

SALIX PHARMACEUTICALS LTD
Form SC TO-T/A
March 16, 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. 5)

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*
\$11,368,746,900

Amount of filing fee**
\$1,321,048.39

- * 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) \$173.00, 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 Filing Party: Valeant Pharmaceuticals International, Inc.
Form or Registration No.: S-4 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. 5 amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission on March 4, 2015 (together with any amendments and supplements thereto, 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. On March 16, 2015, Valeant, VPI, Purchaser and Salix entered into an Amendment No. 1 (the Amendment) to that certain Agreement and Plan of Merger, dated as of February 20, 2015 (as amended, the Merger Agreement), by and among Salix, Merger Sub, VPI and, solely for purposes of guaranteeing VPI s and Merger Sub s obligations thereunder, Valeant. Pursuant to the Amendment, among other things, (i) the offer price was increased from \$158.00 per Share to \$173.00 per Share, net to the holder in cash, without interest, subject to any withholding of taxes required by applicable law thereon, provided that if at 12:00 midnight, Eastern time, on April 8, 2015 (one minute after 11:59 P.M., Eastern time, on April 7, 2015), all of the conditions to the tender offer have not been satisfied or waived by Valeant, then the offer price will be reduced to \$158.00 per Share, net to the holder in cash, without interest, subject to any withholding of taxes required by applicable law thereon; (ii) the amount of the fee payable by Salix upon the termination of the Merger Agreement under certain provisions thereof was increased from \$356.4 million to \$456.4 million; and (iii) the outside date after which either VPI or Salix may terminate the transaction has been moved from August 20, 2015 to May 1, 2015. As a result of the Amendment, Purchaser is offering to purchase all of the outstanding Shares at a price of \$173.00 per Share (as such price per Share may be reduced pursuant to the Merger Agreement, without interest, less any applicable withholding taxes, upon the terms and subject to the conditions set forth in the (i) Offer to Purchase, dated March 4, 2015 (as it may be amended or supplemented from time to time (the Offer to Purchase)) and (ii) related letter of transmittal that accompanied the Offer to Purchase (the Letter of Transmittal), which, together with any amendments or supplements, each as may be amended or supplemented from time to time, collectively constitute the Offer). In the event that, at 12:00 midnight, Eastern time, on April 8, 2015 (one minute after 11:59 P.M., Eastern time, on April 7, 2015), all of the conditions to the Offer (including the Minimum Condition (as defined in the Merger Agreement)) have not been satisfied, or waived by Purchaser, the offer price will be reduced from \$173.00 to \$158.00 per Share, net to the holder in cash, without interest, less any applicable withholding taxes. The Offer will expire at 12:00 midnight, Eastern time, on April 1, 2015 (one minute after 11:59 P.M., Eastern time, on March 31, 2015) (the Initial Expiration Date), unless extended. The Merger Agreement provides that Purchaser is required to extend the Offer beyond the Initial Expiration Date in certain circumstances as set forth in the Offer to Purchase. In the event that, at the Initial Expiration Date, all of the conditions to the Offer (including the Minimum Condition) have not been satisfied, or waived by Purchaser, Purchaser shall (and VPI shall cause Purchaser to) extend the Offer for successive periods of up to ten business days each, the length of each such period to be determined by VPI in its sole discretion, in order to permit the satisfaction of such conditions, *provided* that (i) with respect to the extension, if any, immediately following the Initial Expiration Date, Purchaser shall extend the Offer to 12:00 midnight, Eastern time, on April 8, 2015 (which is one minute after 11:59 P.M., Eastern time, on April 7, 2015) and (ii) Purchaser shall not be required to, and shall not without Salix s prior written consent, extend the Offer beyond May 1, 2015.

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

This Amendment No. 5 is being filed to incorporate by reference the information described above and to amend and supplement Item 12 with an additional exhibit.

Item 12: Exhibits.

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

(a)(5)(x) Joint Press Release issued by Valeant and Salix, dated March 16, 2015.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 5 to Schedule TO is true, complete and correct.

Dated: March 16, 2015

SUN MERGER SUB, INC.

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

**VALEANT PHARMACEUTICALS
INTERNATIONAL**

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

Index 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 <i>The New York Times</i> 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).
(a)(5)(vii)	Press Release issued by Valeant, dated March 11, 2015.*
(a)(5)(viii)	Press Release issued by Valeant, dated March 13, 2015.*
(a)(5)(ix)	Press Release issued by Valeant, dated March 13, 2015.*
(a)(5)(x)	Joint Press Release issued by Valeant and Salix, dated March 16, 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)	

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

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- (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).
- (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

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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).

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- (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).
- (b)(23) Amendment No. 10, dated March 5, 2015, to the Third Amended and Restated Credit and Guaranty Agreement of Valeant.*
- (b)(24) Amended and Restated Commitment Letter, dated as of March 8, 2015, among Valeant, VPI, Deutsche Bank AG New York Branch, Deutsche Bank AG Cayman Island 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, SunTrust Robinson Humphrey, Inc., Barclays Bank PLC, Morgan Stanley Senior Funding, Inc., Royal Bank of Canada, RBC Capital Markets and Citigroup Global Markets Inc.*
- (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.