaining term, regardless of whether or not the holder of the option continues to be an employee or director of Ostex or Inverness; and

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the number of shares issuable upon exercise and the exercise price of each assumed option and warrant will be adjusted to reflect the merger's conversion ratio.

### **Conditions to the Merger (See page 78)**

Inverness and Ostex will not complete the merger unless a number of conditions are satisfied or waived, including approval of the merger agreement by the Ostex shareholders and Inverness obtaining any necessary consents with respect to the transactions contemplated by the

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merger agreement required under any material loan agreement of Inverness. Additionally, under the merger agreement, if the number of dissenting shares exceeds 2% of the number of shares of outstanding Ostex common stock, Inverness is not obligated to effect the merger.

### Limitations on Considering Other Acquisition Proposals (See page 82)

Ostex has agreed not to solicit, encourage or consider any acquisition proposal, such as a business combination or other similar transaction, with a party other than Inverness while the merger is pending; however, the Ostex board may engage in discussions in response to an unsolicited bona fide proposal that represents a superior proposal. To consider a superior proposal, the board of Ostex must conclude that considering the superior proposal is required by the directors' fiduciary duties. Ostex has also agreed to promptly inform Inverness if it is approached by any third party with any acquisition proposal or any request or inquiry that could lead to an acquisition proposal.

Ostex' directors and their affiliates, who collectively owned an aggregate of approximately % of the total outstanding common stock of Ostex as of the record date for the special meeting, have entered into a voting agreement with Inverness. Under the voting agreement, Ostex' directors and their affiliates have agreed to vote, and have granted Inverness an irrevocable proxy and power of attorney to vote, all of their shares of Ostex common stock in favor of the approval of the merger agreement and against any competing acquisition proposal. Ostex' directors and their affiliates also agreed not to dispose of, or enter into any other voting arrangement with respect to, their shares of Ostex common stock. The voting agreement terminates upon the earlier of the effective time of the merger or the termination of the merger agreement in accordance with its terms.

Even if Ostex' board considers a proposal that it determines to be a superior proposal, Ostex will be required to hold the special meeting of its shareholders to consider and vote on the proposal to approve the merger agreement and Ostex' directors and their affiliates will be required to vote in favor of the approval of the merger agreement.

Additionally, Ostex and Inverness have entered into a stock option agreement whereby Ostex has granted Inverness an option to purchase up to 19.9% of its capital stock upon the occurrence of specified events that ordinarily would be associated with an acquisition or potential acquisition of Ostex by a third party. See "Other Material Agreements Relating to the Merger Stock Option Agreement" beginning on page 88.

### Termination of the Merger Agreement (See page 79)

Ostex may terminate the merger agreement for any of the following reasons:

a governmental entity has issued an injunction that prohibits the merger or the other transactions contemplated by the merger agreement and Ostex has used its reasonable best efforts to take all actions necessary or advisable to complete the merger and lift the injunction;

the merger has not occurred on or before March 31, 2003, unless Ostex' failure to comply with the merger agreement was the cause of the failure of the merger to occur on or before this date;

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Inverness has breached any of its representations, warranties, covenants or agreements contained in the merger agreement and cannot cure or has not cured the breach within a 30-day cure period, unless the breach has not had and is not reasonably likely to have a material adverse effect on Ostex;

at any time after November 15, 2002, if at that time Inverness has not obtained any necessary consent with respect to the transactions contemplated by the merger agreement required under any material loan agreement of Inverness; or

before its shareholders meeting, if:

\*

it is concurrently entering into an agreement to effect a superior proposal;

\*

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it gives Inverness five business days prior written notice of the superior proposal and, during the five business day period, it considers and discusses, and causes its financial and legal advisors to consider and discuss, with Inverness any subsequent adjustment to the terms of the merger agreement proposed by Inverness; and

\*

it pays Inverness a \$1.8 million termination fee.

Inverness may terminate the merger agreement for any of the following reasons:

a governmental entity has issued an injunction that prohibits the merger or the other transactions contemplated by the merger agreement and Inverness has used its reasonable best efforts to take all actions necessary or advisable to complete the merger and lift the injunction;

the merger has not occurred on or before March 31, 2003, unless Inverness' failure to comply with the merger agreement was the cause of the failure of the merger to occur on or before this date;

Ostex has breached any of its representations, warranties, covenants or agreements contained in the merger agreement and cannot cure or has not cured the breach within a 30-day cure period, unless the breach has not had and is not reasonably likely to have a material adverse effect on Inverness;

at any time after November 15, 2002, if at that time Inverness has not obtained any necessary consent with respect to the transactions contemplated by the merger agreement required under any material loan agreement of Inverness;

Ostex has breached any of its representations, warranties, covenants or agreements contained in Section 6.1 of the merger agreement, which relates to Ostex' covenants that it will not solicit acquisition proposals and that its board of directors will not withdraw its approval of the merger agreement or recommendation of the merger agreement to its shareholders, or the stock option agreement and cannot cure or has not cured the breach within a 30-day cure period, unless the breach has not prevented or materially delayed, and would not reasonably be expected to prevent or materially delay, the merger;

any required approval of the merger agreement or the transactions contemplated under the merger agreement by Ostex' shareholders was not obtained at a meeting of Ostex' shareholders;

Ostex' board withdraws or modifies, or resolves to withdraw or modify, its approval or recommendation of the merger agreement or any transaction under the merger agreement;

Ostex' board approves or recommends, or resolves to approve or recommend, an agreement relating to an acquisition proposal; or

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a tender or exchange offer relating to Ostex' securities is commenced by a third party and Ostex has not sent a statement recommending rejection of the offer to its shareholders within ten business days after the offer is first given.

The merger agreement may also be terminated upon the mutual written agreement of Ostex and Inverness.

### **Termination Fee and Expenses (See page 81)**

The merger agreement requires Ostex to pay Inverness a termination fee of \$1.8 million if:

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Ostex has willfully or intentionally breached any representation, warranty, covenant or agreement of the merger agreement or stock option agreement and Inverness terminates the merger agreement;

Inverness terminates the merger agreement pursuant to its termination right related to the failure of Ostex to oppose a third party tender offer or exchange offer;

Inverness terminates the merger agreement pursuant to any of its termination rights related to Ostex' board's approval of an acquisition proposal or withdrawal of its approval or recommendation of the merger agreement;

Ostex terminates the merger agreement concurrently with its entering into an agreement to effect a superior proposal in connection with its related termination right; or

the following three conditions are met:

- \*  
prior to the final adjournment of the special meeting of Ostex' shareholders, an acquisition proposal is received by Ostex or publicly announced;
- \*  
the merger agreement is terminated as a result of Ostex' shareholders' failure to approve the merger; and
- \*  
within one year after the termination of the merger agreement:

Ostex enters into an agreement relating to an acquisition proposal with a person other than Inverness;

Ostex' board recommends or resolves to recommend to its shareholders that they approve or accept an acquisition proposal with a person other than Inverness; or

Ostex' board does not recommend to its shareholders that they reject and do not accept any acquisition proposal that is in the form of an actual or proposed tender offer or exchange offer within ten business days of the making or announcement of such offer.

Also, under the merger agreement, Ostex has agreed not to enter into any agreement relating to an acquisition proposal with any person other than Inverness within one year after the termination of the merger agreement, unless that person, prior to entering into the agreement, has paid or caused to be paid to Inverness, to the extent due, any termination fee due under the merger agreement.

### **Stock Option Agreement (See page 89)**

As a condition to Inverness' willingness to enter into the merger agreement, Ostex granted Inverness an option to purchase up to 19.9% of Ostex' outstanding common stock at an exercise price of \$2.39 per share. This option is intended to increase the likelihood that the merger will be completed by, among other things, discouraging other companies from attempting to acquire Ostex during the term of the merger agreement. The option is only exercisable upon the occurrence of specified events that ordinarily would be associated with an acquisition or potential acquisition of Ostex by a third

party. If the option becomes exercisable in specified circumstances in connection with an acquisition proposal, Inverness may also cancel the option, or any portion of the option, in exchange for an amount of cash equal to the product of (a) the excess over the per share exercise price of the highest per share purchase price paid or proposed to be paid pursuant to an acquisition proposal that caused, or would cause, the option to become exercisable, or the current average market price per share, if higher, multiplied by (b) the number of shares subject to the portion of the

option that is canceled.

A copy of the stock option agreement is attached to this proxy statement/prospectus as Annex C.

**Loan Agreement (See page 90)**

In connection with the merger agreement, Inverness and Ostex entered into, and later amended and restated, a loan agreement. Under the loan agreement, Inverness has agreed to loan, or arrange for one of its affiliates to loan, up to an aggregate of \$2 million to Ostex. As of November 6, 2002, Ostex had borrowed \$334,000 under the loan agreement. Ostex may borrow an additional \$433,000 on November 12, 2002 and an additional \$233,000 on December 9, 2002. Ostex may borrow the remaining \$1 million under the loan agreement at any time on or after January 2, 2003 if, after the additional loan, the total of Ostex' cash, cash equivalents and short-term investments would not exceed its budgeted working capital needs for the next six months and other specified conditions are met.

The loans must be repaid at the earliest of:

the first business day after the effective time of the merger;

acceleration upon an event of default;

the termination of the merger agreement in specified circumstances related to Ostex' breach of the terms of merger agreement or stock option agreement or Ostex' board's approval of an acquisition proposal or withdrawal of its approval or recommendation of the merger agreement; or

September 30, 2003.

Additionally, if the merger agreement is terminated in circumstances other than those that would require Ostex to immediately repay the loans, Inverness is not required to make or arrange for any additional loans on or after the effective date of termination, if the aggregate outstanding amount of all loans made under the loan agreement, other than the initial loans with an aggregate principal amount of \$1 million, would exceed \$750,000 after making the additional loan.

A copy of the loan agreement is attached to this proxy statement/prospectus as Annex D.

**Merger-Related Expenses (See page 88 and 100)**

Ostex estimates that its merger-related fees and expenses, consisting primarily of fees and expenses of investment bankers, attorneys and accountants and financial printing and other related charges, will be approximately \$1.2 million to \$1.4 million.

If the merger is effected, Inverness estimates that its merger-related fees and expenses, consisting primarily of restructuring costs, fees and expenses of investment bankers, attorneys and accountants, SEC filing fees, stock exchange listing fees and financial printing and other related charges, will be approximately \$3.3 million. See Notes 1 and 2(w) in "Notes to Unaudited Pro Forma Condensed Combined Financial Information."

**Comparative Shareholder Rights (See page 110)**

When the merger becomes effective, Ostex shareholders will hold shares of Inverness common stock. As Ostex shareholders' rights are presently governed by Washington law and Inverness shareholders' rights are presently governed by Delaware law and Ostex' articles of incorporation and bylaws differ from Inverness' certificate of incorporation and bylaws, Ostex shareholders will have different rights when they become holders of Inverness common stock than they currently have as holders of Ostex common stock.

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**Selected Combined Company Unaudited Pro Forma Financial Data**

The following selected combined company unaudited pro forma financial data for the year ended December 31, 2001 and the six months ended June 30, 2002 has been derived from the unaudited pro forma condensed combined financial information and related notes included



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elsewhere in this proxy statement/prospectus. This information is, in part, based on the respective audited and unaudited historical consolidated financial statements of Inverness and Ostex and after giving effect to the acquisition of Ostex and Inverness' previous acquisitions of the Unipath business, IVC and Wampole, using the purchase method of accounting for business combinations. This information is for illustrative purposes only. The companies may have performed differently had they always been combined. You should not rely on the selected combined company unaudited pro forma financial data as being indicative of the historical results that would have been achieved had the companies always been combined or the future results that the combined company will experience after the merger. This information should be read in conjunction with the unaudited pro forma condensed combined financial information and the historical financial statements and related notes of Inverness and Ostex included in or incorporated by reference into this proxy statement/prospectus.

	Year Ended December 31, 2001	Six Months Ended June 30, 2002
(in thousands, except per share amounts)		
<b>Pro Forma Combined Statement of Operations Data:</b>		
Net revenues	\$ 266,967	\$ 126,442
Cost of sales	144,952	72,156
Gross profit	122,015	54,286
Operating expenses:		
Research and development	14,461	8,051
Sales and marketing	63,906	25,791
General and administrative	44,428	20,538
Other noncash expenses	10,441	22,851
Total operating expenses	133,236	77,231
Operating loss	(11,221)	(22,945)
Interest and other expenses, net	(11,637)	(8,612)
Loss from continuing operations before income taxes	(22,858)	(31,557)
Provision for income taxes	7,741	1,519
Loss from continuing operations	\$ (30,599)	\$ (33,076)
Loss from continuing operations available to common stockholders	\$ (30,599)	\$ (36,878)
Loss per common share basic and diluted:		
Loss from continuing operations	\$ (3.71)	\$ (3.81)
Weighted average common shares basic and diluted	8,248	9,668
	<b>June 30, 2002</b>	
<b>Pro Forma Combined Balance Sheet Data:</b>		
Cash and cash equivalents	\$ 22,598	
Working capital	27,319	
Total assets	380,578	
Debt obligations	106,047	
Redeemable convertible preferred stock	54,834	
Total stockholders' equity	142,252	

**Selected Historical Consolidated Financial Data of Inverness**

The following tables provide selected historical consolidated financial data of Inverness as of and for each of the fiscal years in the five year period ended December 31, 2001, as of June 30, 2002, and for each of the six month periods ended June 30, 2001 and 2002 and should be read in conjunction with Inverness' consolidated financial statements and notes incorporated by reference into this proxy statement/prospectus.

The selected historical consolidated financial data as of and for each of the fiscal years in the three-year period ended December 31, 2001 have been derived from Inverness' audited consolidated financial statements that are incorporated by reference into this proxy statement/prospectus. The selected historical consolidated financial data as of and for the years ended December 31, 1997 and 1998 has been derived from Inverness' unaudited financial statements not included in or incorporated by reference into this proxy statement/prospectus. The selected historical consolidated statement of operations data for the six-month periods ended June 30, 2001 and 2002 and the selected historical consolidated balance sheet data as of June 30, 2002 are derived from Inverness' unaudited consolidated financial statements incorporated by reference into this proxy statement/prospectus. The unaudited consolidated financial statements for the years ended December 31, 1997 and 1998 and for the six-month periods ended June 30, 2001 and 2002 have been prepared on a basis consistent with Inverness' audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of Inverness' consolidated financial position and consolidated results of operations for these periods.

Inverness was formed in May 2001 as a subsidiary of Inverness Medical Technology, Inc., and subsequently split-off as an independent public company as part of a split-off and merger transaction whereby Johnson & Johnson acquired Inverness Medical Technology on November 21, 2001. As part of the split-off and merger, Inverness acquired all rights to Inverness Medical Technology's women's health, nutritional supplement and clinical diagnostics businesses, as well as certain intellectual property. Because Inverness had not historically been operated or accounted for as a stand-alone business, the results for the periods prior to the split-off on November 21, 2001, presented below in the selected historical consolidated financial data, are derived from historical consolidated financial statements for Inverness' businesses, which have been carved out of Inverness Medical Technology's financial statements in accordance with the requirements of accounting principles generally accepted in the United States. Because the financial results for the periods prior to the split-off have been carved out of Inverness Medical Technology's past financial statements, they may not reflect what Inverness' results of operations and financial position would have been had it been a separate, stand-alone entity during those periods or be indicative of Inverness' future performance. For a discussion of certain factors that materially affect the comparability of the consolidated financial data or cause the data reflected herein not to be indicative of our future financial condition or results of operations, see the section of this proxy statement/prospectus titled "Risk Factors."

The historical financial information of Inverness presented in the following table does not include the actual results of the previously acquired entities and businesses (the Unipath business, IVC and Wampole) prior to their respective acquisition dates, December 20, 2001, March 19, 2002 and September 20, 2002. For pro forma financial information including these previously acquired entities and businesses as of June 30, 2002 and for the year ended December 31, 2001 and six months ended June 30, 2002, see the unaudited pro forma condensed combined financial statements included elsewhere in this proxy statement/prospectus.

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	Year Ended December 31,					Six Months Ended June 30,	
	1997	1998	1999	2000	2001	2001	2002
(in thousands, except per share data)							
<b>Consolidated Statement of Operations:</b>							
Net revenues	\$ 50,635	\$ 54,685	\$ 50,584	\$ 51,051	\$ 49,384	\$ 23,131	\$ 88,956
Cost of sales	24,724	26,720	26,890	25,075	25,821	11,767	48,548
Gross profit	25,911	27,965	23,694	25,976	23,563	11,364	40,408
<b>Operating expenses:</b>							