

**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**

**CYMABAY THERAPEUTICS, INC.**

(Name of Subject Company (Issuer))

**PACIFIC MERGER SUB, INC.**

a wholly owned subsidiary of

**GILEAD SCIENCES, INC.**

(Names of Filing Persons (Offeror))

**Common Stock, Par Value \$0.0001 Per Share**

(Title of Class of Securities)

**23257D103**

(Cusip Number of Class of Securities)

**Deborah H. Telman, Esq.**  
**Executive Vice President, Corporate Affairs and General Counsel**  
**Gilead Sciences, Inc.**  
**333 Lakeside Drive**  
**Foster City, CA 94404**  
**650-574-3000**

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

**With copies to:**

**Paul S. Scrivano**  
**Davis Polk & Wardwell LLP**  
**1600 El Camino Real**  
**Menlo Park, CA 94025**  
**(650) 752-2008**

**Cheryl Chan**  
**Davis Polk & Wardwell LLP**  
**450 Lexington Avenue**  
**New York, NY 10017**  
**(212) 450-4503**

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:

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)

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This filing relates solely to preliminary communications made before the commencement of a tender offer by Pacific Merger Sub, Inc., a Delaware corporation (“Purchaser”) and a wholly owned subsidiary of Gilead Sciences, Inc., a Delaware corporation (“Parent”), to acquire all of the outstanding shares of common stock of CymaBay Therapeutics, Inc., a Delaware corporation (the “Company”), at a price of \$32.50 per share, net to the seller in cash, without interest and subject to any withholding of taxes, pursuant to an Agreement and Plan of Merger, dated February 11, 2024, among the Company, Parent and Purchaser.

## FORWARD-LOOKING STATEMENTS

This communication contains forward-looking statements related to Gilead Sciences, Inc. (“Gilead”), CymaBay Therapeutics, Inc. (“CymaBay”) and the acquisition of CymaBay by Gilead that are subject to risks, uncertainties and other factors. All statements other than statements of historical fact are statements that could be deemed forward-looking statements, including all statements regarding the intent, belief or current expectation of Gilead and CymaBay and members of their respective senior management teams. Forward-looking statements include, without limitation, statements regarding the transaction and related matters, prospective performance and opportunities, post-closing operations and the outlook for the companies’ businesses, including, without limitation, the ability of Gilead to advance CymaBay’s product pipeline and successfully commercialize seladelpar; the possibility of unfavorable results from clinical trials; regulatory applications and related timelines; filings and approvals relating to the transaction; the expected timing of the completion of the transaction; the ability to complete the transaction considering the various closing conditions; difficulties or unanticipated expenses in connection with integrating the companies; and any assumptions underlying any of the foregoing. Investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve risks and uncertainties and are cautioned not to place undue reliance on these forward-looking statements. Actual results may differ materially from those currently anticipated due to a number of risks and uncertainties. Risks and uncertainties that could cause the actual results to differ from expectations contemplated by forward-looking statements include: uncertainties as to the timing of the tender offer and merger; uncertainties as to how many of CymaBay’s stockholders will tender their stock in the offer; the possibility that competing offers will be made; the possibility that various closing conditions for the transaction may not be satisfied or waived, including that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the transaction; the effects of the transaction on relationships with employees, other business partners or governmental entities; the difficulty of predicting the timing or outcome of regulatory approvals or actions, if any; the impact of competitive products and pricing; other business effects, including the effects of industry, economic or political conditions outside of the companies’ control; transaction costs; actual or contingent liabilities; adverse impacts on business, operating results or financial condition in the future due to pandemics, epidemics or outbreaks; and other risks and uncertainties detailed from time to time in the companies’ periodic reports filed with the U.S. Securities and Exchange Commission (the “SEC”), including current reports on Form 8-K, quarterly reports on Form 10-Q and annual reports on Form 10-K, as well as the Schedule 14D-9 to be filed by CymaBay and the Schedule TO and related tender offer documents to be filed by Gilead and Pacific Merger Sub, Inc., a wholly owned subsidiary of Gilead. All forward-looking statements are based on information currently available to Gilead and CymaBay, and Gilead and CymaBay assume no obligation and disclaim any intent to update any such forward-looking statements.

## ADDITIONAL INFORMATION AND WHERE TO FIND IT

The tender offer described in this document has not yet commenced. This communication is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell securities of CymaBay, nor is it a substitute for any tender offer materials that Gilead, Pacific Merger Sub, Inc. or CymaBay will file with the SEC. A solicitation and an offer to buy securities of CymaBay will be made only pursuant to an offer to purchase and related materials that Gilead intends to file with the SEC. At the time the tender offer is commenced, Gilead will file a Tender Offer Statement on Schedule TO with the SEC, and CymaBay will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the tender offer. CYMABAY’S STOCKHOLDERS AND OTHER INVESTORS ARE URGED TO READ

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THE TENDER OFFER MATERIALS (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND CERTAIN OTHER TENDER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT ON SCHEDULE 14D-9 BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION THAT SHOULD BE READ CAREFULLY BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. The Offer to Purchase, the related letter of transmittal and certain other tender offer documents, as well as the Solicitation/Recommendation Statement on Schedule 14D-9, will be sent to all stockholders of CymaBay at no expense to them. The Tender Offer Statement on Schedule TO, the Solicitation/Recommendation Statement on Schedule 14D-9 and other related documents will be made available for free at the SEC’s web site at [www.sec.gov](http://www.sec.gov). Additional copies may be obtained for free by contacting Gilead or CymaBay. Free copies of these materials and certain other offering documents will be made available by Gilead by mail to Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, attention: Investor Relations, by phone at 1-800-GILEAD-5 or 1-650-574-3000, or by directing requests for such materials to the information agent for the offer, which will be named in the Tender Offer Statement on Schedule TO. Investors and security holders of CymaBay may also obtain, free of charge, the Solicitation/Recommendation Statement on Schedule 14D-9 and other related documents that CymaBay has filed with or furnished to the SEC under the “Investors & Media” section of CymaBay’s website at [www.cymabay.com/investors-media](http://www.cymabay.com/investors-media).

In addition to the Offer to Purchase, the related Letter of Transmittal and certain other tender offer documents, as well as the Solicitation/Recommendation Statement, Gilead and CymaBay file annual, quarterly and current reports, proxy statements and other information with the SEC. Gilead’s and CymaBay’s filings with the SEC are also available for free to the public from commercial document-retrieval services and at the website maintained by the SEC at [www.sec.gov](http://www.sec.gov).

## EXHIBIT INDEX

Exhibit No.	Description
<a href="#">99.1</a>	<a href="#">Email to CymaBay employees by Gilead on February 14, 2024.</a>

To: Group – All CymaBay Employees  
 From: Daniel O'Day, Chairman and CEO of Gilead  
 Date: February 14, 2024  
 Subject: Message to the CymaBay Team from Daniel O'Day, CEO, Gilead

Hello Everyone,

I wanted to share a few words on behalf of all of us at Gilead following the announcement earlier this week.

We are delighted to have reached the agreement to acquire CymaBay. We have tremendous respect for your work and for the way you have advanced seladelpar as a potential option for people living with PBC. My congratulations on your most recent milestone of achieving acceptance of the U.S. NDA filing with Priority Review.

As I shared with Sujal when we spoke earlier this week, I am deeply impressed by the expertise, focus and perseverance of your team. As we got to learn about CymaBay it became clear that our two companies share a focus on the best quality science, and we have the same goal of bringing forward solutions to make a real difference in people's lives. With our shared commitment to transforming the treatment of liver disease, we are honored to have the opportunity to help seladelpar reach as many people living with PBC as possible around the world.

We look forward to meeting you soon and to getting to know more about your work over the coming weeks as we plan for the successful integration after closing.

Dan

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and uncertainties detailed from time to time in the companies' periodic reports filed with the U.S. Securities and Exchange Commission (the "SEC"), including current reports on Form 8-K, quarterly reports on Form 10-Q and annual reports on Form 10-K, as well as the Schedule 14D-9 to be filed by CymaBay and the Schedule TO and related tender offer documents to be filed by Gilead and Pacific Merger Sub, Inc., a wholly owned subsidiary of Gilead. All forward-looking statements are based on information currently available to Gilead and CymaBay, and Gilead and CymaBay assume no obligation and disclaim any intent to update any such forward-looking statements.

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