

Edgar Filing: EI ACQUISITION INC - Form SC TO-T/A

EI ACQUISITION INC  
Form SC TO-T/A  
July 17, 2003

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

AMENDMENT NO. 4  
TO  
SCHEDULE TO/A  
TENDER OFFER STATEMENT UNDER SECTION 14(D) (1) OF  
THE SECURITIES EXCHANGE ACT OF 1934

EXEGENICS INC.  
(Name of Subject Company (Issuer))

FOUNDATION GROWTH INVESTMENTS LLC (PARENT OF OFFEROR)  
EI ACQUISITION INC. (OFFEROR)  
(Names of Filing Persons (identifying status as offeror,  
issuer or other person))

COMMON STOCK, PAR VALUE \$0.01 PER SHARE  
SERIES A CONVERTIBLE PREFERRED STOCK, PAR VALUE \$0.01 PER SHARE  
(Title of Class of Securities)

301610 (COMMON STOCK)  
(CUSIP NOT APPLICABLE FOR PREFERRED STOCK)  
(CUSIP Number of Class of Securities)

TERRY ROBBINS  
FOUNDATION GROWTH INVESTMENTS LLC  
225 WEST WASHINGTON STREET  
SUITE 2320  
CHICAGO, ILLINOIS 60606  
(312) 551-9900  
(Name, address, and telephone number of person authorized to  
receive notices and communications on behalf of filing person)

WITH A COPY TO:  
TIMOTHY R. M. BRYANT  
MCDERMOTT, WILL & EMERY  
227 WEST MONROE STREET, SUITE 4700  
CHICAGO, ILLINOIS 60606  
(312) 372-2000

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CALCULATION OF FILING FEE: Previously Paid

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/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: \$1,327.  
Form or Registration No.: SC TO-T.  
Filing Party: Foundation Growth Investments LLC and  
EI Acquisition Inc.  
Date Filed: May 29, 2003.

/ / Check the box if the filing relates solely to preliminary communications  
made before the commencement of a tender offer.

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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: / /

### INTRODUCTION

This Amendment No. 4 to Schedule TO relates to the offer by Foundation Growth Investments LLC, a Delaware limited liability company, and EI Acquisition Inc., a Delaware corporation (collectively, the "Purchaser"), to purchase all outstanding shares of common stock, par value \$0.01 per share, and all outstanding shares of Series A Convertible Preferred Stock, par value \$0.01 per share, of eXegenics Inc., a Delaware corporation ("eXegenics"), upon the terms and subject to the conditions set forth in the Offer to Purchase dated May 29, 2003, as amended on June 13, 2003, June 16, 2003, June 25, 2003, and as amended herein (the "Offer to Purchase"), and in the related Letter of Transmittal, as amended on June 13, 2003, June 16, 2003, June 25, 2003 and as amended herein (which, together with any amendments or supplements thereto, collectively constitute the "Offer"). The Offer is described in a Schedule TO (as amended or supplemented from time to time, the "Schedule TO"), initially filed by Purchaser with the SEC on May 29, 2003, as amended on June 13, 2003, June 16, 2003, June 25, 2003, and as herein amended. Copies of the Offer to Purchase and the Letter of Transmittal have been filed as Exhibits 12(a)(1) and 12(a)(2), respectively, of the Purchaser's Schedule TO and are incorporated herein by reference.

All information in (i) the Offer to Purchase, including all schedules thereto, (ii) the Letter of Transmittal, (iii) the Amendment No. 1 to Purchaser's Schedule TO filed on June 13, 2003, (iv) the Amendment No. 2 to Purchaser's Schedule TO filed on June 16, 2003, and (v) the Amendment No. 3 to Purchaser's Schedule TO filed on June 26, 2003 are incorporated by reference in answer to all of this items in this Schedule TO. Additional items with respect to this Schedule TO are set forth below. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule TO.

#### ITEMS 1 THROUGH 12

Items 1 through 12 of the Schedule TO, which incorporate by reference the information contained in the Offer to Purchase, are hereby amended and supplemented as follows:

#### ITEM 5. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

The following is hereby added to the end of "Section 8: Certain Information Concerning EI Acquisition Inc. and Foundation Growth Investments LLC" of the Offer to Purchase:

On July 16, 2003, eXegenics announced that it had signed a merger agreement by which AVI BioPharma, Inc. has agreed to acquire eXegenics in a stock-for-stock transaction. On July 16, 2003, Purchaser issued a press release in response to eXegenics' announcement expressing Purchaser's intention to continue with the Offer. The full text of the press release is filed as Exhibit (a)(11) hereto.

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ITEM 12. EXHIBITS.

Item 12 is hereby amended and supplemented to add the following exhibit:

(a) (11) Press Release issued by Purchaser, dated July 16, 2003.

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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.

EI ACQUISITION INC.

By: /s/ Terry Robbins

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Name: Terry Robbins  
Title: President

FOUNDATION GROWTH INVESTMENTS LLC

By: Foundation Growth Management LLC  
Its: Member

By:/s/ Terry Robbins

-----  
Name: Terry Robbins  
Title: Manager

Dated: July 17, 2003

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