

IMCLONE SYSTEMS INC
Form SC TO-T
October 14, 2008

**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**

IMCLONE SYSTEMS INCORPORATED
(Name of Subject Company (Issuer))

**ALASKA ACQUISITION CORPORATION
ELI LILLY AND COMPANY**
(Names of Filing Persons (Offerors))

**Common Stock, par value \$0.001 per share, and
Associated Preferred Stock Purchase Rights**
(Titles of classes of securities)

45245W109
(CUSIP number of class of securities)

**Robert A. Armitage, Esq.
Senior Vice President and General Counsel
Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indiana 46285
(317) 276-2000**

*(Name, address and telephone number of person authorized to receive notices and
communications on behalf of the filing person)*

Copies to:

**M. Adel Aslani-Far, Esq.
Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Tel: (212) 906-1770**

CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee**
\$ 6,620,562,970	\$ 260,189

* Estimated for purposes of calculating the filing fee only. This amount assumes the purchase of up to 94,579,471 shares of common stock, par value \$0.001 per share, of ImClone, and the associated preferred stock purchase rights, at a purchase price of \$70.00 per share. Such number of shares consists of (i) 88,612,596 shares of common stock issued and outstanding as of September 30, 2008, and (ii) 5,966,875 shares of common stock that are expected to be issuable before the expiration of the Offer under vested options and restricted stock units with respect to ImClone shares.

** The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended (the Exchange Act), equals 0.00003930 of the transaction valuation.

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: Filing Party:
Form or Registration No. Date Filed:

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:

This Tender Offer Statement on Schedule TO (this Schedule TO) relates to the offer by Alaska Acquisition Corporation, a Delaware corporation (the Purchaser) and a wholly-owned subsidiary of Eli Lilly and Company, an Indiana corporation (Lilly), to purchase all of the issued and outstanding shares of common stock, par value \$0.001 per share, and the associated preferred stock purchase rights (collectively, the Shares), of ImClone Systems Incorporated, a Delaware corporation (ImClone), at a purchase price of \$70.00 per share (the Offer Price), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 14, 2008 (the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal), copies of which are filed with this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B) respectively. This Schedule TO is being filed on behalf of Lilly and the Purchaser.

The information set forth in the Offer to Purchase, including Schedule I thereto, is hereby incorporated by reference in answers to Items 1 through 11 of this Schedule TO, and is supplemented by the information specifically provided herein.

Item 1. Summary Term Sheet

The information set forth in the Summary Term Sheet of the Offer to Purchase is incorporated herein by reference.

Item 2. Subject Company Information

(a) The name of the subject company and the issuer of the securities to which this Schedule TO relates is ImClone Systems Incorporated. ImClone's principal executive offices are located at 180 Varick Street, New York, New York 10014. The telephone number at ImClone's principal executive offices is (212) 645-1405.

(b) This statement relates to the common stock, par value \$0.001 per share, of ImClone and the associated preferred stock purchase rights to purchase Series B Participating Cumulative Preferred Stock, par value \$1.00 per share. Based upon information provided by ImClone, there were 88,612,596 shares of common stock issued and outstanding as of September 30, 2008. The information set forth in the Introduction of the Offer to Purchase is incorporated herein by reference.

(c) The information set forth in Section 6 of the Offer to Purchase, entitled Price Range of the Shares; Dividends on the Shares is incorporated herein by reference.

Item 3. Identity and Background of Filing Person

(a), (b), (c) This Schedule TO is filed by Lilly and the Purchaser. The information set forth in Section 9 of the Offer to Purchase, entitled Certain Information Concerning Lilly and the Purchaser and Schedule I to the Offer to Purchase is incorporated herein by reference.

Item 4. Terms of the Transaction

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

Item 5. Past Contacts, Transactions, Negotiations and Agreements

(a), (b) The information set forth in the Introduction, Section 9, entitled Certain Information Concerning Lilly and the Purchaser, Section 11, entitled Background of the Offer; Past Contacts, Negotiations and Transactions, Section 12, entitled Purpose of the Offer; Plans for ImClone; Other Matters and Section 13, entitled The Merger Agreement; Other Agreements, of the Offer to Purchase is incorporated herein by reference.

Item 6. *Purposes of the Transaction and Plans or Proposals*

(a), (c)(1)-(7) The information set forth in the Introduction, Section 7, entitled Effect of the Offer on the Market for the Shares; NASDAQ Global Select Market Listing and Controlled Company Status; Exchange Act Registration; Margin Regulations, Section 12, entitled Purpose of the Offer; Plans for ImClone; Other Matters, and Section 13, entitled The Merger Agreement; Other Agreements, of the Offer to Purchase is incorporated herein by reference.

Item 7. *Source and Amount of Funds or Other Consideration*

(a), (b), (d) The information set forth in Section 10 of the Offer to Purchase, entitled *Source and Amount of Funds*, is incorporated herein by reference.

Item 8. *Interest in Securities of the Subject Company*

The information set forth in the *Introduction*, *Section 9*, entitled *Certain Information Concerning Lilly and the Purchaser*, and *Section 13*, entitled *The Merger Agreement; Other Agreements*, of the Offer to Purchase is incorporated herein by reference.

Item 9. *Persons/Assets Retained, Employed, Compensated or Used*

(a) The information set forth in *Section 11*, entitled *Background of the Offer; Past Contacts, Negotiations and Transactions*, *Section 12*, entitled *Purpose of the Offer; Plans for ImClone; Other Matters*, *Section 13*, entitled *The Merger Agreement; Other Agreements*, and *Section 16*, entitled *Fees and Expenses*, of the Offer to Purchase is incorporated herein by reference.

Item 10. *Financial Statements*

(a), (b) Not applicable.

Item 11. *Additional Information*

(a)(1) The information set forth in *Section 9*, entitled *Certain Information Concerning Lilly and the Purchaser*, *Section 11*, entitled *Background of the Offer; Past Contacts, Negotiations and Transactions*, and *Section 13*, entitled *The Merger Agreement; Other Agreements*, of the Offer to Purchase is incorporated herein by reference.

(a)(2), (3) The information set forth in *Section 13*, entitled *The Merger Agreement; Other Agreements*, *Section 14*, entitled *Conditions of the Offer*, and *Section 15*, entitled *Certain Legal Matters*, of the Offer to Purchase is incorporated herein by reference.

(a)(4) The information set forth in *Section 7* of the Offer to Purchase entitled *Effect of the Offer on the Market for the Shares; NASDAQ Global Select Market Listing and Controlled Company Status; Exchange Act Registration; Margin Regulations* is incorporated herein by reference.

(a)(5) The information set forth in *Section 17*, entitled *Legal Proceedings*, of the Offer to Purchase is incorporated herein by reference.

(b) The information set forth in the Offer to Purchase is incorporated herein by reference.

Item 12. *Exhibits*

(a)(1)(A) Offer to Purchase, dated as of October 14, 2008.

(a)(1)(B) Letter of Transmittal.

(a)(1)(C) Notice of Guaranteed Delivery.

(a)(1)(D) Letter to Brokers, Dealers, Banks, Trust Companies and other Nominees.

(a)(1)(E) Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and other Nominees.

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- (a)(1)(F) Press Release issued by Lilly on October 14, 2008.
- (a)(1)(G) Summary Advertisement published on October 14, 2008.
- (d)(1) Agreement and Plan of Merger, dated as of October 6, 2008, among Lilly, the Purchaser and ImClone (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Lilly with the SEC on October 10, 2008).
- (d)(2) Tender and Support Agreement, dated as of October 6, 2008, between Lilly and Icahn Enterprises Holdings L.P. (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Lilly with the SEC on October 10, 2008).

- (d)(3) Tender and Support Agreement, dated as of October 6, 2008, among Lilly, Barberry Corp., and High River Limited Partnership (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K filed by Lilly with the SEC on October 10, 2008).

Item 13. *Information Required By Schedule 13e-3.*

Not applicable.

SIGNATURES

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.

ALASKA ACQUISITION CORPORATION

By: /s/ Gino Santini

Name: Gino Santini

Title: President

ELI LILLY AND COMPANY

By: /s/ Gino Santini

Name: Gino Santini

Title: Senior Vice President, Corporate Strategy and Business Development

Date: October 14, 2008

INDEX TO EXHIBITS

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