

GENELABS TECHNOLOGIES INC /CA
Form SC TO-T/A
December 30, 2008

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

Schedule TO
Amendment No. 5
(Rule 14d-100)

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

GENELABS TECHNOLOGIES, INC.

(Name of Subject Company (Issuer))

Gemstone Acquisition Corporation,
SmithKline Beecham Corporation

and

GlaxoSmithKline plc

(Names of Filing Persons (Offerors))

Common Stock, no par value per share

(Title of Class of Securities)

368706206

(CUSIP Number of Class of Securities)

Carol G. Ashe, Esq.

GlaxoSmithKline

One Franklin Plaza (FP 2355)

200 N. 16th Street

Philadelphia, Pennsylvania 19102

(215) 741-4000

(Name, Address and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copy to:

Benet J. O Reilly, Esq.

Cleary Gottlieb Steen & Hamilton LLP

One Liberty Plaza

New York, New York 10006

(212) 225-2000

CALCULATION OF FILING FEE

Transaction Valuation*
\$71,505,930.60

Amount of Filing Fee**
\$2,810.18

* For purposes of calculating the

filing fee pursuant to Rule 0-11(d) only, the transaction valuation was calculated on the basis of (a) 55,004,562, the estimated maximum number of shares of common stock, no par value per share, of Genelabs Technologies, Inc. (the Shares) that may be acquired in this tender offer and merger (representing (i) 43,684,465 Shares issued and outstanding, (ii) 3,693,966 Shares issuable upon the exercise of outstanding options and (iii) 7,626,131 Shares issuable upon the exercise of outstanding warrants) and (b) the offer price of \$1.30 per Share.

** The filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, is calculated by

multiplying the
Transaction
Valuation by
.00003930.

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: **\$2,244.33**

Filing Party: **Gemstone Acquisition Corporation
and GlaxoSmithKline plc**

Form or Registration No.: **Schedule TO**

Date Filed: **November 12, 2008**

Amount Previously Paid: **\$565.85**

Filing Party: **Gemstone Acquisition Corporation
and GlaxoSmithKline plc**

Form or Registration No.: **Amendment No, 2 to
Schedule TO**

Date Filed: **December 3, 2008**

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 Amendment No. 5 to the Tender Offer Statement on Schedule TO (this Amendment), filed with the Securities and Exchange Commission on December 30, 2008, amends and supplements the Tender Offer Statement on Schedule TO filed on November 12, 2008, as amended by Amendment No. 1 filed on November 21, 2008, Amendment No. 2 filed on December 3, 2008, Amendment No. 3 filed on December 8, 2008 and Amendment No. 4 filed on December 15, 2008 (the Schedule TO) relates to the offer by Gemstone Acquisition Corporation, a California corporation (Purchaser) and a wholly-owned subsidiary of SmithKline Beecham Corporation, a Pennsylvania corporation (SKB) and a wholly-owned subsidiary of GlaxoSmithKline plc, a public limited company organized under the laws of England and Wales (GSK), to purchase all of the outstanding shares of common stock, no par value per share (the Shares), of Genelabs Technologies, Inc., a California corporation (Genelabs), at a price of \$1.30 per Share, net to the seller in cash, without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated November 12, 2008 (the Offer to Purchase) and in the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the Offer), which are annexed to and filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. This Amendment is being filed on behalf of Purchaser, SKB and GSK.

All information set forth in the Offer to Purchase filed as Exhibit (a)(1)(A) to the Schedule TO is incorporated by reference in answer to Items 1 through 11 in the Schedule TO, except those items as to which information is specifically provided herein. The Agreement and Plan of Merger, dated as of October 29, 2008, by and among Purchaser, SKB and Genelabs, a copy of which is attached as Exhibit (d)(1) to the Schedule TO, is incorporated herein by reference with respect to Items 4 through 11 of the Schedule TO.

Items 1-11.

The Offer to Purchase is hereby amended and supplemented by adding the following:

The Depositary has advised GSK that as of 5:00 p.m., New York City time, on Monday, December 29, 2008, approximately 36,425,725 Shares had been validly tendered and not withdrawn pursuant to the Offer. These Shares, together with Shares beneficially owned by GSK and its wholly-owned subsidiaries, represent approximately 82.2 percent of the outstanding Shares on a fully diluted basis.

Pursuant to the terms of the Merger Agreement, on December 30, 2008, the Purchaser reduced the Minimum Tender Condition to the Option Exercise Minimum Number. As defined in Section 1 of the Offer to Purchase Terms of the Offer, the Option Exercise Minimum Number is equal to the number of Shares that when added to the maximum number of Shares issuable in the top-up option equals one Share more than 90 percent of the outstanding Shares on a fully diluted basis. Based on information provided by the Genelabs, GSK estimates the Minimum Tender Condition to be 74.8 percent of the outstanding Shares on a fully diluted basis.

Purchaser has extended the Offer until 12:00 midnight, New York City time, on Tuesday, January 6, 2009, unless the Offer is further extended. The Offer was scheduled to expire at 5:00 p.m., New York City time, on Monday, December 29, 2008.

The full text of the press release issued by GSK announcing reduction of the Minimum Tender Condition and the extension of the Offer is filed as Exhibit (a)(1)(L) hereto and is incorporated herein by reference.

Item 12.

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

(a)(1)(L) Text of press release issued by GSK on December 30, 2008

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.

GlaxoSmithKline plc

By: /s/ Victoria A. Whyte
Name: Victoria A. Whyte
Title: Deputy Secretary

SmithKline Beecham Corporation

By: /s/ Carol G. Ashe
Name: Carol G. Ashe
Title: Vice President

Gemstone Acquisition Corporation

By: /s/ Carol G. Ashe
Name: Carol G. Ashe
Title: Authorized Signatory

Dated: December 30, 2008

EXHIBIT INDEX

- (a)(1)(A) Offer to Purchase, dated November 12, 2008*
- (a)(1)(B) Form of Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9)*
- (a)(1)(C) Form of Notice of Guaranteed Delivery*
- (a)(1)(D) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees*
- (a)(1)(E) Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees*
- (a)(1)(F) Text of press release issued by GSK and Genelabs, dated October 29, 2008 (incorporated by reference to Schedule TO-C filed by GSK with the Securities and Exchange Commission on October 29, 2008)*
- (a)(1)(G) Text of press release issued by GSK on November 12, 2008*
- (a)(1)(H) Form of summary advertisement, published November 12, 2008*
- (a)(1)(I) Text of press release issued by GSK on December 3, 2008**
- (a)(1)(J) Text of press release issued by GSK on December 8, 2008***
- (a)(1)(K) Text of press release issued by GSK on December 15, 2008****
- (a)(1)(L) Text of press release issued by GSK on December 30, 2008
- (b) Not applicable
- (d)(1) Agreement and Plan of Merger, dated as of October 29, 2008, by and among Purchaser, SKB and Genelabs*
- (d)(2) Form of Tender and Shareholder Support Agreement, dated as of October 29, 2008, among Purchaser, SKB and certain shareholders of Genelabs*
- (d)(3) Confidentiality Agreement, dated as of September 30, 2008, by and between SKB and Genelabs*
- (g) Not applicable
- (h) Not applicable

* Previously filed
on
November 12,
2008.

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Previously filed
on December 3,
2008.

*** Previously filed
on December 8,
2008.

**** Previously filed
on
December 15,
2008.