

AMGEN INC
Form SC TO-I
November 08, 2011

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

AMGEN INC.

(Name Of Subject Company (Issuer) And Filing Person (Offeror))

Common Shares, par value \$0.0001 per share

(Title of Class of Securities)

031162100

(CUSIP Number of Common Stock)

David J. Scott, Esq.

Senior Vice President, General Counsel and Secretary

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One Amgen Center Drive

Thousand Oaks, California 91320-1799

(805) 447-1000

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

With a copy to:

Charles K. Ruck, Esq.

Gregory P. Rodgers, Esq.

Latham & Watkins LLP

885 Third Avenue

New York, New York 10022

(212) 906-1200

CALCULATION OF FILING FEE

Transaction Valuation*
\$5,000,000,000.00

Amount Of Filing Fee**
\$573,000.00

* The transaction value is estimated only for purposes of calculating the filing fee. This amount is based on the offer to purchase for not more than \$5 billion in aggregate of up to 92,592,593 shares of common stock, \$0.0001 par value, at the minimum tender offer price of \$54.00 per share.

** The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, as modified by Fee Rate Advisory No. 3 for fiscal year 2012, equals \$114.60 per million dollars of the value of the transaction.

.. 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:
Form or Registration No.:

N/A Filing Party:
N/A Date Filed:

N/A
N/A

.. 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:

- 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)

SCHEDULE TO

This Tender Offer Statement on Schedule TO relates to the offer by Amgen Inc., a Delaware corporation (Amgen or the Company), to purchase, up to \$5 billion in value of shares of its common stock, \$0.0001 par value per share (the Shares), at a price not greater than \$60.00 nor less than \$54.00 per Share, to the seller in cash, less any applicable withholding taxes and without interest. The Company's offer is being made upon the terms and subject to the conditions set forth in the Offer to Purchase dated November 8, 2011 (the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached to this Schedule TO as Exhibits (a)(1)(i) and (a)(1)(ii), respectively (which together, as amended or supplemented from time to time, constitute the Offer). This Tender Offer Statement on Schedule TO is intended to satisfy the reporting requirements of Rule 13e-4(c)(2) under the Securities Exchange Act of 1934, as amended.

The information in the Offer to Purchase and the related Letter of Transmittal, copies of which are filed with this Schedule TO as Exhibits (a)(1)(i) and (a)(1)(ii), respectively, are incorporated by reference in answer to Items 1 through 11 in this Tender Offer Statement on Schedule TO.

ITEM 1. SUMMARY TERM SHEET

The information set forth in the section captioned Summary Term Sheet in the Offer to Purchase, a copy of which is filed with this Schedule TO as Exhibit (a)(1)(i), is incorporated herein by reference.

ITEM 2. SUBJECT COMPANY INFORMATION

(a) **Name and Address:** The name of the subject company is Amgen Inc., a Delaware corporation. The address of its principal executive office is One Amgen Center Drive, Thousand Oaks, CA 91320-1799 and its telephone number is (805) 447-1000. The information set forth in Section 10 (Certain Information Concerning Us) of the Offer to Purchase is incorporated herein by reference.

(b) **Securities:** The information set forth in the section of the Offer to Purchase captioned Introduction is incorporated herein by reference.

(c) **Trading Market and Price:** The information set forth in the section captioned Introduction in the Offer to Purchase is incorporated herein by reference. Section 8 (Price Range of Shares; Dividends) of the Offer to Purchase is incorporated herein by reference.

ITEM 3. IDENTITY AND BACKGROUND OF FILING PERSON

(a) **Name and Address:** The name of the filing person is Amgen Inc., a Delaware corporation. The address of its principal executive office is One Amgen Center Drive, Thousand Oaks, CA 91320-1799 and its telephone number is (805) 447-1000. The information set forth in Section 10 (Certain Information Concerning Us) of the Offer to Purchase is incorporated herein by reference. The information set forth in Section 10 (Certain Information Concerning Us) and Section 12 (Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Shares) in the Offer to Purchase is incorporated herein by reference.

ITEM 4. TERMS OF THE TRANSACTION

(a) **Material Terms:** The information set forth in the sections of the Offer to Purchase captioned Introduction and Summary Term Sheet is incorporated herein by reference. The information set forth in Section 1 (Number of Shares; Proration), Section 2 (Purpose of the Offer; Certain Effects of the Offer), Section 3 (Procedures for Tendering Shares), Section 4 (Withdrawal Rights), Section 5 (Purchase of Shares and Payment of Purchase Price), Section 6 (Conditional Tender of Shares), Section 7 (Conditions of the Offer), Section 9 (Source and Amount of Funds), Section 12 (Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Shares), Section 14 (Certain United States Federal Income Tax Consequences), Section 15 (Extension of the Offer; Termination; Amendment) and Section 17 (Miscellaneous) of the Offer to Purchase is incorporated herein by reference.

(b) **Purchases:** The information set forth in the sections of the Offer to Purchase captioned Introduction and Summary Term Sheet is incorporated herein by reference. The information set forth in Section 12 (Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Shares) in the Offer to Purchase is incorporated herein by reference.

ITEM 5. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS

Agreements Involving the Subject Company's Securities: The information set forth in Section 12 (Interests of Directors and Executive Officers, Transactions and Arrangements Concerning the Shares) of the Offer to Purchase is incorporated herein by reference.

ITEM 6. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS

(a) **Purposes:** The information set forth in the section of the Offer to Purchase captioned Summary Term Sheet is incorporated herein by reference. The information set forth in Section 2 (Purpose of the Offer; Certain Effects of the Offer) of the Offer to Purchase is incorporated herein by reference.

(b) **Use of the Securities Acquired:** The information set forth in Section 2 (Purpose of the Offer; Certain Effects of the Offer) of the Offer to Purchase is incorporated herein by reference.

(c) **Plans:** The information set forth in Section 2 (Purpose of the Offer; Certain Effects of the Offer) of the Offer to Purchase is incorporated herein by reference.

ITEM 7. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

(a) **Source of Funds:** The information set forth in Section 9 (Source and Amount of Funds) of the Offer to Purchase is incorporated herein by reference.

(b) **Conditions:** The information set forth in Section 7 (Conditions of the Offer) and Section 9 (Source and Amount of Funds) of the Offer to Purchase is incorporated herein by reference.

(d) **Borrowed Funds:** The information set forth in Section 9 (Source and Amount of Funds) of the Offer to Purchase is incorporated herein by reference.

ITEM 8. INTEREST IN SECURITIES OF THE SUBJECT COMPANY

(a) **Securities Ownership:** The information set forth in Section 12 (Interests of Directors and Executive Officers, Transactions and Arrangements Concerning the Shares) of the Offer to Purchase is incorporated herein by reference.

(b) **Securities Transactions:** The information set forth in Section 12 (Interests of Directors and Executive Officers, Transactions and Arrangements Concerning the Shares) of the Offer to Purchase is incorporated herein by reference.

ITEM 9. PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED

Solicitations or Recommendations: The information set forth in Section 16 (Fees and Expenses) of the Offer to Purchase is incorporated herein by reference.

ITEM 10. FINANCIAL STATEMENTS

Financial Information: The information set forth in Section 11 (Certain Financial Information) of the Offer to Purchase is incorporated herein by reference.

ITEM 11. ADDITIONAL INFORMATION

(a) **Agreements, Regulatory Requirements and Legal Proceedings:** The information set forth in Section 2 (Purpose of the Offer; Certain Effects of the Offer), Section 10 (Certain Information Concerning Us), Section 11(Certain Financial Information), Section 12 (Interests of Directors and Executive Officers; Transactions and Arrangements Concerning the Shares) and Section 13 (Certain Legal Matters; Regulatory Approvals) in the Offer to Purchase is incorporated herein by reference.

(b) **Other Material Information:** The information in the Offer to Purchase and the related Letter of Transmittal, copies of which are filed with this Schedule TO as Exhibits (a)(1)(ii) and (a)(1)(ii), respectively, are incorporated herein by reference.

ITEM 12. EXHIBITS

- (a)(1)(i) Offer to Purchase, dated November 8, 2011.
- (a)(1)(ii) Form of Letter of Transmittal (including IRS Form W-9 and Guidelines for Certification of Taxpayer Identification Number on IRS Form W-9).
- (a)(1)(iii) Notice of Guaranteed Delivery.
- (a)(1)(iv) Letter to Brokers, Dealers, Banks, Trust Companies and Other Nominees.
- (a)(1)(v) Letter to Clients for Use by Brokers, Dealers, Banks, Trust Companies and Other Nominees.
- (a)(1)(vi) Internal Communications Materials, dated November 8, 2011.
- (a)(2) Not applicable.
- (a)(3) Not applicable.
- (a)(4) Not applicable.
- (a)(5)(i) Press Release, dated November 7, 2011.
- (a)(5)(ii) Summary Advertisement, dated November 8, 2011.
- (b) None.
- (d)(1) Amgen Inc. 2009 Equity Incentive Plan. (Filed as Appendix A to Amgen Inc.'s Proxy Statement on March 26, 2009 and incorporated herein by reference.)
- (d)(2) Form of Stock Option Agreement for the Amgen Inc. 2009 Equity Incentive Plan. (As Amended on March 2, 2011.) (Filed as an exhibit to Form 10-Q for the quarter ended March 31, 2011 on May 10, 2011 and incorporated herein by reference.)
- (d)(3) Form of Restricted Stock Unit Agreement for the Amgen Inc. 2009 Equity Incentive Plan. (As Amended on March 2, 2011.) (Filed as an exhibit to Form 10-Q for the quarter ended March 31, 2011 on May 10, 2011 and incorporated herein by reference.)
- (d)(4) Amgen Inc. 2009 Performance Award Program. (As Amended and Restated on December 4, 2009.) (Filed as an exhibit to Form 10-K for the year ended December 31, 2009 on March 1, 2010 and incorporated herein by reference.)
- (d)(5) Form of Performance Unit Agreement for the Amgen Inc. 2009 Performance Award Program. (As Amended on March 2, 2011.) (Filed as an exhibit to Form 10-Q for the quarter ended March 31, 2011 on May 10, 2011 and incorporated herein by reference.)
- (d)(6) Amgen Inc. 2009 Director Equity Incentive Program. (Filed as an exhibit to Form 8-K on May 8, 2009 and incorporated herein by reference.)
- (d)(7) Form of Grant of Non-Qualified Stock Option Agreement and Restricted Stock Unit Agreement for the Amgen Inc. 2009 Director Equity Incentive Program. (Filed as an exhibit to Form 8-K on May 8, 2009 and incorporated herein by reference.)

- (d)(8) Agreement between Amgen Inc. and Mr. Jonathan M. Peacock, dated July 5, 2010. (Filed as an exhibit to Form 10-Q for the quarter ended September 30, 2010 on November 8, 2010 and incorporated herein by reference.)
- (g) None.
- (h) None.

ITEM 13. INFORMATION REQUIRED BY SCHEDULE 13E-3

Not applicable.

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Schedule TO is true, complete and correct.

AMGEN INC.

Dated: November 8, 2011

By: /s/ Jonathan M. Peacock
Name: Jonathan M. Peacock
Title: Executive Vice President and Chief Financial Officer