

ZYMOGENETICS INC  
Form SC TO-T/A  
September 17, 2010

**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**

**ZYMOGENETICS, INC.**

**(Name of Subject Company (Issuer))**

**ZEUS ACQUISITION CORPORATION**

**(Offeror)**

**A Wholly Owned Subsidiary of**

# **BRISTOL-MYERS SQUIBB COMPANY**

(Offeror)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

**COMMON STOCK, NO PAR VALUE**

(Title of Class of Securities)

**98985T109**

(CUSIP Number of Class of Securities)

**Sandra Leung, Esq.**

**General Counsel & Corporate Secretary**

**P. Joseph Campisi, Jr., Esq.**

**Vice President & Assistant General Counsel**

**Bristol-Myers Squibb Company**

**345 Park Avenue**

**New York, New York 10154**

**(212) 546-4000**

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

*Copies to:*

**David Fox, Esq.**

**Daniel Wolf, Esq.**

**Kirkland & Ellis LLP**

**601 Lexington Avenue**

**New York, NY 10022**

**(212) 446-4800**

**CALCULATION OF FILING FEE**

**Transaction Valuation(1)**  
\$883,869,654

**Amount of Filing Fee(2)**  
\$63,020

- (1) Calculated solely for purposes of determining the filing fee. The calculation assumes the purchase of 86,584,072 shares of common stock, without par value, and 99,516 shares of common stock subject to restricted stock units, in each case, at \$9.75 per share. The transaction value also includes the aggregate offer price for 8,500,698 shares issuable pursuant to outstanding options with an exercise price less than \$9.75 per share, which is calculated by multiplying the number of shares underlying such outstanding options at each exercise price therefor by an amount equal to \$9.75 minus such exercise price.
- (2) Calculated in accordance with Exchange Act Rule 0-11 by multiplying the transaction value by 0.0000713.
- x 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: \$63,020

Filing Party: Bristol-Myers Squibb Company and Zeus Acquisition Corporation

Form of Registration No.: Schedule TO

Date Filed: September 10, 2010

.. 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.

x 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. "

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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 (the "Schedule TO") amends and supplements the Schedule TO relating to the tender offer by (i) Zeus Acquisition Corporation, a Washington corporation ("Purchaser") and a wholly-owned subsidiary of Bristol-Myers Squibb Company, a Delaware corporation ("Parent") and (ii) Parent, for all of the outstanding common stock, without par value (the "Shares"), of ZymoGenetics, Inc., a Washington corporation (the "Company"), at a price of \$9.75 per share net to the seller in cash without interest and less required withholding taxes, if any, upon the terms and conditions set forth in the offer to purchase dated September 10, 2010 (the "Offer to Purchase"), a copy of which is attached as Exhibit (a)(1)(A), and in the related letter of transmittal (the "Letter of Transmittal"), a copy of which is attached as Exhibit (a)(1)(B), which, together with any amendments or supplements, collectively constitute the "Offer."

All information set forth in the Offer to Purchase is incorporated by reference herein in response to Items 1 through 9 and Item 11 in this Schedule TO, and is supplemented by the information specifically provided in this Schedule TO.

This Amendment No. 2 is being filed to amend and supplement Items 11 and 12 as reflected below.

**Item 11. Additional Information.**

**Regulation M-A Item 1011**

(a) **Agreements, Regulatory Requirements and Legal Proceedings.** Item 11(a) of the Schedule TO is hereby amended and supplemented by adding the following paragraph immediately before the last paragraph of the sub-section captioned "General."

On September 15, 2010, a purported shareholder class action complaint was filed in the United States District Court for the Western District of Washington. The complaint, captioned *Rhonda M. Mesa v. ZymoGenetics, Inc., et al.*, names as defendants the members of the Company Board, as well as the Company and Parent. The plaintiff alleges that the Company's directors breached their fiduciary duties to the Company's shareholders, and further claims that the Company and Parent aided and abetted the purported breaches of fiduciary duty. The complaint alleges that the proposed transaction between the Company and Parent involves an unfair price, an inadequate sales process and unreasonable deal protection devices and that defendants agreed to the transactions to benefit themselves personally. The complaint further alleges that the Schedule 14D-9 filed by the Company on September 15, 2010 contained inadequate disclosures and was materially misleading. The complaint seeks injunctive relief, including to enjoin the transaction, in addition to attorneys' fees and other fees and costs and other relief. The Company believes the plaintiff's allegations lack merit and will contest them vigorously. The foregoing description is qualified in its entirety by reference to the complaint, which is filed as Exhibit (a)(9) hereto.

**Item 12. Exhibits.**

**Regulation M-A Item 1016**

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

**Exhibit No.**

(a)(9) Class Action Complaint dated September 15, 2010 (Mesa v. ZymoGenetics, Inc., et al.).

**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.

**ZEUS ACQUISITION CORPORATION**

By */s/ JEREMY LEVIN*  
Name: **Dr. Jeremy Levin**  
Title: **President**

Date: September 17, 2010

**BRISTOL-MYERS SQUIBB COMPANY**

By */s/ JEREMY LEVIN*  
Name: **Dr. Jeremy Levin**  
Title: **Senior Vice President, Strategy, Alliances and  
Transactions**

Date: September 17, 2010

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**EXHIBIT INDEX**

**Exhibit**

**No.**

- (a)(1)(A) Offer to Purchase, dated September 10, 2010.\*
- (a)(1)(B) Letter of Transmittal (including Internal Revenue Service Form W-9).\*
- (a)(1)(C) Notice of Guaranteed Delivery.\*
- (a)(1)(D) Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.\*
- (a)(1)(E) Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.\*
- (a)(1)(F) Joint Press Release of ZymoGenetics, Inc. and Bristol-Myers Squibb Company, dated September 7, 2010 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Bristol-Myers Squibb Company with the Securities and Exchange Commission dated September 9, 2010).\*
- (a)(1)(G) Summary Advertisement as published on September 10, 2010.\*
- (a)(5) Press Release issued by Bristol-Myers Squibb Company, dated September 10, 2010.\*
- (a)(6) Class Action Complaint dated September 9, 2010 (Vereen v. ZymoGenetics, Inc., et al.).\*
- (a)(7) Class Action Complaint dated September 9, 2010 (Krivan v. ZymoGenetics, Inc., et al.).\*
- (a)(8) Class Action Complaint dated September 9, 2010 (Jaung v. the ZymoGenetics, Inc., et al.).\*
- (a)(9) Class Action Complaint dated September 15, 2010 (Mesa v. ZymoGenetics, Inc., et al.).
- (d)(1) Agreement and Plan of Merger, dated as of September 7, 2010, by and among ZymoGenetics, Inc., Bristol-Myers Squibb Company, and Zeus Acquisition Corporation (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by ZymoGenetics, Inc. with the Securities and Exchange Commission on September 9, 2010).\*
- (d)(2) Form of Tender and Support Agreement, by and among Bristol-Myers Squibb Company, Zeus Acquisition Corporation and Stockholder, dated September 7, 2010 (incorporated by reference to Exhibit 2.2 to the Form 8-K filed by ZymoGenetics, Inc. with the Securities and Exchange Commission on September 9, 2010).\*

\* Previously filed.