

CV THERAPEUTICS INC
Form SC TO-T/A
April 13, 2009

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)

of the Securities Exchange Act of 1934

(Amendment No. 4)

CV Therapeutics, Inc.

(Name of Subject Company (Issuer))

Apex Merger Sub, Inc. (Offeror)

Gilead Sciences, Inc. (Parent of Offeror)

(Names of Filing Persons)

COMMON STOCK, PAR VALUE \$0.001 PER SHARE

(Title of Class of Securities)

126667104

(CUSIP Number of Class of Securities)

Gregg H. Alton, Esq.

Senior Vice President and General Counsel

Gilead Sciences, Inc.

333 Lakeside Drive

Foster City, California 94404

Tel: (650) 574-3000

(Name, address, and telephone number of person authorized to
receive notices and communications on behalf of filing persons)

with copies to:

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Calculation of Filing Fee

Transaction valuation(1)
\$1,473,682,660

Amount of filing fee(2)
\$82,232

(1)

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Estimated solely for the purpose of calculating the registration fee in accordance with the Securities Exchange Act of 1934, as amended, based on the product of (i) \$20.00 (i.e. the tender offer price) and (ii) 73,684,133, the estimated maximum number of shares of CV Therapeutics common stock to be acquired in the tender offer (which number is composed of 64,372,800 shares of CV Therapeutics common stock outstanding as of March 13, 2009, 3,287,938 shares of CV Therapeutics common stock issuable upon the exercise of outstanding options that are or will become vested and exercisable before April 14, 2009 and with an exercise price less than \$20.00, 200,000 shares of CV Therapeutics common stock issuable upon the exercise of outstanding warrants and with an exercise price less than \$20.00, and 5,823,395 shares of CV Therapeutics common stock issuable upon conversion of the 2.75% subordinated convertible notes).

- (2) The amount of the filing fee calculated in accordance with the Securities Exchange Act of 1934, as amended, equals \$55.80 for each \$1,000,000 of value. The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934 and Fee Rate Advisory #5 for fiscal year 2009, issued March 11, 2009.

- 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: \$82,232
Form or Registration No.: SC TO-T

Filing Party: Apex Merger Sub, Inc. and Gilead Sciences, Inc.
Date Filed: March 18, 2009

- .. Check the box if the filing relates 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: ..

This Amendment No. 4 (the Amendment) amends and supplements the Tender Offer Statement on Schedule TO (as amended, the Schedule TO), filed initially with the Securities and Exchange Commission on March 18, 2009 by Apex Merger Sub, Inc., a Delaware corporation (Acquisition Sub) and a wholly-owned subsidiary of Gilead Sciences, Inc., a Delaware corporation (Gilead), and Gilead relating to the tender offer by Acquisition Sub to purchase all of the outstanding shares of common stock, par value \$0.001 per share, of CV Therapeutics, Inc., a Delaware corporation (CV Therapeutics), at a purchase price of \$20.00 per share, net to the seller in cash, without interest thereon. The tender offer by Acquisition Sub is subject to the terms and conditions set forth in the Offer to Purchase, dated March 18, 2009, and in the Letter of Transmittal, copies of which were filed with the Schedule TO as Exhibits (a)(1) and (a)(2), respectively. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO. This Amendment is being filed on behalf of Acquisition Sub and Gilead.

ITEM 7. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

Item 7 of the Schedule TO is hereby amended and supplemented by replacing the second paragraph under the heading **Source and Amount of Funds** on page 24 of the Offer to Purchase with the following:

The total amount of funds required by Acquisition Sub to pay for all outstanding shares of CV Therapeutics common stock that are tendered in the Offer and converted into the right to receive cash in the Merger, and to pay all fees and expenses related to the Offer and the Merger, is estimated to be approximately \$1.5 billion. Acquisition Sub plans to obtain all funds needed for the Offer and the Merger through capital contributions or loans that will be made by Gilead, either directly or through one or more wholly-owned subsidiaries of Gilead, to Acquisition Sub. To make this contribution or loan, Gilead expects to use its cash, cash equivalents and marketable securities on hand, as well as \$400 million in funds to be borrowed under Gilead's existing Amended and Restated Credit Agreement (the Credit Agreement) with Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, and certain lender parties thereto. Gilead entered into the Credit Agreement on December 18, 2007. Under the Credit Agreement, Gilead and Gilead Biopharmaceutics Ireland Corporation (GBIC) may borrow initially up to an aggregate of \$1.25 billion in revolving credit loans. The Credit Agreement also includes a sub-facility for swing line loans and letters of credit. Loans under the Credit Agreement will bear interest at either (i) LIBOR plus a margin ranging from 0.20 percent to 0.32 percent or (ii) the base rate, as defined in the Credit Agreement. The Credit Agreement will terminate and all amounts owing thereunder shall be due and payable on December 17, 2012. Gilead and GBIC may reduce the commitments and may prepay loans under the Credit Agreement in whole or in part at any time without penalty, subject to reimbursement of lenders' breakage and reemployment costs in certain cases. The Credit Agreement contains customary representations, warranties, affirmative covenants, negative covenants and events of default. The foregoing description of the Credit Agreement is qualified in its entirety by reference to the description of such agreement contained in the Current Report on Form 8-K filed by Gilead on December 19, 2007 and the executed agreement, which is attached as Exhibit 10.1 to the Form 8-K. Such Credit Agreement is incorporated herein by reference. Gilead intends to repay the loan using cash flow generated from operations.

SIGNATURES

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.

APEX MERGER SUB, INC.

By: /s/ John F. Milligan, Ph.D.
Name: **John F. Milligan, Ph.D.**
Title: **President**

GILEAD SCIENCES, INC.

By: /s/ John F. Milligan, Ph.D.
Name: **John F. Milligan, Ph.D.**
Title: **President and Chief Operating Officer**

Dated: April 13, 2009