

REPROS THERAPEUTICS INC.
Form SC TO-T/A
January 05, 2018

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. 2)

REPROS THERAPEUTICS INC.

(Name of Subject Company)

CELESTIAL MERGER SUB, INC.

(Offeror)

A Wholly Owned Subsidiary of

ALLERGAN SALES, LLC

(Parent of Offeror)

An Indirect Wholly Owned Subsidiary of

ALLERGAN plc

(Parent of Offeror)

(Names of Filing Persons)

COMMON STOCK, \$0.001 PAR VALUE

(Title of Class of Securities)

76028H209

(CUSIP Number of Class of Securities)

A. Robert D. Bailey, Esq.

Allergan plc

Chief Legal Officer and Corporate Secretary

Clonshaugh Business and Technology Park

Coolock, Dublin, D17 E400, Ireland

(862) 261-7000

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

with copies to:

Andrew Ment, Esq.

Covington & Burling LLP

620 Eighth Avenue

New York, NY 10018

(212) 841-1000

CALCULATION OF FILING FEE

Transaction Valuation*

\$26,627,942.46

Amount of Filing Fee**

\$3,315.18

- * Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated as the sum of (i) 39,560,688 shares of common stock, par value \$0.001 per share (the Shares), of Repros Therapeutics Inc. (Repros) issued and outstanding multiplied by the sum of the price of \$0.67 per share, (ii) 25,000 Shares issuable pursuant to outstanding options with an exercise price less than the price of \$0.67 per share, multiplied by \$0.35 (which is the price of \$0.67 per share minus the weighted average exercise price for such options of \$0.32 per share) and (iii) 144,450 restricted stock units with rights to the issuance of Shares, issued and outstanding multiplied by the sum of the price of \$0.67 per share. The calculation of the filing fee is based on information provided by Repros as of December 28, 2017.
- ** 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 2018, issued August 24, 2017, by multiplying the transaction value by 0.00012450.

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: \$3,315.18

Filing Party: Repros Therapeutics
Inc.

Form or Registration No.: Schedule TO

Date Filed: December 29, 2017

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:

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. 2 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO filed by Celestial Merger Sub, Inc., a Delaware corporation (Purchaser), a wholly owned subsidiary of Allergan Sales, LLC, a Delaware limited liability company (Parent), and an indirect wholly owned subsidiary of Allergan plc, an Irish public limited company (Allergan), with the Securities and Exchange Commission on December 29, 2017 and subsequently amended by Amendment No. 1 filed with the SEC on January 4, 2018 (together with any subsequent amendments and supplements thereto, including this Amendment, the Schedule TO). The Schedule TO relates to the

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tender offer by Purchaser for all of the issued and outstanding shares of common stock, par value \$0.001 per share (Shares), of Repros Therapeutics Inc., a Delaware corporation (Repros), at a price of \$0.67 per share, net to the seller in cash, without interest and less any applicable withholding taxes, upon the terms and subject to the conditions set forth in the offer to purchase dated December 29, 2017 (together with any amendments and supplements thereto, 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, as each may be amended or supplemented from time to time, collectively constitute the Offer. This Schedule TO is being filed on behalf of Purchaser, Parent and Allergan.

All the information set forth in the Offer to Purchase, including Schedule I thereto, is incorporated by reference herein in response to Items 1 through 9 and Item 11 of this Schedule TO, except that such information is amended and supplemented to the extent specifically provided in this Amendment.

Capitalized terms used but not defined in this Amendment shall have the meanings assigned to such terms in the Schedule TO.

This Amendment is being filed to amend and supplement Item 11 as reflected below.

Item 11. Additional Information.

Item 11 of the Schedule TO and the disclosure under Section 16 Certain Legal Matters; Regulatory Approvals of the Offer to Purchase are hereby amended and supplemented by replacing the Subsection titled Legal Proceedings in its entirety with the following:

Legal Proceedings. On December 29, 2017, a putative class action complaint was filed in the United States District Court for the Southern District of Texas by a purported stockholder of Repros in connection with the pending Offer and the Merger. The action captioned *Mark Neuterman v. Repros Therapeutics Inc. et al. (4:17-cv-03918)* (Texas Action), alleges that the directors of Repros violated Sections 14(e), 14(d)(4), and Section 20(a) of the federal securities laws by filing a Schedule 14D-9 Solicitation/Recommendation Statement with the Securities and Exchange Commission that contains allegedly misleading statements and omissions concerning financial projections for Repros and the valuation analyses performed by Repros financial advisor in support of its fairness opinion. On January 3, 2018, two putative class action complaints were filed in the United States District Court for the District of Delaware by purported stockholders of Repros in connection with the pending Offer and the Merger. The actions, captioned *Adam Franchi v. Repros Therapeutics Inc. et al. (4:18-cv-010053)* (Franchi Action) and *Stephen Clement v. Repros Therapeutics Inc. et al. (4:18-cv-010050)*, allege that the directors of Repros violated Sections 14(d)(4) and Section 20(a) of the federal securities laws based on substantially similar allegations as those in the Texas Action. In addition, the Franchi Action also names Parent and Purchaser as defendants and alleges that they violated Section 20(a) of the federal securities laws. The actions seek various remedies, including enjoining the Merger from being consummated, or in the event the Merger is consummated, damages, and costs and fees relating to the lawsuit.

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: January 5, 2018

ALLERGAN SALES, LLC

By: /s/ A. Robert D. Bailey
Name: A. Robert D. Bailey
Title: President

CELESTIAL MERGER SUB, INC.

By: /s/ A. Robert D. Bailey
Name: A. Robert D. Bailey
Title: President

ALLERGAN PLC

By: /s/ A. Robert D. Bailey
Name: A. Robert D. Bailey
Title: Chief Legal Officer and Corporate Secretary

EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated December 29, 2017. *
(a)(1)(B)	Letter of Transmittal. *
(a)(1)(C)	Notice of Guaranteed Delivery. *
(a)(1)(D)	Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees. *
(a)(1)(E)	Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees. *
(a)(1)(F)	Press Release issued by Repros Therapeutics Inc. on December 12, 2017 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Allergan plc with the Securities and Exchange Commission on December 12, 2017). *
(a)(1)(G)	Summary Advertisement as published in The New York Times on December 29, 2017. *
(d)(1)	Agreement and Plan of Merger, dated as of December 11, 2017, by and among Celestial Merger Sub, Inc., Allergan Sales, LLC and Repros Therapeutics Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Repros Therapeutics Inc. with the Securities and Exchange Commission on December 12, 2017). *
(d)(2)	Confidential Disclosure Agreement, dated April 11, 2017, by and between Repros Therapeutics Inc. and Allergan, Inc. *
(g)	None.
(h)	None.

* Previously filed.