

SALIX PHARMACEUTICALS LTD
Form SC TO-T/A
March 25, 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. 8)

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*
\$11,368,746,900

Amount of Filing Fee**
\$1,321,048.39

- * 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) \$173.00, 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. 8 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 \$173.00 per Share net to the holder in cash, without interest and subject to any applicable withholding taxes (the Offer Price), which Offer Price is subject to reduction to \$158.00 per Share if all of the conditions to the Offer (as defined below) are not satisfied, or waived by us, by 12:00 midnight, Eastern time, on April 8, 2015 (one minute after 11:59 P.M., Eastern time, on April 7, 2015), upon the terms and subject to the conditions set forth in the (i) offer to purchase, dated March 4, 2015 (as it may be amended or supplemented from time to time, including by the Amendment and Supplement to the Offer to Purchase, dated March 17, 2015 (the Supplement), the Offer to Purchase) and (ii) related letter of transmittal that accompanied the Offer to Purchase (the Letter of Transmittal), which, together with any amendments or supplements thereto, collectively constitute the Offer. The Offer will expire at 12:00 midnight, Eastern time, on April 1, 2015 (one minute after 11:59 P.M., Eastern time, on March 31, 2015), unless extended.

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

This Amendment No. 8 is being filed to amend and supplement Item 5 as reflected below and to amend and supplement Item 12 with additional exhibits.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

Item 5 of the Schedule TO is hereby amended and supplemented as follows:

The information set forth in Section 11 The Merger Agreement; Other Agreements of the Offer to Purchase is hereby amended and supplemented by adding the following new subsection ***Letter Agreement with Mr. Bertrand*** at the end of such section:

Letter Agreement with Mr. Bertrand

In connection with the Offer and the Merger, on March 24, 2015, Mr. Bertrand entered into a letter agreement with Valeant Pharmaceuticals North America LLC (the Letter Agreement) which, subject to Mr. Bertrand s continued employment with Salix through the Effective Time, will become effective upon closing of the Merger and at such time, will terminate and supersede Mr. Bertrand s existing entitlements under his Amended and Restated Employment Agreement with Salix (other than any ongoing restrictive covenants set forth therein).

Pursuant to the terms of the Letter Agreement, Mr. Bertrand will serve as the SVP and General Manager of the Surviving Corporation. In this role, Mr. Bertrand will receive an annual base salary of \$550,000 (which is the same as his current salary) and will be eligible to participate in Valeant s management bonus plan, under which his target and maximum bonus opportunity will be 40% and 80% of base salary, respectively. Additionally, Mr. Bertrand will receive sign-on equity awards valued at approximately \$2,000,000. One-half of Mr. Bertrand s sign-on equity will be granted in Valeant stock options that vest ratably over four years, and the remainder of such sign-on awards will be granted in Valeant performance share units that will vest between 0-300%, based on the achievement of certain Valeant performance criteria over a three year performance period.

Under the Letter Agreement, Mr. Bertrand will be eligible to receive a retention bonus in the aggregate amount of \$2,799,500 which will be paid in three equal installments on the closing of the Merger and the six and twelve month anniversaries thereof, subject to Mr. Bertrand s continued employment through each payment date. In the event Mr. Bertrand is terminated by Valeant without cause (as that term is defined in the Letter Agreement) prior to the twelve month anniversary of the closing of the Merger, subject to execution and non-revocation of a general release of claims, he will be paid any portion of the retention bonus that remains unpaid at the time of such termination. Mr. Bertrand will not be entitled to any other severance payments or benefits from Valeant and will not be entitled to any severance payments or benefits under his existing Amended and Restated Employment Agreement with Salix.

The foregoing summary description of the Letter Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Letter Agreement, which has been filed as Exhibit (d)(5) to the Schedule TO, which is incorporated herein by reference.

Item 12. Exhibits.

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

(a)(5)(xii) Email sent to employees of Valeant and Salix on March 25, 2015

(d)(5) Letter Agreement, dated as of March 24, 2015, by and between Valeant Pharmaceuticals North America LLC and William C. Bertrand.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 8 to Schedule TO is true, complete and correct.

Dated: March 25, 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

Index 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)(1)(vii) Amendment and Supplement to the Offer to Purchase, dated March 17, 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.*
- (a)(5)(x) Joint Press Release issued by Valeant and Salix, dated March 16, 2015.*
- (a)(5)(xi) Email sent to employees of Salix on March 18, 2015.*
- (a)(5)(xii) Email sent to employees of Valeant and Salix on March 25, 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)

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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 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).

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- (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).
- (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).

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- (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).
- (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.*
- (d)(4) Amendment No. 1 to the Agreement and Plan of Merger, dated as of March 16, 2015, by and among VPI, Valeant, the Purchaser and Salix (incorporated by reference to Exhibit 2.1 to Salix's Current Report on Form 8-K filed on March 17, 2015).
- (d)(5) Letter Agreement, dated as of March 24, 2015, by and between Valeant Pharmaceuticals North America, LLC and William C. Bertrand.
- (g) Not applicable.
- (h) Not applicable.

* Previously filed.