
**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
(Amendment No. 2)**

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)

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).

This Amendment No. 2 to the Tender Offer Statement on Schedule TO (this “Amendment No. 2”) amends and supplements the Tender Offer Statement on Schedule TO filed by Pacific Merger Sub, Inc., a Delaware corporation (“Purchaser”), and Gilead Sciences, Inc., a Delaware corporation (“Parent”), with the U.S. Securities and Exchange Commission (the “SEC”) on February 23, 2024 (together with any subsequent amendments and supplements thereto, the “Schedule TO”). The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares of common stock, \$0.0001 par value per share (“Shares”), of CymaBay Therapeutics, Inc., a Delaware corporation (“CymaBay” or 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, upon the terms and subject to the conditions described in the Offer to Purchase dated February 23, 2024 (together with any amendments or supplements thereto, the “Offer to Purchase”) and in the accompanying Letter of Transmittal (together with any amendments or supplements thereto and with the Offer to Purchase, the “Offer”), which are annexed to and filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Purchaser is a wholly owned subsidiary of Parent. This Amendment No. 2 is being filed on behalf of Parent and Purchaser. Unless otherwise indicated, references to sections in the Schedule TO are references to sections of the Offer to Purchase.

Except as otherwise set forth in this Amendment No. 2, the information set forth in the Schedule TO remains unchanged and is incorporated herein by reference to the extent relevant to the items in this Amendment No. 2. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule TO.

Items 1 through 9 and Item 11.

Items 1 through 9 and Item 11 of the Schedule TO (to the extent such Items incorporate by reference the information contained in the Offer to Purchase) are hereby amended and supplemented as follows:

Offer to Purchase

- (a) Section 13 (“Conditions of the Offer”) of the Offer to Purchase is hereby amended and supplemented by revising the penultimate sentence as follows (deletions are struck through and additions are underlined for convenience):

“The foregoing conditions are for the sole benefit of Parent and Purchaser, may be asserted by Parent or Purchaser regardless of the circumstances giving rise to any such conditions ~~(including any action or inaction by Parent or Purchaser)~~, and (except for the Minimum Tender Condition, the Termination Condition, the HSR Condition and the Governmental Impediment Condition) may be waived by Parent and Purchaser, in whole or in part, at any time and from time to time prior to the expiration of the Offer, in their sole and absolute discretion.”

- (b) Section 15 (“Certain Legal Matters; Regulatory Approvals”) of the Offer to Purchase is hereby amended and supplemented by adding the following paragraph at the end of the subsection titled “Antitrust”:

“The required waiting period under the HSR Act with respect to the Offer expired at 11:59 p.m., Eastern Time on March 8, 2024. Accordingly, the HSR Condition in Section 13—“Conditions of the Offer” has been satisfied.”

ITEM 12. EXHIBITS.

Index No.

- [\(a\)\(1\)\(A\)* Offer to Purchase, dated as of February 23, 2024.](#)
- [\(a\)\(1\)\(B\)* Form of Letter of Transmittal.](#)
- [\(a\)\(1\)\(C\)* Form of Notice of Guaranteed Delivery.](#)
- [\(a\)\(1\)\(D\)* Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.](#)
- [\(a\)\(1\)\(E\)* Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.](#)
- [\(a\)\(1\)\(F\)* Form of Summary Advertisement, published February 23, 2024 in *The Wall Street Journal*.](#)
- [\(a\)\(5\)\(A\) Joint Press Release of Parent and CymaBay, dated February 12, 2024 \(incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Parent with the Securities and Exchange Commission on February 12, 2024\).](#)
- [\(a\)\(5\)\(B\) Tweet posted by Parent on February 12, 2024 \(incorporated by reference to Exhibit 99.1 on Schedule TO-C of Parent and Purchaser filed with the Securities and Exchange Commission on February 12, 2024\).](#)
- [\(a\)\(5\)\(C\) LinkedIn announcement posted by Parent on February 12, 2024 \(incorporated by reference to Exhibit 99.2 on Schedule TO-C of Parent and Purchaser filed with the Securities and Exchange Commission on February 12, 2024\).](#)
- [\(a\)\(5\)\(D\) Investor Relations email sent by Parent on February 12, 2024 \(incorporated by reference to Exhibit 99.3 on Schedule TO-C of Parent and Purchaser filed with the Securities and Exchange Commission on February 12, 2024\).](#)
- [\(a\)\(5\)\(E\) Email to CymaBay employees sent by Parent on February 14, 2024 \(incorporated by reference to Exhibit 99.1 on Schedule TO-C of Parent and Purchaser filed with the Securities and Exchange Commission on February 14, 2024\).](#)
- [\(a\)\(5\)\(F\) Press Release of Parent, dated March 11, 2024, announcing the expiration of the waiting period under the HSR Act.](#)
- [\(d\)\(1\) Agreement and Plan of Merger, dated as of February 11, 2024, by and among CymaBay, Parent and Purchaser \(incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Parent with the Securities and Exchange Commission on February 12, 2024\).](#)
- [\(d\)\(2\) Mutual Non-Disclosure Agreement, dated as of December 15, 2022, by and between CymaBay and Parent \(incorporated by reference to Exhibit \(e\)\(2\) to the Schedule 14D-9 filed by CymaBay with the Securities and Exchange Commission on February 23, 2024\).](#)
- (g) Not applicable.
- (h) Not applicable.
- [107* Filing Fee Table.](#)

* Previously filed on February 23, 2024 as an exhibit to the Schedule TO.

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.

Dated: March 11, 2024

PACIFIC MERGER SUB, INC.

By: /s/ Andrew D. Dickinson

Name: Andrew D. Dickinson

Title: President and Treasurer

GILEAD SCIENCES, INC.

By: /s/ Daniel P. O'Day

Name: Daniel P. O'Day

Title: Chairman and Chief Executive Officer

**CONTACTS:**

Investors:
Jacquie Ross
investor_relations@gilead.com

Media:
Ashleigh Koss
public_affairs@gilead.com

GILEAD SCIENCES ANNOUNCES EXPIRATION OF HART-SCOTT RODINO WAITING PERIOD FOR CYMABAY TENDER OFFER

FOSTER CITY, Calif., March 11, 2024 – Gilead Sciences, Inc. (Nasdaq: GILD) today announced that the required waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) with respect to Gilead's cash tender offer for CymaBay Therapeutics, Inc. expired at 11:59 p.m. on March 8, 2024.

On February 22, 2024, Gilead and CymaBay filed the Premerger Notification and Report Forms required under the HSR Act with the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice.

The expiration of the HSR waiting period satisfies one of the conditions to consummate the tender offer. Other conditions remain to be satisfied, including, among others, a minimum tender of shares of common stock of CymaBay representing a majority of the total number of outstanding shares of common stock of CymaBay. Unless the tender offer is extended, the offer and withdrawal rights will expire at one minute after 11:59 p.m., Eastern Time, on March 21, 2024.

About Gilead Sciences

Gilead Sciences, Inc. is a biopharmaceutical company that has pursued and achieved breakthroughs in medicine for more than three decades, with the goal of creating a healthier world for all people. The company is committed to advancing innovative medicines to prevent and treat life-threatening diseases, including HIV, viral hepatitis, COVID-19, and cancer. Gilead operates in more than 35 countries worldwide, with headquarters in Foster City, Calif.

Forward-Looking Statements

This communication contains forward-looking statements related to Gilead, 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 filed on February 23, 2024 by CymaBay and the Schedule TO and related tender offer documents filed on February 23, 2024 by Gilead and Pacific Merger Sub, Inc. ("Purchaser"), 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

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 have filed with the SEC. Gilead and Purchaser have filed a Tender Offer Statement on Schedule TO with the SEC containing an offer to purchase all of the outstanding shares of common stock of CymaBay for \$32.50 per share, and CymaBay has filed a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the tender offer. The tender offer is being made solely by means of the Offer to Purchase, and the exhibits filed with respect thereto (including the Letter of Transmittal), which contain the full terms and conditions of the tender offer. CymaBay STOCKHOLDERS AND OTHER INVESTORS ARE URGED TO READ THE TENDER OFFER MATERIALS (INCLUDING THE OFFER TO PURCHASE, THE RELATED LETTER OF TRANSMITTAL AND CERTAIN OTHER TENDER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT ON SCHEDULE 14D-9 BECAUSE THEY 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, have been 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 are available for free at the SEC's web site at 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 are 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, Innisfree M&A Incorporated, 501 Madison Avenue, 20th Floor, New York, New York 10022. Stockholders may call toll free: (877) 456-3507; Banks and Brokers may call collect: (212) 750-5833. 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 the Company has filed with or furnished to the SEC under the “Investors & Media” section of CymaBay’s website at <https://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.

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Gilead and the Gilead logo are trademarks of Gilead Sciences, Inc., or its related companies. The CymaBay name and logo are trademarks of CymaBay.

For more information about Gilead, please visit the company’s website at www.gilead.com, follow Gilead on X/Twitter (@Gilead Sciences) and LinkedIn (@Gilead-Sciences).