

SALIX PHARMACEUTICALS LTD
Form SC TO-T/A
March 13, 2015

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO
(RULE 14d-100)

Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 4)

Salix Pharmaceuticals, Ltd.

(Name of Subject Company (Issuer))

Sun Merger Sub, Inc.

a wholly owned subsidiary of

Valeant Pharmaceuticals International

a wholly owned subsidiary of

Valeant Pharmaceuticals International, Inc.

(Names of Filing Persons (Offerors))

Common Stock, par value \$0.001

(Title of Class of Securities)

795435106

(Cusip Number of Class of Securities)

Robert Chai-Onn

Valeant Pharmaceuticals International, Inc.

2150 St. Elzéar Blvd. West

Laval, Quebec

Canada H7L 4A8

(514) 744-6792

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

Copies to:

Alison S. Ressler

Sarah P. Payne

Sullivan & Cromwell LLP

1888 Century Park East, Suite 2100

Los Angeles, CA 90067

(310) 712-6600

CALCULATION OF FILING FEE

Transaction Valuation*

\$10,383,457,114

Amount of Filing Fee**

\$1,206,557.72

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- * Estimated solely for purposes of calculating the filing fee. The transaction value calculation does not take into account the effect of any cash received or deemed received by Salix Pharmaceuticals, Ltd. (Salix) in connection with the exercise of any outstanding equity awards. The transaction value was determined by multiplying (a) \$158.00, the tender offer price, by (b) the sum of (i) 64,248,604, the number of issued and outstanding shares of Salix common stock, (ii) 105,199, the number of shares of Salix common stock subject to issuance pursuant to options to purchase shares of Salix common stock, and (iii) 1,361,497, the number of restricted shares of Salix common stock. This calculation excludes 11,367,710 shares of Salix common stock issuable upon the conversion of all of Salix s outstanding convertible notes (taking into account Salix s irrevocable election to settle the principal amount of all converted notes in cash) as the outstanding convertible notes are not issuable prior to the currently anticipated expiration date of midnight on April 1, 2015 and are expected to be settled in cash. If the offer is extended, the transaction value may be adjusted accordingly for purposes of calculating the amount of the filing fee.
- ** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2015, issued August 29, 2014, by multiplying the transaction value by 0.0001162.
- x Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$3,440,185.01

Filing Party: Valeant
Pharmaceuticals International, Inc.

Form or Registration No.: S-4

Date Filed: June 18, 2014

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

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

- x third party tender offer subject to Rule 14d-1.
- ** issuer tender offer subject to Rule 13e-4.
- ** going private transaction subject to Rule 13e-3
- ** amendment to Schedule 13D under Rule 13d-2.

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

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- ** Rule 13e-4(i) (Cross Border Issuer Tender Offer)
- ** Rule 14d-1(d) (Cross Border Third Party Tender Offer)

This Amendment No. 4 amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission on March 4, 2015 (together with any amendments and supplements thereto, the Schedule TO), which relates to the offer by Sun Merger Sub, Inc., a Delaware corporation (Purchaser) and a wholly owned subsidiary of Valeant Pharmaceuticals International, a Delaware corporation (VPI) and a wholly owned subsidiary of Valeant Pharmaceuticals International, Inc., a British Columbia corporation (Valeant), to purchase all of the shares of common stock, par value \$0.001 per share (the Shares), of Salix Pharmaceuticals, Ltd., a Delaware corporation (Salix), that are issued and outstanding at a price of \$158.00 per Share net to the holder in cash, without interest and subject to any applicable withholding taxes, upon the terms and subject to the conditions set forth in the offer to purchase, dated March 4, 2015 (the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal) (which, together with any amendments or supplements thereto, collectively constitute the Offer).

All information contained in the Offer to Purchase and the accompanying Letter of Transmittal, including all schedules thereto, is hereby incorporated herein by reference in response to Items 1 through 9 and Item 11 in the Schedule TO.

This Amendment is being filed to amend and supplement Items 7 and 11 as reflected below and to amend and supplement Item 12 with an additional exhibit.

Item 7. Source and Amount of Funds or Other Consideration.

Item 7 of the Schedule TO is hereby amended and supplemented as follows:

The information set forth in Section 9 Source and Amount of Funds of the Offer to Purchase is hereby amended and supplemented by adding the following paragraphs after the existing second to last paragraph in Section 9 Source and Amount of Funds :

On March 13, 2015, VRX Escrow Corp., a newly formed wholly owned Canadian subsidiary of Valeant, priced \$2.0 billion aggregate principal amount of 5.375% senior unsecured notes due 2020 (the 2020 notes), \$3.25 billion aggregate principal amount of 5.875% senior unsecured notes due 2023 (the 2023 notes), 1.5 billion aggregate principal amount of 4.50% senior unsecured notes due 2023 (the Euro notes), and \$3.25 billion aggregate principal amount of 6.125% senior unsecured notes due 2025 (the 2025 notes and together with the 2020 notes, the 2023 notes and the Euro notes, the notes). Valeant entered into a purchase agreement with a syndicate of initial purchasers providing for the issuance and sale of the notes. The notes offering is expected to close on or about March 27, 2015. The notes offering has been upsized to approximately \$10.1 billion U.S. dollar equivalent aggregate principal amount of notes from the previously disclosed \$9.6 billion aggregate offering. As a result of the increased size of the notes offering, Valeant intends to incur \$400 million less in incremental term loans in connection with the Offer and the Merger.

If the Offer and Merger are not consummated on or prior to August 20, 2015 or, prior to that date, the Merger Agreement is terminated or the Company otherwise determines that the tender offer will not be pursued, the Company will be required to redeem the notes at 100% of the issue price of the notes, plus accrued and unpaid interest to, but excluding, the redemption date.

The foregoing description of the notes offering does not constitute an offer to sell or the solicitation of an offer to buy any of the notes or any other securities, nor will there be any sale of the notes or any other securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Item 11. Additional Information.

Item 11 of the Schedule TO is hereby amended and supplemented as follows:

(a) Section 15 Conditions to the Offer of the Offer to Purchase is hereby amended and supplemented by adding the following sentence as a new paragraph at the end:

The HSR Condition has been satisfied by the grant of early termination of the HSR Act waiting period by the FTC on March 13, 2015.

(b) The third, fourth and fifth paragraphs of Section 17 Certain Legal Matters; Regulatory Approvals U.S. Antitrust Compliance of the Offer to Purchase are hereby deleted and replaced in their entirety to read as follows:

Pursuant to the HSR Act, we and Salix filed our respective Premerger Notification and Report Forms with the FTC and the Antitrust Division on February 27, 2015 and March 2, 2015, respectively, for review in connection with the Offer. The initial waiting period under the HSR Act, which was scheduled to expire at 11:59 P.M., New York time, on March 16, 2015, was terminated early, effective March 13, 2015. Accordingly, the HSR Condition has been satisfied.

On March 13, 2015, we issued a press release announcing the early termination of the applicable waiting period under the HSR Act. The full text of the press release is attached as Exhibit (a)(5)(ix) to the Schedule TO and is incorporated herein by reference.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit:

(a)(5)(viii) Press Release issued by Valeant, dated March 13, 2015.

(a)(5)(ix) Press Release issued by Valeant, dated March 13, 2015.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 4 to Schedule TO is true, complete and correct.

Dated: March 13, 2015

SUN MERGER SUB, INC.

By: /s/ Robert R. Chai-Onn

Name: Robert R. Chai-Onn

Title: Executive Vice President, General
Counsel and Secretary

**VALEANT PHARMACEUTICALS
INTERNATIONAL**

By: /s/ Robert R. Chai-Onn

Name: Robert R. Chai-Onn

Title: Executive Vice President, General
Counsel and Secretary

**VALEANT PHARMACEUTICALS
INTERNATIONAL, INC.**

By: /s/ Robert R. Chai-Onn

Name: Robert R. Chai-Onn

Title: Executive Vice President, General
Counsel and Chief Legal Officer, Head
of Corporate and Business
Development

EXHIBIT INDEX

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No.

- (a)(1)(i) Offer to Purchase dated March 4, 2015.*
- (a)(1)(ii) Form of Letter of Transmittal.*
- (a)(1)(iii) Form of Notice of Guaranteed Delivery.*
- (a)(1)(iv) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
- (a)(1)(v) Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
- (a)(1)(vi) Summary Advertisement as published in *The New York Times* on March 4, 2015.*
- (a)(5)(i) Joint Press Release issued by Valeant and Salix, dated February 23, 2015 (incorporated by reference to Exhibit 99.1 of the Tender Offer Statement on Schedule TO-C filed by Valeant on February 23, 2015).
- (a)(5)(ii) Earnings Press Release issued by Valeant on February 23, 2015 (incorporated by reference to Exhibit 99.1 of the Tender Offer Statement on Schedule TO-C filed by Valeant on February 23, 2015).
- (a)(5)(iii) Investor presentation by Valeant, dated February 23, 2015 (incorporated by reference to Exhibit 99.1 of the Tender Offer Statement on Schedule TO-C filed by Valeant on February 23, 2015).
- (a)(5)(iv) Email sent to employees of Valeant on February 22, 2015 (incorporated by reference to Exhibit 99.2 of the Tender Offer Statement on Schedule TO-C filed by Valeant on February 23, 2015).
- (a)(5)(v) Email sent to employees of Salix on February 22, 2015 (incorporated by reference to Exhibit 99.3 of the Tender Offer Statement on Schedule TO-C filed by Valeant on February 23, 2015).
- (a)(5)(vi) Transcript from Investor Presentation, dated February 23, 2015 (incorporated by reference to Exhibit 99.1 of the Tender Offer Statement on Schedule TO-C filed by Valeant on February 24, 2015).
- (a)(5)(vii) Press Release issued by Valeant, dated March 11, 2015.*
- (a)(5)(viii) Press Release issued by Valeant, dated March 13, 2015.
- (a)(5)(ix) Press Release issued by Valeant, dated March 13, 2015.
- (b)(1) Third Amended and Restated Credit and Guaranty Agreement, dated as of February 13, 2012, among Valeant, certain subsidiaries of Valeant as guarantors, each of the lenders named therein, J.P. Morgan Securities LLC, Goldman Sachs Lending Partners LLC (GSLP) and Morgan Stanley Senior Funding, Inc. (Morgan Stanley), as Joint Lead Arrangers and Joint Bookrunners, JPMorgan Chase Bank, N.A. (JPMorgan) and Morgan Stanley, as Co-Syndication Agents, JPMorgan, as Issuing Bank, GSLP, as Administrative Agent and Collateral Agent, and the other agents party thereto (the Third Amended and Restated Credit and Guaranty Agreement of Valeant Pharmaceuticals International, Inc.) (incorporated by reference to Exhibit 10.1 to Valeant's Current Report on Form 8-K filed on February 17, 2012).
- (b)(2) Amendment No. 1, dated March 6, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.1 to Valeant's Quarterly Report on

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Form 10-Q for the fiscal quarter ended September 30, 2012 filed on November 5, 2012).

- (b)(3) Amendment No. 2, dated September 10, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.2 to Valeant's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2012 filed on November 5, 2012),
- (b)(4) Amendment No. 3, dated January 24, 2013, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.25 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 filed on February 28, 2013).
- (b)(5) Amendment No. 4, dated February 21, 2013, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.26 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 filed on February 28, 2013).
- (b)(6) Amendment No. 5, dated as of June 6, 2013, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.3 to Valeant's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2013 filed on August 7, 2013).

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- (b)(7) Amendment No. 6, dated June 26, 2013, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.4 to Valeant's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2013 filed on August 7, 2013).
- (b)(8) Amendment No. 7, dated September 17, 2013, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.3 to Valeant's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2013 filed on November 1, 2013).
- (b)(9) Amendment No. 8, dated December 20, 2013, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.28 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2013 filed on February 28, 2014).
- (b)(10) Successor Agent Agreement and Amendment No. 9 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, dated as of January 8, 2015, by and among Valeant, certain subsidiaries of Valeant as guarantors, each of the lenders named therein, Barclays Bank PLC, as the successor agent, and GSLP (incorporated by reference to Exhibit 10.31 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 filed on February 27, 2015)
- (b)(11) Joinder Agreement, dated June 14, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.1 to Valeant's Current Report on Form 8-K filed on June 15, 2012).
- (b)(12) Joinder Agreement, dated July 9, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.2 to Valeant's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2012 filed on August 3, 2012).
- (b)(13) Joinder Agreement, dated as of September 11, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.3 to Valeant's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2012 filed on November 5, 2012).
- (b)(14) Joinder Agreement, dated as of October 2, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.1 to Valeant's Current Report on Form 8-K filed on October 9, 2012).
- (b)(15) Joinder Agreement, dated as of December 11, 2012, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant (incorporated by reference to Exhibit 10.31 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 filed on February 28, 2013).
- (b)(16) Joinder Agreement dated August 5, 2013 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, relating to the Series A-2 Tranche A Term Loans (incorporated by reference to Exhibit 10.5 to Valeant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2013 filed on August 7, 2013).
- (b)(17) Joinder Agreement dated August 5, 2013 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, relating to the Series E Tranche B Term Loans (incorporated by reference to Exhibit 10.6 to Valeant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2013 filed on August 7, 2013).
- (b)(18) Joinder Agreement dated February 6, 2014 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, relating to the Additional Series A-3 Tranche A Term Loan Commitment (incorporated by reference to Exhibit 10.36 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2013 filed on February 28, 2014).

- (b)(19) Joinder Agreement dated February 6, 2014 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, relating to the Series E-1 Tranche B Term Loan Commitment (incorporated by reference to Exhibit 10.37 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2013 filed on February 28, 2014).
- (b)(20) Joinder Agreement dated January 22, 2015 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, relating to the New Revolving Loan Commitment (incorporated by reference to Exhibit 10.41 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 filed on February 27, 2015).
- (b)(21) Joinder Agreement dated January 22, 2015 to the Third Amended and Restated Credit and Guaranty Agreement of Valeant, relating to the Additional Series A-3 Tranche A Term Loan Commitment (incorporated by reference to Exhibit 10.42 to Valeant's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 filed on February 27, 2015).

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- (b)(22) Commitment Letter, dated as of February 20, 2015, among Valeant, VPI, Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Islands Branch, Deutsche Bank Securities Inc., HSBC Bank USA, National Association, HSBC Bank Canada, The Hongkong and Shanghai Banking Corporation Limited, HSBC Securities (USA) Inc., The Bank of Tokyo-Mitsubishi UFJ, Ltd., DNB Capital LLC, DNB Markets, Inc., SunTrust Bank and SunTrust Robinson Humphrey, Inc. (incorporated by reference to Exhibit 10.1 to Valeant's Current Report on Form 8-K filed on February 23, 2015).
- (b)(23) Amendment No. 10, dated March 5, 2015, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant.*
- (b)(24) Amended and Restated Commitment Letter, dated as of March 8, 2015, among Valeant, VPI, Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Island Branch, Deutsche Bank Securities Inc., HSBC Bank USA, National Association, HSBC Bank Canada, The Hongkong and Shanghai Banking Corporation Limited, HSBC Securities (USA) Inc., The Bank of Tokyo-Mitsubishi UFJ, Ltd., DNB Capital LLC, DNB Markets, Inc., SunTrust Bank, SunTrust Robinson Humphrey, Inc., Barclays Bank PLC, Morgan Stanley Senior Funding, Inc., Royal Bank of Canada, RBC Capital Markets and Citigroup Global Markets Inc.*
- (d)(1) Agreement and Plan of Merger, dated as of February 20, 2015, by and among Salix, VPI, Purchaser and, solely for purposes of providing a guarantee of VPI's and Purchaser's obligations, Valeant (incorporated by reference to Exhibit 2.1 to Salix's Current Report on Form 8-K filed on February 23, 2015).
- (d)(2) Confidentiality Agreement, dated January 20, 2015, between Valeant and Salix.*
- (d)(3) Amendment, dated February 6, 2015, to Confidentiality Agreement, dated January 20, 2015, between Valeant and Salix.*
- (g) Not applicable.
- (h) Not applicable.

* Previously filed.