

ARV ASSISTED LIVING INC
Form PRER14A
March 18, 2003
Table of Contents

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

Information Required in Proxy Statement

Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

(Amendment No. 1)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

<input checked="" type="checkbox"/>	Preliminary Proxy Statement	<input type="checkbox"/>	Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
<input type="checkbox"/>	Definitive Proxy Statement		
<input type="checkbox"/>	Definitive Additional Materials		
<input type="checkbox"/>	Soliciting Material Pursuant to Rule 14a-12		

ARV ASSISTED LIVING, INC.

(Name of Registrant as Specified In Its Charter)

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

Edgar Filing: ARV ASSISTED LIVING INC - Form PRER14A

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- 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, par value \$0.01 per share

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

9,864,620 shares of, and options to acquire 2,386,500 shares of, 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 of \$4,034 was calculated pursuant to Exchange Act Rule 0-11(c)(1) and is based on the 9,864,620 shares of ARV Assisted Living, Inc. common stock outstanding that are not owned by Prometheus and its affiliates, multiplied by the \$3.90 per share merger consideration, plus the difference between \$3.90 and the strike price of options to acquire 2,386,500 shares of ARV Assisted Living, Inc. common stock. The filing fee was then calculated by multiplying the resulting transaction cash value of \$43,841,643 by 0.000092.

Table of Contents

(4) Proposed maximum aggregate value of transaction:

\$43,841,643

(5) Total fee paid:

\$4,034

.. Fee paid previously with preliminary materials.

x 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:

\$4,034

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

Schedule 14A

(3) Filing Party:

ARV Assisted Living, Inc

(4) Date Filed:

February 12, 2003

Table of Contents

ARV ASSISTED LIVING, INC.

245 FISCHER AVENUE, SUITE D-1

COSTA MESA, CALIFORNIA 92626

March , 2003

To our Stockholders:

We cordially invite you to attend a special meeting of stockholders of ARV Assisted Living, Inc. (ARV), to be held on April , 2003 at [time] a.m., local time, at the Airport Hilton, 18800 MacArthur Boulevard, Irvine, California 92715.

As described in the enclosed proxy statement, at the special meeting, we will ask you to consider and vote upon a proposal to adopt a merger agreement that provides for the merger of ARV with Jenny Merger Corp. (Merger Sub), a wholly owned subsidiary of Prometheus Assisted Living LLC (Prometheus), and to approve the merger contemplated by the merger agreement. If the merger is completed, you will receive \$3.90 in cash, without interest, for each share of common stock of ARV that you own. After the merger, ARV will be a wholly owned subsidiary of Prometheus.

A special committee of ARV s board of directors, consisting of directors who are not officers or employees of ARV or Prometheus, evaluated and negotiated the terms of the merger agreement and the proposed merger and unanimously recommended the approval of the merger agreement and the proposed merger to ARV s board of directors. The entire board of directors of ARV has unanimously approved the merger agreement and the merger. The special committee and the board of directors unanimously recommend that all stockholders vote FOR the adoption of the merger agreement and approval of the merger. Cohen & Steers Capital Advisors LLC (Cohen & Steers), the special committee s independent financial advisor, rendered an opinion to the special committee on January 3, 2003 that as of such date, the \$3.90 per share cash consideration to be received by the ARV stockholders (other than Prometheus, Merger Sub and their respective affiliates) pursuant to the terms and subject to the conditions set forth in merger agreement, was fair from a financial point of view to those stockholders.

Under Delaware law, for the proposed merger to be completed, the merger agreement must be adopted by the holders of a majority of the shares of ARV common stock outstanding as of the close of business on March 27, 2003, which is the record date for purposes of the special meeting. Prometheus owned approximately 43.5% of the outstanding shares of ARV common stock, as of the record date.

The accompanying notice of special meeting of stockholders and proxy statement explain the proposed transactions and provide specific information concerning the special meeting. Please give this information your careful attention.

Your vote is important. Whether or not you plan to attend the special meeting, please sign, date and return the enclosed proxy card in the postage-paid envelope as soon as possible. Returning a signed proxy card will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting. You may also revoke your proxy at any time before it is voted at the special meeting by submitting a written revocation or a proxy bearing a later date. If you fail to vote by proxy or in person, or fail to instruct your broker on how to

vote, it will have the same effect as a vote against adoption of the merger agreement and approval of the merger.

Table of Contents

In considering the recommendation of the special committee and ARV's board of directors, you should be aware that Prometheus, members of the ARV board of directors and certain key members of ARV's management have interests in the merger that may be different from your interests as an ARV stockholder. These interests are summarized in the accompanying proxy statement in the section entitled "SPECIAL FACTORS - Interests of Certain Persons in the Merger."

On behalf of the board of directors, I thank you for your support and urge you to vote FOR the adoption of the merger agreement and the approval of the merger.

Sincerely yours,

Douglas M. Pasquale

Chairman and Chief Executive Officer

The date of this proxy statement is March 10, 2003. It is first being mailed to ARV stockholders on or about March 10, 2003.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these transactions, passed upon the fairness or merits of these transactions, or passed upon the accuracy or adequacy of the information contained in this document. Any representation to the contrary is a criminal offense.

Table of Contents

ARV ASSISTED LIVING, INC.

245 FISCHER AVENUE, SUITE D-1

COSTA MESA, CALIFORNIA 92626

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON APRIL , 2003

TO THE STOCKHOLDERS OF ARV ASSISTED LIVING, INC.:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders of ARV Assisted Living, Inc., a Delaware corporation (ARV), will be held at the Airport Hilton, 18800 MacArthur Boulevard, Irvine, California 92715 on April , 2003, at [time] a.m., local time, for the following purposes:

1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of January 3, 2003, by and among Prometheus Assisted Living LLC (Prometheus), Jenny Merger Corp., a Delaware corporation and wholly owned subsidiary of Prometheus (Merger Sub), and ARV, a copy of which is attached to the accompanying proxy statement as Appendix A, and to approve the merger contemplated by the merger agreement. Under the merger agreement, Merger Sub will be merged with and into ARV and ARV will become a wholly owned subsidiary of Prometheus. If the merger is completed, each outstanding share of ARV common stock (except for shares held by Prometheus or its affiliates, ARV or any subsidiary of ARV and except for shares as to which the holders perfect their dissenters' rights under Delaware law) will be converted into the right to receive \$3.90 in cash, without interest, and each holder of a stock option granted by ARV to purchase shares of ARV's common stock will receive in cash, without interest, for each share of common stock subject to such option, the excess, if any, of the merger consideration of \$3.90 per share over the exercise price per share of such option, less any applicable withholding taxes. Prometheus owned approximately 43.5% of the outstanding shares of ARV common stock on March 27, 2003, the record date of the special meeting.
2. To consider and vote upon such other matters as may properly come before the special meeting or any adjournment or postponement thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this notice.

ARV's stockholders of record as of the close of business on March 27, 2003 are entitled to receive notice of and to vote at the special meeting, and any adjournment or postponement of the special meeting.

Edgar Filing: ARV ASSISTED LIVING INC - Form PRER14A

The ARV board of directors, based in part on the unanimous recommendation of a special committee, has unanimously determined that the merger agreement and the merger are advisable and approved the merger agreement and the proposed merger. The board of directors and the special committee recommend that you vote **FOR** the adoption of the merger agreement and approval of the merger. Please review in detail the attached proxy statement for a more complete statement regarding the matter to be acted upon at the special meeting, including a description of the merger agreement, the background of the merger and the factors that the special committee considered in recommending that the board of directors adopt and approve the merger and the merger agreement.

Table of Contents

Stockholders of ARV who do not vote in favor of the adoption of the merger agreement and approval of the merger will have the right to seek appraisal of the fair value of their shares of ARV common stock if the merger is completed, but only if they submit a written demand for an appraisal before the vote is taken on the merger agreement and the merger and they comply with Delaware law as explained in the accompanying proxy statement.

Whether or not you expect to attend the meeting, please complete, date and sign the enclosed proxy card and mail it promptly in the enclosed envelope in order to ensure representation of your shares.

Please do not send your stock certificate at this time. If the proposed merger is completed, you will be sent instructions regarding the surrender of your certificates.

If you properly execute and submit a proxy and no instructions are given, the shares of ARV common stock represented by that proxy will be voted FOR the adoption of the merger agreement and approval of the merger.

By Order of the Board of Directors

Douglas Armstrong

Secretary

Costa Mesa, California

March , 2003

Table of Contents**TABLE OF CONTENTS**

	Page
<u>SUMMARY TERM SHEET</u>	1
<u>The Parties</u>	1
<u>Information Concerning the Special Meeting</u>	1
<u>Trading Markets and Market Price of ARV Common Stock</u>	3
<u>Special Factors</u>	3
<u>Accounting Treatment</u>	6
<u>Material U.S. Federal Income Tax Consequences</u>	6
<u>Exchange of Stock Certificates for the Merger Consideration</u>	6
<u>Dissenters' and Appraisal Rights</u>	6
<u>Terms of the Merger Agreement</u>	7
<u>QUESTIONS AND ANSWERS</u>	11
<u>SPECIAL FACTORS</u>	14
<u>Background of the Merger</u>	14
<u>Opinion of the Special Committee's Financial Advisor</u>	23
<u>Special Committee's and Board of Directors' Recommendation; Fairness of the Merger</u>	35
<u>Prometheus Parties' Position as to the Fairness of the Merger</u>	41
<u>Reasons, Purpose and Structure of the Merger</u>	44
<u>Certain Effects of the Merger</u>	46
<u>Plans for ARV</u>	47
<u>Interests of Certain Persons in the Merger</u>	48
<u>SPECIAL MEETING OF STOCKHOLDERS</u>	55
<u>General</u>	55
<u>Matters to be Considered at the Special Meeting</u>	55
<u>Date, Place and Time</u>	55
<u>Record Date, Voting Rights, Quorum and Revocability of Proxies</u>	55
<u>Required Vote, Abstentions and Broker Non-Votes</u>	56
<u>Solicitation of Proxies and Expenses</u>	56
<u>SUMMARY FINANCIAL DATA</u>	57
<u>FINANCIAL PROJECTIONS</u>	59
<u>TRADING MARKETS AND MARKET PRICE</u>	61
<u>DIVIDEND POLICY</u>	62
<u>THE PARTIES</u>	63
<u>ARV Assisted Living, Inc.</u>	63
<u>Prometheus Assisted Living LLC and Jenny Merger Corp.</u>	63
<u>THE MERGER</u>	64
<u>Effective Time of the Merger</u>	64
<u>Payment of Merger Consideration and Surrender of Stock Certificates</u>	64
<u>Risks that the Merger Will Not Be Completed</u>	65
<u>Financing of the Merger</u>	65
<u>Expenses and Fees Associated with the Merger and the Special Meeting</u>	65
<u>Certain Regulatory Considerations</u>	66
<u>Litigation Challenging the Merger</u>	66

Table of Contents**TABLE OF CONTENTS (Continued)**

	Page
<u>Certain U.S. Federal Income Tax Consequences</u>	67
<u>Accounting Treatment</u>	70
<u>Dissenters and Appraisal Rights</u>	70
<u>THE MERGER AGREEMENT</u>	75
<u>General</u>	75
<u>Certificate of Incorporation; Bylaws; Directors of The Surviving Corporation</u>	75
<u>Consideration To Be Paid In The Merger</u>	76
<u>Stock Options</u>	76
<u>Representations and Warranties</u>	76
<u>Conduct of Business Before the Merger</u>	77
<u>Recommendation by the Board and Special Committee; Stockholder Approval</u>	79
<u>No Solicitation</u>	79
<u>Rights Agreement</u>	80
<u>Access to Information; Confidentiality</u>	80
<u>Reasonable Commercial Efforts; Further Assurances</u>	81
<u>Takeover Statutes</u>	81
<u>Financing</u>	82
<u>Notification</u>	82
<u>Employee Benefit Plans</u>	83
<u>Indemnification</u>	83
<u>Insurance</u>	83
<u>Fees and Expenses</u>	83
<u>Public Announcements</u>	84
<u>Conditions to the Merger</u>	84
<u>Termination</u>	85
<u>Effect of Termination</u>	87
<u>Amendments and Waivers</u>	89
<u>Assignment</u>	88
<u>SECURITY OWNERSHIP OF CERTAIN PERSONS</u>	89
<u>Security Ownership of Certain Beneficial Owners</u>	89
<u>Security Ownership of Management</u>	89
<u>CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS</u>	91
<u>OTHER MATTERS</u>	91
<u>FUTURE STOCKHOLDER PROPOSALS</u>	92
<u>LEGAL COUNSEL</u>	92
<u>INDEPENDENT AUDITORS</u>	92
<u>AVAILABLE INFORMATION</u>	93

Table of Contents

TABLE OF CONTENTS (Continued)

LIST OF APPENDICES

APPENDIX A	Agreement and Plan of Merger, dated as of January 3, 2003, by and among ARV Assisted Living, Inc., Prometheus Assisted Living LLC and Jenny Merger Corp.
APPENDIX B	Opinion of Cohen & Steers Capital Advisors LLC, dated January 3, 2003
APPENDIX C	Section 262 of the Delaware General Corporation Law; Appraisal Rights
APPENDIX D	Information Relating to ARV and the Prometheus Parties

Table of Contents

SUMMARY TERM SHEET

This summary term sheet highlights selected information contained in the proxy statement and may not contain all of the information that is important to you. To understand the transactions fully and for a more complete description of the legal terms of the transactions, you should carefully read this entire document and the additional documents to which we refer you, including the Agreement and Plan of Merger attached as Appendix A. This proxy statement is first being mailed on or about March 1, 2003, to ARV's stockholders of record as of the close of business on March 27, 2003.

The Parties (see page 63)

ARV Assisted Living, Inc. (ARV, the Company, we or us) is a fully integrated provider of assisted living accommodations and services in the United States. We operate, acquire and develop assisted living communities (ALCs) that offer a combination of housing, personalized support services and healthcare in a non-institutional setting. Our ALCs are designed to respond to the individual needs of elderly residents who require assistance with certain activities of daily living, but who do not require the intensive nursing care provided in a skilled nursing facility. ARV is a Delaware corporation, and its executive offices are located at 245 Fischer Avenue, Suite D-1, Costa Mesa, California 92626 (Telephone: (714) 751-7400).

Prometheus Assisted Living LLC (Prometheus) is a Delaware limited liability company formed to acquire common stock of, and other investments in, ARV. Prometheus currently owns approximately 43.5% of our outstanding common stock. Prometheus' executive offices are located at c/o Lazard Frères Real Estate Investors L.L.C., Attn: General Counsel, 30 Rockefeller Plaza, New York, New York 10020 (Telephone: (212) 632-6000).

Jenny Merger Corp. (Merger Sub) was incorporated in Delaware in November 2002 by Prometheus for the purpose of effecting the merger. Merger Sub has not been engaged in any business activities other than those in connection with its formation and the merger. All of the outstanding capital stock of Merger Sub is owned by Prometheus. Merger Sub will be merged with and into ARV, and ARV will be a wholly owned subsidiary of Prometheus following the merger. Merger Sub's executive offices are located at c/o Lazard Frères Real Estate Investors L.L.C., Attn: General Counsel, 30 Rockefeller Plaza, New York, New York 10020 (Telephone: (212) 632-6000).

Appendix D sets forth information regarding Prometheus, Merger Sub and certain of their affiliates (namely LF Strategic Realty Investors II L.P., LFSRI II Alternative Partnership L.P., LFSRI II CADIM Alternative Partnership L.P., and Lazard Frères Real Estate Investors L.L.C.) who, under the rules of the Securities and Exchange Commission (the Commission), may be deemed to be engaged in the merger. Prometheus, Merger Sub and these affiliates are collectively referred to as the Prometheus Parties in this proxy statement.

Information Concerning the Special Meeting (see page 55)

Date, Time and Place. ARV will hold a special meeting of stockholders on April 1, 2003 at [time] a.m., local time, at the Airport Hilton, 18800 MacArthur Boulevard, Irvine, California 92715.

Table of Contents

Purpose of the Special Meeting. At the special meeting, you will be asked to adopt the Agreement and Plan of Merger, dated as of January 3, 2003, by and among Prometheus, Merger Sub and ARV, and to approve the merger contemplated by the merger agreement. You will also be asked to vote on other matters that properly come before the special meeting, although we are not aware that any such other matters will be brought before the special meeting. Pursuant to the merger agreement, Merger Sub will merge with and into ARV, and ARV will become a wholly owned subsidiary of Prometheus. If the merger agreement is adopted, the merger is approved and the merger is completed, your shares of ARV common stock will be converted into the right to receive \$3.90 per share, in cash, without interest, unless you perfect appraisal rights in accordance with Delaware law, in which case you will be entitled to receive the appraised value, as determined by the Delaware Court of Chancery, of your shares. (See THE MERGER Dissenters and Appraisal Rights below.) Holders of stock options granted by ARV to purchase shares of ARV's common stock, whether or not otherwise exercisable, will receive in cash, without interest, for each share of common stock subject to such option, the excess, if any, of the merger consideration of \$3.90 per share over the exercise price per share of such option less any applicable withholding taxes.

Record Date; Voting at the Special Meeting. You will only be entitled to vote at the special meeting if you are a stockholder of record as of the close of business on March 27, 2003, which is the record date for the special meeting. You will be entitled to one vote per share.

Quorum. The holders of a majority of the shares of ARV common stock outstanding as of the close of business on March 27, 2003, and entitled to vote on a matter at the special meeting must be present in person or by proxy in order for a quorum to exist at the special meeting. Abstentions and broker non-votes will be counted as present for purposes of determining a quorum.

Vote Required. Under Delaware law, the merger agreement and the proposed merger must be adopted by the holders of a majority of shares of ARV common stock issued and outstanding as of March 27, 2003, which is the record date for the special meeting. On the record date, ARV had 17,459,689 shares of common stock issued and outstanding. Prometheus owned 7,595,069 shares of our common stock, representing approximately 43.5% of the shares of ARV common stock outstanding as of the record date. Separate approval by the holders of a majority of shares of ARV common stock who are not affiliated with Prometheus is not required to complete the merger.

Brokers will not have the right to vote on adoption of the merger agreement and approval of the merger unless the beneficial owners of the shares held in street name give the broker specific instructions authorizing the vote. If you fail to return an executed proxy card or to vote in person at the special meeting, or if you abstain from voting, it will constitute, in effect, a vote against adoption of the merger agreement and approval of the merger. Similarly, broker non-votes will have the same effect as a vote against adoption of the merger agreement and approval of the merger.

Engagement of Proxy Solicitation Firm. ARV has retained the firm of Georgeson Shareholder Communications, Inc. to assist in the solicitation of proxies, for which Georgeson Shareholder Communications will be paid a fee of approximately \$7,500 and reimbursed for its expenses.

Table of Contents

Trading Markets and Market Price of ARV Common Stock (see page 19)

ARV common stock is traded on the American Stock Exchange under the symbol SRS. The closing price per share for ARV common stock on September 23, 2002, the last full trading day prior to the public announcement of Prometheus' initial proposal, was \$2.55 per share. The closing price per share for ARV common stock on January 3, 2003, the last full trading day prior to the public announcement of the proposed merger, was \$3.75 per share. On March 1, 2003, the last full trading day prior to the date of this proxy statement, the closing price for ARV common stock was \$4.50.

Special Factors (see page 14)

Purpose of the Merger (see page 44). ARV's purpose for the merger is to provide ARV's stockholders who are not affiliated with Prometheus immediate liquidity from their investment in ARV. The merger price of \$3.90 per share represents a premium of approximately 53% over the \$2.55 closing price of ARV common stock on September 23, 2002, the last full trading day prior to ARV's announcement that it had received a preliminary transaction proposal from Prometheus. See SPECIAL FACTORS Reasons, Purpose and Structure of the Merger.

Effects of the Merger (see page 46). The merger is a going private transaction for ARV. Upon completion of the merger, Prometheus will beneficially own all of the equity securities of ARV and ARV will be a wholly owned, privately held subsidiary of Prometheus. Immediately following the merger, no other stockholders will have any interest in ARV, including in any future earnings and growth of ARV, and similarly will not bear the risk of any decrease in the value of ARV after the merger. ARV common stock will no longer be publicly traded after the merger. In addition, the registration of ARV common stock and ARV's reporting obligations under the Securities Exchange Act of 1934, as amended (the Exchange Act), will be terminated upon application to the Commission. See SPECIAL FACTORS Certain Effects of the Merger and Plans for ARV.

Special Committee (see page 35). ARV's board of directors formed a special committee of directors consisting of two independent directors (the Special Committee) to evaluate Prometheus' proposal and to consider options that may be available to ARV. The Special Committee consists of David Collins and Maurice DeWald, neither of whom is an officer of ARV or an affiliate of Prometheus. The Special Committee, with the advice and assistance of its independent legal and financial advisors, evaluated and negotiated the merger proposal, including the terms of the merger agreement, with Prometheus.

ARV's Reasons for the Merger and Board of Directors' Recommendation; Fairness of the Merger (see pages 36 and 40). The Special Committee of ARV's board of directors determined that the merger agreement and the proposed merger are fair to, from a financial and procedural point of view, and in the best interests of ARV's stockholders who are not affiliated with Prometheus. The Special Committee considered a number of substantive and procedural factors in its determination of whether the proposed merger was fair to the stockholders of ARV who are not affiliated with Prometheus. These included, without limitation, the fact that the Special Committee had not received a proposal in excess of \$3.90 per share that, in the Special Committee's view, was also reasonably likely to be consummated in light of Prometheus' significant ownership interest in ARV, Prometheus' indication that it was not interested in selling its shares and Prometheus' ability potentially to purchase up to 50% of

Table of Contents

ARV's common stock, without ARV's prior approval. During the course of negotiations between ARV and Prometheus, other parties expressed interest in entering into a strategic transaction with ARV, and two of such parties offered, subject to due diligence, to purchase ARV's outstanding common stock for \$4.00 per share. However one party withdrew its offer before furnishing the Special Committee with any type of definitive agreement and the other party could not provide a reasonable basis for the Special Committee to conclude that such a transaction could be consummated due to the factors set forth above. Therefore, after careful consideration of all of the offers, the Special Committee concluded that the interests of the public stockholders of ARV (other than Prometheus and its affiliates) would be best served by entering into the merger agreement with Prometheus. Accordingly, the Special Committee unanimously recommended to ARV's board of directors that it approve the merger and the merger agreement. ARV's board of directors, based in part on the positive recommendation of the Special Committee, determined that the merger agreement and the merger are advisable and approved the merger agreement and the merger.

The Special Committee and the board of directors recommend that you vote **FOR** the proposal to adopt the merger agreement and approve the merger. To our knowledge, each of our executive officers and directors intends to vote all of the shares of our common stock they directly own in favor of the merger. For a discussion of the material factors considered by the Special Committee and the board of directors, see **SPECIAL FACTORS** Special Committee's and Board of Directors' Recommendation; Fairness of the Merger. All of the members of ARV's board of directors unanimously approved the merger and recommended adoption of the merger agreement and approval of the merger. See **SPECIAL FACTORS** Background of the Merger.

Opinion of Cohen & Steers with respect to the fairness to ARV's stockholders who are not affiliated with Prometheus (see page 23). In connection with the merger, the Special Committee and ARV's board of directors considered the opinion of Cohen & Steers, the independent financial advisor to the Special Committee, dated January 3, 2003, that as of such date, the \$3.90 per share cash consideration to be received by the holders of ARV's common stock (other than Prometheus, Merger Sub and their respective affiliates) pursuant to the terms and subject to the conditions set forth in the merger agreement, was fair, from a financial point of view, to such holders. A copy of the fairness opinion of the Special Committee's financial advisor is attached to this proxy statement as Appendix B. ARV urges you to read the fairness opinion for a complete understanding of the assumptions, limitations and qualifications set forth in it.

Position of Prometheus and Merger Sub as to the Fairness of the Merger (see page 41). The rules of the Commission require each of the Prometheus Parties to express a belief regarding the fairness of the merger to ARV's stockholders who are not affiliated with Prometheus. After careful consideration and based on various factors, the Prometheus Parties have formed the belief that the merger is procedurally and substantively fair to ARV's stockholders who are not affiliated with Prometheus. However, you should not construe this belief as a recommendation as to how you should vote on the merger. For a discussion of the material factors considered by the Prometheus Parties, see **SPECIAL FACTORS** Prometheus Parties' Position as to the Fairness of the Merger.

Interests of Certain Persons in the Merger (see page 48). Certain members of ARV's board of directors and ARV's executive officers have interests in the merger that are different from those

Table of Contents

that you have as an ARV stockholder. These relationships and interests are or could be viewed to create conflicts of interest that would affect the ARV board of directors' recommendations.

Interests that you should consider include:

Two members of ARV's board of directors were nominated by and are affiliated with Prometheus.

Some of ARV's executive officers and directors, including the members of the Special Committee, own our common stock and have options to purchase ARV common stock. The merger agreement provides that, at the effective time of the merger, all outstanding options to purchase common stock of ARV will be cancelled in exchange for the right to receive, for each such option, a cash payment equal to the amount, if any, by which the \$3.90 per share merger consideration exceeds the per share exercise price of the option, referred to as the spread, without interest, less any applicable withholding taxes. Approximately \$2.1 million will be paid to the members of the Special Committee in connection with the merger with respect to their ARV shares and options. The members of the Special Committee received no ARV shares or options in connection with their role as members of that committee.

In recognition of their service on the Special Committee, ARV has agreed to pay to Maurice DeWald and David Collins, the members of the Special Committee, additional compensation of \$1,000 per material meeting. As Chairman of the Special Committee, Mr. DeWald also receives \$750 per quarter. The amount is not conditioned on whether the merger is consummated. To date, Mr. DeWald and Mr. Collins have each received \$29,000 in fees for their service on the Special Committee.

ARV will continue the indemnification arrangements and directors' and officers' liability insurance for ARV's past, present and future directors and officers following the merger, including members of the Special Committee.

Prometheus is having discussions with Douglas Pasquale, ARV's Chairman and Chief Executive Officer, regarding his potential employment in a senior management position with ARV and a combined company composed of ARV and two assisted living companies affiliated with Prometheus after the merger. There is no assurance that Prometheus and Mr. Pasquale will reach an agreement. Prometheus is evaluating the role ARV's current management will play in ARV and the combined company after the merger. Neither member of the Special Committee will be employed by ARV or the combined company after the merger.

Mr. Pasquale and certain other executive officers of ARV have agreements that provide them with severance payments in the event that their employment is terminated after the merger.

Conditions to Completion of the Merger (see page 84). Completion of the merger is subject to various conditions, including, but not limited to, ARV receiving all necessary regulatory approvals. The conditions to completion of the merger are summarized under "THE MERGER AGREEMENT - Conditions to the Merger." As a result of various conditions to the completion of the merger, ARV cannot assure you that the merger will be completed even if the requisite stockholder approval is obtained. It is expected that if ARV's stockholders do not adopt the merger agreement and approve the merger or if the merger is not completed for any other reason, the current management of ARV, under the direction of the board of directors, will continue to manage ARV as an ongoing business.

Financing of the Merger (see page 65). Prometheus has informed us that it currently estimates the aggregate merger consideration and other transaction costs, including fees and expenses relating to the merger to be approximately \$60 million. It expects these funds to come from a

Table of Contents

combination of a capital contribution from one of its affiliates and the working capital of ARV. For additional information regarding the financing of the merger, see **THE MERGER Financing of the Merger**.

Accounting Treatment (see page 70)

The merger will be accounted for under the purchase method of accounting.

Material U.S. Federal Income Tax Consequences (see page 67)

Generally, the merger will be taxable for U.S. federal income tax purposes to ARV's stockholders. You will recognize taxable gain or loss in the amount of the difference between \$3.90 and your adjusted tax basis for each share of ARV common stock that you own. Tax matters are very complex, and the tax consequences of the merger to you will depend on the facts of your own situation. You should consult your tax advisor for a full understanding of the tax consequences of the merger to you.

Exchange of Stock Certificates for the Merger Consideration (see page 64)

You should not send in stock certificates until you receive a letter and instructions from the paying agent on how to surrender your ARV stock certificates, which should be sent to you soon after the effective date of the merger. You can expect to receive a check in the amount of your cash payment soon after ARV's paying agent has received your stock certificates, along with your properly completed documentation.

Dissenters' and Appraisal Rights (see page 70)

If you do not vote in favor of the adoption of the merger agreement and the approval of the merger and you take all steps required to perfect your appraisal rights under Delaware law, you will be entitled to dissent from the merger and to have the fair value of your shares of ARV common stock judicially determined and paid to you in cash, together with a fair rate of interest. The text of Section 262 of the Delaware General Corporation Law (*DGCL*), which sets forth the specific steps you must take to perfect your dissenters' rights, is attached to this proxy statement as Appendix C. Any stockholder of record who wishes to exercise his or her right to dissent from the merger and demand appraisal under Delaware law must:

deliver to ARV a written demand for appraisal of your shares of ARV common stock before the vote on the proposal to adopt the merger agreement and approve the merger is taken at the special meeting, which demand must reasonably inform ARV of your identity and that you intend to demand the appraisal of your shares; and

not vote in favor of the adoption of the merger agreement and approval of the merger (which means that you must vote against adopting the merger agreement and approving the merger or abstain from voting on the adoption of the merger agreement and approval of the merger because a proxy executed in blank that does not contain voting instructions will, unless revoked, be voted in favor of adopting the merger agreement and approving the merger).

Any holder who wishes to exercise his or her right to dissent from the merger and demand appraisal rights or who wishes to preserve his or her right to do so should review the discussion in the section captioned **THE MERGER Dissenters' and Appraisal Rights** carefully (see

Edgar Filing: ARV ASSISTED LIVING INC - Form PRER14A

page 70 and Appendix C). Failure to timely and properly comply with the requirements and procedures specified will result in the loss of appraisal rights under Delaware law.

Table of Contents

Terms of the Merger Agreement (see page 75)

Payments to Stockholders and Holders of Stock Options (see page 76). Upon completion of the merger, you will be entitled to receive \$3.90 in cash, without interest, for each share of ARV common stock that you own, unless you perfect your appraisal rights in accordance with Delaware law. You will not own any shares of ARV common stock or any other equity interest in ARV after completion of the merger. Each outstanding option to purchase shares of ARV common stock (whether or not presently vested) will be cancelled at the effective time of the merger, and each option holder will be entitled to receive a cash payment, without interest, equal to the excess, if any, of the \$3.90 per share merger consideration over the exercise price of the option, multiplied by the number of shares subject to the option, less any applicable withholding taxes. The total merger consideration to be paid to all ARV stockholders and option holders will be approximately \$43.9 million, with the total amount to be paid to the holders of options being approximately \$5.4 million.

Effective Date of the Merger (see page 75). The merger will be effective when a certificate of merger is filed wit