

ZYMOGENETICS INC  
Form SC TO-T/A  
September 29, 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. 5**

**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. 5 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."

**Items 1 through 9 and 11**

Items 1 through 9 and Item 11 of the Schedule TO, which incorporate by reference the information contained in the Offer to Purchase, are hereby revised as follows:

The last paragraph of Section 15 ("Certain Conditions of the Offer") on page 48 of the Offer to Purchase is amended and restated to read as follows:

The foregoing conditions are for the benefit of Parent and Purchaser and may be asserted by Parent and Purchaser regardless of the circumstances (other than conditions that are caused by actions or inactions by Parent or Purchaser) giving rise to such condition, in whole or in part at any applicable time or from time to time in its sole discretion prior to the expiration of the Offer, and all conditions (except for the Minimum Condition, which may be waived by Parent and Purchaser only with the prior written consent of the Company) may be waived by Parent and Purchaser, in their sole discretion, in whole or in part at any applicable time or from time to time, in each case subject to the terms and conditions of the Agreement and the applicable rules and regulations of the SEC.

**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 29, 2010

**BRISTOL-MYERS SQUIBB COMPANY**

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

Date: September 29, 2010

**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.).\*
- (a)(10) Press Release issued by Bristol-Myers Squibb Company, dated September 28, 2010.\*
- (a)(11) Amended Class Action Complaint dated September 17, 2010 (Mesa v. ZymoGenetics, Inc., et al.).\*
- (a)(12) Amended Class Action Complaint dated September 21, 2010 (Krivan v. ZymoGenetics, Inc., et al.).\*
- (a)(13) Class Action Complaint dated September 20, 2010 (Eyster v. ZymoGenetics, Inc., et al.).\*
- (a)(14) Class Action Complaint dated September 23, 2010 (Zhou v. Bruce L.A. Carter, Ph.D., 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.