

ALLOS THERAPEUTICS INC
Form SC TO-T/A
May 01, 2012

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. 4)

Allos Therapeutics, Inc.

(Name of Subject Company (Issuer))

Sapphire Acquisition Sub, Inc.

(Offeror)

a wholly owned subsidiary of

Spectrum Pharmaceuticals, Inc.

(Parent of Offeror)

COMMON STOCK, \$0.001 PAR VALUE PER SHARE
(Title of Class of Securities)

019777101

(CUSIP Number of Class of Securities)

Rajesh C. Shrotriya, M.D.

Spectrum Pharmaceuticals, Inc.

11500 South Eastern Ave., Suite 240

Henderson, Nevada 89052

(702) 835-6300

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

Copies to:

R. Scott Falk, Esq.

Kirkland & Ellis LLP

300 North LaSalle Street

Chicago, Illinois 60654

Eva H. Davis, Esq.

Kirkland & Ellis LLP

333 South Hope Street

Los Angeles, California 90071

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(312) 862-2200

(213) 680-8400

CALCULATION OF FILING FEE

Transaction Valuation(1)
\$218,545,445.26

Amount of Filing Fee(2)
\$25,043.31

- (1) Estimated for purposes of calculating the filing fee only. The calculation assumes the purchase of 113,235,982 shares of Allos Therapeutics, Inc. common stock (assuming full vesting and settlement in common stock of issued and outstanding restricted stock unit awards and exercise of issued and outstanding stock options with an exercise price of less than \$1.82) at a price of \$1.93 per share.
- (2) Calculated in accordance with Rule 0-11 under the Securities and Exchange Act of 1934, as amended, and Fee Rate Advisory #3 for fiscal year 2012, issued September 29, 2011, by multiplying the transaction value by 0.0001146.

- 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.
- Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Amount Previously Paid: \$25,043.31

Filing Party: Spectrum Pharmaceuticals, Inc.

Form or Registration No.: Schedule TO

Date Filed: April 16, 2012

Check the appropriate boxes below to designate any transactions to which the statement relates:

- Third-party offer subject to Rule 14d-1.
- Issuer tender offer subject to Rule 13e-4.
- Going-private transactions 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 amends and supplements the Tender Offer Statement on Schedule TO (which, together with any amendments and supplements thereto, collectively constitute this Schedule TO) relating to the tender offer by Sapphire Acquisition Sub, Inc., a Delaware corporation (the Purchaser), a wholly owned subsidiary of Spectrum Pharmaceuticals, Inc., a Delaware corporation (Parent), to purchase all of the outstanding shares of common stock, par value \$0.001 per share (the Shares), of Allos Therapeutics, Inc., a Delaware corporation (Allos), at a price of \$1.82 per share, net to the seller in cash, without interest thereon and less any applicable withholding taxes, plus one contingent value right to receive additional consideration of \$0.11 per share in cash, upon the terms and subject to the conditions set forth in the offer to purchase dated April 13, 2012 (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.

All of the information set forth in the Offer to Purchase is incorporated by reference herein in response to Items 1 through 9 and Item 11 of this Schedule TO, and is supplemented by the information specifically provided for in this Schedule TO.

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:

(1) The first paragraph immediately following the caption titled "What is the CVR and how does it work?" in the Summary Term Sheet section of the Offer to Purchase is amended and restated in its entirety as follows:

The CVR represents the non-transferable contingent right to receive, for each Share tendered in the Offer and accepted for payment, an additional \$0.11 per Share in cash, without interest and less any applicable withholding taxes, if (1) the Marketing Authorisation Application (the MAA) for FOLOTYN is approved by the European Medicines Agency (the EMA) for the treatment of patients with relapsed or refractory peripheral T-cell lymphoma (PTCL) in Europe by December 31, 2012 and (2) the first reimbursable commercial sale of FOLOTYN is achieved in at least three of the specified major markets in the European Union by December 31, 2013. In January 2012, the EMA Committee for Medicinal Products for Human Use (CHMP) adopted an opinion recommending against approval of the MAA for FOLOTYN for the treatment of patients with relapsed or refractory PTCL in Europe. Allos submitted a request for re-examination of the CHMP opinion in January 2012 and, on April 19, 2012, the CHMP confirmed its position and adopted a final opinion recommending against approval of the MAA. On the same day, the CHMP forwarded a copy of its final opinion to the European Commission (the EC), which is the regulatory authority responsible for rendering a final decision on the MAA. Allos has informed us that it believes that there is no formal process for it to appeal the CHMP's final opinion, and if the EC adopts a final decision refusing approval of the MAA, such decision would be final and binding. In the event the EC does not refer the MAA back to the CHMP, Allos has informed us that it expects that a final decision would likely be adopted by the EC in late May or early June of 2012.

(2) The eighth paragraph in Section 7 "Certain Information Concerning Allos" of the Offer to Purchase is amended and restated in its entirety as follows:

In December 2010, Allos' MAA seeking approval to market FOLOTYN for the treatment of patients with relapsed or refractory PTCL was accepted for review by the European Medicines Agency (the EMA). The MAA is based on updated clinical data from Allos' PROPEL trial described above. In January 2012, the EMA Committee for Medicinal Products for Human Use (CHMP) adopted an opinion recommending against approval of the MAA for FOLOTYN for the treatment of patients with relapsed or refractory PTCL in Europe. Allos submitted a request for re-examination of the CHMP opinion in January 2012 and, on April 19, 2012, the CHMP confirmed its position and adopted a final opinion recommending against approval of the MAA. On the same day, the CHMP forwarded a copy of its final opinion to the European Commission (the EC), which is the regulatory authority responsible for rendering a final decision on the MAA. Allos has informed us that it believes that there is no formal process for it to appeal the CHMP's final opinion, and if the EC adopts a final decision refusing approval of the MAA, such decision would be final and binding. In the event the EC does not refer the MAA back to the CHMP, Allos has informed us that it expects that a final decision would likely be adopted by the EC in late May or early June of 2012. Under the

Mundipharma Collaboration Agreement, if the MAA is approved by the EMA on or before December 31, 2012, Allos would receive a milestone payment from Mundipharma of \$14.5 million, and, if Mundipharma achieves the first reimbursable commercial sale of FOLOTYN in at least three major market countries in the European Union, Allos would receive an additional milestone payment from Mundipharma of \$10.0 million.

(3) The eleventh paragraph in the subsection captioned *Allos Further Consideration of Strategic Alternatives and the Merger Agreement* of Section 10 Background of the Offer; Past Contacts or Negotiations with Allos is amended and restated in its entirety as follows:

In addition, in January 2012, the CHMP adopted an opinion recommending against approval of the MAA for FOLOTYN for the treatment of patients with relapsed or refractory PTCL in Europe. Allos submitted a request for re-examination of the CHMP opinion in January 2012. Allos submitted a request for re-examination of the CHMP opinion in January 2012 and, on April 19, 2012, the CHMP confirmed its position and adopted a final opinion recommending against approval of the MAA. On the same day, the CHMP forwarded a copy of its final opinion to the EC, which is the regulatory authority responsible for rendering a final decision on the MAA. Allos has informed us that it believes that there is no formal process for it to appeal the CHMP's final opinion, and if the EC adopts a final decision refusing approval of the MAA, such decision would be final and binding. In the event the EC does not refer the MAA back to the CHMP, Allos has informed us that it expects that a final decision would likely be adopted by the EC in late May or early June of 2012.

(4) The following paragraph is inserted as the second paragraph in the subsection captioned *Certain Litigation* in Section 16 Certain Legal Matters; Regulatory Approvals of the Offer to Purchase:

On April 30, 2012, an amended class action complaint was filed in the matter captioned *Radmore v. Allos Therapeutics, Inc., et al.*, No. 1:12-cv-00948-PAB-CBS (the Amended Radmore Complaint), adding allegations that the Schedule 14D-9 contains inadequate, incomplete and/or misleading disclosures in violation of the Allos directors' fiduciary duties and section 14(e) of the Exchange Act. The foregoing description of the Amended Radmore Complaint does not purport to be complete and is qualified in its entirety by reference to the Amended Radmore Complaint, which is filed as Exhibit (a)(1)(M) to the Schedule TO and is incorporated herein by reference.

Item 12. Exhibits

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

Exhibit No.	Description
(a)(1)(M)	Amended Complaint, filed in the United States District Court for the District of Colorado, captioned <i>Radmore v. Allos Therapeutics, Inc. et al.</i> (incorporated by reference to Exhibit (g)(5) to Amendment No. 3 to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on May 1, 2012)

SIGNATURES

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: May 1, 2012

SAPPHIRE ACQUISITION SUB, INC.

By: /s/ Brett L. Scott
Name: Brett L. Scott
Title: Chief Financial Officer

SPECTRUM PHARMACEUTICALS, INC.

By: /s/ Brett L. Scott
Name: Brett L. Scott
Title: Senior Vice President and Acting Chief Financial Officer

Exhibit Index

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated April 13, 2012*
(a)(1)(B)	Form of Letter of Transmittal*
(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)	Form of Summary Advertisement as published on April 13, 2012 in the <i>New York Times</i> *
(a)(1)(G)	Joint Press Release issued April 5, 2012 (incorporated by reference to Exhibit 99.1 to the Current Report of Form 8-K filed by Spectrum Pharmaceuticals, Inc. with the Securities and Exchange Commission on April 5, 2012)*
(a)(1)(H)	Complaint filed in the United States District Court for the District of Colorado, captioned <i>Radmore v. Allos Therapeutics, Inc., et al.</i> (incorporated by reference to Exhibit (g)(1) to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 16, 2012)*
(a)(1)(I)	Complaint filed in the Court of Chancery of the State of Delaware, captioned <i>Keucher v. Berns et al.</i> (incorporated by reference to Exhibit (g)(2) to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 16, 2012)*
(a)(1)(J)	Press Release issued by Spectrum Pharmaceuticals, Inc. on April 16, 2012*
(a)(1)(K)	Amended Complaint, filed in the Court of Chancery of the State of Delaware, captioned <i>Keucher v. Berns et al.</i> (incorporated by reference to Exhibit (g)(3) to Amendment No. 2 to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 24, 2012)*
(a)(1)(L)	Second Amended Class Complaint, filed in the Court of Chancery of the State of Delaware, captioned <i>In re Allos Therapeutics, Inc. Shareholders Litigation</i> (incorporated by reference to Exhibit (g)(4) to Amendment No. 2 to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 24, 2012)*
(a)(1)(M)	Amended Complaint, filed in the United States District Court for the District of Colorado, captioned <i>Radmore v. Allos Therapeutics, Inc. et al.</i> (incorporated by reference to Exhibit (g)(5) to Amendment No. 3 to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on May 1, 2012)
(d)(1)	Agreement and Plan of Merger, dated as of April 4, 2012, among Spectrum Pharmaceuticals, Inc., Sapphire Acquisition Sub, Inc. and Allos Therapeutics, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Spectrum Pharmaceuticals, Inc. with the Securities and Exchange Commission on April 5, 2012)*
(d)(2)	Form of Contingent Value Rights Agreement to be entered into by and among the Allos Therapeutics, Inc., Spectrum Pharmaceuticals, Inc. and a Rights Agent to be designated (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K filed by Spectrum Pharmaceuticals, Inc. with the Securities and Exchange Commission on April 5, 2012)*
(d)(3)	Form of Voting and Tender Agreement among Spectrum Pharmaceuticals, Inc., Sapphire Acquisition Sub, Inc. and the stockholders set forth therein (incorporated by reference to Exhibit 2.3 to the Current Report on Form 8-K filed by Spectrum Pharmaceuticals, Inc. with the Securities and Exchange Commission on April 5, 2012)*
(d)(4)	Commitment Letter, dated as of April 4, 2012, among Spectrum Pharmaceuticals, Inc., Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated*
(d)(5)	Confidentiality Agreement, dated as of September 23, 2011, by and among Allos Therapeutics, Inc. and Spectrum Pharmaceuticals, Inc. (incorporated by reference to Exhibit (e)(4) to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 16, 2012)*

**Exhibit
No.**

Description

- (d)(6) Letter Agreement, dated as of March 19, 2012, between Allos Therapeutics, Inc. and Spectrum Pharmaceuticals, Inc. (incorporated by reference to Exhibit (e)(5) to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 16, 2012*
- (d)(7) Letter Agreement, dated as of March 30, 2012, between Allos Therapeutics, Inc. and Spectrum Pharmaceuticals, Inc. (incorporated by reference to Exhibit (e)(6) to the Schedule 14D-9 filed by Allos Therapeutics, Inc. with the Securities and Exchange Commission on April 16, 2012*

* Previously filed.