

BAYER SCHERING PHARMA AKTIENGESELLSCHAFT

Form SC TO-T/A

April 12, 2007

As filed with the Securities and Exchange Commission on April 12, 2007

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

**SCHEDULE TO**

**(Rule 14d-100)**

**Tender Offer Statement under Section 14(d)(1)**

**of the Securities Exchange Act of 1934**

**(Amendment No. 5)**

**Bayer Schering Pharma Aktiengesellschaft**

**(formerly Schering AG)**

*(Name of Subject Company (issuer))*

**Bayer Schering GmbH**

**(formerly Dritte BV GmbH)**

**Bayer Aktiengesellschaft**

*(Name of Filing Persons (offerors))*

**Ordinary Shares, no par value**

*(Title of Class of Securities)*

**DE0007172009**

*(CUSIP Number of Class of Securities)*

**American Depositary Shares**

**(each representing one Ordinary Share)**

*(Title of Class of Securities)*

**806585204**

*(CUSIP Number of Class of Securities)*

**Dr. Roland Hartwig**

**Bayerwerk, Gebaeude W11**

**Kaiser-Wilhelm-Allee**

**51368 Leverkusen**

**Germany**

**+49 (214) 3081195**

*(Name, Address and Telephone Number of Person Authorized to Receive*

*Notices and Communications on Behalf of the Filing Persons)*

*With copies to:*

**Ward A. Greenberg**

**Cleary Gottlieb Steen & Hamilton LLP**

**Neue Mainzer Strasse 52**

**60311 Frankfurt am Main**

**Germany**

**+49 69 97103 0**

### **CALCULATION OF FILING FEE**

| <b>Transaction Valuation*</b> | <b>Amount of Filing Fee**</b> |
|-------------------------------|-------------------------------|
| <b>\$873,725,129.43</b>       | <b>\$93,488.59</b>            |

\* Estimated for purposes of calculating the amount of the filing fee only, in accordance with Regulation 240.0-11(d) under the Securities Exchange Act of 1934, as amended (the Exchange Act ). The calculation of the transaction valuation assumes the purchase of 7,428,648 ordinary shares, no par value per share, of Schering AG, at a purchase price of EUR 89.36 per share in cash upon the expiration of the initial tender period referred to herein, converted into U.S. dollars at the noon buying rate as published by the Federal Reserve Bank of New York on November 28, 2006 of EUR 1 = \$1.3162. Such number of shares represents the difference between the number of ordinary shares issued and outstanding as of November 24, 2006 (excluding shares held by Schering AG in treasury) and the number of shares owned by Bayer Schering GmbH as of November 24, 2006.

\*\* The amount of the filing fee, calculated in accordance with Regulation 240.0-11 of the Exchange Act, and Fee Advisory #5 for Fiscal Year 2006, is equal to \$107.00 per million in value of the transaction, calculated by multiplying the transaction valuation by .000107.

X Check the box if any part of the filing 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:   | \$ 93,488.59 | Filing Party: | Bayer Schering GmbH                           |
| Form or Registration No.: | Schedule TO  | Date Filed:   | Bayer Aktiengesellschaft<br>November 30, 2006 |

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 transaction to which the statement relates:

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- 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:

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This Amendment No. 5 to Schedule TO (this "Amendment") amends and supplements the Tender Offer Statement on Schedule TO (as it may be amended and supplemented from time to time, the Statement) originally filed with the Securities and Exchange Commission (the SEC) on November 30, 2006 by Bayer Schering GmbH (formerly Dritte BV GmbH), a limited liability company organized under the laws of the Federal Republic of Germany (the "Bidder") and a wholly-owned subsidiary of Bayer Aktiengesellschaft, a stock corporation organized under the laws of the Federal Republic of Germany ("Bayer") and Bayer relating to the mandatory offer (*Angebot auf angemessene Barabfindung*) required pursuant to §305(1) of the German Stock Corporation Act, to purchase all of the issued and outstanding bearer shares, no par value (the "Shares"), including those Shares represented by American Depositary Shares ("ADSs"), of Bayer Schering Pharma Aktiengesellschaft (formerly Schering Aktiengesellschaft), a stock corporation organized under the laws of the Federal Republic of Germany ("Bayer Schering Pharma"), held by unaffiliated shareholders of Bayer Schering Pharma, at their request, at a purchase price of EUR 89.36 per Share in cash, with interest in the circumstances and at the rate described in the Offer Document, dated November 30, 2006 (the Offer Document). The terms and conditions of the mandatory offer (as it may be amended or supplemented from time to time, the "Mandatory Offer") are described in the Offer Document, a copy of which was originally filed as Exhibit (a)(1)(A), and, where applicable, the related U.S. Declaration of Tender and ADS Letter of Transmittal and the instructions thereto, copies of which were originally filed as Exhibits (a)(1)(B) and (C), to the Statement. Except as otherwise indicated, the information set forth in the Statement remains unchanged. Capitalized terms used but not defined herein have the meanings ascribed to them in the Statement.

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### Additional Disclosure and Amendments to the Offer Document

Items 1 through 11 of the Statement, to the extent such Items incorporate by reference the information contained in the Offer Document, are hereby amended and supplemented as follows:

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Section 19 of the Offer Document, entitled "Certain Legal Matters" on page 46 of the Offer Document, is hereby amended and supplemented:

(a) by adding the number "40" between the words "by" and "Unaffiliated Schering Securityholders" in the second sentence of the first paragraph.

(b) by replacing the last sentence of the first paragraph (added by Amendment No. 4 to Schedule TO filed with the SEC on January 25, 2007) with the following new sentence:

Two Unaffiliated Schering Securityholders intervened in the actions as third parties.

(c) by replacing the fifth paragraph (added by Amendment No. 4 to Schedule TO filed with the SEC on January 25, 2007) with the following new paragraphs:

In an oral hearing held by the Berlin District Court on March 1, 2007, the court indicated that it considered three alleged procedural failures with respect to the shareholder resolution to be potentially relevant for the outcome of both the proceedings challenging the shareholder resolution and the *Freigabeverfahren*. The court is expected to announce a decision in both proceedings on May 3, 2007.

Under German law, shareholders may no longer challenge a shareholder resolution if the challenged resolution is not void and is confirmed by a new valid resolution, which is not subject to legal challenge. Therefore, on April 12, 2007, the management board and the supervisory board of Bayer Schering Pharma proposed to request the Bayer Schering Pharma shareholders to pass a resolution confirming the shareholder resolution passed on September 13, 2006 at Bayer Schering Pharma AG's annual shareholder meeting, which will be held on May 24, 2007. Bayer Schering Pharma believes that such a resolution will increase its chances of prevailing in both proceedings.

### Additional Exhibits

Item 12 of the Statement is hereby amended and supplemented by adding the following exhibit thereto, which exhibit is filed as part of this Amendment:

(a)(5)(O) Ratification Report, dated April 10, 2007 (incorporated herein by reference to Exhibit (a)(21) to Amendment No. 5 to the Solicitation/Recommendation Statement on Schedule 14D-9 filed by Bayer Schering Pharma AG on April 12, 2007).

**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: April 12, 2007

Bayer Aktiengesellschaft

By: /s/ DR. ROLAND HARTWIG

Name: Dr. Roland Hartwig

Title: General Counsel

By: /s/ PETER MÜLLER

Name: Peter Müller

Title: Head of Corporate Finance

Bayer Schering GmbH

By: /s/ DR. ARMIN BUCHMEIER

Name: Dr. Armin Buchmeier

Title: Managing Director