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EON LABS INC
Form SC TO-T/A
June 15, 2005

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SECURITIES AND EXCHANGE COMMISSION

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Washington, D.C. 20549

SCHEDULE TO
AMENDMENT NO. 4

TENDER OFFER STATEMENT UNDER SECTION 14(d) (1) or 13(e) (1)
OF THE SECURITIES EXCHANGE ACT OF 1934

EON LABS, INC.
(Name of Subject Company)

NOVARTIS AG
NOVARTIS CORPORATION
ZODNAS ACQUISITION CORP.
(Name of Filing Persons--Offerors)

COMMON STOCK, PAR VALUE \$0.01
(Title of Class of Securities)

29412E100
(CUSIP Number of Class of Securities)

George Miller
Head of Legal and General Affairs
Novartis AG
35 Lichtstrasse
CH-4002 Basel, Switzerland
41-61-324-1111
(Name, Address and Telephone Number of Person Authorized
to Receive Notices and Communications on Behalf of Filing Persons)

-Copies to-
Andrew R. Brownstein, Esq.
Trevor S. Norwitz, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
(212) 403-1000

CALCULATION OF FILING FEE

Transaction Valuation	Amount of Filing Fee
\$977,098,158*	\$115,005*

- * Estimated for purposes of calculating the amount of the filing fee only. The calculation of the filing fee is described on the cover page to Amendment No. 1 to the Schedule TO filed on May 27, 2005.
- [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

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previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$115,005 Filing Party: Novartis Corp.

Form or Registration No.: Schedule TO Date Filed: May 23, 2005

[] 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: []

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This Amendment No. 4 amends and supplements the Tender Offer Statement on Schedule TO, as amended, (the "Schedule TO"), originally filed with the Securities and Exchange Commission on May 23, 2005 and as amended and supplemented by Amendment No. 1 on May 27, 2005, Amendment No. 2 on June 2, 2005, and Amendment No. 3 on June 7, 2005, by Novartis AG, a Swiss Corporation, Novartis Corporation ("Novartis US"), a New York corporation and an indirect wholly owned subsidiary of Novartis AG, and Zodnas Acquisition Corp. ("Zodnas"), a Delaware corporation and an indirect wholly owned subsidiary of Novartis US. The Schedule TO relates to the offer by Zodnas to purchase any and all of the outstanding shares of common stock, par value \$0.01 per share (the "Shares"), of Eon Labs, Inc., a Delaware corporation ("Eon"), for \$31.00 per Share, net to the seller in cash, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated May 23, 2005 (the "Offer to Purchase"), and in the related Letter of Transmittal. Copies of the Offer to Purchase and the related Letter of Transmittal are filed with the Schedule TO as exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not defined herein shall have the meanings assigned such terms in the Offer to Purchase and Schedule TO.

ITEMS 1 THROUGH 9 AND 11.

Items 1 through 9 and 11 of the Schedule TO, which incorporate by reference the information contained in the Offer to Purchase, are hereby amended and supplemented as follows:

The Offer to Purchase is hereby amended and supplemented as follows:

1. The following sentence is hereby added at the end of the second paragraph on page 1:

"The Santo Purchase will be consummated immediately following the expiration of the Offer."

2. The following sentence is hereby added at the end of the response to the question on page 6: "Does Purchaser have the financial resources to pay for the Shares it is offering to purchase?":

"No alternative financing plan exists."

3. In the response following the question "If I accept the Offer, when will I get paid?" on page 7, the words "as promptly as practicable" are hereby deleted and replaced

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with "promptly".

4. The second sentence of the first paragraph in the section entitled "Forward-Looking Statements" on page 11 is hereby deleted.
5. The following language is hereby inserted as an additional paragraph on page 11 following the second paragraph on such page:

"The forward-looking statements contained within this Offer to Purchase are not subject to the "safe harbor" provided for in the Private Securities Litigation Reform Act of 1995."

6. The first sentence of the second complete paragraph on page 13 is hereby deleted and replaced with the following:

"Novartis US will purchase the Santo Shares pursuant to the Santo Agreement immediately following the expiration of the Offer (such purchase, the "Santo Purchase")."

7. The following sentence is hereby added at the end of the third paragraph on page 18:

"Neither Novartis AG, Novartis US nor Zodnas has any present intention to transfer or assign, or to cause the transfer or assignment of, the right to purchase Shares tendered into the Offer. In the event of any change in such intention, any transferee or assignee will be considered an offeror for purposes of the Offer and will independently satisfy the timing, signatory and dissemination requirements of the federal securities laws."

8. The following words are inserted at the end of the third sentence of Section 13 on page 42 and prior to the period:

"and no alternative financing plans exist"

9. The last paragraph on page 30 is hereby deleted and replaced with the following:

The descriptions of the Merger Agreement and the Santo Agreement in this Offer to Purchase have been included to provide you with information regarding their terms. The Merger Agreement and the Santo Agreement each contain representations and warranties made by and to the parties thereto as of specific dates. The statements embodied in those representations and warranties were made for purposes of those contracts between the respective parties and are subject to qualifications and limitations agreed by the respective parties in connection with negotiating the terms of those contracts. In addition, certain representations and warranties were made as of a specified date, may be subject to a contractual standard of materiality different from those generally applicable to shareholders, or may have been

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used for the purpose of allocating risk between the respective parties rather than establishing matters as facts.

FORM OF LETTER OF TRANSMITTAL

The Form of Letter of Transmittal included as Exhibit (a)(1)(B) to the Schedule TO is hereby amended and supplemented as follows:

1. The last sentence of the third paragraph on page 5 is hereby deleted and replaced with the following:

"Under certain circumstances set forth in the Offer to Purchase, Purchaser may not be required to accept for payment any of the Shares tendered by this Letter of Transmittal."

2. The last sentence of the last paragraph on page 5 is hereby deleted and replaced with the following:

"Purchaser has no obligation, pursuant to the Special Payment Instructions, to transfer any Shares from the name of the registered holder(s) of such Shares if Purchaser does not purchase any of the Shares tendered by this Letter of Transmittal."

SIGNATURE

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.

Dated: June 15, 2005

NOVARTIS AG

By: /s/ George Miller

Name George Miller
Title: Authorized Signatory

By: /s/ Peter Rupprecht

Name: Peter Rupprecht
Title: Authorized Signatory

NOVARTIS CORPORATION

By: /s/ Terrence A Barnett

Name: Terrence A Barnett

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Title: President and
Chief Executive Officer

ZODNAS ACQUISITION CORP.

By: /s/ Eric Pomerantz

Name: Eric Pomerantz
Title: Vice President
Zodnas Acquisition Corp

EXHIBIT INDEX

- * (a) (1) (A) Offer to Purchase, dated May 23, 2005.
- * (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) Guidelines for Certification of Taxpayer Identification Number (TIN) on Substitute Form W-9.
- (a) (2) Not applicable.
- (a) (3) Not applicable.
- (a) (4) Not applicable.
- * (a) (5) (A) Text of Press Release issued by Novartis dated February 21, 2005, incorporated in this Schedule TO by reference to the Schedule TO filed by Novartis AG, Novartis US and Zodnas on February 22, 2005.
- * (a) (5) (B) Form of Summary Advertisement published in The Wall Street Journal on May 23, 2005.
- * (a) (5) (C) Text of Press Release issued by Novartis dated May 27, 2005.
- * (a) (5) (D) Text of Press Release issued by Novartis dated June 7, 2005.
- * (a) (6) (A) Complaint titled Ellen Wiehl v. Eon Labs, Inc. et al., filed on February 22, 2005, in the Chancery Court of the State of Delaware, County of New Castle.

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- * (a) (6) (B) Complaint titled Paulena Partners LLC v. Eon Labs, Inc. et al., filed on February 22, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- * (a) (6) (C) Complaint titled Robert Kemp, IRRA v. Eon Labs, Inc. et al., filed on February 22, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- * (a) (6) (D) Complaint titled Peter J. Calcagno v. Eon Labs, Inc. et al., filed on February 23, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- * (a) (6) (E) Complaint titled Christopher Pizzo v. Novartis AG et al., filed on February 23, 2005, in the Supreme Court of the State of New York, County of New York.
- * (a) (6) (F) Complaint titled Erste Sparinvest Kapitalanlagegesellschaft MBH v. Eon Labs, Inc. et al., filed on March 1, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- * (a) (6) (G) Complaint titled Merl Huntsinger v. Eon Labs, Inc. et al., filed on March 1, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- * (a) (6) (H) Complaint titled Jason Hung v. Eon Labs, Inc. et al., filed on March 3, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- * (a) (6) (I) Consolidated Amended Complaint titled In re Eon Labs, Inc. Shareholders Litigation, filed on May 27, 2005, in the Chancery Court of the State of Delaware, County of New Castle.
- (b) None.
- * (d) (1) Agreement and Plan of Merger, dated as of February 20, 2005, by and among Novartis US, Zodnas, Eon and, for purposes of Section 12 thereof only, Novartis AG, incorporated in this Schedule TO by reference to Exhibit 2.2 to the Schedule 13D filed by Novartis US, Novartis AG and Zodnas on March 2, 2005.
- * (d) (2) Agreement for Purchase and Sale of Stock, dated as of February 20, 2005, by and between Novartis US, Santo and, for purposes of Section 10.12 thereof only, Novartis AG, incorporated in this Schedule TO by reference to Exhibit 2.1 to the Schedule 13D filed by Novartis US, Novartis AG and Zodnas on March 2, 2005.
- * (d) (3) Confidentiality Agreement, by and between Novartis US and Eon, dated as of February 11, 2005, incorporated in this Schedule TO by reference to Exhibit 2.3 to the Schedule 13D filed by Novartis US, Novartis AG and Zodnas on March 2, 2005.
- (g) None.
- (h) Not applicable.

* Previously filed.