

Foundation Medicine, Inc.
Form SC 13D
January 21, 2015

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

SCHEDULE 13D
Under the Securities Exchange Act of 1934

Foundation Medicine, Inc.
(Name of Issuer)

Common Stock, 0.0001 par value per share
(Title of Class of Securities)

350456100
(CUSIP Number)

Beat Kraehenmann
Roche Holding Ltd
Grenzacherstrasse 124
CH-4070 Basel, Switzerland
Telephone: +41-61-688-1111
(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

With a Copy to:

Marc O. Williams
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

January 11, 2015
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

1 Names of Reporting Persons.

I.R.S. Identification Nos. of above persons.

Roche Holding Ltd

2 Check the Appropriate Box if a Member of a Group

(a)o

(b)o

3 SEC Use Only

4 Source of Funds

OO

5 Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

o

6 Citizenship or Place of Organization

Switzerland

7 Sole Voting Power

414,823

NUMBER OF SHARES
BENEFICIALLY OWNED

8 Shared Voting Power

BY

8,894,702(1)(2)

EACH REPORTING

9 Sole Dispositive Power

PERSON

WITH

414,823

10 Shared Dispositive Power

8,608,539(1)(2)

11 Aggregate Amount Beneficially Owned by Each Reporting Person

9,309,525(3)

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares

o

13 Percent of Class Represented by Amount in Row (11)

32.8%(2)

14 Type of Reporting Person (See Instructions)

CO

(1) Beneficial ownership of such Shares (as defined below) is being reported hereunder solely because Parent (as defined below) may be deemed to have beneficial ownership of such Shares as a result of the Tender and Support Agreements (as defined below). Neither the filing of this Schedule 13D nor any of its contents shall be deemed to constitute an admission

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by Parent that it is the beneficial owner of such Shares for purposes of Section 13(d) of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or for any other purpose, and such beneficial ownership thereof is expressly disclaimed.

- (2) See Item 5 of this Schedule 13D.
 - (3) See notes (1) and (2).
-

1 Names of Reporting Persons.

I.R.S. Identification Nos. of above persons.

Roche Finance Ltd

2 Check the Appropriate Box if a Member of a Group

(a)

(b)

3 SEC Use Only

4 Source of Funds

OO

5 Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

6 Citizenship or Place of Organization

Switzerland

7 Sole Voting Power

414,823

NUMBER OF SHARES
BENEFICIALLY OWNED

8 Shared Voting Power

BY

8,894,702(1)(2)

EACH REPORTING
PERSON

9 Sole Dispositive Power

WITH

414,823

10 Shared Dispositive Power

8,608,539(1)(2)

11 Aggregate Amount Beneficially Owned by Each Reporting Person

9,309,525(3)

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares

13 Percent of Class Represented by Amount in Row (11)

32.8%(2)

14 Type of Reporting Person (See Instructions)

CO

(1) Beneficial ownership of such Shares (as defined below) referenced above is being reported hereunder solely because Finance (as defined below) may be deemed to have beneficial ownership of such Shares as a result of the Tender and Support Agreements (as defined below). Neither the filing of this Schedule 13D nor any of its contents shall be deemed to constitute an admission by Finance that it is the beneficial owner of such Shares for purposes

of Section 13(d) of the Exchange Act or for any other purpose, and such beneficial ownership thereof is expressly disclaimed.

- (2) See Item 5 of this Schedule 13D.
 - (3) See notes (1) and (2).
-

1 Names of Reporting Persons.

I.R.S. Identification Nos. of above persons.

Roche Holdings, Inc.

51-0304944

2 Check the Appropriate Box if a Member of a Group

(a)

(b)

3 SEC Use Only

4 Source of Funds

OO

5 Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

6 Citizenship or Place of Organization

Delaware

7 Sole Voting Power

-0-

NUMBER OF SHARES
BENEFICIALLY OWNED

8 Shared Voting Power

BY

8,894,702(1)(2)

EACH REPORTING
PERSON

9 Sole Dispositive Power

WITH

-0-

10 Shared Dispositive Power

8,894,702(1)(2)

11 Aggregate Amount Beneficially Owned by Each Reporting Person

8,894,702(1)(2)

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares

13 Percent of Class Represented by Amount in Row (11)

31.4%(2)

14 Type of Reporting Person (See Instructions)

CO

(1) Beneficial ownership of such Shares (as defined below) is being reported hereunder solely because Holdings (as defined below) may be deemed to have beneficial ownership of such Shares as a result of the Tender and Support Agreements (as defined below). Neither the filing of this Schedule 13D nor any of its contents shall be deemed to constitute an admission by Holdings that it is the beneficial owner of any Shares for purposes of Section 13(d) of the

Exchange Act, or for any other purpose, and such beneficial ownership thereof is expressly disclaimed.

(2) See Item 5 of this Schedule 13D.

Item 1. Security and Company

The class of equity securities to which this statement relates is the common stock, \$0.0001 par value per share (the “Shares”), of Foundation Medicine, Inc., a Delaware corporation (the “Company”). The principal executive offices of the Company are located at 150 Second Street, Cambridge, MA, 02141.

Item 2. Identity and Background

(a)–(c) and (f) This statement is filed jointly by Roche Holding Ltd, a Swiss company (“Parent”), Roche Finance Ltd, a Swiss company and a wholly owned subsidiary of Parent (“Finance”), and Roche Holdings, Inc., a Delaware corporation and a wholly owned subsidiary of Finance (“Holdings” and, together with Parent and Finance, the “Roche Entities”).

Headquartered in Basel, Switzerland, Parent is the holding company of the Roche Group, which is a leader in research-focused healthcare with combined strengths in pharmaceuticals and diagnostics. The Roche Group is the world’s largest biotech company, with truly differentiated medicines in oncology, immunology, infectious diseases, ophthalmology and neuroscience. The Roche Group is also the world leader in in vitro diagnostics and tissue-based cancer diagnostics, and a frontrunner in diabetes management. The Roche Group’s personalized healthcare strategy aims at providing medicines and diagnostics that enable tangible improvements in the health, quality of life and survival of patients. Founded in 1896, the Roche Group has been making important contributions to global health for more than a century. Twenty-four medicines developed by the Roche Group are included in the World Health Organisation Model Lists of Essential Medicines, among them life-saving antibiotics, antimalarials and chemotherapy. The address of the principal office of Parent is Grenzacherstrasse 124 4002 Basel, Switzerland.

Finance is a holding company participating in various subsidiaries of Parent. The address of the principal office of Finance is Grenzacherstrasse 122, 4002 Basel, Switzerland.

Holdings was organized in Delaware in 1987 to act as a holding company for substantially all of Parent’s United States operations. The address of the principal office of Holdings is 1 DNA, MS #24, South San Francisco, CA 94080.

The name, business address, present principal occupation or employment and citizenship of each director and executive officer of the Roche Entities are set forth on Schedules A to C attached hereto, and are incorporated herein by reference.

The Roche Entities understand that certain shareholders of Parent are party to a shareholder pooling agreement with respect to a significant portion of (but not a majority of) the issued shares of Parent.

(d) During the last five years, neither any of the Roche Entities nor, to the knowledge of any of the Roche Entities, any of the persons set forth on Schedules A to C attached hereto has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) During the last five years, neither any of the Roche Entities nor, to the knowledge of any of the Roche Entities, any of the persons set forth on Schedules A to C attached hereto was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, U.S. federal or state securities laws or finding any violations with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration

On January 11, 2015, concurrently with the execution of the Transaction Agreement (as defined in Item 4 below), and as an inducement for Holdings to enter into the Transaction Agreement and certain other agreements contemplated thereby, each of (i) Google Ventures 2011 L.P. (“Google Ventures”), (ii) Third Rock Ventures, L.P. (“TRV”) and (iii) (A) Kleiner Perkins Caufield & Byers XIV, LLC (“KPCB XIV”) and (B) KPCB XIV Founders Fund, LLC (“KPCB Founders Fund”, and, together with KPCB XIV, “KPCB”, and KPCB together with Google Ventures and TRV, the “VC Investors”), entered into tender and support agreements (the “Tender and Support Agreements”) with Holdings with respect to the Shares beneficially owned by the VC Investors. As of January 11, 2015, the VC Investors beneficially owned 8,894,702 Shares (based on the representations made by each of the VC Investors in the Tender and Support Agreements). As described in response to Item 4, the Shares beneficially owned by the VC Investors have not been purchased by Holdings, and thus no funds were used for such purpose. Holdings did not pay any monetary consideration to the VC Investors in connection with the execution and delivery of the Tender and Support Agreements. For a description of the Tender and Support Agreements, see Item 4 below, which description is incorporated by reference in response to this Item 3.

Item 4. Purpose of Transaction

As an inducement for Holdings to enter into the Transaction Agreement and certain other agreements contemplated thereby, the VC Investors entered into the Tender and Support Agreements. The purpose of the Tender and Support Agreements is to facilitate the consummation of the transactions contemplated by the Transaction Agreement.

Transaction Agreement

On January 11, 2015, Holdings and the Company entered into a Transaction Agreement (the "Transaction Agreement"), pursuant to which, among other things, (a) Holdings will make a primary investment of \$250 million in cash to purchase 5 million newly issued Shares of the Company (the "Issuance Shares"), at a price of \$50.00 per share (the "Issuance"), and (b) Holdings will commence a tender offer to purchase outstanding Shares of the Company (the "Offer" and together with the Issuance, the "Investment"). The Offer will be for the purchase by Holdings of approximately 15.6 million Shares of the Company at a price of \$50.00 per share (the "Offer Price") so that, when combined with the Issuance Shares and existing Shares of the Company owned by the Roche Group, the Roche Group will own approximately 56.3% of the outstanding Shares of the Company on a fully diluted basis at the closing of the transactions contemplated by the Transaction Agreement (the "Closing"). The Offer is conditioned upon the Company's existing stockholders tendering sufficient Shares of the Company in the Offer for Holdings to own at least 52.4% of the outstanding Shares of the Company on a fully diluted basis at the Closing (taking into account the Issuance Shares and existing Shares of the Company owned by Parent and its subsidiaries). In the event of an over-subscription by stockholders in the Offer, shares validly tendered and not validly withdrawn prior to expiration of the Offer will be subject to proration.

Pursuant to the Transaction Agreement, effective as of the time at which Shares of the Company are first accepted for payment under the Offer (such time, the "Acceptance Time"), subject to approval by the stockholders of the Company, the certificate of incorporation of the Company in effect immediately prior to the Acceptance Time will be amended to provide for, among other things, the declassification of the Board of Directors of the Company (the "Board of Directors") and the waiver of the corporate opportunity doctrine with respect to Holdings and its affiliates (the "Company Charter Amendments").

Each of the Company and Holdings has made customary representations, warranties and covenants in the Transaction Agreement, including, among others, covenants by the Company: (a) to conduct its business in the ordinary course, consistent with past practice, during the interim period between the execution of the Transaction Agreement and the closing of the Issuance; (b) not to solicit competing proposals during such period; (c) to convene and hold a meeting of the stockholders of the Company to approve (the "Company Stockholder Approval") the Company Charter Amendments, the Transaction Agreement and the transactions contemplated thereby (including the Issuance) and the Roche Group's anti-dilution protection rights under the Investor Rights Agreement (as defined below); and (d) that, subject to limited customary exceptions, the Board of Directors will recommend the Offer and the Company Stockholder Approval to the stockholders of the Company. If the Closing occurs, the Transaction Agreement also provides for the Company to indemnify Holdings for breaches of the Transaction Agreement by the Company subject to negotiated limitations.

Holdings' obligation to consummate the Offer is subject to certain conditions, including, among other things, (a) that there shall have been validly tendered and not validly withdrawn prior to the Acceptance Time that number of Shares that, when combined with the Issuance Shares and existing Shares of the Company owned by Parent and its subsidiaries, represents at least 52.4% of the outstanding Shares of the Company on a fully diluted basis, (b) the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (c) receipt of the Company Stockholder Approval, (d) the Investor Rights Agreement and certain

other commercial agreements between the Company and Holdings continuing in full force and effect, and (e) the approval of the Issuance Shares for listing on the NASDAQ Global Select Market. Neither the Offer nor the Issuance is subject to a financing condition.

The Transaction Agreement also contains certain termination rights for both the Company and Holdings, including, among other things, for (a) the failure of the Acceptance Time to occur by October 11, 2015, (b) the enactment, adoption, enforcement, promulgation or application of any final and non-appealable applicable law, order, injunction or judgment that makes the consummation of the Offer or the Issuance illegal or otherwise prohibited or permanently enjoins either the Company or Holdings from consummating the Offer or the Issuance, (c) the failure to receive the Company Stockholder Approval, and (d) breaches of representations, warranties or covenants by a party that, in the case of the Company, result in the failure of certain conditions to closing being satisfied, or, in the case of Holdings, would reasonably be expected to prevent Holdings from consummating the Offer or the Issuance. Prior to the Acceptance Time, the Company has the right to terminate the Transaction Agreement in connection with entering into a definitive agreement with respect to a superior

proposal with a third party, subject to certain conditions, including the Company's compliance with certain procedures set forth in the Transaction Agreement and payment of a termination fee of \$30 million by the Company.

The Board of Directors of the Company unanimously adopted resolutions (a) determining and declaring that each of the documents executed in connection with the Transaction Agreement and the transactions contemplated thereby, including the Offer, the Issuance and the Company Charter Amendments, are advisable and in the best interests of the Company and its stockholders, (b) approving the Offer, the Issuance, the Company Charter Amendments and the transactions contemplated by all of the documents executed in connection with the Transaction Agreement in accordance with the requirements of the Delaware General Corporation Law, (c) approving and declaring advisable each of the documents executed in connection with the Transaction Agreement and the transactions contemplated thereby, including the Offer, the Issuance and the Company Charter Amendments and (d) consenting to the Offer and recommending that the stockholders of the Company accept the Offer and vote their shares in favor of the Company Stockholder Approval.

The foregoing description of the Transaction Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Transaction Agreement, a copy of which is filed as Exhibit 2.1 to the Company's Current Report filed on Form 8-K on January 12, 2015 and is incorporated herein by reference.

Investor Rights Agreement

In connection with the Investment and simultaneously with the execution of the Transaction Agreement, the Company, Holdings and the VC Investors entered into an Investor Rights Agreement, which will become effective at the Acceptance Time (the "Investor Rights Agreement").

Board Representation. Under the terms of the Investor Rights Agreement, immediately following the Closing, the Board of Directors will consist of nine directors, consisting of (a) three directors designated by Holdings, who initially shall include Daniel O'Day, (b) two of the current independent directors affiliated with the VC Investors, (c) three additional independent directors, who shall initially be current directors Evan Jones and David Schenkein and a third director to be agreed upon by the Company and Holdings prior to the Closing, and (d) Michael Pellini, the Chief Executive Officer of the Company (the foregoing, the "Board Composition"). It is expected that Alexis Borisy will remain as Chairman of the Board of Directors of the Company following the Closing.

Pursuant to the Investor Rights Agreement, following the Closing: (a) so long as Holdings beneficially owns at least 10% of the outstanding Shares, it will be entitled to the lesser of (i) the number of seats representing 33.34% of the Board of Directors and (ii) proportionate representation on the Board of Directors, but in any event, at least one director designee and (b) so long as Holdings is entitled to appoint at least one director to the Board of Directors, it will be entitled to proportionate representation on each committee of the Board of Directors, but in any event, at least one director designee on each committee, subject to compliance with the applicable rules of the SEC and the NASDAQ Stock Market.

Consent Rights. Until such time as Holdings beneficially owns less than a majority of the outstanding Shares (subject to a cure period), the Company (and its subsidiaries) may not take certain actions without Holdings' prior written consent, including any of the following: (a) appoint a new Chief Executive Officer of the Company; (b) incur any indebtedness (as defined in the Investor Rights Agreement) that would result in the outstanding aggregate principal amount of the indebtedness of the Company and its subsidiaries exceeding the lesser of (i) \$200 million and (ii) 20% of the Company's aggregate market capitalization at the time of such incurrence; (c) issue or sell any equity securities (including any securities convertible or exercisable into such equity securities), other than (X) Shares issued pursuant

to equity awards granted as of the Closing in accordance with their terms, (Y) equity awards granted after the Closing pursuant to the Company's 2013 Stock Option and Incentive Plan or any permitted new equity incentive plan or equity incentive plan amendment and (Z) in connection with permitted acquisitions, certain Shares issued as stock consideration as long as such issuance does not result in Holdings beneficially owning less than 50.5% of the outstanding Shares on a fully diluted basis; (d) establish or amend any equity incentive plan of the Company, except for certain equity plans; (e) acquire any entity, business or assets if the aggregate consideration payable by the Company and its subsidiaries exceeds the lesser of (i) \$200 million and (ii) 20% of the Company's aggregate market capitalization at the time of such transaction, unless Holdings is separately contemplating acquiring the same entity, business or assets; (f) dispose of any entity, business or assets if the aggregate consideration payable to the Company and its subsidiaries exceeds \$50 million; (g) change the scope and nature of the Company's business; (h) amend the organizational documents of the Company or any of its subsidiaries; (i) take any action that would impair in any material respect the Company's ability to perform its obligations under the Investor Rights Agreement or Holdings' rights thereunder; or (j) voluntarily dissolve or liquidate or make any voluntary bankruptcy filings.

Voting Obligations. As long as Holdings is entitled to appoint at least one director to the Board of Directors, Holdings will be required to (a) cause all of its Shares to be present for quorum purposes at any meeting of the stockholders of the Company, (b) vote all of its Shares to approve any matter requiring approval by Holdings described in the preceding paragraph that Holdings has approved within the previous six months and (c) vote all of its Shares in connection with the election of directors or the adoption of certain equity plans either (i) in accordance with the recommendation of the Board of Directors or (ii) in the same proportion as the votes cast by all stockholders of the Company other than Holdings and its affiliates.

As long as a VC Investor has at least one representative on the Board of Directors, such VC Investor will be required to (a) cause all of its Shares to be present for quorum purposes at any meeting of the stockholders of the Company and (b) vote all of its Shares in a manner consistent with the Board Composition.

Standstill Provisions. Under the terms of the Investor Rights Agreement, during the period following the Closing and ending on the date three years following the Closing (the “Restricted Period”), Holdings will be restricted from acquiring additional Shares, except in order to offset dilution and maintain its aggregate percentage ownership in the Company at no less than 50.5% of the outstanding Shares on a fully diluted basis. During the Restricted Period and for as long as Holdings has the right to designate a director, Holdings shall not make any proxy solicitations in connection with the election or removal of directors, or knowingly encourage or facilitate a third party to engage in any such solicitation, subject to certain limited exceptions.