

SALIX PHARMACEUTICALS LTD
Form SC TO-T/A
March 06, 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. 1)

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*

\$10,383,457,114

Amount of Filing Fee**

\$1,206,557.72

- * 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) \$158.00, 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
Form or Registration No.: S-4

Filing Party: Valeant Pharmaceuticals International, Inc.
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. 1 amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission on March 4, 2015 (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 \$158.00 per Share net to the holder in cash, without interest and subject to any applicable withholding taxes, upon the terms and subject to the conditions set forth in the offer to purchase, dated March 4, 2015 (the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal) (which, together with any amendments or supplements thereto, collectively constitute the Offer).

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

This Amendment is being filed to amend and supplement Items 7 and 11 as reflected below and to amend and supplement Item 12 with an additional exhibit.

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

Item 7 of the Schedule TO is hereby amended and supplemented as follows:

The information set forth in the first paragraph of Section 9 Source and Amount of Funds of the Offer to Purchase is hereby amended and restated in its entirety to read as follows:

The Offer is not conditioned upon obtaining financing. Because the only consideration to be paid in the Offer and the Merger is cash, the Offer is to purchase all issued and outstanding Shares, Valeant has guaranteed the performance by us of our obligations under the Merger Agreement, including our payment obligations with respect to the Offer, and the Merger and the Offer is not subject to any financing condition, we believe that the business, financial condition and results of VPI and Purchaser are not material to a decision by a holder of the Shares whether to sell, hold or tender their Shares into the Offer. Valeant will provide us with sufficient funds to purchase all Shares validly tendered in the Offer and will provide funding for our acquisition of the remaining Shares in the Merger. Valeant expects to fund such cash requirements from its available cash on hand and borrowings of up to \$15.15 billion under the financing commitment discussed below.

In connection with the proposed Offer and Merger, Valeant has received a commitment letter dated February 20, 2015 (the Commitment Letter), from Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Islands Branch, HSBC Bank USA, National Association, HSBC Bank Canada, The Hongkong and Shanghai Banking Corporation Limited, The Bank of Tokyo-Mitsubishi UFJ, Ltd., DNB Capital LLC and SunTrust Bank (collectively referred to as the Lenders), and Deutsche Bank Securities Inc., HSBC Securities (USA) Inc., DNB Markets, Inc. and SunTrust Robinson Humphrey, Inc., to provide the debt financing for the Offer and the Merger.

Pursuant to the Commitment Letter, the Lenders committed to provide an aggregate principal amount of \$15.15 billion in financing to Valeant provided that certain amendments (the Credit Agreement Amendments) to Valeant's existing credit agreement, dated as of February 13, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the Third Amended and Restated Credit and Guaranty Agreement), by and among Valeant, certain subsidiaries of Valeant, as guarantors, the lenders party thereto from time to time, Barclays Bank PLC (as successor to Goldman Sachs Lending Partners LLC), as administrative agent and as collateral agent, and the other agents party thereto, were obtained within 30 days of the date of the Commitment Letter (the Amendment Date). The Credit Agreement Amendments were obtained prior to the Amendment Date on March 5, 2015, pursuant to Amendment No. 10 to the Third Amended and Restated Credit and Guaranty Agreement.

The term loan component of the Lenders' commitment, comprising an aggregate principal amount of \$5.55 billion, would be expected to be obtained as incremental term loans pursuant to the Third Amended and Restated Credit and Guaranty Agreement. Such incremental term loans would be comprised of a Term A Facility denominated in dollars in an aggregate principal amount of \$1.0 billion and a Term B Facility denominated in dollars in an aggregate principal amount of \$4.55 billion. Such Term A Facility would mature on the fifth anniversary of the funding thereof and such Term B Facility would mature on the seventh anniversary of the funding thereof. The interest rates on the incremental facilities would be based on customary market LIBO-based rates. The obligations of Valeant and the guarantors under the Third Amended and Restated Credit and Guaranty Agreement are secured by substantially all assets of Valeant and the guarantors, subject to certain exclusions. The remainder of the Lenders' commitment comprises an aggregate principal amount of \$9.6 billion which would be expected to be issued as senior unsecured notes pursuant to a Rule 144A (without registration rights) or other private placement or, in the event that proceeds in an aggregate principal amount of \$9.6 billion would not be received by Valeant or its subsidiaries from the senior unsecured notes offering at or prior to the time the Offer and the Merger is consummated, borrowings by Valeant of senior unsecured increasing rate bridge loans under a new senior unsecured credit facility in an aggregate principal amount of \$9.6 billion less the gross proceeds from the sale of senior unsecured notes issued on or prior to the time the Offer and the Merger are consummated.

Funding of the Lenders' commitment is subject to certain customary conditions including, but not limited to, receipt of financial information, delivery of customary documentation relating to Valeant and its subsidiaries and consummation of the proposed Offer. This summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Commitment Letter and Amendment No. 10 to the Third Amended and Restated Credit and Guaranty Agreement, copies of which are filed as Exhibits (b)(22) and (b)(23) to the Schedule TO, respectively, each of which is incorporated herein by reference.

We estimate that the total amount of funds required to purchase all of the outstanding Shares pursuant to the offer and to pay related fees and expenses will be approximately \$15.7 billion.

Item 11. Additional Information.

The information set forth in Section 17 Certain Legal Matters; Regulatory Approvals Litigation of the Offer to Purchase is hereby amended and restated in its entirety to read as follows:

Following the announcement of the execution of the Merger Agreement, five purported stockholder class actions were filed challenging the proposed transaction. All of the actions were filed in the Delaware Court of Chancery: *Feinstein v. Valeant Pharmaceuticals International, Inc., et al.*, C.A. No. 10721 (filed February 25, 2015); *Garcia v. Salix Pharmaceuticals, Ltd., et al.*, C.A. No. 10728 (filed February 27, 2015); *Gonsalves v. Salix Pharmaceuticals, Ltd., et al.*, C.A. No. 10737 (filed March 2, 2015); *Lindgren v. Salix Pharmaceuticals, Ltd., et al.*, C.A. No. 10748 (filed March 4, 2015); and *Zhang v. Salix Pharmaceuticals, Ltd., et al.*, C.A. No. 10760 (filed March 6, 2015). The *Feinstein* complaint names the Salix Board, Valeant, VPI and Purchaser as defendants, and the *Garcia*, *Gonsalves*, *Lindgren*

and *Zhang* complaints name the Salix Board, Valeant, VPI, Purchaser and Salix as defendants. The complaints allege generally that the members of the Salix Board breached their fiduciary duties to stockholders and that the other defendants aided and abetted such breaches, by seeking to sell Salix for inadequate consideration and agreeing to allegedly preclusive deal protections. The complaints seek, among other things, injunctive relief, including enjoining the proposed transaction, and unspecified attorneys' and other fees and costs. We intend to vigorously defend against such claims.

Item 12. Exhibits.

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

(b)(23) Amendment No. 10, dated March 5, 2015, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 1 to Schedule TO is true, complete and correct.

Dated: March 6, 2015

SUN MERGER SUB, INC.

By: /s/ Robert R. Chai-Onn
Name: Robert R. Chai-Onn
Executive Vice President, General Counsel and
Title: Secretary

**VALEANT PHARMACEUTICALS
INTERNATIONAL**

By: /s/ Robert R. Chai-Onn
Name: Robert R. Chai-Onn
Executive Vice President, General Counsel and
Title: 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

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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)(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).
- (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) 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

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10-K for the fiscal year ended December 31, 2012 filed on February 28, 2013).

- (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).

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- (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).

- (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).

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- (b)(23) Amendment No. 10, dated March 5, 2015, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant.
- (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.*
- (g) Not applicable.
- (h) Not applicable.

* Previously filed.