

ZYMOGENETICS INC
Form SC TO-T
September 10, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

ZYMOGENETICS, INC.

(Name of Subject Company (Issuer))

ZEUS ACQUISITION CORPORATION

(Offeror)

A Wholly Owned Subsidiary of

BRISTOL-MYERS SQUIBB COMPANY

(Offeror)

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(Names of Filing Persons (identifying status as offeror, issuer or other person))

COMMON STOCK, NO PAR VALUE

(Title of Class of Securities)

98985T109

(CUSIP Number of Class of Securities)

Sandra Leung, Esq.

General Counsel & Corporate Secretary

P. Joseph Campisi, Jr., Esq.

Vice President & Assistant General Counsel

Bristol-Myers Squibb Company

345 Park Avenue

New York, New York 10154

(212) 546-4000

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

Copies to:

David Fox, Esq.

Daniel Wolf, Esq.

Kirkland & Ellis LLP

601 Lexington Avenue

New York, NY 10022

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(212) 446-4800

CALCULATION OF FILING FEE

Transaction Valuation(1)
\$883,869,654

Amount of Filing Fee(2)
\$63,020

(1) Calculated solely for purposes of determining the filing fee. The calculation assumes the purchase of 86,584,072 shares of common stock, without par value, and 99,516 shares of common stock subject to restricted stock units, in each case, at \$9.75 per share. The transaction value also includes the aggregate offer price for 8,500,698 shares issuable pursuant to outstanding options with an exercise price less than \$9.75 per share, which is calculated by multiplying the number of shares underlying such outstanding options at each exercise price therefor by an amount equal to \$9.75 minus such exercise price.

(2) Calculated in accordance with Exchange Act Rule 0-11 by multiplying the transaction value by 0.0000713.

.. Check the 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: N/A
Form of Registration No.: N/A

Filing Party: N/A
Date Filed: N/A

.. 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)

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“ Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Tender Offer Statement on Schedule TO (together with any amendments and supplements hereto, this Schedule TO) is filed by (i) Zeus Acquisition Corporation, a Washington corporation (Purchaser) and a wholly owned subsidiary of Bristol-Myers Squibb Company, a Delaware corporation (Parent), and (ii) Parent. This Schedule TO relates to the tender offer for all of the outstanding shares of common stock, no par value (the Shares), of ZymoGenetics, Inc., a Washington corporation (the Company), at a price of \$9.75 per share net to the seller in cash without interest and less any required withholding taxes, if any, upon the terms and conditions set forth in the offer to purchase dated September 10, 2010 (the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(A), and in the related letter of transmittal (the Letter of Transmittal), a copy of which is attached as Exhibit (a)(1)(B), which, together with any amendments or supplements, collectively constitute the Offer.

All the information set forth in the Offer to Purchase is incorporated by reference herein in response to Items 1 through 9 and Item 11 in this Schedule TO, and is supplemented by the information specifically provided in this Schedule TO.

Item 1. Summary Term Sheet.
Regulation M-A Item 1001

The information set forth in the Offer to Purchase under the caption SUMMARY TERM SHEET is incorporated herein by reference.

Item 2. Subject Company Information.
Regulation M-A Item 1002

(a) **Name and Address.** The name, address, and telephone number of the subject company's principal executive offices are as follows:

ZymoGenetics, Inc.

1201 Eastlake Avenue East

Seattle, Washington 98102

(206) 442-6600

(b) **Securities.** This Schedule TO relates to the Offer by Purchaser to purchase all issued and outstanding Shares. As of August 31, 2010, there were 86,584,072 Shares issued and outstanding, 8,500,698 Shares were issuable pursuant to outstanding stock option grants with an exercise price of less than \$9.75 per Share, 1,500,000 Shares were issuable pursuant to warrants and 99,516 Shares were subject to restricted stock units. The information set forth on the cover page and in the INTRODUCTION of the Offer to Purchase is incorporated herein by reference.

(c) **Trading Market and Price.** The information set forth under the caption THE TENDER OFFER Section 6 (Price Range of Shares; Dividends) of the Offer to Purchase is incorporated herein by reference.

Item 3. Identity and Background of Filing Person.
Regulation M-A Item 1003

(a)-(c) **Name and Address; Business and Background of Entities; and Business and Background of Natural Persons.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 8 (Certain Information Concerning Parent and the Purchaser) and Schedule I attached thereto

Item 4. Terms of the Transaction.
Regulation M-A Item 1004

(a) **Material Terms.** The information set forth in the Offer to Purchase is incorporated herein by reference.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.
Regulation M-A Item 1005

(a) **Transactions.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with the Company)

(b) **Significant Corporate Events.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with the Company)

THE TENDER OFFER Section 11 (The Merger Agreement)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for the Company)

Item 6. Purposes of the Transaction and Plans or Proposals.
Regulation M-A Item 1006

(a) **Purposes.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for the Company)

(c) (1)-(7) **Plans.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 9 (Source and Amount of Funds)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with the Company)

THE TENDER OFFER Section 11 (The Merger Agreement)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for the Company)

THE TENDER OFFER Section 13 (Certain Effects of the Offer)

THE TENDER OFFER Section 14 (Dividends and Distributions)

Item 7. Source and Amount of Funds or Other Consideration.
Regulation M-A Item 1007

(a) **Source of Funds.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 9 (Source and Amount of Funds)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with the Company)

(b) **Conditions.** The Offer is not subject to a financing condition.

(d) **Borrowed Funds.** Not applicable.

Item 8. Interest in Securities of the Subject Company.
Regulation M-A Item 1008

(a) **Securities Ownership.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

THE TENDER OFFER Section 8 (Certain Information Concerning Parent and the Purchaser) and Schedule I attached thereto

THE TENDER OFFER Section 11 (The Merger Agreement)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for the Company)

(b) **Securities Transactions.** None.

Item 9. Persons/Assets, Retained, Employed, Compensated or Used.
Regulation M-A Item 1009

(a) **Solicitations or Recommendations.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 3 (Procedures for Accepting the Offer and Tendering Shares)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with the Company)

THE TENDER OFFER Section 17 (Fees and Expenses)

Item 10. Financial Statements.
Regulation M-A Item 1010

(a) **Financial Information.** Not Applicable.

(b) **Pro Forma Information.** Not Applicable.

Item 11. Additional Information.
Regulation M-A Item 1011

(a) **Agreements, Regulatory Requirements and Legal Proceedings.** The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with the Company)

THE TENDER OFFER Section 11 (The Merger Agreement)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for the Company)

THE TENDER OFFER Section 13 (Certain Effects of the Offer)

THE TENDER OFFER Section 16 (Certain Legal Matters; Regulatory Approvals)

(b) **Other Material Information.** The information set forth in the Offer to Purchase and the Letter of Transmittal is incorporated herein by reference.

Item 12. Exhibits.
Regulation M-A Item 1016

Exhibit
No.

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- (a)(1)(A) Offer to Purchase, dated September 10, 2010.
- (a)(1)(B) Letter of Transmittal (including Internal Revenue Service Form W-9).

- (a)(1)(C) Notice of Guaranteed Delivery.
- (a)(1)(D) Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.
- (a)(1)(E) Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.
- (a)(1)(F) Joint Press Release of ZymoGenetics, Inc. and Bristol-Myers Squibb Company, dated September 7, 2010 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Bristol-Myers Squibb Company with the Securities and Exchange Commission dated September 9, 2010).
- (a)(1)(G) Summary Advertisement as published on September 10, 2010.
- (a)(5) Press Release issued by Bristol-Myers Squibb Company, dated September 10, 2010.
- (b) None.
- (d)(1) Agreement and Plan of Merger, dated as of September 7, 2010, by and among ZymoGenetics, Inc., Bristol-Myers Squibb Company, and Zeus Acquisition Corporation (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by ZymoGenetics, Inc. with the Securities and Exchange Commission on September 9, 2010).
- (d)(2) Form of Tender and Support Agreement, by and among Bristol-Myers Squibb Company, Zeus Acquisition Corporation and Stockholder, dated September 7, 2010 (incorporated by reference to Exhibit 2.2 to the Form 8-K filed by ZymoGenetics, Inc. with the Securities and Exchange Commission on September 9, 2010).
- (g) None.
- (h) None.

Item 13. Information Required by Schedule 13E-3.

Not applicable.

SIGNATURE

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

ZEUS ACQUISITION CORPORATION

By */s/ JEREMY LEVIN*
Name: **Dr. Jeremy Levin**
Title: **President**

Date: September 10, 2010

BRISTOL-MYERS SQUIBB COMPANY

By */s/ JEREMY LEVIN*
Name: **Dr. Jeremy Levin**
Title: **Senior Vice President, Strategy, Alliances and Transactions**

Date: September 10, 2010

EXHIBIT INDEX

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(g)	None.
(h)	None.